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UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re
TRUDY KALUSH,
Reorganized Debtor.

Case No. 8:11-bk-19563-ES
Chapter 11
Adv. Case No. 8:12-ap-01206-ES

TRUDY KALUSH,
Plaintiff,
vs.
DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE OF THE
INDYMAC INDX DEED OF TRUST LOAN
TRUST 2005-AR12, DEED OF TRUST
PASS-THROUGH CERTIFICATES, SERIES
2005-AR12, UNDER THE POOLING AND
SERVICING AGREEMENT DATED JUNE
1, 2005; ONEWEST BANK, FSB; and DOES
1-100, Inclusive,
Defendants.

**EVIDENTIARY OBJECTIONS TO THE
DECLARATION OF CHARLES BOYLE
FILED IN SUPPORT OF SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
PARTIAL SUMMARY ADJUDICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

**[Opposition to Motion for Summary
Judgment; Response to Separate Statement
of Facts and Evidentiary Objections to the
Affidavit of Ronaldo Reyes filed
concurrently herewith]**

Hearing:
Date: November 5, 2013
Time: 2:00 p.m.
Courtroom: 5A

**TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY
JUDGE, AND PARTIES IN INTEREST:**

Plaintiff Trudy Kalush (“Debtor” or “Plaintiff”) hereby files her evidentiary objections to the Declaration of Charles Boyle (“Declarant”) filed in Support of the Motion for Summary Judgment or, In the Alternative, for Partial Summary Adjudication (“Motion”) filed by Defendants Deutsche Bank National Trust Company as Trustee for the IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 (“Loan Trust”), under the Pooling and Servicing Agreement Dated June 1, 2005 (“DBNTC”) through OneWest Bank, FSB in its capacity as servicer and attorney-in-fact (“OneWest”) (collectively, “Defendants”) as follows:

EVIDENTIARY OBJECTIONS TO DECLARATION OF CHARLES BOYLE

Provision Objected to:	Grounds for Objection:
Objection. Paragraph 2: “I am authorized to make this declaration on behalf of OneWest in its capacity as servicer and attorney in fact for Deutsche Bank...”	Hearsay – Federal Rules of Evidence (“FRE”) 802; Lack of Foundation – FRE 402; Lack of Personal Knowledge – FRE 602; Speculation – FRE 602; Assumes Facts not in Evidence – FRE 402; Improper Opinion – FRE 701, 704; Relevance – FRE 402; Subject to Dispute, Not Capable of Accurate and Ready Determination – FRE 201. No evidence that OneWest is attorney in fact or servicer of loan for Deutsche Bank
Objection. Paragraph 4: “I am informed and believe that the records obtained from the FDIC were made by CCB in the ordinary and regular course of business at or near the time of the act, condition or event of which they are a record, and made by persons who had a business duty to CCB to make such records, and that CCB relied on the maintenance of such records in the course of its business. OneWest maintains accurate copies or originals of these records and relies on the maintenance of such records in the course of its business.”	Hearsay –FRE 802; Lack of Foundation – FRE 402; Lack of Personal Knowledge – FRE 602; Speculation – FRE 602; Assumes Facts not in Evidence – FRE 402; Improper Opinion – FRE 701, 704; Relevance – FRE 402; Subject to Dispute, Not Capable of Accurate and Ready Determination – FRE 201. Declarant has no personal knowledge of the record keeping of CCB, or upon what the CCB relief in maintenance of such records.

1 2 3 4 5 6 7 8	Objection. Paragraph 6: On July 1, 2010, the FDIC as receiver for IndyMac Federal Bank, FSB executed a Limited Power of Attorney (“LPOA”) designating certain individuals, including Roger Stotts, as having authority to execute certain documents as necessary pertaining to the transfer of assets pursuant to the Servicing Business Asset Purchase Agreement. The LPOA was recorded on July 29, 2010. A true and correct copy of the LPOA is appended hereto as Exhibit A .	Hearsay –FRE 802; Lack of Foundation – FRE 402; Lack of Personal Knowledge – FRE 602; Speculation – FRE 602; Assumes Facts not in Evidence – FRE 402; Improper Opinion – FRE 701, 704; Relevance – FRE 402; Subject to Dispute, Not Capable of Accurate and Ready Determination – FRE 201; Lack of Authentication – FRE 901 The LPOA was recorded in Florida and the attached document is not a certified copy, thus the authenticity of the same has not been established.
9 10 11 12 13 14 15 16 17 18 19	Objection. Paragraph 7: “On March 16, 2005, CCB executed an Endorsement to Promissory Note, assigning all right, title, and interest to the Note and Deed of Trust to IndyMac Bank, F.S.B. (“IMB”). The Endorsement to Promissory Note references the subject loan number, is dated, and was physically stapled to the Note.”	Hearsay –FRE 802; Lack of Foundation – FRE 402; Lack of Personal Knowledge – FRE 602; Speculation – FRE 602; Assumes Facts not in Evidence – FRE 402; Improper Opinion – FRE 701, 704; Relevance – FRE 402; Subject to Dispute, Not Capable of Accurate and Ready Determination – FRE 201. OneWest was not formed until 2009. Declarant has no personal knowledge of the events that took place in 2005 at CCB, to which Declarant was not associated. Further, the testimony contradicts the Proof of Claim which had no Endorsement attached. Declarant does not testify that he has actually seen the Note with attached Endorsement nor is it attached as an exhibit.
20 21 22 23 24 25 26 27 28	Objection. Paragraph 8: “By July 1, 2010, Plaintiff defaulted on the Subject Loan and has failed to make any payment on the Subject Loan since her default. OneWest, as servicer, caused to be recorded a Notice of Default and Election to Sell Under Deed of Trust on February 11, 2011, reflecting arrears of \$112,701.69. On March 29, 2011, OneWest as servicer executed the Assignment of DOT from the FDIC to DBNTC and recorded it for recordkeeping purposes. On May 18, 2011, OneWest, as servicer, caused to be recorded a Notice of Trustee’s Sale for a scheduled trustee’s sale on June 7, 2011.”	Hearsay –FRE 802; Lack of Foundation – FRE 402; Lack of Personal Knowledge – FRE 602; Speculation – FRE 602; Assumes Facts not in Evidence – FRE 402; Improper Opinion – FRE 701, 704; Relevance – FRE 402; Subject to Dispute, Not Capable of Accurate and Ready Determination – FRE 201

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Dated: October 15, 2013

Respectfully submitted by:

GOE & FORSYTHE, LLP

By: /s/Robert P. Goe
Robert P. Goe, Attorneys for
Reorganized Debtor/Plaintiff Trudy
Kalush

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 18101 Von Karman Avenue, Suite 510, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **EVIDENTIARY OBJECTIONS TO THE DECLARATION OF CHARLES BOYLE FILED IN SUPPORT OF SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL SUMMARY ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 15, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Allan P Bareng** barenga@bryancave.com, theresa.macaulay@bryancave.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Robert Reganyan** reganyanlawfirm@gmail.com
- **J Alexandra Rhim** arhim@dykema.com, cperez@dykema.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov
- **Sharon Z. Weiss** sharon.weiss@bryancave.com, raul.morales@bryancave.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) October 15, 2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows: Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:

(*state the method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) October 15, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- The Honorable Erithe A. Smith, USBC, 411 West Fourth Street, Santa Ana, CA 92701 (Hand delivered)

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 15, 2013

Susan C. Stein

/s/Susan C. Stein

Date

Printed Name

Signature