

1 **Juan V. Lopez**
2 **7906 La Nita Street**
3 **Highland, California [92346]**

FILE ON DEMAND
FOR THE RECORD

4 IN PRO SE

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**

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11 **FEDERAL NATIONAL MORTGAGE**
12 **ASSOCIATION**

13 **Plaintiff,**

14 **vs.**

15
16 **Juan V. Lopez and Does 1-10,**
17 **Defendant.**

Case No.: UDDS1203999

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EMERGENCY APPLICATION
FOR AN EX-PARTE MOTION
FOR HEARING TO VACATE
JUDGMENT, SET ASIDE WRIT
OF POSSESSION :UNDER
FRAUD UPON COURT, PROOF
OF EVIDENCE: PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE 473(b); POINTS AND
AUTHORITIES: ANNEXED AT
HEARING BY SWORN JURAT

21 PLEASE TAKE NOTICE To Plaintiff(s) Herein and to Attorney of Record. Ex-
22 Parte motion hearing and **EMERGENCY APPLICATION FOR EX-PARTE TO**
23 **VACATE JUDGMENT, CANCEL AND SET ASIDE WRIT OF POSSESSION**
24 **DUE TO FRAUD, FORGERY, FRAUD UPON COURT, TAX FRAUD AND**
25 **VIOLATION OF SENIOR AND MILITARY INTEREST RIGHTS UNDER THE**
26 **LAW OF FRAUD; UNDER EVIDENCE CODE 437(d) AND UNDER NEWLY**

27 **EMERGENCY APPLICATION FOR AN EX-PARTE MOTION FOR HEARING TO VACATE JUDGMENT, SET ASIDE WRIT OF**
28 **POSSESSION: UNDER FRAUD UPON COURT, PROOF OF EVIDENCE: PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE**
473(b); POINTS AND AUTHORITIES: ANNEXED AT HEARING BY SWORN JURAT

1 DISCOVERED FACTS THAT COURT WAS NOT MADE AWARE
2 UNDER MISTAKE, AND SET ASIDE DEFAULT UNDER CCP 473 (b). THE
3 NEW DISCOVERED EVIDENCE 437(d) FACTS PROVIDED BY AFFIDAVIT
4 OF STATEMENT JURAT. THE DEFENDANT HAS PROOF OF THIS CRIME.
5

6 Ex-parte notice of this application was not given by defendant because see
7 ANNEXED AFFIDAVIT BY SWORN JURAT PROOF OF FRAUD. On Facts that
8 were not presented to the court. Therefore the fact is that this case is being
9 reviewed by HUD, and the Fact is that this property was sold fraudulently, and
10 intentionally by FRAUD to avoid tax rules, and bought for profit and not part of the
11 REMIC; this is TAX FRAUD. The facts of this case has many procedural flaws, in
12 Non judicial foreclosure sale, that is brought into court of summary procedures. If
13 there would have been a case of Title, and duly perfected under 1161(b); Title
14 recording was done by FRAUD. This is why this action is raised in this case.
15 Through this Ex-Parte application, the Plaintiff used these fraudulent documents to
16 hold an illegal foreclosure sale. Therefore, the case herein.
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23 These are the facts of this fraud that Plaintiff could not have assigned or sold
24 this property. The Defendant is asking the Court to vacate and cancel this FRAUD
25 UPON THE COURT and issue a written order to protect this citizen from further
26 harm. The Defendant demands that the court cancel, vacate writ of possession and
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1 **vacate fraudulent judgment. Defendant seeks to VOID, CANCEL, VACATE and**
2 **DISMISS under 473 (b) because of mistake and error, that defendant has just newly**
3 **discovered this FRAUD, FORGERY and Civil Rights Violation under TENANT**
4 **RIGHTS, for Defendant is CARE GIVER to documented disabled tenant. This is**
5 **an Ex-Parte application with evidential proof that the case before this court should**
6 **be CANCELLED and made NULL and VOID. The attached memorandum of**
7 **points and authorities, and all the papers and documents on file in this case.**

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12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **PROPER NOTICE WAS GIVEN**

15 On Wednesday June 5, 2013, at approximately 9:00 AM, I, Deirdra Duncan
16 telephonically informed Christina J. O., # 266845 (Telephone # _____),
17 Attorney for the Plaintiff, associated with the Law Corporation MALCOLM &
18 CISNEROS, by delivering the message personally that there would be an **Ex-Parte**
19 motion, and that Defendant will be seeking **Ex-Parte** motion to null and void and vacate
20 judgment due to fraud upon the court. I have provided the court with proof of **FRAUD**
21 and that title has not been duly perfected. To this Ex-Parte motion attached is the
22 SHERIFF NOTICE OF EVICTION service, shown in **ANNEXED D** of **Affidavit of**
23 **Statement Jurat**. That is why this is an **Ex-Parte** motion, to set aside and **VACATE**
24 the default judgment entered in case number **UDDS1203999**, on an **Ex-Parte** basis on
25 Thursday 6, 2013 at 8:30 a.m. in the Superior Court of California in San Bernardino
26 County.
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II.

