

1 2. Based upon information and belief, Defendant JP Morgan Chase Bank, National
2 Association (“JP Morgan Chase”) is a national lender banking association doing business in
3 California. Further, based upon information and belief, in September 2008, Washington Mutual
4 Bank (“WaMu”) was seized by the Federal Deposit Insurance Corporation and its assets, except
5 for Plaintiff’s trust deed loans, were allegedly transferred to Chase.

6 3. Based upon information and belief, Defendant Chase Home Finance LLC
7 (“CHF”) is a Delaware corporation doing business in the State of California. CHF provides
8 mortgage loan servicing to Chase. JP Morgan Chase, CHF and DOES 1 through 10 are
9 collectively referred to herein as “Chase.”

10 4. Based upon information and belief, Defendant LPS Default Solutions, Inc. is a
11 Delaware corporation with its principal place of business in Florida and doing business in the
12 State of California. LPS provides mortgage loan services to lenders including Chase. LPS and
13 DOES 1 through 10 are collectively referred to herein as “LPS.”

14 5. Defendant Quality Loan Service Corp. is a California corporation doing business
15 in the State of California. Quality and DOES 1 through 10 are collectively referred to herein as
16 “Quality.”

17 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
18 as DOES 1 through 10 and, therefore, sues these defendants by such fictitious names. Plaintiff
19 will amend this complaint to allege their true names and capacities when ascertained.
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21 7. Defendants sued herein as DOES 1 through 10 are contractually, strictly,
22 negligently, intentionally, vicariously liable and or otherwise legally responsible in some manner
23 for each and every act, omission, obligation, event or happening set forth in this Complaint, and
24 that each of said fictitiously named Defendants is indebted to Plaintiff as hereinafter alleged.

25 8. The use of the term “Defendants” in any of the allegations in this Complaint,
26 unless specifically otherwise set forth, is intended to include and charge both jointly and
27 severely, not only named Defendants, but all Defendants designated as as well.
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1 9. Plaintiff is informed and believe and thereon alleges that, at all times mentioned
2 herein, Defendants were agents, servants, employees, alter egos, superiors, successors in interest,
3 joint venturers and/ or co-conspirators of each of their co-defendants and in doing the things
4 herein after mentioned, or acting within the course and scope of their authority of such agents,
5 servants, employees, alter egos, superiors, successors in interest, joint venturers and/ or co-
6 conspirators with the permission and consent of their co-defendants and, consequently, each
7 Defendant named herein, and those Defendants named herein as DOES 1 through 10, inclusive,
8 are jointly and severally liable to Plaintiff for the damages and harm sustained as a result of their
9 wrongful conduct.

10 10. Defendants, and each of them, aided and abetted, encouraged, and rendered
11 substantial assistance to the other Defendants in breaching their obligations to Plaintiff, as
12 alleged herein. In taking action, as alleged herein, to aid and abet and substantially assist the
13 commissions of these wrongful acts and other wrongdoings complained of, each of the
14 Defendants acted with an awareness of its primary wrongdoing and realized that its conduct
15 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and
16 wrongdoing.

17 11. Defendants, and each of them, knowingly and willfully conspired, engaged in a
18 common enterprise, and engaged in a common course of conduct to accomplish the wrongs
19 complained of herein. The purpose and effect of the conspiracy, common enterprise, and
20 common course of conduct complained of was, inter alia, to financially benefit Defendants at the
21 expense of Plaintiff by engaging in fraudulent activities. Defendants accomplished their
22 conspiracy, common enterprise, and common course of conduct by misrepresenting and
23 concealing material information regarding the servicing of loans, and by taking steps and
24 making statements in furtherance of their wrongdoing as specified herein. Each Defendant was
25 a direct, necessary and substantial participant in the conspiracy, common enterprise and common
26 course of conduct complained of herein, and was aware of its overall contribution to and
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1 furtherance thereof. Defendants' wrongful acts include, inter alia, all of the acts that each of
2 them are alleged to have committed in furtherance of the wrongful conduct of complained of
3 herein.

4 12. Any applicable statutes of limitations have been tolled by the Defendants'
5 continuing, knowing, and active concealment of the facts alleged herein. Despite exercising
6 reasonable diligence, Plaintiff could not have discovered, did not discover, and was prevented
7 from discovering, the wrongdoing complained of herein.

8 13. In the alternative, Defendants should be estopped from relying on any statutes of
9 limitations. Defendants have been under a continuing duty to disclose the true character, nature,
10 and quality of their financial services and debt collection practices. Defendants owed Plaintiff
11 an affirmative duty of full and fair disclosure, but knowingly failed to honor and discharge such
12 duty.

13 INTRODUCTION

14 14. This action arises out of the worst economic crisis since the Great Depression.
15 The implosion of the real estate market is at the center of the crisis. It has created a frenzy
16 among banks such as Chase, the largest corporation in terms of assets in the world, to foreclose
17 on as many properties as possible. It has recently come to light that, in their quest to foreclose
18 on properties as quickly as possible, Chase and other lenders have been acting outside of the law
19 in its foreclosure practice.

