

1 *Attorney Info.*

2  
3 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

4 **COUNTY OF MARIN**

5 JOHN DOE, an individual §

6 Case No. [number]

7 vs.

8 **COMPLAINT FOR TRO, INJUNCTION**  
9 **AND FOR DECLARATORY RELIEF**  
10 **[Civ. Code, § 3422; Code Civ. Proc., §§**  
11 **526, 527]**

12 WASHINGTON MUTUAL BANK,  
13 FSB; DEUTSCHE BANK NATIONAL  
14 TRUST CO. AS TRUSTEE FOR  
15 SECURITIZED TRUST WAMU  
16 MORTGAGE PASS-THROUGH  
17 CERTIFIACTES SERIES 2006-AR4  
18 TRUST; WASHINGTON MUTUAL  
19 BANK, FA; WAMU ASSET  
20 ACCEPTANCE CORP.;  
21 WASHINGTON MUTUAL/JP  
22 MORGAN CHASE; MORTGAGE  
23 ELECTRONIC REGISTRATION  
24 SYSTEM, AKA "MERS" AND DOES 1  
25 THROUGH 100, INCLUSIVE

26 **APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION,**  
27 **AND DECLARATORY RELIEF**

28  
29 COMES NOW, Plaintiffs John Doe ("Plaintiff") and files *Verified Emergency Petition*  
30 *for Temporary Restraining Order and/or Preliminary Injunction, and Declaratory Relief*  
31 against the listed Defendants. A temporary restraining order is appropriate to maintain the  
32 status quo. Plaintiff's home will be sold within the next week and Plaintiffs are subject to  
33 eviction actions, without immediate intervention from this Court.

34 **A. PARTIES**

1 Plaintiff is now, and at all times relevant to this action, a resident of the County of  
2 Marin, State of CALIFORNIA.

3 At all times relevant to this action, Plaintiff has owned the Property located at 65  
4 Mariners Cir., San Rafael, CA 94903 (the "Property").

5 Defendant, Washington Mutual Bank, FA is a National Banking Association, doing  
6 business in the County of Marin, State of CALIFORNIA. Plaintiff is further informed and  
7 believes, and thereon alleges, that Washinton Mutual is the Originator of the loan.

8 Defendant, Deutsche Bank National Trust Company (hereafter "Deutsche Bank"), as  
9 Trustee for securitized trust WAMU Mortgage Pass-Through Certificates Series 2006-AR4  
10 Trust (hereafter "WAMU 2006-AR4 Trust"). Plaintiff is informed and believe, and thereon  
11 allege that, Defendant Deutsche Bank, is a national banking association, doing business in the  
12 County of Marin, State of CALIFORNIA and is the purported Master Servicer for Securitized  
13 Trust and/or a purported participant in the imperfect securitization of the Note and/or the Deed  
14 of Trust as more particularly described in this Complaint.

15 Defendant, Washington Mutual Bank, FA. Plaintiff is informed and believe, and  
16 thereon allege that, Defendant Washington Mutual Bank, FA, is a corporation, doing business  
17 in the County of Marin, State of CALIFORNIA and is the purported Sponsor for Securitized  
18 Trust and/or a purported participant in the imperfect securitization of the Note and/or the Deed  
19 of Trust as more particularly described in this Complaint.

20 Defendant, Wamu Asset Acceptance Corp.. Plaintiff is informed and believe, and  
21 thereon allege that, Defendant Wamu Asset Acceptance Corp., is a corporation, doing business  
22 in the County of Marin, State of CALIFORNIA and is the purported Sponsor for Securitized  
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1 Trust and/or a purported participant in the imperfect securitization of the Note and/or the Deed  
2 of Trust as more particularly described in this Complaint.

3 Defendant, Washington Mutual/JP Morgan Chase. Plaintiff is informed and believe, and  
4 thereon allege that, Defendant Washington Mutual/JP Morgan Chase, is a corporation, doing  
5 business in the County of Marin, State of CALIFORNIA and is the purported Master Servicer  
6 for Securitized Trust and/or a purported participant in the imperfect securitization of the Note  
7 and/or the Deed of Trust as more particularly described in this Complaint.

