

15

**FILED**

JAN 22 2010

UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

1 **ANDREW C. BAILEY**  
2 2500 N. Page Springs Rd  
3 Cornville, AZ 86325  
4 928 634-4335  
5 *Plaintiff and Debtor in Pro Per*

6 **UNITED STATES BANKRUPTCY COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 In re:

Chapter 11  
Case #: 2:09-bk-06979-PHX-RTBP  
AP Case # 2:09-ap-01728-RTBP

9 **ANDREW C. BAILEY**  
10 Plaintiff

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND FIRST  
REQUEST FOR PRODUCTION OF  
DOCUMENTS**

11 Vs

(Related to Docket #82)

12 **BANK OF NEW YORK MELLON, f/k/a**  
13 **BANK OF NEW YORK**  
14 Defendant

Subject Property:  
2560 N Page Springs Rd  
Cornville, AZ 86325

15  
16 **PLAINTIFF'S FIRST SET OF INTERROGATORIES**  
17 **AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**  
18

19 Pursuant to Rule 33 and Rule 34 of the Federal Rules of Civil Procedure, Plaintiff requests  
20 Defendant **BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK** to answer the  
21 following Interrogatories and produce documents in accordance with the following Request  
22 for Production of Documents.  
23  
24  
25

1 **DEFINITIONS**

2  
3 1. BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK includes any and all persons  
4 and entities presently or formerly acting for or in concert with BANK OF NEW YORK  
5 MELLON, f/k/a BANK OF NEW YORK.

6 2. BAC HOME LOANS SERVICING LP includes any and all persons and entities presently or  
7 formerly acting for or in concert with BAC HOME LOANS SERVICING LP, COUNTRYWIDE  
8 HOME LOANS, COUNTRYWIDE BANK, or BANK OF AMERICA.

9 3. "Document" includes each record held in BANK OF NEW YORK MELLON, f/k/a BANK  
10 OF NEW YORK's possession or generated by BANK OF NEW YORK MELLON, f/k/a BANK  
11 OF NEW YORK.

12 4. The word "document(s)" includes all "writings," "recordings," and "photographs," as  
13 those terms are defined in Rule 1001 of the Federal Rules of Evidence, and should be  
14 construed in the broadest sense permissible. Accordingly, "document(s)" includes, but is  
15 not limited to, all written, printed, recorded or graphic matter, photographic matter, sound  
16 reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically,  
17 electromagnetically, optically or otherwise on hard drive, diskette, compact disk, primary or  
18 backup tape, audio tape or video tape) from whatever source derived and however and by  
19 whomever prepared, produced, reproduced, disseminated or made. Without limiting the  
20 generality of the foregoing, "document(s)" includes the original and any non-identical copy  
21 and also every draft and proposed draft of all correspondence, internal memoranda, notes of  
22 meetings, telegrams, telexes, facsimiles, electronic mail, reports, transcripts or notes of  
23 telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies,  
24 testimony, speeches, worksheets, maps, charts, diagrams, computer printouts, and any other  
25 writings or documentary materials of any nature whatsoever, whether or not divulged to  
other parties, together with any attachments thereto and enclosures therewith. In addition,  
the word "Document(s)" encompasses all forms and manifestations of electronically or  
optically coded, stored, and/or retrievable information, including but not limited to "e-

1 mail,” “voice mail,” digital images and graphics, digital or analog audiotapes and files, and  
2 digital or analog videotapes and files.

3 5. The word “person(s)” includes not only natural persons, but also firms, partnerships,  
4 associations, corporations, subsidiaries, divisions, departments, joint ventures,  
5 proprietorships, syndicates, trusts, groups, and organizations; federal, state, or local  
6 governments or government agencies, offices, bureaus, departments, or entities; other legal,  
7 business, or government entities; and all subsidiaries, affiliates, divisions, departments,  
8 branches, and other units thereof or any combination thereof.

9 6. As used herein, any reference to any “person” includes the present and former officers,  
10 executives, partners, directors, trustees, employees, attorneys, agents, representatives, and  
11 all other persons acting or purporting to act on behalf of the person and also its subsidiaries,  
12 affiliates, divisions, and predecessors and successors in interest.

13 7. The words “you,” “your,” “defendants” or “movants” refer to defendants, defendant-  
14 intervenors, movants, and their agents, representatives, attorneys, experts, and all other  
15 persons acting or purporting to act on behalf of Defendant.