20 15. Specifically, on or about September 30, 2010, the California Office of the
21 Attorney General sent a cease and desist letter to Chase demanding that it halt all foreclosures in
22 California unless it can establish that it is complying with California Civil Code Section 2923.5,
23 which it violated in this action. A true and correct copy of said letter is attached hereto as
24 Exhibit "A."

25 16. Thereafter, on October 4, 2010, members of the California Democratic
26 Congressional Delegation wrote a letter to Eric Holder, United States Attorney General; Ben S.
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1 Bernanke, Chairman of the Board of Governors of the Federal Reserve System; and John Walsh,
2 Acting Comptroller of the Office of the Comptroller of the Currency, urging them “to
3 investigate possible violations of law or regulations by financial institutions [including Chase] in
4 their handling of delinquent mortgages, mortgage modifications, and foreclosures.” The letter
5 was supported by numerous California case studies, several of which described scenarios that
6 were substantially similar to the wrongful conduct inflicted on Plaintiff by Chase. A true and
7 correct copy of said letter and attachment is attached hereto as Exhibit “B.”

8 17. Ever since, the national press has been reporting stories of numerous illegalities
9 in the policies, practices and procedures of Chase and other lenders, and their employees and
10 agents employed and retained to process foreclosures. The evidence is overwhelming that Chase
11 and other lenders have been acting outside of the law since this crisis began. This action is a
12 prime example of Chase and its agents’ wrongful and illegal conduct in their greed for property
13 and fees at any cost without any regard to the rights of homeowners and borrowers.
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15 **STATEMENT OF FACTS**

16 18. Plaintiff purchased her property at 644 Priscilla Lane in Burbank, California, in
17 1991. She refinanced it in 2001, obtaining a new first trust deed from WaMu (“FTOD”). A true
18 and correct copy of the FTOD which listed “Washington Mutual Bank, FA, a federal
19 association” as the lender and “California Reconveyance Company” as the trustee, is attached
20 hereto as Exhibit “C.” She obtained an equity line of credit in 2003 from WaMu recorded as a
21 second trust deed (“STOD”). A true and correct copy of the STOD which listed “Washington
22 Mutual Bank, FA, a federal association” as the lender and “Group 9 Inc.” as the trustee, is
23 attached hereto as Exhibit “D.” The proceeds of the equity line were used for remodeling of the
24 bath and kitchen of her home.

25 19. Due to cutbacks in her work schedule, Plaintiff fell behind in her mortgage
26 payments in 2007. She requested a loan modification of her loans with WaMu. Pursuant to the
27 request of WaMu, Plaintiff submitted documents several times in 2008 for this purpose. In early
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1 2009, Plaintiff was notified by a representative of Chase that WaMu had been acquired by
2 Chase.

3 20. On October 3, 2008, the U.S. Congress passed the Emergency Economic
4 Stabilization Act ("EESA"), 12 USC § 5201 et seq., which allocated \$700 billion to the Treasury
5 Department to restore liquidity and stability to the financial system, and preserve home
6 ownership.

7 21. Enabled by the authority granted in the EESA, the Treasury Department and
8 other federal agencies created the Making Home Affordable Program on February 18, 2009, of
9 which the Home Affordable Modification Program ("HAMP") was a part of.

10 22. HAMP provides financial incentives to participating mortgage servicers to
11 modify the terms of eligible loans for the benefit of homeowners.

12 23. Pursuant to her request, Plaintiff received a loan modification proposal from
13 WaMu/Chase in July 2009. The proposal did not comply with the HAMP guidelines. A copy of
14 this proposal is attached hereto as Exhibit "E." Also, in the proposal, it states that no foreclosure
15 would occur as long as Plaintiff complied with the Trial Period Plan.

16 24. Plaintiff did not sign this loan modification agreement as the loan payments were
17 too high as a result of its non-compliance with the HAMP guidelines. She was told by Chase
18 that it would review the matter again and, as long as the matter was being reviewed, there would
19 be no foreclosure of her property. The representative that Plaintiff spoke with never indicated
20 that any pending foreclosure would proceed.

21 25. Prior to receiving the HAMP document attached hereto as Exhibit "E," Plaintiff
22 had discussions with representatives of Chase, including Ms. Sharae Cleveland, about
23 modification of the payments on the second trust deed as well. In that regard, on or about March
24 3, 2009, Ms. Cleveland sent Plaintiff a Forbearance Agreement with respect to the Second Trust
25 Deed, a copy of which is attached hereto as Exhibit "F." The transmittal letter which is included
26 as part of Exhibit "F" bears the date of March 6, 2010, which is a mistake as the first payment of
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1 \$500 was to be made on or before November 20, 2009. In Paragraph 7 of the Forbearance
2 Agreement it is stated that if a foreclosure sale has been scheduled it will be postponed during
3 the term of the agreement.