9 Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., aka  
10 MERS ("MERS"), Plaintiff is informed and believe, and thereon allege, that MERS is a  
11 corporation duly organized and existing under the laws of BROWARD, whose last known  
12 address is 1818 Library Street, Suite 300, Reston, Virginia 20190; website:  
13 <http://www.mersinc.org>. MERS is doing business in the County of BROWARD, State of  
14 CALIFORNIA. Plaintiff is further informed and believe, and thereon allege, that Defendant  
15 MERS is the purported Beneficiary under the Deed of Trust and/or is a purported participant in  
16 the imperfect securitization of the Note and/or the Deed of Trust, as more particularly described  
17 in this Complaint.

18 Plaintiff does not know the true names, capacities, or basis for liability of Defendants  
19 sued herein as Does 1 through 100, inclusive, as each fictitiously named Defendant is in some  
20 manner liable to Plaintiff, or claims some right, title, or interest in the Property. Plaintiff will  
21 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is  
22 informed and believe, and therefore allege, that at all relevant times mentioned in this  
23 Complaint, each of the fictitiously named Defendants are responsible in some manner for the  
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1 injuries and damages to Plaintiff so alleged and that such injuries and damages were  
2 proximately caused by such Defendants, and each of them.

3 Plaintiff is informed and believe, and thereon allege, that at all times herein mentioned,  
4 each of the Defendants were the agents, employees, servants and/or the joint-venturers of the  
5 remaining Defendants, and each of them, and in doing the things alleged herein below, were  
6 acting within the course and scope of such agency, employment and/or joint venture.  
7

8 **B. INTRODUCTION**

9 On March 1, 2006, plaintiff executed and delivered to defendant Washinton Mutual a  
10 promissory note payable to Originator in the amount of \$520,000.  
11

12 On March 1, 2006, as security to defendant Washinton Mutual for payment of the note,  
13 plaintiff executed a deed of trust/mortgage conveying to MERS as trustee for the Originator as  
14 beneficiary/mortgagee, that real property located at 65 Mariners Cir., San Rafael, CA 94903,  
15 which is more specifically described as  
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17 \_\_\_\_\_ [  
18 legal description of real property]. The deed of trust/mortgage was recorded as document  
19 number 15585 in the official records of Marin County, California. This deed of trust/mortgage  
20 is referred to in this complaint as "the deed of trust/mortgage," and the property described in the  
21 deed of trust/mortgage is referred to as "the property." A copy of the deed of trust/mortgage is  
22 attached, marked Exhibit \_\_\_\_\_, and incorporated by reference.  
23

24 Defendant Washinton Mutual did NOT cause to be recorded a notice of default in the  
25 official records of Marin County, California, alleging that a breach of the obligation secured by  
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1 the deed of trust/mortgage has occurred as required by law.<sup>1</sup>

2 Defendants, and each of them, intend to sell the property, having given notice that sale  
3 of the property. Unless restrained, defendants, and each of them, will thus sell the property or  
4 cause the property to be sold. This sale would be to plaintiff's great and irreparable injury, for  
5 which pecuniary compensation would not afford adequate relief, in that plaintiff, having no  
6 right to redeem the property from the sale, will forfeit the property if the sale takes place as  
7 scheduled.  
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9 **C. FACTUAL ALLEGATIONS**

10 For years, mortgage brokers and lenders have been selling loan products that they knew  
11 or should have known would never be able to be repaid by the borrower and would prevent  
12 borrowers from ever actually owning the home. Instead, borrowers were offered interest-only,  
13 negative amortization, and/or other subprime loan products<sup>1</sup> that amounted to no more than a  
14 short term lease until the payments became so unaffordable that the borrowers are now faced  
15 with either bankruptcy or foreclosure. The housing bubble of the past decade was created by  
16 predatory lending practices, such as charging excessive fees, incorporating payment penalties,  
17 negative amortization payments, or other abusive terms in the agreements, providing  
18 kickbacks to brokers, flipping loans, using balloon payments to conceal the true burden of the  
19 financing, requiring unnecessary insurance and other products, including mandatory arbitration  
20 clauses, steering borrowers to subprime loans when they qualify for conventional loans, and  
21 using bait and switch tactics. All were rampant within the industry without oversight or good  
22 judgment and found to be inconsistent with important national objectives, including the goals  
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27 <sup>1</sup> See *Bliss v. California Co-op. Producers*, 30 Cal. 2d 240, 244-246, 181 P.2d  
28 369, 170 A.L.R. 1009 (1947).