**BECAUSE DEFENDANT WAS SERVED WITH FRAULENT DOCUMENT,
WITH FORGED SIGNATURES, THAT MAKES IT NOT PROPERLY SERVED;
THE COURT HAS A DUTY TO CANCEL JURISDICTION; THE JUDGMENT
MUST BE CANCELLED DUE TO FRAUD AND THE CASE SHOULD BE
DISMISSED WITH PREJUDICE, OR IN THE ALTERNATIVE THE DEFAULT
JUDGMENT SHOULD BE SET ASIDE, AND DEFENDANT BE GIVEN AN
EVIDENTIAL HEARING ON FRAUD, AND NOTICE TO SHOW CAUSE WHY
ATTORNEYS FOR THE PLAINTIFF SHOULD NOT BE SANCTIONED FOR
PERFORMING FRAUD UPON THE COURT.**

California Code of Civil Procedure § 1162 states:

(a) Except as provided in subdivision (b), the notices required by Sections 1161 and 1161a may be served by any of the following methods:

(1) By delivering a copy to the tenant personally.

(2) If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence.

(3) If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place

1 on the property, and also delivering a copy to a person there residing, if such person can
2 be found; and also sending a copy through the mail addressed to the tenant at the place
3 where the property is situated. Service upon a subtenant may be made in the same
4 manner.

5
6 **(b)** The notices required by Section 1161 may be served upon a commercial tenant by
7 any of the following methods:

8
9 **(1)** By delivering a copy to the tenant personally.

10
11 **(2)** If he or she is absent from the commercial rental property, by leaving a copy with
12 some person of suitable age and discretion at the property, and sending a copy through
13 the mail addressed to the tenant at the address where the property is situated.

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15 **(3)** If, at the time of attempted service, a person of suitable age or discretion is not found
16 at the rental property through the exercise of reasonable diligence, then by affixing a
17 copy in a conspicuous place on the property, and also sending a copy through the mail
18 addressed to the tenant at the address where the property is situated. Service upon a
19 subtenant may be made in the same manner.

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22 An unlawful detainer action is a statutory proceeding governed by the provisions of
23 the statute creating it. *Fifth & Broadway Partnership v. Kimny Inc*, 102 Cal. App. 3d 195,
24 200. In this case at bar, the Plaintiff never served the Defendant with a Three-Day Notice
25 to Quit. Instead Plaintiff served Defendant a summons on or after August 25, 2012 by
26 service agent.

27 Defendant sought assistance from Legal Counsel and gave answer to the complaint
28 within stipulated 5 days, with many other filings with challenges and actions against

1 Plaintiff. Defendant now chooses to challenge the Court’s jurisdiction by way of **Ex-**
2 **Parte** motion to **VACATE JUDGMENT**.

- 3
- 4 1. The supreme law of the land is the Constitution of the United States as ratified with
5 the Bill of Rights 1791, pursuant to Article VI paragraph 2, “...and the Judges in every
6 state are bound thereby, any Thing in the Constitution or Laws of any State to the
7 Contrary notwithstanding.”
- 8 2. Pursuant to Article IV section 4 of this Constitution, each state of the Union, the State
9 of California. Being one of those states, is faced with a guarantee that it will be
10 governed by the rule of law and not of men.
- 11
- 12 3. The only jurisdiction that can hear matters of the People per the Constitution of the
13 United States is pursuant to Article III section 2, a Jurisdiction Court bound by the
14 Supreme Law of the Land including the Bill of Rights.
- 15
- 16 4. The Judge in this matter has sworn an Oath to support and defend the Constitutions
17 for the United States of America, circa 1787, as amended in 1791 with the Bill of
18 Rights, and the California State Constitution and its Bill of Rights, and to the rights of
19 the People of the State of California, secured therein, in exchange for the public trust,
20 per Article IV of the national Constitution and Article 16 Section 4 of the Constitution
21 for the California State Constitution.
- 22

