II

LEGAL DISCUSSION

A) <u>The Superior Court's Ruling Is Reviewable By Writ</u>. Code of Civil Procedure Section 1085 provides that a writ of mandamus will issue compelling the performance by an inferior court to act in a way which the law requires such inferior court to perform. Section 1086 provides that a "The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." Code of Civ. Proc. § 1086.

Writ review may also lie where the petitioner can show "some special reason why [appeal] is rendered inadequate by the particular circumstances of the case" (e.g. undue hardship on account of inability to obtain a stay; or affording needless delay and expense of trial*). Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370; *Coulter v. Superior Court* (1978) 21 Cal.App.3d 144, 148 (if the challenged order is not directly appealable but is reviewable only on appeal from a subsequent judgment, review by appeal may be "inadequate" in light of facts such as prejudice from delay and expense of trial or the certainty of reversal and need for the trial.) As more fully stated in the Petition, the issue in this case of signal legal importance and a failure to grant relief would not only deprive the Petitioner of further legal recourse, it would leave thousands of similarly situated Californian's facing the very ruing that Section 580b was enacted to prevent.

B) <u>California's Antideficiency Laws Generally</u>. California's anti-deficiency statutes were enacted in the 1930s in response to the wave of foreclosures and the financial ruin caused by the Great Depression. The core objective of the statutes was to relieve debtors, from the scourge of deficiency judgments resulting from foreclosure, which were causing the "the complete ruin of the real estate mortgage debtor." Sol P. Perlman, *Mortgage Deficiency Judgments During an Economic Depression*, 20 Va. L. Rev. 771, 771 (1934); *see also Cornelison* v. *Kornbluth* (1975) 15 Cal.3d 590, 600-601. The statutory sections that comprise the anti-deficiency laws are, *inter alia*, Code of Civil

Procedure Sections 726, 580d and 580b.

This Court can take judicial notice of the fact that California in the midst of the worst real estate decline since the great depression and once again Californians are facing a tidal wave of foreclosures. Preserving and enforcing the anti-deficiency laws is as important today as it was seventy years ago.

C) <u>The Statute</u>.

Section 580b provides, in relevant part:

> No deficiency judgment shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale, or under a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of that real property or estate for years therein, **or under a deed of trust or mortgage on a dwelling for not more than four families <u>given *to a lender*</u> to secure repayment of a loan which was in fact used to pay all <u>or part of the purchase price</u> of that dwelling occupied, entirely or in part, by the purchaser**.

Code of Civ. Proc. § 580b (emphasis added). Section 580b was enacted in 1933 as part of a series of statutes, including the fair-market-value limitations of sections 726 and 580a, that were intended to aid debtors who had lost real property through foreclosure in the depression. *Cornelison* v. *Kornbluth* (1975) 15 Cal.3d 590, 600-601; *Palm* v. *Schilling* (1988) 199 Cal.App.3d 63, 68; *Younker* v. *Reseda Manor* (1967) 255 Cal.App.2d 431, 434. The related provisions of section 580d, which bar a deficiency judgment following private sales, were enacted later in 1940. Section 580b assumed its present form in 1963 through an amendment, which clearly defined the rights of ***non-vendor*** purchase-money lenders. (Stats. 1963, ch. 2158, § 1, p. 4500.) The amendment distinguished between non-vendor purchase-money loans with respect to whether or not they were made for homeownership, applying the antideficiency protection only to loans for that purpose.

D) **<u>The Statutory Objectives Underlying Section 580b</u>**. The California Supreme Court has described the purpose of Section 580b as follows:

> " 'Section 580b places the risk of inadequate security on the purchase money mortgagee. A vendor is thus discouraged from overvaluing the security. Precarious land promotion schemes are discouraged, for the security value of the land gives purchasers a clue as to its true market value. [Citation.] If inadequacy of security results, not from overvaluing, but from a decline in property values during a general or local depression, section 580b prevents the aggravation of the downturn that would result if defaulting purchasers were burdened with large personal liability. Section 580b thus serves as a stabilizing factor in land sales.' [Citations.]"