16 8. The singular of each word shall be construed to include its plural and vice versa, and the  
17 root word and all derivations (*i.e.*, “ing,” “ed,” etc.) shall be construed to include each other.

18 9. The words “and” as well as “or” shall be construed both conjunctively as well as  
19 disjunctively.

20 10. The word “each” shall be construed to include “every” and vice versa.

21 11. The word “any” shall be construed to include “all” and vice versa.

22 12. The present tense shall be construed to include the past tense and vice versa.

23 13. The masculine shall be construed to include the feminine and vice versa.

24 14. The words “knowledge,” “information,” “possession,” “custody,” and “control” of a  
25 person shall be construed to include such person’s agents, representatives, and attorneys.

1 15. The word "including" shall have its ordinary meaning and shall mean "including but not  
2 limited to" and shall not indicate limitation to the examples or items mentioned.

3 16. The phrase "reflect, refer, or relate to" means reflecting, referring to, relating to,  
4 regarding, discussing, concerning, constituting, mentioning, pertaining to, alluding to, or  
5 associated with.

6 17. The words "to present" mean to the date on which you respond to these interrogatories  
7 and requests.

### 8 **INSTRUCTIONS**

9 1. Unless otherwise specified, if your response in regard to a portion of the time period  
10 addressed in any interrogatory differs from your response in regard to another portion of  
11 such period, provide a response for each such portion and indicate the period of time to  
12 which each response relates.

13 2. Deem any reference to a non-natural person to include the legal predecessors of such  
14 non-natural person.

15 3. When an interrogatory asks you to "describe" or "identify" a document, provide the  
16 following information with respect to each such document:

17 a. The date appearing on such document; or if it has no date, so state and give the date or  
18 approximate date such document was prepared, produced, created, or came into being;

19 b. Any identifying or descriptive code number, file number, title or label of such document;

20 c. The general nature or description of such document;

21 d. The name of the person(s) who signed, authored, produced or created such document;

22 e. The name of the person(s) who prepared such document if different from the name  
23 provided pursuant to subpart (d) of this instruction;

24 f. The name of the person(s) to whom such document was addressed and the name of each  
25 such person other than the addressee to whom such document, or copy or reproduction

1 thereof, was given or sent;

2 g. The name of the person or entity having present possession, custody and/or control of  
3 such document;

4 h. The present location of such document;

5 i. If such document was, but is no longer in your possession or control, state what  
6 disposition was made of such document, the reason for such disposition, and the date  
7 thereof.

8 j. Whether or not any draft, copy, or reproduction of such document contains any script,  
9 notation, change, addendum, or the like, not appearing on such document itself, and if so,  
10 the answer shall give the description and identification of each such draft, copy or  
11 reproduction in accordance with the above subparts (a) through (i).

12 4. The above information shall be given in sufficient detail to enable any person or party to  
13 whom a subpoena or request for production is directed to identify the documents sought to  
14 be produced and to enable counsel to determine whether such document, when produced, is  
15 in fact the document so described and identified.

16 5. Notwithstanding any other instruction in this First Set of Interrogatories that is or may be  
17 to the contrary, if a document has already been produced by you to the Plaintiff, such  
18 document may be identified by specifying the Bates numbers for all pages of such  
19 document.

20 6. A request that you identify a document is not limited to documents within your  
21 possession, and such requests shall extend to all documents under your control.

22 7. When an interrogatory asks you to "identify" a person, the answer shall contain the  
23 following information with respect to each such person:

24 a. The full name, current or last known business and residence addresses, and business and  
25 residence phone numbers of such person;

1 b. The name and address of the agency, employer or entity at which such person worked  
2 and/or to which such person reported;

3 c. The title(s) and related periods of service for such person with each such agency,  
4 employer or entity.

5 8. When an interrogatory calls for the "description" or "identity" of any "document" you  
6 contend to be subject to a privilege against disclosure in response to these interrogatories,  
7 provide with respect to each such document or communication the following:

8 a. The nature of the document you contend is privileged (*e.g.*, letter, memorandum, chart,  
9 picture, report, etc.);

10 b. The number of pages comprising the document and a description of any identifying  
11 marks or designations (*e.g.* Bates numbers) if any, on the document;

12 c. The date of the document which you contend is privileged;

13 d. The name(s) of the author(s) and of any recipient(s) of the document;

14 e. The name and address of any person who is not included in your response to subpart (d)  
15 with respect to such document and who has access to or has seen, read, or heard any portion  
16 of the material in the document that you contend to be privileged; and

17 f. The nature of the privilege asserted.