1 of fair access to credit, community development, and stable homeownership by the broadest  
2 spectrum of America. Rather than offering a loan product that was viable and long-term for the  
3 borrower and lender, brokers and lenders greedily sold whatever they could get away with,  
4 arguably the primary catalyst for what is now this country's worst economic crisis since the  
5 Great Depression.  
6

7 The loan product sold to Plaintiff in this case was exactly the kind of loan that has  
8 contributed to our national problem. The Defendants were aware of this trend, and possessed  
9 the foresight to advise Plaintiff of this risk. They intentionally concealed the negative  
10 implications of the loan they were offering, and as a result, Plaintiff face the potential of losing  
11 their home to the very entity and entities who placed them in this position.  
12

13 On or about March 1, 2006 (hereinafter referred to as "Closing Date") Plaintiff  
14 entered into a consumer credit transaction with Washington Mutual Bank, FA (hereafter  
15 "Washington Mutual") by obtaining a \$520,000 mortgage loan secured by Plaintiff's principal  
16 residence, 65 Mariners Cir., San Rafael, CA 94903. This note was secured by a Deed on the  
17 Property in favor of Washinton Mutual.  
18

19 The terms of the finance transaction with Washinton Mutual are not clear or  
20 conspicuous, nor consistent, and are illegal which violates several statutes and is in essence  
21 creates an illegal loan. Further, this loan was underwritten without proper due diligence by  
22 Washinton Mutual as evidenced by their failure to verify borrower's income utilizing signed  
23 IRS Income Tax Disclosure Form 4506T which would have provided past borrower tax  
24 returns. Washinton Mutual also used a "GDW Cost of Savings" as the Index for the basis of  
25 this loan, because the Lender controls this Index and it is directly based upon the average rate  
26 of interest Washinton Mutual parent company.  
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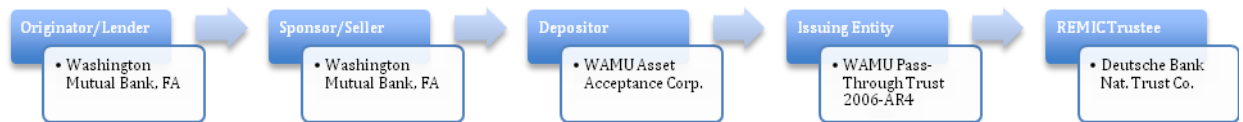
1           In addition, and unbeknownst to Plaintiffs', Washinton Mutual illegally, deceptively  
2 and/or otherwise unjustly, qualified Plaintiff for a loan which Washinton Mutual knew or  
3 should have known that Plaintiff could not qualify for or afford by, for example, the  
4 underwriter has approved this loan based upon credit scores and the borrower's Stated Income  
5 only. Had Washinton Mutual used a more accurate and appropriate factor, such as Tax Forms  
6 and a more determinative level of scrutiny of determining comply with the requirement to  
7 provide Plaintiff with a Mortgage Loan Origination Agreement the debt to income ratio,  
8 Plaintiff would not have qualified for the loan in the first place. Consequently, Washinton  
9 Mutual sold Plaintiff a loan product that it knew or should have known would never be able to  
10 be fully paid back by Plaintiff. Washinton Mutual ignored long-standing economic principals  
11 of underwriting and instead, knowingly, liberally, greedily and without any regard for  
12 Plaintiff's rights sold Plaintiff a deceptive loan product.  
13

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15           From 1998 until the financial crash of 2008-2009, over 60 million home loans where sold  
16 by originating lender banks to investment banks to be securitized in a complex series of billions  
17 of transactions. The Plaintiff's home loan was one of the 60 million notes that were  
18 securitized.  
19

20           Securitization is the process whereby mortgage loans are turned into securities, or bonds,  
21 and sold to investors by Wall Street and other firms. The purpose is to provide a large supply  
22 of money to lenders for originating loans, and to provide investments to bond holders which  
23 were expected to be relatively safe. The procedure for selling of the loans was to create a  
24 situation whereby certain tax laws known as the Real Estate Mortgage Investment Conduit  
25 (hereinafter "REMIC") Act were observed, and whereby the Issuing Entities and the Lenders  
26 would be protected from either entity going into bankruptcy. In order to achieve the desired  
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1 “bankruptcy remoteness,” numerous “True Sales” of the loans had to occur, in which loans  
2 were sold and transferred to the different parties to the securitization.