Cornelison v. Kornbluth (1975) 15 Cal.3d 590at 601-602, 125 Cal.Rptr. 557, 542 P.2d 981.

As similarly explained in *Bargioni v. Hill* (1963) 59 Cal.2d 121, 123, 28 Cal.Rptr. 321, 378 P.2d 593:

> "[Section 580b] compels a purchase money mortgagee to assume the risk that the security is inadequate. The purposes are to discourage land sales that are unsound because the land is overvalued and, in the event of a depression in land values, to prevent the aggravation of the downturn that would result if defaulting purchasers lost the land and were burdened with personal liability. [Citation.] These purposes are served by relieving the purchaser of personal liability to any person who finances the purchase and takes as security a trust deed or mortgage on the property purchased, provided the financier intended the loan to be used to pay all or part of the purchase price. [Citations.]"

The court in *Birman v. Loeb* (1998) 64 Cal.App.4th 502, 510, 75 Cal.Rptr.2d 294 hit the proverbial legislative nail on the head insofar as who is deemed to bear the risk of a deficiency under the statute: "Stated differently, section 580b places the risk of inadequate security, whether due to overvaluation or market decline, **<u>on the lender</u>.** *Id*; see also *American Sav. & Loan Assn. v. Leeds* (1968) 68 Cal.2d 611, 615, 68 Cal.Rptr. 453, 440 P.2d 933; *Brown v. Jensen* (1953) 41 Cal.2d 193, 197, 259 P.2d 425; *Schumacher v. Gaines* (1971) 18 Cal.App.3d 994, 999, 96 Cal.Rptr. 223.

Here, the Residence was occupied by the Petitioner and his family during the relevant period of time. Here, the replacement second loan at issue was granted to the *same lender* as the original second loan; it was secured by the *same property*; and it was granted by the *same borrower*, and it had the *same priority*. Moreover, this entire refinancing was recommended by the original lender.

The only issue facing this Court is legal: To wit, whether a refinance under these terms and conditions falls within the parameters of Section 580b, or whether, as National Bank seems to contend, the "refinance" of the original purchase money loans somehow destroys their purchase money character. Respectfully, as the following review of the case law confirms, the Fourth Appellate District and the California Supreme Court have already decided this issue in favor of the Petitioner.

E) **<u>The Anti-deficiency Laws Are Liberally Construed</u>**. California courts have consistently held that the anti-deficiency laws must be liberally construed to effectuate the underlying legislative purpose and that any attempt to evade this purpose should be rejected. *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 259 933 P.2d 507 ("Over the several decades since their enactment, our courts have construed the antideficiency statutes liberally, rejecting attempts to circumvent the proscriptions against deficiency judgments after nonjudicial foreclosure."); *Conley v. Matthes* (1997) 56 Cal.App.4th 1453, 66 Cal.Rptr.2d 518 ("However, the language of section 580b has been liberally construed to extend anti-deficiency protection beyond the standard transaction where the circumstances of the case indicate the policies of the statute will be served."); *Rettner v. Shepherd* (1991) 231 Cal.App.3d 943, 952, 282 Cal.Rptr. 687; *Freedland v. Greco* (1955) 45 Cal.2d 462, 468, 289 P.2d 463 (In construing the antideficiency statutes, " 'that construction is favored which would defeat subterfuges, expediencies, or evasions employed to continue the mischief sought to be remedied by the statute, or ... to accomplish by indirection what the statute forbids.' "); *Simon v. Superior Court* (1992) 4 Cal.App.4th 63, 78, 5 Cal.Rptr.2d 428.).

The Supreme's Court's admonition that a *key purpose* of section 580b is to stabilize the state's economy, to the benefit of all, is uniquely resonant in today's harsh economic conditions. *DeBerard Property Ltd. v. Lim* (1999) 20 Cal.4th 659, 669, 85 Cal.Rptr.2d at page 294, 976 P.2d at page 845.

