

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SIX

WILLIAM A. BOOKOUT,

PLAINTIFF/APPELLANT

vs.

MUFG UNION BANK, N.A.
SUCCESSOR TO SANTA BARBARA
BANK & TRUST, N.A., fka PACIFIC
CAPITAL BANK; NOW KNOWN AS
MUFG UNION BANK, N.A DOES 1-50,

DEFENDANTS/RESPONDENTS

) Second Appellate No. B269942

) Appeal from the Judgment of the Superior
) Court of San Luis Obispo County
) Case No. 15CV-0265

) Hon. Judge Barry T. LaBarbera, Presiding

-) 1) BREACH OF WRITTEN CONTRACT
) 2) FRAUD
) 3) PERJURY
) 4) BREACH OF FIDUCIARY DUTY
) 5) NEGLIGENCE

**PETITION FOR REHEARING PER (FAC EXHIBITS 9-5 AND 10-4) SHOWING
NO RESJUDICATA AND
RESTRAINING ORDERS MENTIONED BY THE APPELLATE COURT
NEEDING TO BE MADE CALIFORNIA CASE LAW**

APPELLANT'S REPLY BRIEF

NOTICE OF INTENT TO RELY ON REPLY BREIF IN THE SUPREME COURT

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I. INTRODUCTION

Appellant presents this reply to Respondent Union Banks July 1, 2016 Brief. Respondent did an undisclosed rescission on December 26, 2011 and changed SBA loan documents during Bankruptcy using two Amortization Schedules created by Respondent's Attorney's (Clerk's Transcript on Appeal ("CT") 675-685.) Respondent did not provide this rescission information until June 27, 2013 after the April 13, 2012 Bankruptcy Confirmation ("CT") 746). Respondents on December 26, 2011 changed actual Union Bank loan documents ("CT") 838)-(933-973). ("CT") 838) is a September 23, 2011 Monthly Payment Notice during bankruptcy, showing an interest rate of 6% at \$4,121.06 per month, ("CT") 662-665) is a Certified August 29, 2011 SBB&T Loan Transaction History prior to Bankruptcy each showing that Respondent had not done a Rescission prior to December 26, 2011 and that the Four Year Statute of Limitations under Civil Code section 337 had not expired. This is backed up in ("CT") 839-841) Respondents November 7, 2011 online accounting. Respondents ("CT" 686-689 (FAC Exhibit 6-1 to 6-4) May 19, 2011 letter from Union Banks Attorneys does not claim a rescission with the two amortization schedules created by Respondent's Attorneys.

Respondents, Breach of Written Contract, Fraud, Breach of Fiduciary Duty, Negligence and Perjury prior to May 19, 2011 going back to the 2007 Forbearance agreement was not argued before the San Luis Obispo Superior Court per Respondent's ("CT" 686-689.) and ("CT" 675-685) The Civil Code section 337 four year Statute of limitations has not expired for Respondents actions after respondent changed their November 7, 2011 online accounting Loan Transaction History ("CT" FAC Exhibit 839-841).

Respondents Brief P. 7 refers to Respondents fraud prior to Bankruptcy and not the SBA Loan changes made after ("CT" 675-689) ("CT" FAC Exhibit 839- 841) on June 27, 2013 by respondent.

Respondent Brief P. 8 does not account for the June 25, 2013 Loan Transaction History ("CT") 785-789) and June 27, 2013 email ("CT") 746) showing Respondents

undisclosed December 26, 2013 Rescission not provided during Bankruptcy thus, showing no res judicata per the (“CT”) 1630-1633.

Respondent Brief P. 9-10 **“STATEMENT OF FACTS” A and B.** Refers to actions prior to May 19, 2011 that are not being litigated. Respondent refers to the two amortization schedules created by Robert B. Forouzandeh and Diana Jessup Lee that are not bank records (“CT”) 753) Paragraph 2. Respondent Brief P. 9-10 **B “Harassment of Respondent by Appellant”** Admits to the use of restraining orders only allowing communication with Respondents Attorneys.

Respondent Brief P. 10 **“C. Appellant’s Bankruptcy”** ignores (“CT”) 14-1) dated November 7, 2011 as argued and ignores the undisclosed December 26, 2011 Rescission (“CT”) 788.) with Respondents use of restraining orders.

Appellant was granted Augmentation of the April 13, 2012 Bankruptcy Conformation hearing by the Appellate Court on May 26, 2016 (FAC Opposition Exhibit # 27) showing no res judicata as the Bankruptcy Court was not made aware of Respondents December 26, 2011 Rescission that could not have been argued at conformation. Augumtated (FAC OPP Exhibit # 27) shows that Respondent Breach of Written Contract had not occurred prior to May 18, 2012.

Respondent **“Summary of Claims Against Respondent in the FAC”** are misguided P. 11-12. (“CT”) 790-792 # 3) shows Appellants mistakes in accounting by adding \$45,171.20 back into the SBA loan. This is seen in the June 25, 2013 Loan Transaction History (FAC (“CT”) 534-566 # 5) \$57,676.17 was not put a Proof of Claim.

Respondent **“F The Demurrer and the Judgment”** P. 12-13 shows the Court December 3, 2015 findings coming from prior actions by Respondent per restraining order communication in June 24, 2011. This has nothing to do with the undisclosed December 26, 2011 Rescission by Respondent (“CT”) FAC 545-546) provided by Respondent on June 27, 2013 after the Bankruptcy Conformation.

Respondent **“V ARGUMENT”** P. 15 Failed to provide its June 25, 2013 loan accounting prior in Bankruptcy showing no Res Judicata. Respondent prior to Bankruptcy actions in the Forbearance Agreement are not at issue. Respondents

changing the Forbearance agreement on December 26, 2011 and providing this information on June 27, 2013 is at issue. Respondent P.18 # 3 Respondent now shows on June 25, 2013 that it was not owed \$45,171.20 added onto the SBA loan. This Fraud was not litigated in Bankruptcy as respondent failed to provide this June 25, 2013 accounting using Restraining orders into 2013.

Respondent Breif P. 23 (“**B.**”) **Breach of Contract**, ignores the Four Year Statutute of Limitations from the December 26, 2011 Rescission provided by Respondent on June 27, 2013.

Respondent Breif P. 24 (“**C.**”) **FRAUD**, ignores the Three Year Statutute of Limitations from June 27, 2013; when respondent provided an accounting of the December 26, 2011 Rescission.