4 26. While Plaintiff was waiting for a review of the modification agreement (Exhibit
5 “E”), she made the first payment of \$500.00 to Chase as called for in the Forbearance
6 Agreement on November 22, 2009. A copy of the Western Union receipt is attached hereto as
7 Exhibit “G.” Even though the transmittal letter included as part of Exhibit “F” expressly stated
8 that the agreement was null and void if the first \$500 payment was not made by November 20,
9 2009, Ms. Cleveland of Chase confirmed receipt of the payment and the signed Forbearance
10 Agreement on Monday, November 23, 2009. Thus, the Forbearance Agreement was valid and
11 enforceable as Chase waived its right to reject the Agreement by accepting Plaintiff’s payments
12 under the Agreement. Alternatively, if the Forbearance Agreement was null and void because
13 the first payment was not timely, Plaintiff was not informed of that fact and Chase accepted
14 payments made thereunder.
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16 27. On December 20, 2009, Plaintiff sent a payment of \$350.00 to Chase by Western
17 Union pursuant to the Agreement. A copy of this receipt is attached hereto as Exhibit “H.”
18 Plaintiff spoke to Ms. Cleveland thereafter and she acknowledged receipt of the payment.

19 28. However, on December 25, 2009, a man knocked on the door of Plaintiff’s home
20 and said his name was and that he was the new owner of Plaintiff’s home. Plaintiff told Mr. that
21 there must be some mistake. Plaintiff called Ms. Cleveland at Chase the next business day,
22 December 28, 2009, and asked what was going on. Ms. Cleveland told Plaintiff that, according
23 to Chase’s records, there was no foreclosure, Mr. was likely engaged in fraudulent conduct and
24 that she should continue to make her payments pursuant to the Agreement. Accordingly, on
25 December 30, 2009, Plaintiff sent Chase a third payment in the amount of \$ 400.00 pursuant to
26 the Agreement. A copy of the receipt from Western Union is attached hereto as Exhibit “I.”
27 Chase never returned any of the payments made by Plaintiff.
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1 legal authority to sign on behalf of Chase as she did not enter into a power of attorney agreement
2 directly with Chase and she did not sign on behalf of LPS. Also, Chase's retention of LPS for
3 the purpose of signing mass quantities of foreclosure related documents which LPS had no
4 personal knowledge of is inconsistent with the purpose and intent, and in violation, of,
5 California's corporate, foreclosure and recording statutes. Lastly, the Substitution is void
6 because the Power of Attorney allegedly giving Ms. Allen to execute and record the Substitution
7 was not recorded concurrently with the Substitution in violation of California law, including, but
8 not limited to, California Civil Code Section 2933.

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10 34. Additionally, the Substitution is void because it did not disclose Ms. Allen's
11 principal, LPS, and it was executed solely on behalf of Chase and did not subscribe WaMu's
12 name to it in violation of California Civil Code Section 1095. As there was not an assignment of
13 the FDOT from WaMu to Chase (or any evidence that the FDOT transferred to Chase), the
14 failure to subscribe WaMu (or LPS) to the Substitution rendered it invalid and void. Thus,
15 Chase and Quality acted beyond its legal authority.

16 35. Nevertheless, Quality thereafter recorded a Notice of Trustee's Sale on May 28,
17 2009. A true and correct copy of the Notice is attached hereto as Exhibit "M." As a duly
18 recorded and legally valid Notice of Default and Substitution of Trustee is required before
19 Quality could serve and record a Notice of Trustee's Sale, and the former never happened, the
20 Notice of Trustee's Sale was also void and of no legal effect.

21 36. Also, based on information and belief, Quality failed to continue the trustee's sale
22 to December 15, 2009, in the manner required by California Civil Code Section 2924g.

23 37. After the sale, Quality promptly paid Chase's allegedly outstanding balances on
24 the promissory notes for the FDOT and SDOT in full without any investigation. However,
25 Quality failed and refused to remit payment of the remaining surplus funds (\$54,342.50) to
26 Plaintiff until approximately nine (9) months later when it remitted payment to Plaintiff in the
27 amount of \$51,676.56. Moreover, Quality wrongfully deducted its attorney's fees and costs
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1 totaling \$2665.94 from the surplus funds and refused to give Plaintiff the approximately eight
2 (8) months of interest that had accrued on the funds while they were wrongfully being withheld
3 by Quality. Plaintiff was forced to retain a lawyer to seek remittance to her of the surplus funds.

4 **FIRST CAUSE OF ACTION FOR VIOLATION OF THE SECURITY FIRST RULE**
5 **AGAINST JP MORGAN CHASE, CHF AND DOES 1-10**

6 38. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
7 through 37, inclusive, as though fully set forth herein.

8 39. From November 22, 2009, to December 30, 2009, Plaintiff tendered three (3)
9 payments totaling \$1,200.00 to Chase pursuant to a Forbearance Agreement that Plaintiff
10 believed that she entered into.

11 40. However, there was no Forbearance Agreement in effect. Instead, Chase kept the
12 funds that it received under false pretenses as Chase and never had any intention of not
13 foreclosing on the Subject Property on December 15, 2009. The Forbearance Agreement was
14 worthless as it was on the SDOT and Chase was foreclosing on the FDOT. Thus, Plaintiff paid
15 Chase \$1,200.00 for nothing.