F) <u>Precedent In This District Holds That Section 580b Applies</u>. This Court has made it clear that Section 580b will be deemed to apply where, as in this case, refinance dollars merely replace purchase money. *Palm v. Schilling*, (1988) 199 Cal.App.3d 63, 244 Cal.Rptr. 600; *Jackson v. Taylor*, (1969) 272 Cal. App. 2d 1, 76 Cal. Rptr. 891; *Ziegler v. Barnes* (1988) 200 Cal.App.3d 224, 246 Cal.Rptr. 69; *DCM Partners v. Smith* (1991) 228 Cal.App.3d 729, 738, 278 Cal.Rptr. 778.

In *Palm v. Schilling*, the owners of a property (the Palms) sold the Schillings a home. In return the Palms received two promissory notes secured by second and third trust deeds on the property. Later, the Schillings were unable to make the payments, and sought financing from a new lender. The new lender insisted on senior priority. The Palms agreed to subordinate their notes to the new financing on the condition that the Schillings agree to certain modifications, including an increase in the interest rate, a principal reduction, immediate payment of accrued interest, a personal guarantee, and a waiver of section 580b protection. Later, the first lender foreclosed on the property, causing the Palms to lose their security. The Palms sued for a deficiency judgment based on the personal guarantee and waiver of section 580b protection obtained through the loan modifications. **The court in *Palms* found that this case involved a *<u>"standard purchase money mortgage situation"</u>* and held that the bar in Section 580b, could not be waived and squarely applied.[1]**

[1] The Petitioner would also submit that the California Supreme Court's ruling in *DeBerard Property Ltd. v. Lim*, (1999) 20 Cal.4th 659, 663-664, which cited the *Palm* case, *supra*, with approval, lays to rest any contention that the contrary ruling in *Union Bank v. Wendland* (1976) 54 Cal. App. 3d 393 (addressed extensively herein), which the lower court apparently relied upon, has any persuasive authority. In *DeBerard*, the

In *Jackson v. Taylor*, (1969) 272 Cal. App. 2d 1, the plaintiffs held a purchase money note secured by a junior lien on two parcels of property. After the note went into default, the owner agreed to sell the property to new buyers. To accomplish this sale, new financing was necessary. The plaintiffs agreed to *reconvey* their deed of trust in exchange for some cash and a *new note* secured by a *new junior lien*. Later, the senior lien holder foreclosed and extinguished the plaintiffs' junior lien. The plaintiffs then sued for a deficiency judgment. The court held that the bar in section 580b applied, even though the defendants were not the owners of the property when the note was created, and the note in Jackson, as in this case, was given to replace a prior purchase money obligation.

In *Ziegler v. Barnes* (1988) 200 Cal.App.3d 224, the fact pattern was somewhat complicated, but the relevant facts can be distilled to the following. Ziegler sold a property to a group and received a second trust deed in return. Pursuant to the terms of the second trust deed, Ziegler was required to subordinate to an incoming construction loan. Later, the buyers come to Ziegler and asked him to effectively "refinance" this position. Under the refinance transaction, the obligation to Ziegler would be reduced, but Ziegler agreed to subordinate his position to a substantially larger construction loan. At

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existing second mortgage holder on a property – DeBerard - made substantial changes to his purchase money note when the owners, the Lims, fell into arrears, including agreeing to consent to any necessary modifications to the senior loan. In consideration for these amendments, the second lender obtained a waiver of Section 580b. When the property was later foreclosed upon by the first lienholder, DeBerard sued on his sold out junior position. The trial court held for DeBerard and the Court of Appeal reversed. On appeal, the California Supreme Court held that Section 580b barred the deficiency claim and that the purported waiver of this statutory protection was void.

