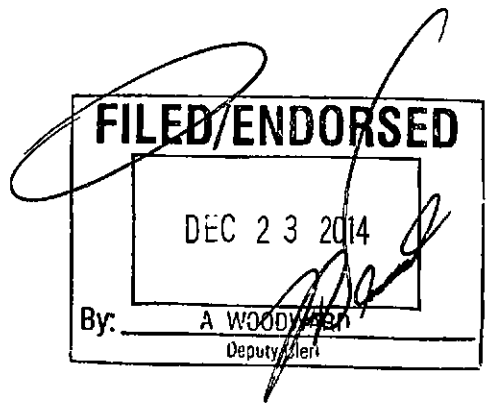


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8 WELLS FARGO BANK, N.A. and
9 U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR WFASC 2005-AR1

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SACRAMENTO

14 THADDEUS J. POTOCKI and
KELLY R. DAVENPORT,

15 Plaintiffs,

16 vs.

17 WELLS FARGO BANK, N.A.;
18 FIRST AMERICAN SERVICING
SOLUTIONS, LLC;
19 U.S. BANK, N.A.; and
DOES 1 through 100, inclusive,

20 Defendants.

Case No. 34-2014-00160873
The Hon. David W. Abbott, Dept. 39

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF WELLS FARGO BANK
AND U.S. BANK'S DEMURRER TO
FIRST AMENDED COMPLAINT**

Date: February 3, 2015
Time: 2:00 p.m.
Dept.: 53
Judge: Hon. David L. Brown
Reservation No.: 2010118

Action Filed: March 27, 2014
Trial Date: None

23 Defendants Wells Fargo Bank, N.A. and U.S. Bank National Association, as Trustee for
24 WFASC 2005-AR1, request that the Court take judicial notice of the following documents in
25 support of their demurrer to the First Amended Complaint of plaintiffs Thaddeus J. Potocki and
26 Kelly R. Davenport.

27 A court may take judicial notice of "[r]ecords of (1) any court of this state or (2) any court
28 of record of the United States...." (Cal. Evid. Code, § 452(d).) A court also may take judicial

BY FAX

1 notice of other “[f]acts and propositions that are not reasonably subject to dispute and are capable
2 of immediate and accurate determination by resort to sources of reasonably indisputable
3 accuracy.” (Cal. Evid. Code, § 452(h).) Courts commonly take judicial notice of recorded deeds
4 and similar instruments. (See *McElroy v. Chase Manhattan Mortg. Corp.* (2005) 134 Cal.App.4th
5 388, 394 (taking judicial notice of notice of default, notice of trustee’s sale, and trustee’s deed
6 upon sale); *Cal-American Income Property Fund II v. County of Los Angeles* (1989) 208
7 Cal.App.3d 109, 112 n. 2.)

8 Similarly, both the Ninth Circuit and California appellate courts have long recognized that
9 a document is not “outside” the complaint if the complaint specifically refers to the document and
10 if its authenticity is not questioned. (*Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994),
11 overruled on other grounds by *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002);
12 *Townsend v. Columbia Operations*, 667 F.2d 844, 848-49 (9th Cir.1982); *Performance Plastering*
13 *v. Richmond American Homes, Inc.* (2007) 153 Cal.App.4th 659, 666; *Burnett v. Chimney Sweep*
14 (2004) 123 Cal.App.4th 1057; *Ingram v. Filippo* (1999) 74 Cal.App.4th 1280, 1285, n. 3.)

15 Under California Evidence Code section 453, the Court “shall take judicial notice of any
16 matter specified in Section 452 if a party requests it and: (a) gives each adverse party sufficient
17 notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare
18 to meet the request; and (b) furnishes the court with sufficient information to enable it to take
19 judicial notice of the matter.” (Cal. Evid. Code, § 453.)

20 Through this pleading, plaintiff is being furnished with sufficient notice of, and the Court
21 is being provided sufficient information to grant, this request for judicial notice of the following
22 documents:

23 1. The Grant Deed recorded in the official records of Sacramento County¹ on June 1,
24 2004, book number 20040601, page 2084, a true and correct copy of which is attached hereto as
25 Exhibit I (Cal. Evid. Code, § 452(h));

26 _____
27 ¹ All recordings mentioned herein are in the official records of Sacramento County unless
28 otherwise specified.