16 41. Accordingly, the payments were essentially a “set-off” in which Chase attempted
17 to satisfy a portion of their debt secured by real property by attaching property other than the
18 secured real property, i.e., the \$1,200.00 Plaintiff paid to Chase which it was not entitled to
19 collect given the fact that that they had already chosen to foreclose on the Subject Property.
20 Accordingly, Chase’s actions were a clear violation of the Security First Rule set forth in Code
21 of Civil Procedure (“CCP”) §726.

22 42. Said violation of CCP §726 and Chase’s refusal to return the set-off funds
23 rendered Chase’s FDOT and SDOT null and void. Accordingly, Chase’s security interests in the
24 Subject Property did not exist at the time of foreclosure sale. Therefore, the foreclosure sale was
25 invalid and void as well.
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1 62. Additionally, Chase breached its obligation to Plaintiff to modify the loan by
2 proceeding with a foreclosure of her home when Chase and had agreed not to do so. Defendants
3 further breached the provisions of Civil Code Section 2924g(c)(1) which requires postponement
4 of a foreclosure sale by “mutual agreement, whether oral or in writing, of any trustor and any
5 beneficiary.” Here, Plaintiff had both oral and written agreements not to proceed with a
6 foreclosure of the Subject Property. Chase breached both of them. Further, Chase and Quality
7 breached Section 2924g by not providing proper notice of the postponement of the trustee’s sale
8 on December 15, 2009.

9 63. Additionally, Chase breached the SPA by failing to review the financial
10 information of Plaintiff and negotiate a loan modification with Plaintiff in good faith. Plaintiff
11 is informed and believes that Chase received over Five Hundred Million Dollars of TARP funds
12 from the federal government, a condition of which was that Chase was required to comply with
13 the provisions of the SPA. As Chase breached its obligations not to foreclose during the review
14 period, the trustee’s deed upon sale was issued in violation of the SPA and should be cancelled.

15 64. Additionally, Defendants violated California Civil Code §2923.5(a), which
16 requires a “mortgagee, beneficiary or authorized agent” to “contact the borrower or person by
17 telephone in order to assess the borrower’s financial situation and explore options for the
18 borrower to avoid foreclosure. “Section 2923.5(b) requires a default notice to include a
19 declaration “from the mortgagee, beneficiary, or authorized agent” of compliance with section
20 2923.5, including attempt “with due diligence to contact the borrower as required by this
21 section.” None of the Defendants assessed Plaintiff’s financial situation correctly or in good
22 faith prior to filing either of the Notices of Default against the Subject Property in this action.
23 Accordingly, the Defendants did not fulfill their legal obligation to Plaintiff prior to filing of the
24 Notices of Default and, therefore, any acts based on the Notice of Default taken thereafter were
25 invalid and void.
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1 payments made to Chase that were not returned to her. Moreover, had Plaintiff known that her
2 home was being foreclosed upon while she was told otherwise, she could have taken legal action
3 prior to the sale, including a Chapter 13 bankruptcy which would have allowed Plaintiff to bring
4 the loan current through a plan of reorganization. Additionally, Plaintiff could have explored
5 the possibility of refinancing or marketing and selling the Subject Property, either of which
6 would have been an option as there was substantial equity in the Subject Property. Accordingly,
7 Chase was estopped from taking any action that was contrary to the written and oral promises
8 made by it to Plaintiff.

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10 71. Additionally, pursuant to the SPA and HAMP, Chase promised to suspend all
11 pending foreclosure proceedings until the HAMP analysis is complete for all homeowners,
12 including Plaintiff. Plaintiff is a third party beneficiary of this agreement.

13 72. Pursuant to the SPA and the HAMP, Chase agreed to offer a 3 month HAMP
14 Trial Period at a payment level of 31 percent of income to all borrowers, including Plaintiff, who
15 meet the HAMP criteria and pass the NPV test.

16 73. Chase breached the SPA agreement with the federal government of which
17 Plaintiff is a third party beneficiary. Accordingly, Chase should be estopped from claiming any
18 benefit from the foreclosure due to its violation of the SPA.

19 74. As a result of Chase's false promises and misrepresentations, Plaintiff suffered
20 special and general damages in an amount according to proof at trial.

21 **SEVENTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA CIVIL CODE**
22 **SECTIONS 2924J AND 2924K AGAINST QUALITY AND DOES 1 THROUGH 10**

23 75. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
24 through 74, inclusive, as though fully set forth herein.