The modifications to the underlying loan in *DeBerard* were clearly more substantial than those at issue in this case and effectively created a new loan instrument. If *Wendland* were indeed the law in California, then the *DeBerard* court would have been compelled to conclude the loan in that case fell outside the parameters of Section 580b. However, the Court ruled otherwise and approved this Court's ruling in *Palm*.

this juncture, Barnes was added to the transaction, since his credit was required to obtain the larger construction loan. Later, Ziegler's new "refinance" second note was foreclosed out by the first lender and Ziegler sued to recover on his "sold-out" note. The lower court held for Ziegler, allowing him to recover. The appellate court reversed holding: "The January 1981 promissory note was but a substitute, albeit smaller to reflect payments made, for the original note. The character of the money due thereunder had not changed. *Ziegler*, 200 Cal.App.3d at 230-31, 246 Cal.Rptr. 73.[2]

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[2] The following explanatory comments by the *Ziegler* court are directly relevant to this case:

> "The explicit language of section 580b brooks no interpretation other than that deficiency judgments are prohibited by a purchase money mortgagee so long as a purchase money mortgage or deed of trust is in effect on the original real property." (*Palm v. Schilling, supra,* 199 Cal.App.3d 63, 76, 244 Cal.Rptr. 600.) FN6
>
> FN5. To find otherwise would defeat the purposes of section 580b. A vendor would be precluded from pursuing a deficiency judgment on the original purchase money note; yet, if a substitute note, in the amount then due, is accepted, and/or subsequent owners accept responsibility for its repayments, the vendor magically is removed from the statute's constraints.
>
> FN6. We recognize the original classification of a promissory note and trust deed is not cast in stone. A purchase money trust deed may retain its characterization upon the property's resale, whether assumed by the new purchasers or renegotiated by them. (*Jackson v. Taylor* (1969) 272 Cal.App.2d 1, 76 Cal.Rptr. 891; *Shepherd v. Robinson, supra,* 128 Cal.App.3d 615, 180 Cal.Rptr. 342.) Similarly, cancellation and replacement with new notes, secured by the same property, transfers purchase money status to the new notes. (*Lucky Investments, Inc. v. Adams, supra,* 183 Cal.App.2d 462, 7 Cal.Rptr. 57.) However, the purchase money nature of a note and trust deed may be lost where security for the note is later transferred from the purchased property to other real estate owned by the debtor. (*Goodyear v. Mack, supra,* 159 Cal.App.3d 654, 205 Cal.Rptr. 702.)

The case of *DCM Partners v. Smith* was in substantial measure a usury case. However, the statement of the law therein relative to Section 580b is instructive:

> It is now well established that as a general rule where a note is created as a purchase money note it remains as such even though the terms of that note may be altered, modified or extended provided the obligation is secured by the same property. (See *Palm v. Schilling* (1988) 199 Cal.App.3d 63, 76 [244 Cal.Rptr. 600].) There can be no question here that if Smith had been required to foreclose on the modified note she would have been governed by the provisions of section 580b. "The explicit language of section 580b brooks no interpretation other than that deficiency judgments are prohibited by the purchase money mortgagee so long as a purchase money mortgage or deed of trust is in effect on the original property. ... If the purchase money creditor retains an interest in the original property, the debtor cannot be held for a deficiency. If the purchase money creditor does not wish to accept the risk that the property will be lost through foreclosure by another secured creditor, the remedy is to either foreclose himself or destroy the purchase money nature of the transaction ...." (*Palm v. Schilling*, *supra*, at p. 76.) (1d) Thus treating the transaction here as retaining its nonusurious character is consistent with the law's unwillingness to change the modified secured note into a nonpurchase obligation. Where the law insists the legal effect of the bargain continues for one purpose, absent valid reasons that same bargain should continue for other purposes.