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24 The Plaintiff has filed a fraudulent complaint, that the Defendant has opposed with
25 protest and objection and denial of consent, with filed written documents and verbally
26 spoken in court appearances, that the Plaintiff has purchased stolen property, which
27 Plaintiff fraudulently is claiming. Defendant has given verbal and written notice of this
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1 possible **TAX** Crime and which was given to the law office. Plaintiff has no legal claim
2 to possession of the property and that the foreclosure sale should be **NULL** and **VOID**,
3 The Plaintiff did not purchase this property at an auction, that he could have alleged that
4 he was or is a bonafide purchaser, and cannot take possession, which is evidence of the
5 **FACT** that Plaintiff brought in to the court **FRAUDULENT** alleged ownership.
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7
8 Notice is hereby given that this property was part of the settlement done, in the
9 United States District Court of Columbia, Plaintiffs **BANK OF AMERICA, N.A.** and
10 **FEDERAL NATIONAL MORTGAGE ASSOCIATION**, collectively; for the sake of
11 convenience only (Plaintiffs) violated and committed unfair and deceptive acts and
12 practices. See case **Case # 1:12-cv-00361-RMC**. Served and filed herewith, all the
13 pleadings, record and papers and document file herein, and upon evidence, oral and
14 documentary, to be presented at the hearing of motion. Under Penal Code sections 132,
15 Plaintiff committed fraud upon the submitting void on its face instrument, Deed upon
16 sale, Trustee Deed of Sale, and Assignments of Deed of Trust: Both are a Nullity or Void
17 under California Civil Code 2934a which requires that the beneficiary execute and
18 notarize and record a substitution for a valid substitution of trustee to effect. Thus, if the
19 assignment of Deed of Trust is **Fictitiously-Signed** or **Robo-Signed**, the sale is **VOID**.
20 If the substitution of trustee is **Robo-Signed**, the sale is **VOID**. If the notice of default is
21 **Robo-Signed**, the sale is **VOID**. Clear Title May Not Derive from a Fraud including a
22 bonafide purchase for value by **Bank of America, N.A., MERS by Federal National**
23 **Mortgage Association** as to the fraudulent filing of Trust assignment by **BANK OF**
24 **AMERICA, N.A.** In the case of a fraudulent transaction **California law** is settled. The
25 Court in trout v. Trout, (1934), 220 Cal.652 T 656 made as much plain: “Numerous
26 authorities have established the rule that an instrument wholly void, such as undelivered
27 deed, a forged instrument, or a deed in blank, cannot be made the foundation of good
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1 title, even under the equitable doctrine of bonafide purchase. Consequently, the fact that
2 defendants archer acted in good faith in dealing with person who apparently held legal
3 title, is not in itself sufficient basis for relief” (Emphasis added, internal Citations
4 omitted) this sentiment was clearly echoed in 6 Angel, Inc v. Stuart-Wright Mortgage,
5 Inc. (2001) 85 Cal. App 4 th 1279 at 1286 where the court stated: It is general rule that
6 courts have power to vacate a **foreclosure sale** where there has been fraud in the
7 procurement of the foreclosure decree or where has been a mistake that to allow it to
8 stand would be inequitable to purchaser and parties hence, if forged **Robo-Signed**
9 signatures are used to obtain in the foreclosure states any apparent sale based on **Robo-**
10 **Signed** documents is **VOID** – without any legal effect- like Monopoly Money. In Bank
11 of America v. La Jolla Group II., the California Court of Appeal held that if a trustee is
12 not contractually empowered under the Deed of Trust to hold a sale, it is totally **VOID**.
13 **Void-Ness**, as opposed to **Void-Ability**, means that it is without legal effect to begin
14 with. Title does not transfer. No right to evict arises. The Property is not **SOLD**. In
15 turn, California Civil Code **2934a** requires that the beneficiary execute and notarize and
16 record a substitution for a valid substitution of trustee to take effect. Thus, if the
17 assignment of deed of trust is **Robo-Signed**, the sale is **VOID**. If the substitution of
18 trustee is **Robo-Signed**, the sale is **VOID**. If the Notice of default is **Robo-Signed**, the
19 sale is **VOID**. These documents are not recorded without good notarization. In
20 California un-clean hands rule requires that the plaintiff not cheat, and behave fairly. The
21 Plaintiff must come into court with clean hands, and keep them clean, or he or she will be
22 denied relief, regardless of the merits of the claim. Kendall-Jackson Winery LTD v
23 Superior Court (1999) 76 CA 4th 970, 978, 90 CR 2nd 743. Whether the doctrine applies
24 is a question of fact. Cross Talk Prods, Inc., v Jacobson (1998) 65 CA 4th 631, 639, 76
25 CR2d 615. **Robo-Signed** Documents are intended for use in California Bankruptcy
26 courts matters. One Major overlooked facet of California is our extremely active
27 bankruptcy court proceedings, where just as in judicial foreclosure states, the bank must
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1 prove “standing” to proceed with a foreclosure. If they are not signed by persons with
2 requisite knowledge, affidavits submitted in bankruptcy court proceeding such as
3 objection to plan and relief from stays are perjured. In the Violation of Bankruptcy rules
4 without getting relief of stay, are often falsified evidence. Conclusion verified eviction
5 complaints, perjured motions for summary judgment, and all other evictions paperwork
6 after **Robo-Signed** non judicial foreclosure in California and others are illegal and
7 **VOID**. The paperwork itself is **VOID**. The sale is **VOID**. But the only way to clean up
8 hundreds of thousands of affected titles is through litigation, because even the bank will
9 simply not do the right thing. And that’s why **Robo-Signers** are countless in non-judicial
10 foreclosure states; and the victims of **Robo-Signers** in California may seek declaratory
11 relief, damages under the Rosenthal Act: injunction and attorney fees for Un-fair debt
12 practices, as well as claims of slander of titles: abuse of due process, civil rights, civil
13 theft, and conversion. Every person who enters into any trial, proceeding inquiry, or
14 investigation fraudulently altered or anté-dated, is **guilty of felony**. The above documents
15 are missing, Promissory note, Proper Assignment into the Trust as to the **REMIC** under
16 **TAX FRAUD, DEED UPON SALE**, the Notary did not acknowledge Power of
17 Attorney for Attorney – in-fact, Assistant, or secretary or whatever, un-authorized person
18 forgery of these document that is not permitted by law. But have been used as and offers
19 in evidence as genuine true. **The Plaintiff is not holder of the note, and have no**
20 **Standing to evict or foreclosure**. The Plaintiff and their attorney said they perfected
21 title on November 10, 2011. This is a clear admission of fraud and I have all necessary
22 documents to prove that this is not an allegation but, real proof that has standing in any
23 court. These documents are shown in **ANNEXED A, B, C and D** of **Affidavit of**
24 **Statement by Sworn Jurat** as **EVIDENCE** of **FRAUD**. The court has certified this fact
25 in **Case No.: 12CV-361-RMC**. I submit these documents as proof that these documents
26 are in **BIG QUESTION** and the likelihood of **FRAUD** is to be and had been accepted.
27