Respondent Breif P. 24 (“**D.**”) **Perjury**, ignores the restraining orders stopping Appellants discovery and signed declarations by Respondents Attorney Robert B. Forouzandeh. (“CT”) FAC 604-606.)

Respondent Breif P. 25 (“**E.**”) **Breach of Fiduciary Duty**, ignores the Three Year Statutute of Limitations from June 27, 2013; when respondent provided an accounting of the December 26, 2011 Rescission/Deceit for the first time using restraining orders stopping Appellants discovery of the December 26, 2011 Rescission changing SBA Loan documents. (“CT”) FAC 606-614.) Respondent Breif P. 26 (“**E.**”) **Negligence**, ignores the (“CT” FAC 614-622.) Respondent Breif P. 27 (“**G.**”). Regarding the Court denying Appellant Leave to Amend his Complaint, is an Abuse of Discretion with the Court refusal of Appellants Augumented Opposition Exhibit # 27 (“CT”) 1631.) The Court acknowledged the June 27, 2013 Email (“CT”) 1631.) Respondent Breif VI. Has not madeAppellant whole from its December 26, 2011 rescission made known in 2013..

LEGAL DISCUSSION

In The December 3, 2015 decision by Hon. Judge Barry T. LaBarbera, he would not allow Judicially, noticed (Exhibits 26, 27, 28, 29-1 to 29-17 “CT” Vol. 6 P. 1629 to 1632) showing no adjudication or Res Judicata and that Respondent’s Breach of Written Contract/Rescission was not prior to May 19, 2011 pled in the (“CT”)Vol. 2 P.

572 to 576 Paragraphs 101, 102 103, 104, 105, 106, 109, 110, 111). This is an Abuse of Discretion. Appellant November 30, 2015(Reply OPP (“CT”) Ex. 1621-1622) **June 30, 2011 letter from the Comptroller of the Currency Administrator of National Banks** showed the Court that Respondent had not done a rescission prior to June 30, 2011. The Courts Abuse of Discretion comes from believing two Amortization Schedules created by Respondents Attorneys are bank documents against the Comptroller of the Currency Administrator of National Banks June 30, 2011 Accounting (“CT”) 1621-1622) Request for Judicial Notice (“CT” P. 1610-1620).

RESPONDENT’S BREACH OF WRITTEN CONTRACT-FRAUD-BREACH OF FIDUCIARY DUTY-RESCISSION

Respondent December 26, 2011 Rescission is within the Statute of Limitations for Civil Code section 337, Civil Code section 338(d) and Civil Code section 337(3) that Respondent finally provided June 27, 2013 as pled in the (“CT” Vol 2 P. 572 to 576) after the May 23, 2013 RESPA Denial (“CT” Vol. 2 P. 524 Paragraph 25). (“CT” Vol. 2 P. 541 to 542 FAC P. 30 to 31 Paragraph 55 shows as pled Respondent’s Loan changes in June 2013 as Respondents have no claim for Res Judicata with their continued 2013 Loan changes. This case has not been litigated prior and no res judicata has occurred with Respondents loan changes in their June 25, 2013 Loan Transaction History.

A. UNION BANK USE OF RESTRAINING ORDERS IN 2011 AND 2013

The Court talks about the restraining orders issued for asking SBA Loan Question (“CT” P. 1629)- 1 under (foot notes) and Paragraph 3, but ignores the fact (“CT” Vol. 2 P. 524) that Respondent used these restraining orders as a prison for stopping Appellant from finding the facts behind the December 26, 2011 Rescission until June 27, 2013 showing no res judicata. This is an Abuse of Discretion under Civil Code section 352.1 as Respondent’s restraining order actions are the same as being imprisoned as Appellant could only ask SBA loan Questions of Respondent’s Attorneys (“CT” Vol. 3 P. 742 January 8, 2013 email FAC Exhibit # 9-1 to 9-3 Ex. 9-4 “CT’ P. 745) Email dated January 24, 2013 and (“CT” P 748 RESPA Email 9-7) dated May 23, 2013 per the arguments in the (“CT” P. 521 to 523 P. 10, 11 and 12 Paragraphs 19 to 23). Appellant

in the (FAC) Pled Civil Code section 337. (“CT” Vol. 2 P. 518 to 526) that the Court ignored and did not discuss. For the Court to ignore Civil Code section 337 is an Abuse of Discretion with Respondent restraining order actions.

Appellant in the (FAC) with Respondent’s undisclosed December 26, 2011 Rescission per (“CT”) P. 785 to 789 FAC Exhibit #10) June 25, 2013 Loan Transaction History, Pled the facts under Civil Code section 337(3). “CT” Vol. 2 and 3 Pages 522 to 613 (FAC) For the Court to ignore Civil Code section 337(3) is an Abuse of Discretion.

The Courts Abuse of Discretion in ignoring (FAC Exhibits 1-1, 1-3, 1-4, 5-1, 10-4, 13 14-1, 20-1) to claim (“CT” Vol. 6 P. 1630 Paragraph # 6) in his December 3, 2015 decision. **“Thus, Plaintiff was aware of Defendant’s calculation of the principal owed prior to the bankruptcy.”** Is a full Abuse of Discretion as Respondent own records showed up to November 7, 2011; Respondent had not done a Rescission and the Principal Balance was \$390,996.61 in (“CT” Vol. 3 P. 839 Ex. # 14-1) dated November 7, 2011! The Courts December 3, 2015 Decision claims Respondent did their rescission on November 23, 2011 which is within the four year Statute of Limitations and is an Abuse of Discretion. Union Banks Monthly Payment notice (“CT” Vol. 3 P 838 Ex. 13) September 23, 2011 Shows that Respondent had not done a rescission prior and (“CT” P. 662 to 665 “CT Vol. 3 # 1-1, 1-3, 1-4) being the SBA Certified August 29, 2011 Loan Transaction History. The Court failed to understand that Respondent never provided an accounting of their Rescission until June 27, 2013 Civil Code section 337(3). This could not have been argued earlier showing no Res Judicata or adjudication.

For the Court to claim (“CT” Vol. 6 P. 1631 December 3, 2015 paragraph 8), that two May 6, 2011 Amortization Schedules (“CT” Vol. 3 P. 753 Paragraph 2) with an interest rate of 6% starts the Statute of Limitations is an Abuse of Discretion and makes this fully appealable. The June 24, 2011 restraining order answer is not Res Judicata per the (FAC Exhibits (“CT”) 746) # 9-5) and (“CT”) 788) FAC EX. 10-4) acknowledged by the Court paragraph 6 December 3, 2015 decision. In a Second Amended complaint this can be explained further as the two Amortization Schedules created by Union Bank’s Attorney Robert B. Forouzandeh are not Bank documents (“CT” 977 FAC Exhibit 19-1)

and should not have been used in the courts starting point for Statute of Limitations and Res Judicata with Respondent's use of restraining orders in 2011, 2012 and 2013. This is an Abuse of Discretion.

