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7 Attorney for Defendant ANTHONY J. MARTIN

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF STANISLAUS**

10  
11 U.S. BANK NATIONAL ASSOCIATION,  
12 as successor in interest to the Federal  
13 Deposit Insurance Corporation Including  
Any Assignors or Successors In Interest,

14 Plaintiff,

15 vs.

16 ANTHONY J. MARTIN and DOES 1  
17 through 50 inclusive,

18 Defendants.

Case No.: 645068

DEFENDANT ANTHONY MARTIN'S  
EVIDENTIARY OBJECTION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

[Filed concurrently with Opposition to Motion  
For Summary Judgment]

DATE: June 21, 2010

TIME: 8:30 a.m.

DEPT: D-22

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25 Defendant Anthony J. Martin respectfully submits his Evidentiary Objection to the  
26 Declaration of Mac Johnson filed in support of Plaintiff's Motion for Summary Judgment as  
27 follows:  
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**DECLARATION OF MAC JOHNSON**

**EVIDENTIARY OBJECTION:**

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3 1. I am REO regional manager for  
4 Plaintiff and I make this Declaration  
5 from my own personal knowledge. If  
6 called to testify I could and would  
7 competently so testify. I have been in this  
8 capacity for the past seven years.  
9 I am also the custodian of records for  
10 Plaintiff regarding properties that have  
11 fallen into default status and these records  
12 are kept in the normal course of business.

13 2. My job duties include, but are not  
14 limited to, reviewing and managing all  
15 mortgage loans that have fallen in a default  
16 status from the time the Notice of Default  
17 has been recorded until the time possession  
18 of the subject property has been returned  
19 to the bank. I have been so employed for  
20 over seven years. In this position I have  
21 become familiar with the general monthly  
22 rental rates for similar properties to the  
23 subject property in the general Los Angeles  
24 area.

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1. Objection. Affiant makes statements regarding documents and events for which no evidentiary foundation has been laid that affiant in fact has personal knowledge as alleged. Hearsay. Lack of proper foundation. The fact that an affiant is the custodian of records does confer personal knowledge of the specific documents in issue.

2. Objection. Lack of proper foundation. Hearsay.

1           3. I have reviewed the file materials for  
2 the real property located at 1312 Harbour  
3 Town Lane, Modesto, CA 95357 and I make  
4 this Declaration based on that review.  
5 According to the file materials for the subject  
6 property, Defendant had defaulted on a Note  
7 that was secured by a Deed of Trust dated  
8 2/9/09 that was recorded in the Office of the  
9 County Recorder for the County of Stanislaus,  
10 that contained a power of sale, by failing to pay  
11 the regular monthly payments by the Note and  
12 Deed of Trust.

13           4. Plaintiffs agent, FC1 Lender Services,  
14 Inc., recorded, published, posted and served a  
15 Notice of Default and Election to Sell Under  
16 Deed of Trust, in accordance with the provisions  
17 of Civil Code § 2924 et seq., due to Defendant's  
18 failure to pay the monthly mortgage payments  
19 that had become due under the Note Secured  
20 by the Deed of Trust.

21           5. After the expiration of the statutory  
22 period set forth in the Notice of Default, FCI  
23 Lender Services, Inc., recorded, published and  
24 posted and served a Notice of Trustee's Sale  
25 on Defendant in accordance with Civil Code  
26 § 2924 et seq.

3. Objection. Hearsay. Lack of proper  
foundation. States an improper legal  
conclusion as to the status of defendant's  
loan.

4. Objection. Plaintiff's cannot established  
ownership of the property, because Downey  
Savings never assigned the deed of trust to  
U.S. Bank. Pursuant to Civil Code §2932.5  
Plaintiff never had the power of sale to  
proceed under Civil Code section 2924.

5. Objection. Because Plaintiff was not  
the lawful owner of the property pursuant to  
Civil Code §2923.5, Plaintiff did not have  
the power of sale, and therefore could not  
proceed under Civil Code section 2924.

