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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11	PLAINTIFFS,	)	PLAINTIFFS' COMPLAINT FOR
12)	
13	vs.	)	(1) NEGLIGENCE;
14		)	(2) FRAUD;
15		)	(3) CANCELLATION OF A VOIDABLE
16	SPECIALIZED LOAN SERVICING, LLC;	)	CONTRACT UNDER REV & TAX CODE
17	MTC FINANCIAL INC., DBA TRUSTEE	)	§§ 23304.1, 23305A AND VIOLATION OF
18	CORPS; U.S. BANK NATIONAL	)	CAL. CORP. CODE §§ 191(C)(7);
19	ASSOCIATION AS INDENTURE	)	(4) TO SET ASIDE TRUSTEE'S SALE;
20	TRUSTEE, ON BEHALF OF THE	)	(5) TO VOID OR CANCEL TRUSTEE'S
21	HOLDERS OF THE TERWIN MORTGAGE	)	DEED UPON SALE;
22	TRUST 2007-QHL1 ASSET-BACKED	)	(6) TO VOID OR CANCEL ASSIGNMENT
23	SECURITIES, SERIES 2007-QHL1,	)	OF DEED OF TRUST;
24	WITHOUT RECOURSE; MORTGAGE	)	(7) WRONGFUL FORECLOSURE;
25	ELECTRONIC REGISTRATION SYSTEMS,	)	(8) BREACH OF CONTRACT;
26	INC; ALL PERSONS UNKNOWN,	)	(9) BREACH OF THE IMPLIED
27	CLAIMING ANY LEGAL OR EQUITABLE	)	COVENANT OF GOOD FAITH AND
28	RIGHT, TITLE, ESTATE, LIEN, OR	)	FAIR DEALING;
	INTEREST IN THE PROPERTY	)	(10) UNJUST ENRICHMENT;
	DESCRIBED IN THE COMPLAINT	)	(11) VIOLATION OF CALIFORNIA
	ADVERSE TO PLAINTIFFS' TITLE, OR	)	BUSINESS AND PROFESSIONS CODE
	ANY CLOUD ON PLAINTIFFS' TITLE	)	SECTIONS 17200 ET SEQ.;
	THERE TO; and DOES 1-20, INCLUSIVE,	)	(12) QUIET TITLE; AND
		)	(13) SLANDER OF TITLE
	DEFENDANTS.)	

1 TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD
2 HEREIN:

3 Plaintiffs hereby allege as follows:

4 **PARTIES**

5 3. Defendant Specialized Loan Servicing, LLC is, and at all times herein mentioned
6 was, a Delaware limited liability company, organized and existed under the laws of the State of
7 California, doing business in Los Angeles County, California.

8 4. Defendant U.S. Bank, National Association, as Indenture Trustee, on Behalf of
9 the Holders of the Terwin Mortgage Trust 2007-QHL1 Asset-Backed Securities, Series 2007-
10 QHL1, Without Recourse (“U.S. Bank”) is, and at all times herein mentioned was, a business
11 entity of unknown form, doing business in Los Angeles County, California.

12 5. Defendant MTC Financial Inc., dba Trustee Corps (“TC”) is a California
13 corporation with its principal place of business in Orange County, California.

14 6. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”), is a
15 Delaware corporation with its principal place of business in the State of Virginia.

16 8. “All Persons Unknown, Claiming Any Legal Or Equitable Right, Title, Estate,
17 Lien, Or Interest In The Property Described In The Complaint Adverse To Plaintiffs’ Title, Or
18 Any Cloud On Plaintiffs’ Title Thereto” are sued herein pursuant to California Code of Civil
19 Procedure Section 762.020(a).

20 9. Plaintiffs do not know the true names and capacities of the defendants sued
21 herein as DOES 1 through 20 (“DOE Defendants”), inclusive, and therefore sues said DOE
22 Defendants by fictitious names. Plaintiffs are informed and believe and based on such
23 information and belief aver that each of the DOE Defendants is contractually, strictly,
24 negligently, intentionally, vicariously liable and or otherwise legally responsible in some manner
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1 for the acts and omissions described herein. Plaintiffs will amend this Complaint to set forth the
2 true names and capacities of each DOE Defendant when same are ascertained.

3 10. Plaintiffs are informed and believe and based on such information and belief aver
4 that Defendants U.S. Bank, SLS and DOE Defendants 1 through 10, inclusive, and each of them,
5 are and at all material times have been, the agents, servants or employees of each other,
6 purporting to act within the scope of said agency, service or employment in performing the acts
7 and omitting to act as averred herein. U.S. Bank, SLS, MTC, MERS and DOE Defendants 6
8 through 10, inclusive, are hereinafter collectively referred to as the "Foreclosing Defendants."
9

10 11. Each of the Defendants named herein are believed to, and are alleged to have
11 been acting in concert with, as employee, agent, co-conspirator or member of a joint venture of,
12 each of the other Defendants, and are therefore alleged to be jointly and severally liable for the
13 claims set forth herein, except as otherwise alleged.