B. STATUTE OF LIMITATIONS FRAUD AND RESCISSION

Appellant's ("CT Vol. 3 P. 788 FAC Exhibit # 10-4) June 25, 2013 Loan Transaction History shows that the Courts November 23, 2011 ("CT" Vol. 3 P. 783) email from Attorney Robert B. Forouzandeh ("CT" Vol. 3 P. 783 Exhibit 9-43) Rescission did not occur until December 26, 2011 and was not provided until June 27, 2013. Res judicata could not happen as it took Respondent until June 27, 2013 within the 3 year Statute of Limitations under Civil Code section 338(d) Fraud and Civil Code section 337(3) Rescission to provide their Concealment of their December 26, 2011 rescission. **"An action for fraudulent misrepresentation lies when the defendant is charged with knowledge of falsity and an intent to deceive (3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, sections 586, 588, at pp. 2224-2227).** Respondent December 26, 2011 Rescission was against Civil Code section 1689 under Rescission, as Respondent did not notify Appellant or make Appellant whole. —When the defendant is guilty of fraudulent concealment of the cause of action the statute is deemed not to become operative until the aggrieved party discovers the existence of the cause of action. (*Kane v. Cook*, 8 Cal. 449; *Kimball v. Pacific Gas & Elec. Co.* (1934) 220 Cal. 203 [30 P.2d 39].” Appellant in the (FAC) Pled Civil Code section 338(d) --On Pages ("CT" 519- 614) pages 8-12, 14-17, 19-22, 24-25, 27-32, 34, 36-42, 44-45, 47-49, 53, 56, 57, 60, 62-63, 65, 67, 70, 74-79, 81, 83-85, 87-103. The Trial Court in its Abuse of Discretion on December 3, 2015 decision ("CT" Vol. 6 P. 1631 paragraph 9) ignored as Pled in the ("CT" Vol. 2 P. 593, 594, 595 # 2, 3, 4, 6 and 7) Civil Code section 338(d) and Civil Code section 337(3) .

3. ("With respect to actions based on fraud, the statute of limitations is tolled when plaintiff is able to show the defendant fraudulently concealed facts which would have led him to discover his potential cause of action. 'Technical rules as to when a cause of action accrues apply therefore only in those cases which are free from fraud committed by the defendant. Said section 338, subdivision 4, . . .

recognizes the non-applicability of those technical rules where the fraud of the defendant may be so concealed that in the absence of circumstances imposing greater diligence on the plaintiff, the cause of action is deemed not to accrue until the fraud is discovered. Otherwise, in such cases, the defendant by concealing his fraud would effectively block recovery by the plaintiff because of the intervention of the statute of limitations.” (*Snow v. A. H. Robins Co. (1985) 165 Cal.App.3d 120, 127—128 [211 Cal.Rptr. 271, internal citation omitted.]*).

4. (“Courts have relied on the nature of the relationship between defendant and plaintiff to explain application of the delayed accrual rule. The rule is generally applicable to confidential or fiduciary relationships. The fiduciary relationship carries a duty of full disclosure, and application of the discovery rule ‘prevents the fiduciary from obtaining immunity for an initial breach of duty by a subsequent breach of the obligation of disclosure.’” (*Parsons v. Tickner (1995) 31 Cal.App.4th 1513, 1526 [37 Cal.Rptr. 2d 810, internal citations omitted.]*)“

See (FAC) Appellant (Exhibits (“CT” 746) 9-5) and (“CT 788) FAC 10-4) dated June 25, 2013 and June 27, 2013 as Respondent withheld the December 26, 2011 Rescission from Appellant until June 27, 2013 by use of Restraining orders in 2012 and 2013, per the (FAC Exhibit # 8 “CT” 707-741). Respondent’s Attorneys Robert B. Forouzandeh and Diana Jessup Lee created the amortization schedules used in the Courts December 3, 2015 decision, contributing to the Appellants delay in filing suit. [*Bollinger v National Fire Ins. Co. (1944) 25 C2d 399, 411* equitably tolled (extended, suspended, put on hold). See (“CT” Vol. 3 P.698 FAC Exhibit 6-13 Lines 9-13).

The Courts, Abuse of Discretion is seen in this December 3, 2015 Decision statement (“CT” Vol. 6 P. 1629) Notes Stating:

“1 The Court grants Defendant’s request for judicial notice of various pleadings including, but not limited to, the restraining order and bankruptcy court proceedings that will be discussed infra. “If all of the facts necessary to show that an action is barred by res judicata are within the complaint or subject to judicial notice, a trial court may properly sustain a general demurrer. (Citation)” (*Frommhagen v. Bd. of Supervisors (1987) 197 Cal.App.3d 1292, 1299*) “In ruling on a demurrer based on res judicata, a court may take judicial notice of the official acts or records of any court in this state. (Citations.)” (*Id.*) Even so, most if not all of the documents, including the certain bankruptcy pleadings, are attached as exhibits to the FAC such that they are within the complaint and do not require judicial notice. Plaintiff’s request for judicial notice as to exhibits 26, 27 and 28 is denied, the request as to the other exhibits is unnecessary as those exhibits are attached to the FAC.”

Appellant's ("CT" Vol. 4 P. 978 FAC Ex. 20-1) is an email from Bankruptcy Attorney Chris Gautschi showing the Bankruptcy Courts Conformation, hearing was held **"Without Prejudice"** regarding Attorney Fees Etc.

C. BREACH OF CONTRACT, FRAUD AND BREACH OF FIDUCIARY DUTY

It is an Abuse of Discretion for the Court ("CT" Vol. 6 P. 1631 paragraph 9 December 3, 2015 decision to establish Union Bank's Fraud and Breach of Fiduciary Duty from December 26, 2011 as Union Bank failed to comply with Federal Bankruptcy Rule 3002.1 per (FAC Ex. 20-1) and (Opposition Ex. # 27) not allowed by the Court filed on November 20, 2015 and refilled on December 21, 2015 as Augmented April 28, 2016 into this record.