25 76. The handling of surplus funds in California is governed by California Civil Code
26 Section 2924j and 2924k. Section 2924j provides, in pertinent part, that:
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1 “2924j . . . (b) The trustee shall exercise **due diligence** to determine the priority
2 of the written claims received by the trustee to the trustee's sale surplus proceeds
3 from those persons to whom notice was sent pursuant to subdivision (a). **In the**
4 **event there is no dispute as to the priority of the written claims submitted to**
5 **the trustee, proceeds shall be paid within 30 days after the conclusion of the**
6 **notice period.** If the trustee has failed to determine the priority of written claims
7 within 90 days following the 30-day notice period, then within 10 days thereafter
8 the trustee shall deposit the funds with the clerk of the court pursuant to
9 subdivision (c) or file an interpleader action pursuant to subdivision (e). **Nothing**
10 **in this section shall preclude any person from pursuing other remedies or**
11 **claims as to surplus proceeds.**

12 (c) If, **after due diligence**, the trustee is **unable to determine the priority of the**
13 **written claims** received by the trustee to the trustee's sale surplus of multiple
14 persons or **if the trustee determines there is a conflict between potential**
15 **claimants**, the trustee may file a declaration of the unresolved claims and deposit
16 with the clerk of the superior court of the county in which the sale occurred, that
17 portion of the sales proceeds that cannot be distributed, less any fees charged by
18 the clerk pursuant to this subdivision. . .

19 . . .

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21 Upon deposit of that portion of the sale proceeds that cannot be distributed by
22 **due diligence**, the trustee shall be discharged of further responsibility for the
23 disbursement of sale proceeds. A deposit with the clerk of the court pursuant to
24 this subdivision may be either for the total proceeds of the trustee's sale, less any
25 fees charged by the clerk, if a conflict or conflicts exist with respect to the total
26 proceeds, or that portion that cannot be distributed after due diligence, less any
27 fees charged by the clerk.
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(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order **to resolve a dispute about the proceeds of a trustee's sale**. Once an interpleader action has been filed, thereafter the provisions of this section do not apply.

(f) "Due diligence," for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and **determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve**. (emphasis added).

77. Section 2924k provides, in pertinent part, that

(a) The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

(1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section.

(2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

(b) A trustee may charge costs and expenses incurred for such items as mailing and a **reasonable fee** for services rendered in connection with the distribution of

1 the proceeds from a trustee's sale, including, but not limited to, the investigation
2 of priority and validity of claims and the disbursement of funds. . .”

3 78. Accordingly, Quality was only allowed to hold onto Plaintiff’s surplus funds for
4 longer than 30 days if there was a dispute as to the **priority of claims**. There was never a
5 dispute as to the priority of claims.

6 79. Consequently, Quality violated Section 2924j and 2924k by not acting with due
7 diligence and wrongfully withholding the surplus funds belonging to Plaintiff for approximately
8 8 months.

9 80. Additionally, Quality violated Section 2924j and 2924k by converting
10 approximately \$2665.94 of Plaintiff’s surplus funds for its attorney’s fees which is not allowed
11 under Section 2924k. Alternatively, if Quality is entitled to attorney’s fees, Plaintiff hereby
12 demands payment of the attorney’s fees and costs she incurred in prosecuting the surplus funds
13 claim against Quality.

14 81. Accordingly, as a result of Quality’s wrongful conduct in violation of Sections
15 2924j and 2924k, Plaintiff has suffered, and will continue to suffer, compensatory, general and
16 special damages in an amount to proof. Additionally, Quality acted with malice, fraud and/or
17 oppression and, thus, Plaintiff is entitled to an award of punitive damages.

18 **EIGHTH CAUSE OF ACTION FOR NEGLIGENCE AGAINST JP MORGAN CHASE,**

19 **CHF AND DOES 1 THROUGH 10**

20 82. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
21 through 81, inclusive, as though fully set forth herein.

22 83. At all times relevant herein, Chase, acting as Plaintiff’s lender and servicer, had a
23 duty to exercise reasonable care and skill to maintain proper and accurate loan records and to
24 discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing
25 of loan records, including, but not limited, disclosing to Plaintiff the status of any foreclosure
26 actions taken by it, refraining from taking any action against Plaintiff that it did not have the
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1 legal authority to do, and providing all relevant information regarding the loans Plaintiff had
2 with it to Plaintiff.

3 84. In taking the actions alleged above, and in failing to take the actions as alleged
4 above, Chase breached its duty of care and skill to Plaintiff in the servicing of Plaintiff's loans
5 by, among other things, failing to disclose to Plaintiff that it was foreclosing on Plaintiff's
6 Subject Property while telling her the opposite, treating the FDOT and SDOT as though they
7 were being serviced and held by two separate entities so as to confuse and mislead Plaintiff,
8 preparing and recording false documents, and foreclosing on the Subject Property without
9 having the legal authority and/or proper documentation to do so.

10 85. As a direct and proximate result of the negligence and carelessness of Chase as
11 set forth above, Plaintiff suffered, and continues to suffer, general and special damages in an
12 amount to be determined at trial.

13 **NINTH CAUSE OF ACTION FOR NEGLIGENCE AGAINST QUALITY AND DOES 1**
14 **THROUGH 10**

15 86. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
16 through 85, inclusive, as though fully set forth herein.

17 87. At all times relevant herein, Quality, acting as the alleged trustee under the
18 FDOT, but without the legal authority to do so, had a duty to exercise reasonable care and skill
19 to follow California law with regard to foreclosures, refrain from taking any action against
20 Plaintiff that it did not have the legal authority to do, and immediately remit payment to Plaintiff
21 of all surplus funds from the foreclosure sale for which there were no competing claims.