1           6. A public auction was held on 5/15/09,  
2 in accordance with Civil Code § 2924h and  
3 the Notice of Trustee's Sale. On that same  
4 day, Downey Savings & Loan, acquired the  
5 subject property at the public auction.  
6 The Trustee's Deed Upon Sale was perfected  
7 on 5/22/09 by recording the Trustee's Deed  
8 Upon Sale in the County Recorder's Office of  
9 the County of Sacramento. (A true and correct  
10 copy of the Trustee's Deed Upon Sale is attached  
11 hereto, marked Exhibit "1" and incorporated  
12 herein by reference.)

13           7. In October 2008 Downey Savings &  
14 Loan was taken over by the FDIC and in  
15 November 2008 the FDIC sold the assets of  
16 Downy Savings & Loan to Plaintiff, U.S.  
17 Bank National Association.

18  
19           8. On or about 05/23/09 a 3/90 Day  
20 Foreclosure Notice to Quit, in accordance with  
21 the provisions of California Civil Code Section  
22 1161a, was served on Defendants. (A true and  
23 correct copy of the 3/90 Day Notice to Vacate  
24 is attached to the Declaration of Russ McCormic,  
25 marked Exhibit "2" and incorporated herein by  
26 reference.)

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6. Objection. Because Plaintiff was not  
the lawful owner of the property pursuant to  
Civil Code §2923.5, Plaintiff did not have  
the power of sale, and therefore could not  
proceed under Civil Code section 2924.

7. Objection. Hearsay. Lack of Foundation.  
Affiant makes no statement whatsoever  
that the property at issue was conveyed to  
U.S. Bank. U.S. Bank is not the record  
owner of the property, prior to the  
foreclosure.

8. Objection. Hearsay. Lack of Foundation.  
U.S. Bank was not the owner of record  
prior to the foreclosure, as such the  
action to proceed pursuant to Civil Code  
Section 1161a, was not lawful.

10. On 05/27/09, the 3/90 Day Notice to Vacate expired, and Defendant(s) have remained in possession of the subject property ever since.

10. Objection. Hearsay. Lack of Foundation.  
U.S. Bank was not the owner of record  
prior to the foreclosure, as such the  
Action to proceed pursuant to Civil Code  
Section 1161a, was not lawful.

10. It is my opinion, based on my personal knowledge of the general rental market for properties similar to the subject property that are situated in the general area of the subject property, that the reasonable rental value of the subject property is \$75.00 per day and Plaintiff has incurred damages as a direct result of Defendant(s) unlawful holding over after the expiration of the notice to vacate.

10. Objection. Relevance. Lack of Foundation. U.S. Bank was not the owner of record prior to the foreclosure, as such the action to proceed pursuant to Civil Code Section 1161a, was not law. As such, the reasonable rental value of the property is irrelevant.

11. Plaintiff has incurred court costs in a sum that will be proven with the filing of a timely cost bill.

11. Objection. Relevance. Lack of foundation.

Dated: September 11, 2009

**LAW OFFICES OF  
TIMOTHY MCCANDLESS ESQ.**

Timothy L. McCandless, Esq.,  
Attorney for Defendants  
**ANTHONY J. MARTIN**

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

I am over the age of 18 and not a party to this action. My business address is 15647 Village Drive, Victorville, California 92392, which is located in the county where the mailing described took place.

On June 18, 2010, I served the foregoing document(s) described: **DEFENDANT ANTHONY MARTIN EVIDENTIARY OBJECTION TO THE DECLARATION OF MAC JOHNSON** which were served upon:

**ATTORNEYS FOR U.S. BANK**

John E. Bouzane, Esq.  
Law Offices of John E. Bouzane  
634 Oak Court  
San Bernardino, CA 92410

\_\_\_\_\_ I deposited the foregoing documents in the Federal Express Mail (FedEx). Executed on: , in Victorville, California.

(State) XXXX I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) \_\_\_\_\_ I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

\_\_\_\_\_ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee(s) above.

\_\_\_\_\_  
BERNIE KIMMERLE