As pled in the ("CT" Vol. 2 P. 518 Paragraph 13lines 10 to 13) show the beginning of Respondent's Breach of Contract as stated and pled in the (FAC):

"Defendant's actions on December 26, 2011 are the basis for this Breach of Written Contract law suit. Plaintiffs discovery on June 27, 2013 falls under Code of Civil Procedure section 338(d) and Code of Civil Procedure section 337(3)."

The Courts statement (CT" Vol. 6 P. 1630 Paragraph 6). **"Thus, Plaintiff was aware of Defendant's calculation of the principal owed prior to the bankruptcy."** Is a full Abuse of Discretion as during Bankruptcy up to November 7, 2011 Respondent had not done a rescission per (Augmented Opposition Ex. # 27 ("CT" 839 Respondents own accounting).

The Court in its Abuse of Discretion claims December 3, 2015 ("CT" Vol. 6 P. 1631 and 1632 paragraph 11 that:

"Contrary to Plaintiff's allegation that the breach occurred on May 19, 2011, the FAC contains other allegations that affirm that Plaintiff was fully aware of his breach of contract claims prior to May 19, 2011, such that the first cause of action is barred by the four year statute of limitations."

This is not the case as pled in the ("CT") 662 to 665-746, 787, 838, 839 FAC Exhibits 1-1, 1-3, 1-4, 5-1, 9-5, 10-4, 13 and 14-1("CT" 839) along with Augmented (Opposition Ex. # 27) as on December 26, 2011 Respondent changed Appellant's (FAC

Exhibits without informing Appellant or the Bankruptcy Court using Restraining orders and Federal Bankruptcy Rule 3002.1 to withhold these loan Rescission changes against Civil Code section 338(d) – Civil Code section 337(3) pled throughout the (FAC).

The Court in-properly accounts for on December 3, 2015 per (“CT” P. 1630 per FAC Ex. 9-5) the date of Respondent Rescission and the fact that Appellant’s (FAC Exhibits (“CT”) 662 to 665-746, 787, 838, 839) Show that Respondent had not done a rescission, prior to November 23, 2011 or make Appellant whole. The (“CT” Vol. 6 P. 1630 paragraph 6 States:

“Plaintiff alleges that he learned of Defendant’s rescission in a June 27, 2013 email from defense counsel which is attached as Exhibit 9-5 to the FAC. The alleged December 26, 2011 rescission appears to be related to Plaintiff’s assertion that Defendant’s online records reflected a principal balance owing of \$390,996.61, while the amount of the balance on statements provided to Plaintiff stated a balance of \$400,962.89 owing. However, in a November 23, 2011 email, counsel informed Plaintiff that the difference in the online information was due to Defendant’s recalculation of the principal based on a rescission of the Agreement. Thus, Plaintiff was aware of Defendant’s calculation of the principal owed prior to the bankruptcy.”

This is a full Abuse of Discretion under Civil Code section 1689 as the November 7, 2011 online accounting (“CT” Vol. 3 P. 839 Exhibit # 14-1) showed that Respondent **had not done a Rescission prior to bankruptcy** and that Appellant’s Breach of Written Contract claim is within the Four Year Statute of Limitations under California Civil Code section 337. Respondent cannot claim Res Judicata with their withholding the December 26, 2011 Rescission through Restraining orders into 2013! Code of Civil Procedure section 352.1 use of a California Court applies to respondent actions. It took Respondent Attorneys till January 5, 2015 to admit to creating the two May 6, 2011 Amortization Schedules (“CT” Vol. 3 P. 753) as stated by Robert B. Forouzandeh: **“I stated that my office “in conjunction with Union Bank” created the amortization schedules.”** No Current California Case law allows Bank Attorneys to make their own Bank Records (“CT” Vol. 3 P. 753) against Certified Bank Records dated August 29, 2011 (“CT” Vol. 3 P. 1-1 to 1-4). The Court abuse of Discretion is seen (“CT” Vol. 6 P. 1631 to 1632) as

stated by the Court. **“Contrary to plaintiff’s allegation that the breach occurred on May 19, 2011, the FAC contains other allegations that affirm that Plaintiff was fully aware of his breach of contract claims prior to May 19, 2011, such that the first cause of action is barred by the four year statute of limitations.”** The Court is incorrect with the Certified August 29, 2011 Proof of Claim (“CT” P. 662-665 Vol. 3)! The Court is incorrect in its Statute of Limitations in (“CT” Vol. 3 P 838 to 844) showing that Respondent had not done a Rescission prior to December 26, 2011.

D. STATUTE OF LIMITATIONS FRAUD AND RES JUDICATA

As pled to the October 9, 2015 (Demurrer Opposition) on November 20th 2015 (“CT”) FAC 1552). “Res Judicata is not a bar to claims that arise after the initial complaint was filed. (*Allied Fire Protection v. Diede Construction, Inc. (2005) 127 Cal.App.4th 150, 155.*) Respondent’s 12/26/2011 Rescission could not have been argued in Bankruptcy as it arose after the Bankruptcy was filed and Respondent withheld this information until June 27, 2013. The Court is fully aware of Respondents’s May 23, 2013 RESPA Denial (“CT”) 748 FAC Exhibit 9-7 (“CT”) 524 P 13 Lines 12 to 24) (FAC (“CT”) 574-576) P. 63 to 65 Arguments Paragraph 105 to 111) showing no Res Judicata.

If the plaintiff is unaware of facts when filing a complaint, *res judicata* will not bar subsequent litigation. (*Id.* At p. 914, original italics.) *Doe v. Allied-Signal, Inc. (7th Cir.1993) 985 F.2d 908*, in which a second suit was filed after plaintiff discovered new facts.” New facts per the (FAC) are the June 27, 2013 email and June 25, 2013 Proof of Claim (FAC Exhibits (“CT”)746, 788 and 753) as pled in the (FAC).

Respondent’s Fraudulent December 26, 2011 Rescission is within 3 years as provided for the first time and discovered on June 27, 2013 Civil Code section 337(3) and is not Res Judicata with Respondents use of restraining orders. Respondent Counsel for the first time on June 27, 2013 providing a Loan Transaction History-(Proof of Claim) is within Civil Code section 338(d) under fraud. Respondent’s claimed Rescission as acknowledged by the Court is an act of willful Misconduct Pled in the (“CT” Vol. 2 P. 514 Paragraph 6) (*California Bank & Trust v. DelPonti (2014) 232 Cal.App.4th 162, 167.*) “(In *California Bank & Trust*, there was substantial evidence in the form of an

unambiguous e-mail from the bank that if the guarantors performed certain tasks the guarantor's obligations would be mitigated. As such, the trial court in *California Bank & Trust* found that the bank was guilty of willful misconduct.)”