28 Therefore, I demand that the court takes this notice of related cases and clerks entry as
EMERGENCY APPLICATION FOR AN EX-PARTE MOTION FOR HEARING TO VACATE JUDGMENT, SET ASIDE WRIT OF
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1 **TRUTH.** The **FRAUD** document that is the reason that the **JUDGE** has to **VACATE**
2 and **CANCEL WRIT** due to **FRAUD UPON COURT**, As for many of these documents
3 have been submitted in Federal Bankruptcy Court **Case No.: 6:13 bk-14020-MH**, and
4 within the Federal Bankruptcy Court as Adversary Proceeding Complaint Action **Case**
5 **No.: 6:13 ap- 01123-MH.** **The Plaintiff continues the fraud upon the court with**
6 **fraudulent document that will be VOID on its FACE.** This case has civil rights
7 violation that is for the District Court, Debtor has an open bankruptcy that will
8 understand the **TAX FRAUD** that has been uncovered in the discovery of this fraudulent
9 foreclosure, this court has jurisdiction over the **TAX FRAUD** because this is a **TAX**
10 **COURT.** This case should be looked at as a **BANKRUPTCY FRAUD** the Attorney and
11 the **CREDITOR** have been notified of this **TAX FRAUD.** This is a core proceeding as
12 the claims for **FRAUD** in relief arise under 11 U.S.C. §§ 101-1330 (hereinafter “the
13 Code”), including, but not limited to, 11 U.S.C. §§ 362, 101(54), 105, 522, 541, 542, 544,
14 548, 550, 551, 552, and 1306. This court has a legal duty to report **FRAUD** and
15 **FORGERY** to the authority that would handle these complaints.
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19 Dated: May 6, 2013

Respectfully Submitted,

22 **Juan V. Lopez and Does 1-10**

1
2 **DECLARATION OF JUAN V. LOPEZ AND DOES 1-10**
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4 I, **Juan V. Lopez** and Does 1-10, do hereby declare that I am over the age of 18 and
5 if called upon as a witness, I shall testify to the following:
6