14 **GENERAL ALLEGATIONS**

15 12. Prior to July 5, 2007, Plaintiffs purchased certain real property commonly known
16 as (the "Subject Property").
17

18 13. On or about July 5, 2007, Plaintiffs refinanced the loan on the Subject Property
19 through Quality Home Loans ("Quality") and executed a promissory note in favor of Quality.
20 The note was secured by a deed of trust with Quality as beneficiary.

21 14. Plaintiffs made each payment due on the new loan.

22 15. On or about November 1, 2007, SLS acquired the servicing rights to Plaintiffs'
23 loan from Quality. Plaintiffs continued to make their payments but now remitted them to SLS.
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25 16. In August 2008, the monthly payment due under the note was \$3,021.15. On or
26 about August 1, 2008, Plaintiff made their monthly payment to SLS.
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1 17. On or about September 1, 2008, Plaintiffs again made their regular monthly
2 mortgage payment on the loan to SLS. However, on or before September 29, 2008, Plaintiffs
3 were notified by SLS that SLS allegedly had not received Plaintiffs' monthly mortgage
4 payments for the months of August and September 2008. Plaintiffs advised Mr., a
5 representative of SLS, that the payments had indeed been made on time. In response, Mr.
6 requested written verification of the payments.

7
8 18. On or about September 30, 2008, Plaintiffs faxed to SLS correspondence and
9 copies of Plaintiffs' bank confirmations showing the debits on August 3 and September 4, 2008,
10 going to SLS.

11 19. In response, Mr. contacted Plaintiffs and stated that the bank confirmations were
12 insufficient proof of payment and requested further verification. Plaintiffs again faxed to Mr.
13 on October 2nd and October 30th more bank transaction records showing the debits on August 3
14 and September 4, 2008, both paid to SLS.

15 20. On or about November 4, 2008, Plaintiffs were contacted by a gentleman who
16 identified himself as a representative of SLS named who was calling on behalf of Mr. . told
17 Plaintiffs that SLS had not been successful in locating Plaintiffs' August and September
18 payments, but that SLS was placing a waiver on the October and November 2008 payments as a
19 show of good faith. said he expected SLS to locate the payments soon.

20 21. Plaintiffs made several telephone calls on a regular basis to check on the status of
21 the payments. After a couple of weeks of receiving no correspondence, Plaintiffs spoke with "e"
22 of SLS. advised Plaintiffs that their account was not current for August, September, October
23 and November, and that the next payment due was for December 2008. further advised that
24 Plaintiffs should be receiving a new accounting summary within the next few days.
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1 22. On or about November 23, 2008, when Plaintiffs had not received the new
2 accounting, Plaintiffs contacted SLS inquiring about it. Plaintiffs spoke with "" another SLS
3 representative. stated that he knew nothing about the August and September payments, or a
4 new accounting or any arrangements to waive the October and November payments. He further
5 stated that if SLS did not receive payment within the next 24 hours, SLS would foreclose on the
6 Subject Property. Plaintiffs then made several calls to Mr. to confirm the waivers but none of
7 them returned Plaintiffs' calls. Plaintiffs also called SLS's Vice President of Customer Service,
8 , but she did not return Plaintiffs' call either.

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10 23. Subsequently, on or about January 24, 2009, Plaintiffs received notice that a
11 Notice of Default and Election to Sell Deed of Trust ("Notice") had been recorded on the
12 Subject Property. The Notice was executed on January 9, 2009, and recorded on January 12,
13 2009. However, Plaintiffs were not familiar with the entities set forth therein. Specifically, the
14 Notice stated that the Deed of Trust executed by Plaintiffs "was to secure obligations in favor of
15 Mortgage Electronic Registration Systems, Inc. ["MERS"], as Beneficiary," not Quality. MERS
16 was never a beneficiary of Plaintiffs' loan. Additionally, MERS was never entitled to receive
17 payments from Plaintiffs pursuant to the note and MERS has never been qualified to conduct
18 business in the State of California. Thus, MERS did not have legal standing or any legal right to
19 substitute the trustee under the Deed of Trust. Moreover, the Notice listed MTC as the trustee
20 and MTC executed and recorded the Notice. The Notice did not include a declaration pursuant
21 to Civil Code Section 2923.5. A true and correct copy of the Notice is attached hereto as
22 Exhibit "A."
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25 24. The Notice was wrongfully recorded by MTC as Plaintiffs were not in default
26 with their payment obligations as they made (and provided proof of payment) for the August and
27 September 2008 payments at issue. Moreover, the Notice was wrongful and improper because
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1 MTC did not have the legal right to act as trustee under the Deed of Trust. Specifically, the
2 Substitution of Trustee which allegedly substituted MTC in as trustee was not executed until
3 March 10, 2009, and was not recorded until April 13, 2009. A true and correct copy of said
4 Substitution of Trustee is attached hereto as Exhibit "B." Thus, MTC was not the duly
5 appointed trustee under the Deed of Trust when it executed the Notice on January 9, 2009.