As Pled in the (“CT” Vol. 2 P. 528 Paragraph 34) shows the Statute of Limitations under Civil Code section 338(d) fraud and Civil Code section 337(3) Rescission could not be discovered until June 27, 2013. As a matter of law." (*Bonus-Built, Inc. v. United Grocers, Ltd. (1982) 136 Cal.App.3d 429, 442 [186 Cal.Rptr. 357].*) Facts not contained in the separate statement do not exist. (*United Community Church v. Garcin (1991) 231 Cal.App.3d 327, 337 [282 Cal.Rptr. 368].*) Respondent Rescission did not occur prior to December 26, 2011 as shown in the (“CT” Vol. 2 P. 529 Paragraphs 34 to 36) See e.g. *Klein v. First Edina National Bank (1972) 243 Minn. 418 [196 N.W.2d 619, 622-623, 70 A.L.R.3d 1337]; First National Bank in Lenox v. Brown (Iowa 1970) 181 N.W.2d 178, 182-183; Stewart v. Phoenix Nat. Bank (1937) 49 Ariz. 34 [64 P.2d 101, 106]; Deist v. Wachholz (1984) 208 Mont. 207 [678 P.2d 188, 193-195].* Union Bank's Fiduciary Duty was created between a bank and a borrower. The cases above in the (FAC) involved situations similar in which a bank allegedly withheld information from the borrower about relevant transactions or the borrower relied on advice of the bank. In this case Union Bank withheld their December 26, 2011 Rescission against Appellant (FAC Exhibits 1, 13 and 14-1) and (FAC Exhibit 9-7 RESPA Refusal. (“CT’ Vol. 6 P. 1631 Paragraph 10) of the December 3, 2015 Superior Court Decision regarding Respondent's claimed Rescission falls under the above case law (misconduct.)”

As Pled in (“CT” Vol. 2 P. 529 to 530 Paragraph # 36). -- “36. The Breach of Written Contract, Fraud, Perjury, Breach of Fiduciary Duty and Negligence lawsuit against Union Bank involves situations in which Union Bank has intentionally withheld information from the Appellant and the United States Bankruptcy Court about relevant transactions and loan changes made by Respondent on December 26, 2011 from the Appellant, Appellant's Council and the United States Bankruptcy Court. ‘undue influence involves the use of excessive pressure to persuade one vulnerable to such pressure’ (*Odorizzi v. Bloomfield School Dist. (1966) 246 Cal.App.2d 123, 131 [54 Cal.Rptr. 533];*

see *Olam v. Congress Mortgage Co.* (N.D.Cal. 1999) 68 F.Supp.2d 1110, 1139-1142.) Accordingly, to state a claim for rescission, the plaintiff must ordinarily allege that the party against whom rescission is sought took some advantage of the mental weakness or incapacity of the other party. (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, sections 547, 551, pp. 674-675, 679-680.)”

In September 2011 Appellant was forced to file Bankruptcy on his SBA Loan from Respondent, Attorneys emails from May 19, 2011 to September 7, 2011 Appellants (“CT” Vol. 3 P.742 to 783 Exhibits). In Appellant (“CT” Vol. 3 and 4 P. 900 to 922) November 18, 2011 Bankruptcy **CASE NO. ND11-14393RR Doc 31 Entered 11/8/2011**--Respondent had not done a Rescission or changed Respondent’s Certified SBA Loan documents Per the FAC Bankruptcy, Attorney Richard Rossi in his arrears accounting of \$107,186.12 included Defendants claimed legal fees, late charges etc. on top of actual Principal and interest at 6% owed Respondent per Respondents **August 24, 2011 (Payment Notice) Appellant (“CT” Vol. 4 P. 933Exhibit 17-2).**

The San Luis Obispo Courts statement (“CT” Vol. 6 P. 1629 Paragraph # 2)

“Thus, Plaintiff was aware of Defendant’s calculation of the principal owed prior to the bankruptcy.”

Is a full Abuse of Discretion against the Statute of Limitations as during Bankruptcy up to November 7, 2011 Respondent had not Re-Calculated or done a Rescission. Similar to (*Allied Fire Protection v. Diede Construction, Inc.* (2005) 127 Cal.App.4th 150, 155.)” Appellant’s fraud claim for Respondent’s December 26, 2011 Rescission is not barred by res judicata because it did not accrue until after the Bankruptcy was filed and was withheld from Appellant and the Bankruptcy Court with Respondent’s Extrinsic fraud (Restraining Orders until June 27, 2013). The Court has misunderstood the fact that Respondent’s Attorney Robert B. Forouzandeh admitted June 27, 2013 in (FAC) Exhibit 9-5 (“CT” P. 746) that his Amortization Schedules are not accurate! This has not been litigated and there currently is no California Case law allowing Bank Attorneys to make up their own Bank loan documents! **This should be new Case Law Bookout V. MUFJ Union Bank.** As the Court acknowledges the June

27, 2013 email from Respondent (“CT” 1630 Exhibit 9-5 (“CT” P. 746)) showing that Amortization Schedules are not official Bank SBA Loan documents.

The purpose of res judicata is “to prevent repetitive suits involving the same cause of action.” (*Ripplin Shoals Land Co., LLC v. U.S. Army Corps of Eng’rs*, (8th Cir. 2006) 440 F.3d 1038, 1042.) To determine whether res judicata bars a party from asserting a claim, three elements must be considered: (1) whether the prior judgment was entered by a court of competent jurisdiction; (2) whether the prior decision was a final judgment on the merits; and (3) whether the same cause of action and the same parties or their privies were involved in both cases. All Three of these fail in the December 3, 2015 decision as seen in Appellants Judicially Noticed Augumented (Opposition Exhibit # 27).

In ruling on a demurrer based on res judicata, a court may take judicial notice of the official acts or records of any court in this state. (Id. at p. 481; *Safeco Insurance Co. v. Tholen* (1981) 117 Cal. App. 3d 685, 696 [173 Cal. Rptr. 23]; Evid. Code, section 452.) Appellants Judicially Noticed Augumented (Opp Exhibit # 27) records and testimony by Honorable Judge Robin L. Riblet was not allowed by the San Luis Obispo Superior Court, showing no res judicata.