22 88. In taking the actions alleged above, and in failing to take the actions as alleged
23 above, Quality breached its duty of care and skill to Plaintiff by failing to properly train and
24 supervise its agents and employees with regard to California law regarding surplus funds and
25 substitution of trustees; failing to follow California law with regard to foreclosures, including,
26 but not limited to, acting as the trustee under the FDOT when it did not have the legal authority
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1 to do so; taking actions against Plaintiff that it did not have the legal authority to do; failing to
2 immediately remit payment to Plaintiff of all surplus funds from the foreclosure sale for which
3 there were no competing claims and wrongfully deducting its fees and costs from Plaintiff's
4 surplus funds which it had no legal authority to do.

5 89. As a direct and proximate result of the negligence and carelessness of Quality as
6 set forth above, Plaintiff suffered, and continues to suffer, general and special damages in an
7 amount to be determined at trial.

8 **TENTH CAUSE OF ACTION FOR NEGLIGENCE PER SE AGAINST QUALITY AND**

9 **DOES 1 THROUGH 10**

10 90. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
11 through 89, inclusive, as though fully set forth herein.

12 91. Quality owed a duty of care to Plaintiff to handle Plaintiff's surplus funds in
13 compliance with California Civil Code Section 2924j and 2924k.

14 92. Quality violated Sections 2924j and 2924k by not remitting payment of Plaintiff's
15 surplus funds within thirty (30) days of the foreclosure sale and by deducting its attorney's fees
16 and costs when Sections 2924j and 2924k did not provide a statutory basis for either.

17 93. Quality's violations of Sections 2924j and 2924k caused Plaintiff the loss of use
18 of her funds for nine (9) months, the loss of interest on the funds for nine (9) months and the
19 continual loss of approximately \$2665.94 which was converted by Quality to pay for their own
20 attorney's fees and costs.

21 94. Sections 2924j and 2924k were enacted to allow for the speedy and efficient
22 distribution of the proceeds resulting from a foreclosure sale, including surplus funds back to the
23 former homeowner. Thus, Plaintiff's damages resulted from the kind of conduct that the statutes
24 were designed to prevent. Additionally, Plaintiff was and is a member of the class of persons
25 that the statutes were intended to protect.
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1 95. As a direct and proximate result of the negligence per se on behalf of Quality as
2 set forth above, Plaintiff suffered, and continues to suffer, general and special damages in an
3 amount to be determined at trial.

4 **ELEVENTH CAUSE OF ACTION FOR NEGLIGENT HIRING AND SUPERVISION**
5 **AGAINST QUALITY AND DOES 1 THROUGH 10**

6 96. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
7 through 95, inclusive, as though fully set forth herein.

8 97. At all times relevant herein, Quality, acting as the trustee under the FDOT, but
9 without the legal authority to do so, had a duty to exercise reasonable care and skill to follow
10 California law with regard to foreclosures, refrain from taking any action against Plaintiff that it
11 did not have the legal authority to do, hire and retain employees that were fit and competent and
12 would not present a risk of harm to third parties, and supervise its employees so that they
13 handled foreclosures and surplus funds in compliance with California law.

14 98. Plaintiff is informed and believes and based on that information and belief alleges
15 that Quality knew, or in the exercise of reasonable care should have known, that its employees
16 and agents hired or retained to handle surplus funds claims were incompetent and unfit to
17 perform the job that they were hired to perform and that the performance of this job involved the
18 risk of harm to others such as Plaintiff. Specifically, Quality hired and retained an employee or
19 agent, Esq., to oversee the handling and management of surplus funds resulting from
20 foreclosure sales. At the time that he handled Plaintiff's claim, he was serving a two year
21 probation ordered by the State Bar of California as a result of his misappropriation of trust funds
22 in a prior matter. Instead of the disciplinary proceedings against Mr. disqualifying him for a
23 position involving the management of trust funds, Quality did the exact opposite and placed him
24 in a position of tremendous authority over trust/surplus funds.
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26 99. Quality knew or should have known that Mr. was unfit and unsuitable for the
27 position of handling and managing surplus, i.e., trust, funds, and supervising other employees
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1 Loan Mitigation Specialist who was employed by Chase to supervise the issuance of the
2 Forbearance Agreement that Plaintiff believed went into effect on November 20, 2009.

3 112. Chase failed to disclose to Plaintiff that it was taking the position that the
4 Forbearance Agreement never went into effect and was null and void as a result of her first
5 payment being late. Instead, Chase continued to accept payments from Plaintiff as though the
6 Forbearance Agreement was in full effect. Moreover, Chase failed to disclose to Plaintiff that the
7 Forbearance Agreement was completely worthless as Chase intended to foreclose on the FDOT
8 regardless of the Agreement. Furthermore, Chase fraudulently treated the FDOT and SDOT as
9 though they were being serviced and held by two separate entities so as to confuse and mislead
10 Plaintiff who believed that Chase was Chase whenever she communicated with it.

