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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

JANET ORTIZ,

Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, SUCCESSOR BY MERGER
TO WACHOVIA FKA AS WORLD SAVINGS
BANK, FSB; GOLDEN WEST SAVINGS
ASSOCIATION SERVICE CO.; WACHOVIA
BANK NA/AMERICAN MORTGAGE
NETWORK, INC.; WACHOVIA MORTGAGE
LOAN TRUST LLC; US BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR
WACHOVIA MORTGAGE LOAN TRUST,
SERIES 1006-AMN1; AND DOES 1
THROUGH 100, INCLUSIVE;

Defendants.

Case No.: 4:11-CV-02401-PJH
[Assigned to the Hon. Phyllis J. Hamilton in
Courtroom 3]

**ORDER GRANTING DEFENDANTS
WELLS FARGO AND GOLDEN WEST
SAVINGS ASSOCIATION SERVICE
CO.’S MOTION TO DISMISS
PLAINTIFF’S COMPLAINT**

Date: October 5, 2011
Time: 9:00 a.m.
Ctrm: 3

The Motion to Dismiss of defendant Wachovia Mortgage, a division of Wells Fargo Bank, N.A., formerly known as World Savings Bank, FSB and Wachovia Mortgage, FSB, as successor in interest to American Mortgage Network, Inc. (“Wells Fargo”) (erroneously sued as “Wells Fargo Bank, National Association, successor by merger to Wachovia fka as World Savings Bank, FSB;” “Wachovia Bank NA/American Mortgage Network, Inc.,” “Wachovia

1 Mortgage Loan Trust LLC”) and Golden West Savings Association Service Co. (collectively
2 “Defendants”) came on regularly for hearing before the Honorable Phyllis J. Hamilton, Judge,
3 presiding, on October 5, 2011 at 9:00 a.m. in Courtroom 3 of the above-captioned Court.

4 The Court, having read and considered the motion, the accompanying request for judicial
5 notice and for good cause appearing, finds as follows:

6 (1) Plaintiff fails to state a claim for Lack of Standing to Foreclose (first) because: (i)
7 plaintiff has failed to allege a tender of the amount borrowed to set aside a Deed of Trust; (ii)
8 plaintiff fails to plead facts sufficient to constitute a claim for relief; and (iii) this state law claim
9 is preempted by 12 Code of Federal Regulations § 560.2 (regulatory codification of preemption of
10 the Home Owners’ Loan Act of 1933 (“HOLA”)), as an interference with the federal savings
11 bank’s lending operations;

12 (2) Plaintiff fails to state a claim for Violation of California Business & Professions
13 Code § 17200 (Fraudulently Procured Documents) (second) because: (i) plaintiff has failed to
14 allege a tender of the amount borrowed to set aside a Deed of Trust; (ii) plaintiff fails to plead
15 facts sufficient to constitute a claim for relief; (iii) plaintiff fails to properly plead the required
16 elements with the required specificity; and (iv) the claim as plead is preempted by the HOLA;

17 (3) Plaintiff fails to state a claim for Unfair Business Practices, California Business
18 and Professions Code § 17200 (Fairness Doctrine) (third) because: (i) plaintiff has failed to
19 allege a tender of the amount borrowed to set aside a Deed of Trust; (ii) plaintiff fails to plead
20 facts sufficient to constitute a claim for relief; (iv) plaintiff fails to properly plead the required
21 elements with the required specificity; and (v) the claim as plead is preempted by the HOLA;

22 (4) Plaintiff fails to state a claim for Quiet Title because: (i) plaintiff has not alleged
23 tender to satisfy the underlying debt; (ii) plaintiff fails to plead facts sufficient to constitute a
24 claim for relief; and (iii) the claim is preempted by the HOLA.

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1 **IT IS HEREBY ORDERED:**

- 2 1. Defendants' request for judicial notice is granted;
- 3 2. Defendants' motion to dismiss is granted with prejudice as to the first and fourth
- 4 claims;
- 5 3. Defendants' motion to dismiss is granted with prejudice as to the second and third
- 6 causes of action to the extent that the allegations are based on claims preempted by
- 7 HOLA (claims relating to imposition of requirements on federal savings banks
- 8 regarding loan-related fees, disclosure and advertising, and processing, origination,
- 9 and servicing mortgages). Otherwise, the motion is granted with leave to amend to
- 10 allege facts sufficient to support the statutory elements of a claim under Business
- 11 & Professions Code § 17200 (the identification of some business practice that is
- 12 forbidden by law; and the "who, what, where, and when" of any allegedly
- 13 fraudulent conduct).
- 14 4. The amended complaint shall be filed within twenty-eight (28) days of October 5,
- 15 2011.

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17 Dated: October 14, 2011



18 HONORABLE PHYLLIS J. HAMILTON
19 UNITED STATES DISTRICT JUDGE
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