228 Cal.App.3d 737-38. This statement of the law squarely applies to and should be controlling in this case.

The case of *Lucky Investments, Inc. v. Adams* (1960) 183 Cal.App.2d 462, 7 Cal.Rptr. 57, is similar to the case, from transactional and risk perspective, and provides well-reasoned guidance on the application of Section 580b. In *Lucky Investments*, the appellate court was asked to decide whether two notes that had been substituted for two

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> In like fashion, a nonpurchase money note may retain its character through a subsequent transaction (*Paramount Sav. & Loan Assn. v. Barber* (1968) 263 Cal.App.2d 166, 69 Cal.Rptr. 390) or be transmuted *into* a purchase money obligation (*LaForgia v. Kolsky* (1987) 196 Cal.App.3d 1103, 242 Cal.Rptr. 282).

200 Cal.App.3d at 230-31, 246 Cal.Rptr. 73.

purchase money notes retained their purchase money status and the protection of Section 580b. The *Lucky Investments* court held that they did, stating:

> Next, assuming the holding agreements to be arrangements of trust securing Adams' debt to Lucky, we are confronted with the question of whether or not the notes sued upon were ones for the purchase price of real property. We are convinced that Adams is right in contending that they were such. It stands undisputed in the record that the first notes she gave to Lucky were purchase money notes. It stands equally undisputed that when she gave the notes being here sued upon, at the time the holding agreements were executed, the old notes were cancelled and delivered up to Adams and the new notes were given for the amount which she still owed upon the old notes. Under these circumstances we must conclude that the new notes were mere counterparts of the old, and that the nature of the debts for which they stood remained unchanged.

183 Cal. App. 2d at 464. Respectfully, a more seamless fit with the facts of this case is difficult to imagine.

The case of *Costanzo v. Ganguly*, (1993) 12 Cal. App. 4th 1085, 1090 is also on point. In *Costanzo*, the senior lender in *Constanzo* foreclosed on the owners' property, extinguishing the lien held by the junior lienholder, who was an assignee of the notes. The assignee filed an action against the owners seeking to recover the balance due on the notes. The Superior Court determined that the anti-deficiency statute did not apply, and entered judgment in favor of assignee. The owners appealed. The Court of Appeal reversed, holding that: (1) assignors of notes qualified as "vendors" for purposes of the anti-deficiency statute by virtue of their participation in and necessity to sale, and (2) the purposes underlying the anti-deficiency statute would be advanced if it were applied in the present case.

In *Shepherd v. Robinson* (1981) 128 Cal.App.3d 615, 180 Cal.Rptr. 342, the plaintiffs held a secured purchase money lien. The owner of the property in *Shepherd* had to sell his property due to financial distress. To accomplish this sale, new financing was required. The plaintiffs, who were the existing lienholders, agreed to reduce their

debt and to subordinate their lien to a new senior lien to accommodate the sale. Later, the senior lender foreclosed. Although the plaintiffs were not the sellers of the property, the court held they were necessary parties to the transfer, and by consenting to and participating in the sale they were "vendors" of their interest as beneficiaries under the original trust deed, and thus must be considered "vendors" for purposes of section 580b.

In this case, the facts are far more favorable than those cited above, insofar as the preservation of purchase money status is concerned. Here, the prior note was refinanced by a new note, with the same lender, the same borrower, it was secured by the same property, and the earlier note was retired with the loan proceeds. This is "standard purchase money situation," *Palm v. Schilling*, at 606. Accordingly, the Plaintiff's cause of action is barred. *See, DeBerard Property Ltd. v. Lim*,. 20 Cal.4th 659, 663 (1999) ("DeBerard began with a relatively risky subordinated security interest, and ended in the same position. We observed in *Brown v. Jensen* (1953) 41 Cal.2d 193, 197, 259 P.2d 425: 'The one taking ... a [purchase money] trust deed knows the value of his security and assumes the risk that it may become inadequate. Especially does he know the risk where he takes, as was done here, a second trust deed.' ").