Honorable Judge Robin L. Riblet made her Bankruptcy Conformation “without Prejudice” under Federal Bankruptcy Rule 3002.1 without having a hearing or deciding on a decision as to what has been pled in the September 4, 2015 (FAC). Honorable Judge Robin L. Riblet gave no ruling or decision on Breach of Written Contract, Fraud, Perjury, Breach of Fiduciary Duty and Negligence with Respondent’s December 26, 2011 Rescission withheld until June 27, 2013.

Honorable Judge Robin L. Riblet in (Augumentated Exhibit # 27) stated at the April 13, 2012 Conformation hearing “**Are these attorney’s fees post-petition or pre-petition?**” “**Both. To the extent they pre-petition, they should go on the claim. To the extent that they are post-petition, they sort of get shunted aside for a while.**”

Respondent’s October 9, 2015 (Opposition Exhibit (“CT” Vol. 6 P. 1528 to 1532) shows that the prior (Proof of Claim) was not approved per Federal Bankruptcy Rule 3002.1. Respondents only claim Pre-Petition Attorney fees of \$15,922.92 and not the

\$57,676.17 in Attorney Fees Post-Petition charged on February 22, 2012 per (FAC Exhibit # 10-4). The February 22, 2012 \$57,676.17 Attorney Fees from Robert B. Forouzandeh should be tried per the May 18, 2015 Civil Complaint. Respondent under bankruptcy rule 3002.1 failed to account for 2012 Post-Petition charges of \$26,500.00 and \$39,750.00 charged on February 21, 2012 which is within Civil Code section 337 and has not been litigated, showing no Res Judicata.

Title 11 United States Code section 502(j) states in relevant part, "A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case"

Honorable Judge Barry T. LaBarbera issued his ruling on December 3, 2011 refusing Judicial Notice of Plaintiff October 20th 2015 Augumented (Opposition Ex. # 27) under Federal Bankruptcy Rule 3002.1 showing no Res Judicata. He allowed Respondent on November 24, 2015 to give testimony ("CT" Vol. 6 P. 1594 to 1595 Exhibit # 27). The Court Acknowledged Respondent's June 27, 2013 Email Appellant's ("CT" Vol. 3 P. 746 Ex. 9-5) in his December 3, 2015 decision showing, that the Courts Amortization Schedule accounting prior to May 19, 2011 did not start the 4 year Statute of Limitation under Civil Code section 337 which is an Abuse of Discretion. ("CT" Vol. 3 P. 746-FAC Ex. 9-5) acknowledged by the Court dated June 27, 2013 states.

("Additionally this document will not match the amortization schedules which were previously provided to you, because as I have repeatedly told you, amortization schedules set forth the schedule of *future* payments on a loan if the terms of the loan are adhered to i.e. they are forward looking. Amortization schedules do not take into account missed payments, late payments, fees incurred etc.")

The Court has misunderstood the amortization schedules created by Union Banks Attorney Robert B. Forouzandeh ("CT" Vol. 3 P. 753) January 5, 2015. This is an Abuse of Discretion.

Respondent's actions fall under *Wells Fargo Bank, N.A. v. Jones (5th Cir. 2011) 439 Fed.Appx. 330* as explained in the ("CT" Vol. 2 and 3 Pages 585, 603, 611, 616, 622) showing no Res judicata as explained in *Allied Fire Protection v. Diede*

Construction, Inc. (2005) 127 Cal.App.4th 150, 155.)” “Res judicata is not a bar to claims that arise after the initial complaint is filed. These rights may be asserted in a supplemental pleading, but if such a pleading is not filed a plaintiff is not foreclosed from asserting the rights in a subsequent action. (*Yager v. Yager (1936) 7 Cal.2d 213, 217*) The general rule that a judgment is conclusive as to matters that could have been litigated "does not apply to new rights acquired pending the action which might have been, but which were not, required to be litigated [Citation]." (*Kettelle v. Kettelle (1930) 110 Cal.App. 310, 312.*)”

Respondent’s misrepresentation, Extrinsic fraud per Federal Bankruptcy Rule 3002.1 and May 23, 2013 RESPA Denial is similar to (*Kettelle v. Kettelle (1930) 110 Cal.App. 310, 312.*)” and (*Yager v. Yager (1936) 7 Cal.2d 213, 217.*) as Respondent was required to Amend their Proof of Claim as explained in Judicially Noticed (Opposition Ex. # 27) denied by the Court. (“CT” Vol. 2 P. 569 Paragraph 97) Exhibit 20-1 explains the Bankruptcy Courts ruling “without prejudice”. The Court failed to acknowledge (“CT” P. 978 Ex. # 20-1) Bankruptcy Conformation hearing ruling “without prejudice”.

“Where the plaintiff is unaware of the facts giving rise to a claim due to defendant's fraud, there is no question of successive litigation by design, the only concern is negligence. A claim should be barred if with diligence it could have been brought earlier. (*Himel v. Continental Ill. Nat. Bank & Trust (1979) 596 F.2d 205, 210* [summary judgment based on res judicata reversed where no showing plaintiffs should have known of alleged misconduct of defendant prior to first suit].) But where it cannot be said that plaintiff knew or should have known of the claim when the first action was filed, res judicata should not bar the second action. (*Id.* at pp. 210-211.)”

Union Bank’s misrepresentation, RESPA Denial, fraud per Federal Bankruptcy Rule 3002.1 can be explained in:

“Comment j of section 26 of Restatement Second of Judgments provides in pertinent part: "A defendant cannot justly object to being sued on a part or phase of a claim that the plaintiff failed to include in an earlier action because of the defendant's own fraud [¶] The result is the same when the defendant was not fraudulent, but by an innocent misrepresentation prevented the plaintiff from including the entire claim in the original action." This rule has been adopted in California. (See *Mattson v. City of Costa Mesa, supra*, 106 Cal.App.3d at p. 449.)”