18 9. In answering each of these interrogatories, furnish all information available to you that is  
19 relevant or that might lead to the discovery of relevant evidence, including information in  
20 the possession of your attorneys, or their investigators, and all persons acting on your  
21 behalf, including but not limited to your employees, agents, officers, or representatives.

22 If you are unable to answer these interrogatories in full after exercising due diligence to  
23 supply a complete answer, so state and answer to the extent possible. Specify the reasons  
24 for your inability to answer and state whatever information or knowledge you have  
25 concerning the unanswered portions.

1 10. For each interrogatory or part of an interrogatory that you refuse to answer on grounds  
2 of burdensomeness, explain in as much detail as possible the basis for your refusal.

3 11. These interrogatories are deemed to be continuing; as such, you are requested to file and  
4 serve by way of supplemental answers thereto such additional information as may be  
5 required to complete your answers to these interrogatories.

6  
7 **INTERROGATORIES**

8 Where applicable, with respect to your answer to each of these interrogatories, please:

- 9 A. identify each person on whose testimony you will or may rely in support of your answer;  
10 B. identify each document on which you will or may rely in support of your answer.

- 11  
12 1. State the name, job title and business address of each person providing information in  
13 response to these discovery requests:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

2. State the type of business organization BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK is, and name each State of the Union in which BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK is chartered or registered:

3. State the name, job title, and business address of each person who has first-hand personal knowledge of the time and circumstances under which the promissory note obligating Andrew C. Bailey and/or alienable in this instant case was created, sold, transferred and/or assigned for value:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

4. State the name and contact information of the creditor in the instant case.  
(NOTE: The creditor is the person who actually provided the money for the Debtor's  
loan in expectation of payment, and who stands to lose money in the event of  
default.)

5. State the names and contact information of all persons or entities, in order of  
assignment, who at any time were constructive holders or holders in due course of  
the promissory note obligating Andrew C. Bailey and/or alienable in this instant  
case:

6. State the name and contact information of the current beneficiary under the  
promissory note obligating Andrew C. Bailey and/or alienable in this instant case:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

7. If the name of the current beneficiary under the promissory note obligating Andrew C. Bailey and/or alienable in this instant case in Item (6) above is different from your name BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK explain why:

8. BAC HOME LOANS SERVICING LP has filed with the Bankruptcy Court a Proof of Claim with respect to the subject promissory note. Explain the nature of BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK's relationship with BAC HOME LOANS SERVICING LP in this instant case. If none, state "none".

9. Explain why the alleged copy of the promissory note submitted as Exhibit "A" attached to BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK's Motion for Lift from Stay includes no allonge or endorsement showing any assignment of the note to BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

10. If BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK did not keep or cannot produce a copy of an allonge or other paper showing assignment to BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK of the promissory note obligating Andrew C. Bailey and/or alienable in this instant case, explain why:

11. Identify the name, address and telephone number of each person or entity likely to have discoverable information relevant to the foregoing or that you may use to support your action.

1 **REQUEST FOR PRODUCTION OF DOCUMENTS**

2 Plaintiff hereby requests that Defendant BANK OF NEW YORK MELLON, f/k/a BANK  
3 OF NEW YORK produce the following documents for inspection and copying within 30  
4 days of service of this request, or any earlier date on which the parties agree, subject to the  
5 foregoing Definitions and Instructions set forth above, at the offices of the Yavapai County  
6 Recorder, 6<sup>th</sup> Street, Cottonwood, AZ or at another location agreeable to the parties hereto.  
7

8 1. Produce the original promissory note signed by Andrew C. Bailey and/or alienable in this  
9 instant case. If none, state "none."  
10

11 2. Produce all documents identified by you in response to each interrogatory set forth  
12 above. If none, state "none".  
13

14 3. Produce all documents associated with BAC HOME LOANS SERVICING LP's  
15 authorization of BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK's right  
16 to enforce the promissory note obligating Andrew C. Bailey and/or alienable in this instant  
17 case. If none, state "none".  
18

19 4. Produce a copy of the allonge or endorsement attached to the promissory note obligating  
20 Andrew C. Bailey and/or alienable in this instant case showing an assignment of the  
21 promissory note from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC to  
22 BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK. If none, state "none."  
23

24 5. Produce any and all Pooling and Servicing Agreement or other contractual agreement or  
25 memo involved in the "securitization" of the subject promissory note. If none, state "none".