- 1 2. The Deed of Trust recorded on November 22, 2004, book number 20041122, page
2 2453, a true and correct copy of which is attached hereto as Exhibit 2 (Cal. Evid. Code, § 452(h));
- 3 3. The Notice of Default and Election to Sell Under Deed of Trust recorded on
4 February 4, 2010, book number 20100204, page 0415, a true and correct copy of which is attached
5 hereto as Exhibit 3 (Cal. Evid. Code, § 452(h));
- 6 4. The Substitution of Trustee recorded on April 9, 2010, book number 20100409,
7 page 0254, a true and correct copy of which is attached hereto as Exhibit 4 (Cal. Evid. Code,
8 § 452(h));
- 9 5. The Assignment of Deed of Trust recorded on May 4, 2010, book number
10 20100504, page 0220, a true and correct copy of which is attached hereto as Exhibit 5 (Cal. Evid.
11 Code, § 452(h));
- 12 6. The Notice of Trustee's Sale recorded on May 11, 2010, book number 20100511,
13 page 0272, a true and correct copy of which is attached hereto as Exhibit 6 (Cal. Evid. Code,
14 § 452(h));
- 15 7. The Notice of Trustee's Sale recorded on June 3, 2011, book number 20110603,
16 page 1342, a true and correct copy of which is attached hereto as Exhibit 7 (Cal. Evid. Code,
17 § 452(h));
- 18 8. The Notice of Trustee's Sale recorded on March 11, 2014, book number 20140311,
19 page 0150, a true and correct copy of which is attached hereto as Exhibit 8 (Cal. Evid. Code,
20 § 452(h));
- 21 9. The Voluntary Petition for Chapter 13 bankruptcy filed by Thaddeus Joseph
22 Potocki and Kelly Rene Davenport on June 1, 2010, in the United States Bankruptcy Court,
23 Eastern District of California, case number 10-34420, a true and correct copy of which is attached
24 hereto as Exhibit 9 (Cal. Evid. Code, § 452(d));
- 25 10. The docket for United States Bankruptcy Court, Eastern District of California, case
26 number 10-34420, printed from PACER on April 9, 2014, a true and correct copy of which is
27 attached hereto as Exhibit 10 (Cal. Evid. Code, § 452(d));

28

1 11. The civil minutes of United States Bankruptcy Court, Eastern District of California,
2 case number 10-34420, entered on August 24, 2010, a true and correct copy of which is attached
3 hereto as Exhibit 11 (Cal. Evid. Code, § 452(d));

4 12. The Complaint filed on September 13, 2010, in Sacramento County Superior Court,
5 case number 34-2010-00087317, a true and correct copy of which is attached hereto as Exhibit 12
6 (Cal. Evid. Code, § 452(d));

7 13. The Voluntary Petition for Chapter 13 bankruptcy filed by Thaddeus Joseph
8 Potocki and Kelly Rene Davenport on March 19, 2012, in the United States Bankruptcy Court,
9 Eastern District of California, case number 12-25236, a true and correct copy of which is attached
10 hereto as Exhibit 12 (Cal. Evid. Code, § 452(d));

11 14. The bankruptcy schedules filed by Thaddeus Joseph Potocki and Kelly Rene
12 Davenport on April 2, 2012, in the United States Bankruptcy Court, Eastern District of California,
13 case number 12-25236, a true and correct copy of which is attached hereto as Exhibit 14 (Cal.
14 Evid. Code, § 452(d));

15 15. The Order Confirming Plan entered June 25, 2012, in the United States Bankruptcy
16 Court, Eastern District of California, case number 12-25236, a true and correct copy of which is
17 attached hereto as Exhibit 15 (Cal. Evid. Code, § 452(d));

18 16. The Request for Dismissal of Sacramento County Superior Court case number 34-
19 2010-00087317, filed February 7, 2014, a true and correct copy of which is attached hereto as
20 Exhibit 16 (Cal. Evid. Code, § 452(d));

21 17. The Complaint filed on March 27, 2014, in the present action (Cal. Evid. Code,
22 § 452(d));

23 18. The First Amended Complaint filed on September 5, 2014, in the present action
24 (Cal. Evid. Code, § 452(d));

25 19. The letter dated August 12, 2009, from Wells Fargo to Thaddeus J. Potocki and
26 Kelly R. Davenport, offering a Special Forbearance Plan to them, a true and correct copy of which
27 is attached hereto as Exhibit 19 (Cal. Evid. Code, § 452(h); *Performance Plastering v. Richmond*
28 *American Homes, Inc.* (2007) 153 Cal.App.4th 659, 666; *Burnett v. Chimney Sweep* (2004) 123

1 Cal.App.4th 1057; *Ingram v. Filippo* (1999) 74 Cal.App.4th 1280, 1285, n. 3).

2 Dated: December 23, 2014

SEVERSON & WERSON
A Professional Corporation

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By: 
Daska P. Babcock

Attorneys for Defendants WELLS FARGO BANK,
N.A. and U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR WFASC 2005-AR1