The following statement of the law on this subject in Miller & Star, *California Real Estate 3rd* accurately summarizes the state of law in California today, and should guide this Court:

> A beneficiary and trustor may agree to a "refinance" of the purchase-money debt by the reconveyance of the deed of trust and the substitution of a new note and deed of trust for the original note and deed of trust secured by the same real property.[FN1] The issue of whether the new secured note is subject to the anti-deficiency limitations depends on the source of the debt and whether or not the substituted note and trust deed represent substantially the same debt as the prior note,[FN2] and whether or not the substituted notes are secured by the same property.[FN3]
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> The substitution of notes by the execution of a new note and trust deed representing the same purchase-money debt and secured by the same

> property does not change the purchase-money character of the debt. Even though there is a cancellation and replacement with new notes secured by the same property, the new notes executed in substitution for the old notes, and secured by the same property, remain as purchase-money notes subject to the purchase-money limitations.[FN4]

4 Cal. Real Est. § 10:240 (3d ed.). Other well considered authorities are to the same effect. *See* C. Burns, *Will Refinancing Your Home Mortgage Risk Your Life Savings?: Refinancing And California Code Of Civil Procedure Section 580b*, UCLA law Rev., August 1996 (the "Burn's Article"); *Bank One, Arizona, N.A. v. Beauvais*, 188 Ariz. 245, 934 P.2d 809 (1997).

G) The Wendland Decision Is Factually Inapposite and In Error. In an effort to evade the clear language in Section 580b, National Bank cites *Union Bank v. Wendland*, (1976) 54 Cal.App.3d 393 ("*Wendland*") for the proposition that a loan, which is used to retire an existing purchase money loan, between the same parties, with the same lien priority against the same home, is somehow outside the parameters of Section 580b. The *Wendland* ruling, which was a First Appellate District case, held that the deficiency claim at issue in that case was barred by Section 580d, instead of Section 580b. In the opinion, the Court stated that Section 580b did not apply:

> Section 580b was drafted to protect purchasers under the standard purchase money mortgage transactions *in which the vendor of real property retains an interest in the land sold to secure payment of part of the purchase price*.

54 Cal.App.3d 393 (emphasis added).

In the first instance, it should be noted that the facts in *Wendland* bear no relation to those in the instant case. In *Wendland*, the sold-out junior position was a third priority mortgage and there was no evidence indicating that the proceeds from this loan were used to repay an existing purchase money loan, as in this case

The statement of law in *Wendland* in also in error. Although Section 580b, as originally drafted, only included pure seller-financed loans, it was later amended to incorporate the language highlighted below:

> No deficiency judgment shall lie … **under a deed of trust or mortgage on a dwelling for not more than four families <u>given *to a lender* to secure repayment of a loan which was in fact used to pay all or part of the purchase price</u> of that dwelling occupied, entirely or in part, by the purchaser**.

Code Civ. Proc. § 580b.

As amended, the statute encompasses all third party debts that are used to repay existing purchase money loans, which is exactly what occurred in this case. The *Wendland* court's failure to note this critical change in the statute renders its decision contrary to the plain language in the statute. *See* Burn's Article, *supra*; *Bank One, Arizona, N.A. v. Beauvais*, 188 Ariz. 245, 934 P.2d 809 (1997).

As the author of the Burn's Article stated:

> As an appellate level decision, *Wendland's* value as a precedent is limited. Further, the court's flawed reasoning weakens its value even as persuasive authority." *Id*. In arriving at this conclusion the author noted that the *Wendland* court purported to base its decision on the plain language of the statute, but then, unaccountably, ignored this language. To again quote the Burn's Article: "The court appears to have based its decision on the plain wording of the statute. That wording indicates that the statute applies to a "loan which was in fact used to pay all or part of the purchase price" of a residence. Although the defendant used the funds to pay off the original loan, and thus paid the purchase price of the residence indirectly, the court found that this did not meet the statute's requirements."

Id; *see also* Shepard, *California Code Of Civil Procedure Section 580b, Anti-Deficiency Protection Regarding Purchase Money Debts: Arguments For The Inclusion Of Refinanced Purchase Money Obligations Within The Anti-Deficiency Protection Of Section 580b*, So. Cal. Inter. L.J., Winter 1997 (The court's comments regarding section 580b are dicta because the resolution of the controversy before the court was controlled by the provisions of section 580d inasmuch as Union Bank had foreclosed its deed of trust non-judicially.")