1 6. Produce the account and general ledger statement of each transaction BANK OF NEW  
2 YORK MELLON, f/k/a BANK OF NEW YORK alleges Andrew C. Bailey has made with  
3 BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK with respect to the  
4 promissory note alienable in this instant case, showing all receipts and disbursements. If  
5 none, state "none".  
6

7 7. Produce all bills of sale and allonges and agreements illustrating where the promissory  
8 note alienable in this instant case was sold or assigned for value, from inception to the  
9 present. If none, state "none".  
10

11 8. Produce all insurance claim information and credit default claim or settlement or  
12 payment records relative to any alleged default under the promissory note alienable in this  
13 instant case. If none, state "none".  
14

15 9. Produce all information pertaining to Federal TARP or other bailout settlements or  
16 payments relative to any alleged default under the promissory note alienable in this instant  
17 case. If none, state "none".  
18

19 10. Produce all contracts, agreements, and/or memos illustrating that law firm  
20 Gust Rosenfeld, PLC has authority to represent BANK OF NEW YORK MELLON, f/k/a  
21 BANK OF NEW YORK in this instant case. If none, state "none".  
22

23 11. Produce all assignments, contracts, agreements, and/or memos identifying both the  
24 creditor and the current beneficiary in this instant case. If none, state "none".  
25

1 12. Produce all contracts, agreements, and/or memos illustrating that BANK OF NEW  
2 YORK MELLON, f/k/a BANK OF NEW YORK or its attorney law firm Gust Rosenfeld,  
3 PLC has authority to represent the creditor and/or the current beneficiary in this instant  
4 case. If none, state "none".  
5

6 13. Produce all contracts, agreements, and/or memos illustrating that BANK OF NEW  
7 YORK MELLON, f/k/a BANK OF NEW YORK has authority to represent CWALT, Inc.,  
8 Alternative Loan Trust 007-HY4 Mortgage Pass-Through Certificates, Series 2007-HY4, its  
9 assignees and/or successors in interest in this instant case. If none, state "none".  
10

11 14. Produce all contracts, agreements, and/or memos illustrating that BANK OF NEW  
12 YORK MELLON, f/k/a BANK OF NEW YORK has authority to represent the bondholders  
13 or certificateholders of CWALT, Inc., Alternative Loan Trust 007-HY4 Mortgage Pass-  
14 Through Certificates, Series 2007-HY4, its assignees and/or successors in interest in this  
15 instant case. If none, state "none".  
16

17 15. Produce all documents or data compilations that are in your possession, custody or  
18 control that you may use in support of your action.  
19

20 Respectfully submitted this 19th day of January, 2010

21 (Previously submitted in the administrative case on the 11<sup>th</sup> day of January, 2010)  
22

23  
24 Signed 

25 Andrew C. Bailey, Plaintiff and Debtor in Pro Per

1  
2  
3 **CERTIFICATE OF SERVICE**

4  
5 I, Andrew C. Bailey, certify that on the ~~19<sup>th</sup>~~<sup>22<sup>nd</sup> ACB</sup> day of January, 2010, a true and correct copy  
6 of Plaintiff's First Set of Interrogatories and First Request for Production of Documents was  
7 served upon the attorney for Defendant by certified mail to:  
8

9  
10 Gerard R. O'Meara, Esq,

11 Bar # 002434

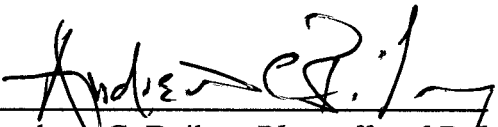
12 Gust Rosenfeld, PLC

13 1 South Church Avenue, Suite 1900

14 Tucson, AZ 85701-1620

15 (Attorney for BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK)  
16  
17  
18

19  
20 Signed this ~~19<sup>th</sup>~~<sup>22<sup>nd</sup> ACB</sup> day of January, 2010.  
21

22  
23   
24 Andrew C. Bailey, Plaintiff and Debtor in Pro Per  
25