As stated in (*Allied Fire Protection v. Diede Construction, Inc. (2005) 127 Cal.App.4th 150, 155.*)” The trial court erred in granting summary judgment. [*Allied Fire Protection v. Diede Construction, Inc. (2005) 127 Cal.App.4th 158*] Union Bank was to amend their January 6, 2012 (Proof of Claim) per Judicially Noticed (Augumented Opposition Ex. # 27) denied by the Superior Court from the April 13, 2012 Bankruptcy Conformation hearing. As pled in the November 20, 2015 (“CT” Vol. 6 Opposition P. 1558 lines 12-16). **“—Where there is a duty to disclose, the disclosure must be full and complete, and any material concealment or misrepresentation will amount to fraud. — (Pashley v. Pacific Elec. Ry. Co. (1944) 25 Cal.2d 226, 235 [153 P.2d 325].) fn. 25 [11]”** The Bankruptcy Court has not made a Final judgment with the April 13, 2012 Bankruptcy Conformation Hearing conformed “Without Prejudice” (per Augumented Opp Ex. # 27). The Bankruptcy Court could not make a final judgment with Respondent withholding Post-Petition Attorney Fees as stated by Honorable Judge Robin L. Riblet in Augumented (OPP Ex. # 27) April 13, 2012 Bankruptcy Conformation hearing: **“Oh yes, you didn’t comply with Bankruptcy Rule 3002.1. Excuse me it hasn’t been 180 days.”**

The Trial Court in its Abuse of Discretion ignored as Pled in the (“CT” Vol. 2 P. 593, 594, 595 # 2, 3, 4, 5, 6 and 7) Regarding Respondent’s Fraud, Breach of Written Contract, Perjury, Breach of Fiduciary Duty and Negligence. The Trial Court instead (“CT” 1630) believes that Amortization Schedules created by Attorney Robert B. Forouzandeh are Bank documents as Appellant Stated before the Court in the (FAC).

“2. Defendant Union Bank and Union Bank’s Attorney Robert B. Forouzandeh does not deny Union Bank’s Breach of Written Contract, Fraud, Perjury, Breach of Fiduciary Duty and Negligence with defendants changing Certified SBA loan documents on December 26, 2011 during bankruptcy; without informing Plaintiff, Plaintiffs Bankruptcy Cancel or the United States Bankruptcy Court until June 27, 2013. *Code of Civil Procedure section 338(d)-- Code of Civil Procedure section 337(3).*”

“3. (“With respect to actions based on fraud, the statute of limitations is tolled when plaintiff is able to show the defendant fraudulently concealed facts which would have led him to discover his potential cause of action. ‘Technical rules as to

when a cause of action accrues apply therefore only in those cases which are free from fraud committed by the defendant. Said section 338, subdivision 4, . . . recognizes the non-applicability of those technical rules where the fraud of the defendant may be so concealed that in the absence of circumstances imposing greater diligence on the plaintiff, the cause of action is deemed not to accrue until the fraud is discovered. Otherwise, in such cases, the defendant by concealing his fraud would effectively block recovery by the plaintiff because of the intervention of the statute of limitations.” (*Snow v. A. H. Robins Co.* (1985) 165 Cal.App.3d 120, 127—128 [211 Cal.Rptr. 271], internal citation omitted.) See (FAC) Exhibit # 10-4 dated June 25, 2013.”

“4. (“Courts have relied on the nature of the relationship between defendant and plaintiff to explain application of the delayed accrual rule. The rule is generally applicable to confidential or fiduciary relationships. The fiduciary relationship carries a duty of full disclosure, and application of the discovery rule ‘prevents the fiduciary from obtaining immunity for an initial breach of duty by a subsequent breach of the obligation of disclosure.’” (*Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1526 [37 Cal.Rptr. 2d 810], internal citations omitted.)“ See (FAC Exhibits 9-5 and 10-4) dated June 25, 2013”

“5. (“The provision tolling operation of [section 338(d)] until discovery of the fraud has long been treated as an exception and, accordingly, has held that if an action is brought more than three years after commission of the fraud, plaintiff has the burden of pleading and proving that he did not make the discovery until within three years prior to the filing of his complaint.” (*Samuels v. Mix* (1999) 22 Cal.4th 1, 14 [91 Cal.Rptr.2d 273, 989 P.2d 701], internal citation omitted.) Union Bank’s June 25, 2013 Loan Transaction History (FAC Ex. # 10-4) is the Discovery date of the December 26, 2011 Rescission along with) FAC Ex. 9-5).”

“6. The section 338, subdivision (d), three-year statute of limitations applies to an unjust enrichment cause of action based on *mistake*.” (*Federal Deposit Ins. Corp. v. Dintino* (2008), 167 Cal.App.4th 333, 348 [84 Cal.Rptr.3d 38], original italics.)”

“7. On or about December 26, 2011 defendants and each of them changed Certified SBA Loan Documents and provided this information on June 27, 2013. (The San Luis Obispo Superior Court has established the Rescission as November 23, 2011.) These representations were false and defendants knew the falsity of these statements at the time they were made. Defendants knew in Defendants October 9, 2015 Demurrer (Exhibit # 6-1 to 6-14) of the Extrinsic fraud they would be doing on December 26, 2011 when defendants purposely changed Certified SBA loan documents. Under delayed Discovery and Fraud, the Statute of Limitations fall under *Code of Civil Procedure section 338(d)* and *Code of Civil Procedure section 337(3)*.”

The Trial Court ignored as Pled in the (“CT” Vol. 3 P. 612, Paragraph # 21),
Regarding Respondent’s Fraud, Breach of Written Contract, Perjury, Breach of Fiduciary
Duty and Negligence

“21. Defendants actions in charging \$57,676.17 in Attorney fees fall under. [*Tate v. Nationsbanc Mortgage Corporation* (In re Tate), 253 B.R. 653 (Bankr. W.D.N.C. 2000)] “As a result, many creditors adopted policies to refrain from including the fees in their claims, while continuing to assess the fees to the debtors’ accounts. The practice was admonished by an Alabama bankruptcy court that published opinions in a series of cases, prohibiting the assessment of post-petition, pre-confirmation attorneys’ fees to an account without disclosure in the proof of claim or in a fee application. [*Slick v. Norwest Mortgage, Inc.* (In re Slick), 280 B.R. 722 (Bankr. S.D. Ala. 2002)]; *Dean v. First Union Mortgage Corporation* (In re Dean), 281 B.R. 327 (Bankr. S.D. Ala. 2002)]; and *Powe v. Chrysler Financial Corporation, L.L.C.* (In re Powe), 278 B.R. 539 (Bankr. S. D. Ala. 2002).”

The Trial Court in its Abuse of Discretion ignored as Pled in the (“CT” P. 592 and
593 Paragraph # 166, Regarding Respondent’s Fraud, Breach of Written Contract,
Perjury, Breach of Fiduciary Duty and Negligence.