11 113. The representations of Chase were false and fraudulent as Chase caused a
12 trustee's sale to be scheduled on December 15, 2009, without Plaintiff's knowledge. Although
13 Plaintiff had numerous communications with Chase prior to December 15, 2009, Chase never
14 disclosed to Plaintiff that the Subject Property would be sold at a trustee's sale on that date.
15 Chase intentionally made the representations as part of Chase's pattern and practice to deceive
16 borrower's such as Plaintiff into relying to their detriment so that Chase could foreclose on
17 homes before borrower's could seek other remedies or options. The exact same thing happened
18 to Plaintiff. Plaintiff justifiably relied on the oral and written representations of Chase and
19 Chase's written Forbearance Agreement that no foreclosure would take place during the loan
20 modification and forbearance process and did not seek other remedies or pursue other options.
21 As a proximate result of Chase's fraudulent misrepresentations, Plaintiff lost her home of 19
22 years and inflicted great emotional distress and suffering on Plaintiff.

23 114. Accordingly, as a result of Chase's fraudulent conduct, Plaintiff has suffered, and
24 will continue to suffer, compensatory, general and special damages in an amount to proof.
25 Additionally, Chase acted with malice, fraud and/or oppression and, thus, Plaintiff is entitled to
26 an award of punitive damages.
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1 **FOURTEENTH CAUSE OF ACTION FOR VIOLATION OF THE ROSENTHAL FAIR**
2 **DEBT COLLECTION PRACTICES ACT AGAINST JP MORGAN CHASE, CHF AND**
3 **DOES 1 THROUGH 10**

4 115. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
5 through 114, inclusive, as though fully set forth herein.

6 116. Plaintiff is a consumer and the obligation between the parties is a debt owed
7 pursuant to the subject notes and trust deeds and is a consumer debt pursuant to the Rosenthal
8 Fair Debt Collection Practices Act (“Rosenthal Act”).

9 117. Chase is a lender and mortgage servicing company that is in the business of
10 collecting and processing mortgage payments.

11 118. The representative of Chase made false misrepresentations in connection with the
12 debt secured by the deed of trust on Plaintiff’s house. Specifically, Chase represented that if the
13 modification offer was accepted and a payment of \$500 was sent to Chase, any foreclosure of
14 Plaintiff’s property would be postponed. This representation was false and fraudulent as, after
15 Plaintiff signed the Forbearance Agreement and sent three payments as agreed, Chase foreclosed
16 on Plaintiff’s property anyway without notice. In fact, Chase accepted three payments pursuant
17 to the Forbearance Agreement that Chase asserts was never in effect because of Plaintiff’s tardy
18 first payment.

19 119. Additionally, after Plaintiff’s debt was extinguished by the foreclosure sale of her
20 property, Chase continued to demand and accepted payment from Plaintiff on a nonexistent
21 debt. Chase received but did not refund the payment made by Plaintiff after the foreclosure sale
22 occurred.

23 120. As a proximate result of Chase’s violations of the Rosenthal Act, Plaintiff is
24 entitled to actual and statutory damages, attorney’s fees and costs, and such other relief as the
25 court determines is due.
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1 **FIFTEENTH CAUSE OF ACTION FOR CONVERSION AGAINST QUALITY AND**

2 **DOES 1-10**

3 121. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
4 through 120, inclusive, as though fully set forth herein.

5 122. Plaintiff was, and still is, entitled to all of the surplus funds from the foreclosure
6 sale wrongfully being held by Quality. Quality, by and through the acts alleged herein, did and
7 is currently exercising dominion and control over the property of Plaintiff in taking unto itself
8 the surplus funds from the foreclosure sale belonging to Plaintiff in the total sum amount of
9 \$54,342.50. Said funds were owing and payable to Plaintiff within thirty to sixty days after the
10 foreclosure sale on December 15, 2009.

11 123. Quality did not remit any payments to Plaintiff until mid-September 2010, when
12 it remitted a single payment to Plaintiff in the amount of \$51,676.56, nine (9) months after the
13 foreclosure sale. The remaining \$2665.94 was deducted and converted by Quality to allegedly
14 cover its attorney's fees and costs for which it had no legal basis to do so. Said amount and
15 interest (plus interest on the entire amount up to and including mid-September 2009 when
16 Quality wrongfully withheld the entire amount from Plaintiff) is currently due and owing to
17 Plaintiff. Accordingly, Quality deprived Plaintiff of the use and possession of \$51,676.56 until
18 mid-September 2010 during a time when she was facing financial difficulties. Additionally,
19 Quality is still depriving Plaintiff of the use and possession of \$2665.94 which was converted by
20 Quality for its own use and benefit.

21 124. As a proximate result of Quality's conversion of Plaintiff's surplus funds,
22 Plaintiff has suffered compensatory, general and special damages in an amount according to
23 proof at trial. Additionally, Quality acted, and is acting, with malice, fraud and/or oppression
24 and, thus, Plaintiff is entitled to an award of punitive damages.