In *Bank One, Arizona, N.A. v. Beauvais*, 188 Ariz. 245, 251, 934 P.2d 809, 815 (1997), the court noted this same fatal defect in the *Wendland* court's reasoning:

> Although on its face *Wendland* appears to support the Bank's argument, a close reading shows that it is distinguishable. Section 580b prohibited deficiency judgments after a sale of real property under a deed of trust given to the property *seller* to secure payment of the purchase price of the property. 54 Cal.App.3d at 398, 126 Cal.Rptr. at 553, n. 2. The *Wendland* court found that section 580b was inapplicable because the first deed of trust was not given as security for the purchase money within the meaning of section 580b. *Id.* at 398, 126 Cal.Rptr. at 553. That was so because a loan transaction with a bank was a transaction that did not come within the purpose of section 580b, which was to protect purchasers under purchase-money mortgage transactions in which the seller of real property retained an interest in the land sold to secure payment of part of the purchase price. *Id.* The court then analyzed the case under section 580d, the more general Anti-Deficiency Statute, and, based on a merger theory, reversed the judgment for the bank. *Id.* at 405, 126 Cal.Rptr. at 558.
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> Two California cases more recent than *Wendland* refute the Bank's argument. The issue in *Palm v. Schilling*, 199 Cal.App.3d 63, 244 Cal.Rptr. 600 (1988), was whether the prohibition against deficiency judgments could be contractually waived as a condition of renegotiation of the obligation. In holding that it could not be waived in the circumstances presented, the *Palm* court stated:
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> > As the Supreme Court observed decades ago, "[w]ith purchase money trust deeds, [ ][sic] the character of the transaction must necessarily be determined at the time the trust deed is executed. Its nature is then fixed for all time and as so fixed no deficiency judgment may be obtained regardless of whether the security later becomes valueless." ... Renegotiation of a purchase money note, whether viewed as a renewal or a new transaction, will not support a waiver because section 580b prohibits a waiver in advance of or at the time of the creation of a purchase money mortgage.
>
> The explicit language of section 580b brooks no interpretation other than that deficiency judgments are prohibited by a purchase money mortgagee so long as a purchase money mortgage or deed of trust is in effect on the original real property.

(Citation omitted.)

> *Id.* at 75-76, 244 Cal.Rptr. at 609. Similarly, the court in *Ziegler v. Barnes,* 200 Cal.App.3d 224, 246 Cal.Rptr. 69 (1988), concluded that a new $95,000 promissory note that replaced a $185,000 purchase-money note was merely a substitute for the original note, even though it was for a lower amount that reflected payments made, and thus that the character of the money due had not changed. *Id.* at 230-31, 246 Cal.Rptr. at 72-73. The fact that the note added payees also did not change its character. *Id.* at 230, 246 Cal.Rptr. at 72. Therefore, the court held that the creditor was not entitled to a deficiency judgment. *Id.*
>
> In summary, we hold that regardless of whether the workout note was an extension, renewal, or refinancing of the 1989 consolidated loan, it retained its character as a purchase-money note. *See Lucky Invs., Inc. v. Adams,* 183 Cal.App.2d 462, 7 Cal. Rptr. 57 (1960) (Cancellation and replacement with new notes, secured by the same property, transfers purchase-money status to new notes.). Accordingly, the Bank is prohibited from waiving the security under the deed of trust and suing on the note. We affirm the trial court's dismissal of the Bank's complaint.

188 Ariz. 245, 251, 934 P.2d 809, 815. Finally, *Wendland* is also directly contrary to the authorities in this district cited above.

III

CONCLUSION

For all the foregoing, Petitioner requests that the court issue its writ of mandate as requested herein.

DATED: December _____

OKEEFE & ASSOCIATES
LAW CORPORATION, P.C.

By: _____
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for the petitioner