“166. Defendants actions against Plaintiff and his Creditors (County of San Luis Obispo) involves, situations in which Union Bank has intentionally withheld information from the Plaintiff about relevant transactions and loan changes made by defendant on December 26, 2011. See (E.g. *Klein v. First Edina National Bank* (1972) 243 Minn. 418 [196 N.W.2d 619, 622-623, 70 A.L.R.3d 1337]; *First National Bank in Lenox v. Brown* (Iowa 1970) 181 N.W.2d 178, 182-183; *Stewart v. Phoenix Nat. Bank* (1937) 49 Ariz. 34 [64 P.2d 101, 106]; *Deist v. Wachholz* (1984) 208 Mont. 207 [678 P.2d 188, 193-195].)”

Respondent’s December 26, 2011 Rescission was withheld until June 27, 2013 by the use of a May 23, 2013 RESPA Denial, restraining orders and Bankruptcy Rule 3002.1 per (“CT” 1594 to 1595 Augumented Opposition Ex. # 27) Testimony by Respondent making the Civil Court the proper Court as Respondent changed loan documents in June 2013. Extrinsic fraud is found where fiduciaries have concealed information they have a duty to disclose. (See, e.g., *Adams* [181 Cal. App. 3d 597] v. *Martin* (1935) 3 Cal. 2d 246, 248 [44 P.2d 572]; *In re Marriage of Brennan* (1981) 124 Cal. App. 3d 598, 601 [177 Cal. Rptr. 520]; *Morgan v. Asher* (1920) 49 Cal. App. 172, 176-179 [193 P. 288].)

Appellant cannot be expected to object to matters not known from Respondent's December 26, 2011 Rescission because of Respondent's concealment of information as a fiduciary that took Respondent's Attorneys until June 27, 2013 to inform Appellant as seen in ("CT" P. 746 785-789 FAC Exhibits 9-5 and 10-4). Extrinsic Fraud is explained. In *Craney v. Low* (1956) 46 Cal. 2d 757 [298 P.2d 860], As Respondent's Attorneys put themselves in Charge of Answering SBA loan questions for Union Bank as seen in ("CT" Vol. 3 P. 690 to 705)-statements by Respondent's Attorney Robert B. Forouzandeh. "The commonest ground for equitable relief is extrinsic fraud, a broad concept which covers a number of situations. Its essential characteristic is that it has the effect of preventing a fair adversary hearing, the aggrieved party being deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense." 5 Witkin, California Procedure (2d ed. 1971) Attack on Judgment in Trial Court, section 183, page 3752.

Respondent's withholding a Loan Transaction History through restraining orders til June 27, 2013 is known to the Court per the Courts restraining order statements ("CT" Vol.6 P. 1629 to 1632. FAC Ex. # 10-4). In *Stenderup v. Broadway State Bank* (1933) 219 Cal. 593 [28 P.2d 14], defendants withheld requested information, without which plaintiff was unable to show fraud in accounting. The court held this constituted extrinsic fraud. As said in *Caldwell v. Taylor*, supra, 218 Cal. 471, at page 479.

The doctrine of res judicata precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction." (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 810-811 [122 P.2d 892]; see 7 Witkin, Cal. Procedure, supra, section 188, p. 621) This is not the Case as argued ("CT" Vol. 2 P. 541 Par. 55 Lines 22 to 27 P. 542 Line 1 to 3 ("CT" Vol. 3-P. 790 to792 FAC Exhibit # 11-1 to11-3) per Respondent changing Loan Documents in June 2013.

Respondent's Amortization Schedules created by Robert B. Forouzandeh and not by Respondent Union Bank per the ("CT"746) FAC Ex. 9-5) Acknowledged by the Court

in its Directed Judgment Pursuant to Civil Code section 631.8 is not Substantiated by the Record and should not have been abused by the Court.

Respondent's Attorneys created the amortization schedules used in the Courts December 3, 2015 decision, contributing to the Appellants delay in filing suit. [*Bollinger v National Fire Ins. Co. (1944) 25 C2d 399, 411* equitably tolled (extended, suspended, put on hold). See ("CT" Vol. 3 P.698 FAC Exhibit 6-13 Lines 9-13). 312.)"

Respondent Union Bank has successfully misled the Court to prevent Appellant from a Jury Trial on the merits of this case, which has denied Appellant his right to trial. Appellant has pled that on several dates within the four year statute of limitations, there was Breach of Written Contract, showing that Appellant claims are not barred by the Statute of Limitations prior to May 19, 2011 and are within Civil Code section 337(1). Appellant has shown Respondent's Fraud Civil Code section 338(d). Respondent's fraud and deceit are defined in Civil Code section 1572, 1709, and 171

VII. CONCLUSION

Appellant respectfully requests that the Second Appellate Court make new California Case Law with Respondent's June 25, 2013 Loan Transaction History and use of Restraining orders acknowledged by the Court in its December 3, 2015 Decision:

For the foregoing reasons and those contained in Appellant's Opening Brief, Appellant respectfully requests that the Second Appellate Court reverse Hon Judge Barry T. LaBarbera's December 3, 2015 ruling for Judgment on Breach of Written Contract, Fraud, Perjury, Breach of Fiduciary Duty and Negligence. Allow Appellant to file a Second Amended Complaint or Proceed to Trial, with Respondent's claimed rescission on November 23, 2011 from Amortization Schedules created by respondent's Attorneys.

DATED: July__, 2016

William A. Bookout, Appellant

By: _____
William A. Bookout

State of California
Court of Appeal
Second Appellate District

CERTIFICATE OF COMPLIANCE

Appellant hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed brief of William A. Bookout, the appellant, is produced using 13-point Times New Roman and contains approximately 7,698 words, which is less than the total words permitted by the rules of court. Appellant relies on the word count of the computer program used to prepare this brief.

Dated: July __, 2016

Signed: _____
By: William A. Bookout
Appellant, In Pro Per

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this action. I am a resident of the county where the mailing occurred.

2. My business address is: 470 Price Street Pismo Beach, California 93449.

3. I served the foregoing REPLY APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY FOR 1) BREACH OF WRITTEN CONTRACT; 2) FRAUD; 3) PERJURY; 4) BREACH OF FIDUCIARY DUTY; AND 5) NEGLIGENCE on each person named below by enclosing a copy in an envelope addressed as shown below and deposited the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.

4. Date mailed: July 18, 2016, at San Luis Obispo, California.

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

Date: July 18, 2016

Name: Vicki Cogley

NAME AND ADDRESS OF EACH PERSON TO WHOM THIS DOCUMENT WAS MAILED:

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