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9 **MARIBEL MONROY**

FILED
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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY: [Signature] Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF CONTRA COSTA**
12 **UNLIMITED JURISDICTION**

13 HERITAGE PACIFIC FINANCIAL, LLC, a)
14 Texas company, d/b/a HERITAGE PACIFIC)
15 FINANCIAL,)

16 Plaintiff,

17 vs.

18 MARIBEL MONROY, an individual, and)
19 DOES,)

20 Defendants.)

21

MARIBEL MONROY, an individual,)

22 Cross-Complainant,)

23 vs.)

24

HERITAGE PACIFIC FINANCIAL, LLC, a)
25 Texas company, d/b/a HERITAGE PACIFIC)
26 FINANCIAL, and ROES 101-200,)

27 Cross-Defendants.)
28

Case No. C10-01607

**ORDER SUSTAINING DEMURRER TO
SECOND AMENDED COMPLAINT
WITHOUT LEAVE TO AMEND**

**Hearing Date: August 9, 2011
Hearing Time: 9 a.m.
Dept. 9/Hon. Judith Craddick**

1 Defendant/Cross-complainant Maribel Monroy's Demurrer to Plaintiff Heritage Pacific
2 Financial LLC's Second Amended Complaint came for hearing on August 9, 2011 at 9 a.m. in
3 Department 9 of the above entitled Court, the Honorable Judith Craddick presiding, following a
4 tentative ruling granting the demurrer without leave to amend. William Kennedy specially
5 appeared for Ms. Monroy. Brad Mokri appeared for the Plaintiff. After considering the
6 arguments of the parties, the briefing, and all the records in this action, good cause appearing
7 therefore, the tentative ruling is adopted as the final order of the Court, as follows:

8 Defendant's general demurrer to the Second Amended Complaint is sustained without
9 leave to amend. (Cal. Code Civ. Proc., section 430.10, subd. (e).)

10 Despite being afforded an opportunity to amend, Plaintiff has still failed to adequately
11 allege an assignment of the original lender's tort claims, as distinct from an assignment of the
12 original lender's contractual rights under the subject promissory note. (See, *Sunburst Bank v.*
13 *Executive Life Ins. Co.* (1994) 24 Cal. App. 4th 1156, 1164.) Plaintiff has not attached to its
14 complaint a written assignment agreement, as specified in the Court's ruling on the demurrer to
15 the First Amended Complaint, and plaintiff has not adequately alleged the formation of an oral
16 assignment agreement. (See, SAC, par. 14.)

17 Plaintiff alleges that the promissory note was assigned after foreclosure of the first Deed
18 of Trust and the corresponding extinguishment of the second deed of trust securing the
19 promissory note. (See, SAC, pars. 9,10.) Thus, there was no underlying property interest
20 supporting an incidental assignment of the original lender's fraud claims. (See, *Mason v. Drug,*
21 *Inc.* (1939) 31 Cal. App. 2d 697, 704.) This is an independent ground for sustaining the
22 demurrer without leave to amend.

23 **IT IS SO ORDERED**

24 Dated 8-8-11

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28 JUDGE OF THE SUPERIOR COURT