3 How a particular mortgage loan ended up being transferred to a REMIC TRUST in the  
4 securitization process is governed by a contract known as a Pooling and Servicing Agreement  
5 (“PSA”). The PSA is a Trust Agreement required to be filed under penalty of perjury with the  
6 United States Securities and Exchange Commission (“SEC”) and which, along with another  
7 document, the Mortgage Loan Purchase Agreement (“MLPA”), is the operative securitization  
8 document created by the finance and securitization industry to memorialize securitization  
9 transactions. Plaintiff’s PSA required at minimum this chain of title:  
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17 A “True Sale” of the loan would be a circumstance whereby one party owned the Note  
18 and then sold it to another party. An offer would be made, accepted and compensation given to  
19 the “seller” in return for the Note. The Notes would be transferred, and the Deeds of Trust  
20 assigned to the buyers of the Note, with an Assignment made every step of the way, and,  
21 furthermore, each Note would be endorsed to the next party by the previous assignee of record.  
22

23 In order for the Trustee of the Securitized REMIC Trust to have a valid and enforceable  
24 secured claim against Plaintiff’s Home, the Trustee must prove and certify to all parties that,  
25 among other things required under the PSA:  
26

- 27 a. There was a complete and unbroken chain of indorsements and transfers of the  
28 Note from and to each party to the securitization transaction (which should be from the (A) Mortgage Originator to the (B) Sponsor to the (C) Depositor to the



1 (D) Trust/Trustee, and that all of these indorsements and transfers were  
2 completed prior to the Trust closing dates (see discussion below); and

- 3 b. The Trustee of the Securitized Trust had actual physical possession of the Note  
4 at that point in time, when all indorsements and assignments had been  
5 completed. Absent such proof, Plaintiff alleges that the Trust cannot  
6 demonstrate that it had perfected its security interest in Plaintiff's Home that is  
7 the subject of this action. Therefore, if the Defendants, and each of them, did  
8 not hold and possess the Note on or before the closing date of the Trust herein,  
9 they are estopped and precluded from asserting any secured or unsecured claim  
10 in this case.

11 Plaintiff is informed and believes, and thereon alleges, that pursuant to the terms of the  
12 PSA, the Mortgage Originator (i.e., the original lender herein) agreed to transfer and endorse to  
13 the Trustee for the Securitized Trust, without recourse, including all intervening transfers and  
14 assignments, all of its right, title and interest in and to the mortgage loan (Note) of Plaintiff's  
15 herein and all other mortgage loans identified in the PSA.

16 Based upon the foregoing, Plaintiff is further informed and believe, and thereon allege,  
17 that the following deficiencies exist, in the "True Sale" and securitization process as to this  
18 Deed of Trust which renders invalid any security interest in the Plaintiff's mortgage, including,  
19 but not limited to:

- 20 a. The splitting or separation of title, ownership and interest in Plaintiff's Note and  
21 Deed of Trust of which the original lender is the holder, owner and beneficiary  
22 of Plaintiff's Deed of Trust;
- 23 b. When the loan was sold to each intervening entity, there were no Assignments  
24 of the Deed of Trust to or from any intervening entity at the time of the sale.  
25 Therefore, "True Sales" could not and did not occur;
- 26 c. The failure to assign and transfer the beneficial interest in Plaintiff's Deed of  
27 Trust to Deutsche Bank, in accordance with the PSA of the Defendants, as  
28 Securitization Participants;
- d. The failure to endorse, assign and transfer Plaintiff's Note and/or mortgage to  
Defendant Deutsche Bank, as Trustee for WAMU 2006-AR4 Trust, in  
accordance with the PSA;

- 1 e. No Assignments of Beneficiary or Indorsements of the Note to each of the  
2 intervening entities in the transaction ever occurred under CALIFORNIA law,  
3 which is conclusive proof that no true sales occurred as required under the PSA  
4 filed with the SEC; and
- f. Defendants, and each of them, violated the pertinent terms of the PSA.