7 1. That, the property within this action is at **7906 La Nita Street, Highland,**
8 **California [Postal Zone 92346]**; this property and the title holder has evidence to the
9 facts surrounding the **FRAUD** and that this case should be **VACATED** under the rules of
10 **FACTS FINDING of EVIDENCE .**
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14 2. That, no one has ever delivered to my address in person any of the evidence that
15 the Plaintiff has bought into this **FRAUDULENT** complaint for unlawful detainer.
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18 3. That there was no true fact and evidence that has been attached as verification of
19 fact by an affidavit that this is a correct summons of complaint and the sale was
20 perfected. The Unlawful Detainer and Summons are **FRAUD** which can and will be
21 proved. The date of the suppose service by a process service was sought by **FRAUD**,
22 the documents that have been submitted is an instrument that are signed by verifiable
23 **Robo-Signers** that **IS FRAUDULENT** therefore instrument is **VOID**, this instrument
24 can be **NULLIFIED** and **VOIDED** if evidence is presented to a JUDGE, therefore the
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1 entity seeking eviction has no standing; see case Bank of America, N.A. in the
2 settlement agreement prior to the illegal foreclosure.

3
4 4. I was forced to file bankruptcy in July 2011, to **VOID** the illegal foreclosure and
5 eviction. The violation of Bankruptcy code has happen in this case, Prejudgment /
6 Post judgment form was not accepted, see docket, this is a violation of rights under
7 due process under the law and violation of the **AUTOMATIC STAY** within the
8 forced bankruptcy to stop these illegal procedures.
9

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11 5. I can prove that Plaintiff is aware of this **FRAUD** but is still hastily moving for a
12 default judgment and lockout by the sheriff, unless this court stay this writ and set this
13 case for an evidential facts to the **FRAUD**, in order to abrogate my rights to due process,
14 and only this Court can stop them; by the evidence of fraud submitted today.
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16
17 I declare under the penalty of perjury under the laws of the State of California that all of
18 the forgoing is true and correct.
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22 Dated: June 6, 2013

Respectfully Submitted,

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26 _____
Juan V. Lopez, Affidavit JURAT

27 **Without Recourse**

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AFFIDAVIT OF ANNEXED JURAT
as DECLARATION of FACT as EVIDENCE

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5 **PROOF OF SERVICE BY MAIL**
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8 In the California Republic state, in the County of San Bernardino, in Highland
9 Township.

10 I, the undersigned, herein declare that I am over the age of eighteen years and not a
11 party to the within entitled action.
12

13
14 I hereby declare under the penalty of perjury of the California Republic state and
15 *these* United States of America, that I personally served the foregoing document entitled
16 **EMERGENCY APPLICATION FOR AN EX-PARTE MOTION FOR HEARING**
17 **TO VACATE JUDGMENT, SET ASIDE WRIT OF POSSESSION :UNDER**
18 **FRAUD UPON COURT, PROOF OF EVIDENCE: PURSUANT TO**
19 **CALIFORNIA CODE OF CIVIL PROCEDURE 473(b); POINTS AND**
20 **AUTHORITIES: ANNEXED AT HEARING BY SWORN JURAT ,** by SERVICE
21 OF MAIL, with postage fully paid, and deposited in a mail box serviced by the United
22 States Postal Service, and addressed as follows:

23 **CHRISTINA J.O., #266845**
24 **ERICA T. LOFTIS, #259286**
25 **MALCOLM & CISNEROS A LAW CORPORATION**
26 **2112 BUSINESS CENTER DR., SECOND FLOOR**
27 **IRVINE, CA 92612**

28 **ADAM N. BARASCH, #158220**
MARK JOSEPH KENNEY, #87345

EMERGENCY APPLICATION FOR AN EX-PARTE MOTION FOR HEARING TO VACATE JUDGMENT, SET ASIDE WRIT OF
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1 DONALD H. CRAM, #160004
2 SEVERSON & WERSON
3 A Professional Corporation
4 One Embarcadero Center, Suite 2600
5 San Francisco, CA 94111

6 **PROOF OF SERVICE BY MAIL**

7
8 I declare under the penalty of perjury of the Laws of the California Republic state
9 and *these* United States of the America, that the foregoing is correct and complete to the
10 best of my knowledge, information and belief, and that this declaration is executed by the
11 voluntary act of my own hand in Highland Township and is dated this ____ Day of the
12 Fifth Month, in the Year Two Thousand and Thirteen, Anno Domini, in the two-hundred
13 and thirty-sixth of the Independence of America.
14

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17
18 _____ By: _____
19 Printed Name Autographed Name

20 _____
21 _____
22 _____