25 **SIXTEENTH CAUSE OF ACTION FOR VIOLATION OF BUSINESS AND**
26 **PROFESSIONS CODE SECTION 17200 ET SEQ. AGAINST ALL DEFENDANTS**
27

1 125. Plaintiff incorporates herein by reference the allegations made in paragraphs 1
2 through 124, inclusive, as though fully set forth herein.

3 126. California Business & Professions Code Section 17200, et seq., prohibits acts of
4 unfair competition, which means and includes any “fraudulent business act or practice . . .” and
5 conduct which is “likely to deceive” and is “fraudulent” within the meaning of Section 17200.

6 127. As more fully described above, Defendants’ acts and practices are likely to
7 deceive, constituting a fraudulent business act or practice. This conduct is ongoing and
8 continues to this date.

9 128. Specifically, as fully set forth above, Defendants engage in deceptive business
10 practices with respect to mortgage loan servicing, assignments of notes and deeds of trust,
11 foreclosure of residential properties and related matters by, among other things,

12 (a) Instituting improper or premature foreclosure proceedings to generate
13 unwarranted fees;

14 (b) Executing and recording false and misleading documents;

15 (c) Executing and recording documents without the legal authority to do so;

16 (d) Failing to disclose the principal for which documents were being executed
17 and recorded in violation of California Civil Code Section 1095;

18 (e) Failing to record Powers of Attorney in connection with other recorded
19 documents in violation of California Civil Code Section 2933;

20 (f) Violating the Security First Rule;

21 (g) Demanding and accepting payments for debts that were non-existent;

22 (h) Acting as beneficiaries and trustees without the legal authority to do so;

23 (i) Failing and refusing to remit payment of surplus funds pursuant to California
24 Civil Code Sections 2924j and 2924k;

25 (j) Wrongfully withholding and converting surplus funds that were due and
26 owing to the trustor;
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1 (k) Wrongfully deducting attorney's fees and costs from surplus funds owing to
2 the trustor;

3 (l) Failing to give proper notice of a trustee's sale and the postponement of the
4 sale pursuant to California Civil Code Section 2924g;

5 (m) Failing to comply with California Civil Code Section 2923.5;

6 (n) Failing to comply with the HAMP guidelines;

7 (o) Misrepresenting the foreclosure status of properties to borrowers; and

8 (p) Other deceptive business practices.

9 129. Plaintiff alleges that by engaging in the above described acts and/or practices as
10 alleged herein, Defendants have violated several California laws and regulations and said
11 predicate acts are therefore per se violations of California Business and Professions Code
12 Section 17200, et seq.

13 130. Plaintiff alleges that Defendants' misconduct, as alleged herein, gave, and have
14 given, Defendants an unfair competitive advantage over their competitors. The scheme
15 implemented by Defendants is designed to defraud California consumers and enrich the
16 Defendants.

17 131. The foregoing acts and practices have caused substantial harm to California
18 consumers.

19 132. Plaintiff alleges that as direct and proximate result of the aforementioned acts,
20 Defendants have prospered and benefitted from Plaintiff by collecting mortgage payments and
21 fees for foreclosure related services, and have been unjustly enriched from their act of
22 foreclosing on Plaintiff's home when they had agreed not to do so and/or to do so in compliance
23 with applicable laws.

24 133. By reason of the foregoing, Defendants have been unjustly enriched and should
25 be required to disgorge their illicit profits and/or make restitution to Plaintiffs and other
26 California consumers who have been harmed, and/or be enjoined from continuing in such
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1 practices pursuant to California Business & Professions Code Sections 17203 and 17204.
2 Additionally, Plaintiffs are therefore entitled to injunctive relief and attorney's fees as available
3 under California Business and Professions Code Sec. 17200 and related sections.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment against the Defendants and each of them, jointly
6 and severally, as follows:

7 1. For a declaration of the rights and duties of the parties, specifically that the
8 foreclosure of Plaintiff's residence was wrongful.

9 2. For compensatory, special, general and punitive damages according to proof
10 against all Defendants.

11 3. Pursuant to Business and Professions Code § 17203, that all Defendants, their
12 successors, agents, representatives, employees, and all persons who act in concert with them be
13 permanently enjoined from committing any acts of unfair competition in violation of § 17200,
14 including, but not limited to, the violations alleged herein.

15 4. For civil penalties pursuant to statute, restitution, injunctive relief and reasonable
16 attorney's fees according to proof.

17 5. For reasonable attorney's fees and costs.

18 6. For reasonable costs of suit and such other and further relief as the Court deems
19 proper.
20

21 DATED: October 7, 2010

LAW OFFICES OF CAMERON H. TOTTEN

22
23 By: _____

Cameron H. Totten
Attorney for Plaintiff

24
25
26 **JURY DEMAND**

27 Plaintiff demands a jury trial for all claims set forth herein.
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1 DATED: October 7, 2010

LAW OFFICES OF CAMERON H. TOTTEN

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By: _____
Cameron H. Totten
Attorney for Plaintiff