5 **D. THE STANDARD FOR INJUNCTIVE RELIEF IS SATISFIED**

6 **1. FORECLOSURE TRO'S:**

7 Injunctive or declaratory relief may be available to prevent an improper private sale of  
8 encumbered property on such grounds as that there is no actual default justifying the sale  
9 (Bisno v. Sax (1959, 2nd Dist) 175 Cal App 2d 714, 346 P2d 814), that the secured transaction  
10 is itself invalid (Daniels v. Williams (1954) 125 Cal App 2d 310, 270 P2d 556), or that  
11 inadequate notice of default was given. (Lupertino v. Carbahal (1973, 3rd Dist) 35 Cal App 3d  
12 742, 111 Cal Rptr 112) This relief may also be available to resolve a dispute as to the amount  
13 of the default. (More v. Calkins (1890) 85 Cal 177, 24 P 729).

14 **2. PRELIMINARY INJUNCTION:**

15 In deciding whether to issue a preliminary injunction, the trial court considers two  
16 related factors: (1) the likelihood the plaintiff will prevail on the merits of its case at trial, and  
17 (2) the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to  
18 the harm the defendant is likely to suffer if the court grants a preliminary injunction. *Buckland*  
19 *v. Threshold Enterprises, Ltd.*, 155 Cal. App. 4th 798, 66 Cal. Rptr. 3d 543 (2d Dist. 2007), as  
20 modified, (Oct. 22, 2007).

21 **3. TEMPORARY RESTRAINING ORDER:**

22 Trial courts should evaluate two interrelated factors when deciding whether to issue a  
23 restraining order: the first is the likelihood that the plaintiff will prevail on the merits at trial,  
24 and the second is the interim harm that the plaintiff is likely to sustain if the restraining order is  
25

1 denied, as compared to the harm that the defendant is likely to suffer if the order is issued.  
2 *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 121 Cal. Rptr. 2d 810  
3 (2d Dist. 2002).

4 **E. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS AT TRIAL.**

5  
6 The foreclosure sale and/or any further transfer of ownership or encumbrance must be  
7 enjoined because the evidence elicited demonstrates that Plaintiff will succeed on the merits at  
8 trial. Plaintiff has successfully alleged nine causes of action against Defendants in this case,  
9 including violations of TILA and RESPA; Fraud; Unfair and Deceptive Business Practice;  
10 Unconscionability; and Quiet Title.

11  
12 An actual controversy has arisen and now exists between plaintiff and defendants  
13 regarding their respective rights and duties. Plaintiff contends that his note and deed of trust  
14 where not transferred and/or assigned pursuant to Plaintiff's loan's PSA and/or California Law,  
15 that defendants violated Federal TILA and RESPA laws, as well as committed fraud in the  
16 inducement and concealment at the initiation of the loan. A judicial declaration is necessary and  
17 appropriate at this time under all the circumstances so that plaintiff may determine his or her  
18 rights and duties under the note and *deed of trust*, specifically,

19  
20 At the very basis of Plaintiff's Complaint, based upon the facts outlined herein and  
21 above, Plaintiff has alleged and can demonstrate at trial that Defendants breached their PSA  
22 contract and through misrepresentation are about to foreclose on Plaintiff's real property, and  
23 that because of the securitization process Defendants and their predecessors in interest failed to  
24 properly assign Plaintiff's Mortgage note and Deed of Trust according to state law and the PSA  
25 governing the original loan.  
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27 **PRAYER**

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WHEREFORE, plaintiff requests judgment as follows:

1. A temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining defendants, defendants’ agents, attorneys, and representatives, and all persons acting in concert or participating with them, from selling, attempting to sell, or causing to be sold the property, either under the power of sale in the deed of trust/mortgage or by foreclosure action;
2. A declaration by the court that sale of the property to enforce the deed of trust/mortgage is improper in that plaintiff has raised a claim that the defendant’s do not legally hold the note or deed of trust and/or do not have right to foreclose on the subject property;
3. Costs of suit; and
4. Any further relief that the court may deem just and equitable.

Dated \_\_\_\_\_

*[Signature]*  
Attorney for Plaintiff

**VERIFICATION**

I am the plaintiff in this action. I have read the foregoing complaint and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

*Date of execution:* \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
NOTARY

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[SEAL]