6 25. Prior to their receipt of the Notice, Plaintiffs did not receive any telephone calls
7 or written correspondence from SLS.
8

9 26. In or about February 2009, Plaintiffs retained what they believed to be legal
10 counsel, Mr., to stop the foreclosure. On or about April 10, 2009, Mr. filed a complaint against
11 SLS and others with the Los Angeles Superior Court.

12 27. In or about mid-late April 2009, Plaintiffs received a Notice of Trustee's Sale in
13 the mail and promptly gave it to Mr.. Attached to the Notice of Trustee's Sale was a declaration
14 pursuant to Section 2923.5 signed by in which he testifies that he sent a letter to Plaintiffs,
15 attempted to contact Plaintiffs by telephone at least 3 times and sent a certified letter notifying
16 Plaintiffs of the default. The facts set forth in the declaration were not true. Prior to receiving
17 the Notice of Default, Plaintiffs received no communication or contact, in writing or
18 telephonically, from SLS other than the October 2008 statement.
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20 28. Based upon information and belief, in or around May 2009, prior to the
21 foreclosure of the Subject Property but after the recording of the Notice of Default, MERS
22 (acting as beneficiary) assigned the Deed of Trust to US Bank. The Assignment was recorded
23 by MTC. The Assignment by MERS was improper because MERS never had a beneficial
24 interest in the Subject Property and was merely a "nominee" under the Deed of Trust.
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26 Therefore, the Assignment was invalid and void. Moreover, the recording of the Notice of
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1 Default was invalid and void because it occurred approximately two months prior to the alleged
2 assignment of the Deed of Trust to US Bank.

3 29. Based upon information and belief, there was no assignment of the Note with the
4 Deed of Trust, none of the Foreclosing Defendants are the holder of the Note in due course, and
5 none of the Foreclosing Defendants were assigned the Note by Quality. Accordingly, none of
6 the Foreclosing Defendants were ever entitled to enforce the Note.

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8 30. Based upon information and belief, on or about May 4, 2009, notwithstanding of
9 the fact that it was not the trustee under the Deed of Trust and it did not have any authority from
10 the beneficiary under the Deed of Trust, MTC went forward with the public auction which
11 resulted in US Bank being granted and conveyed the Subject Property by MTC, allegedly acting
12 as the duly appointed Trustee under the Deed of Trust. The Trustee's Deed Upon Sale which
13 was executed and recorded by MTC states that US Bank was the foreclosing beneficiary. A true
14 and correct copy of the Trustee's Deed Upon Sale is attached hereto as Exhibit "C." The
15 Trustee's Deed Upon Sale was also invalid and void because it was based on an invalid and void
16 Assignment of the Deed of Trust.

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18 31. Based upon information and belief, the Trustee's Sale was also invalid because it
19 took place without anyone ever presenting the original note, or original and valid assignments of
20 the note, to MTC. The failure to do so resulted in an invalid foreclosure sale.

21 32. Based upon information and belief, at no time did MTC know, in fact, who the
22 actual beneficiary of the Deed of Trust was. Further, Plaintiffs are informed and belief that the
23 actual beneficiary of the Deed of Trust NEVER provided a declaration to MTC stating that
24 Plaintiffs were in default under the terms of the Deed of Trust and, accordingly, the recording of
25 the Notice of Default and any subsequent documents relating to a non-judicial foreclosure were
26 recorded in violation of California Civil Code section 2924(a)(1)(C).
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1 38. As a direct and proximate result of the negligence and carelessness of the
2 Foreclosing Defendants as set forth above, Plaintiffs suffered general and special damages in an
3 amount to be determined at trial.

4 **SECOND CAUSE OF ACTION FOR**
5 **NEGLIGENCE**
6 **(AGAINST DEFENDANT)**

7 39. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
8 through 38, inclusive, as though fully set forth herein.

9 40. In or around February 2009, Plaintiffs retained Defendant to represent them in
10 connection with the defense of the foreclosure process which had been commenced by the
11 Foreclosing Defendants.
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13 41. Defendant represented himself as an attorney but was not an attorney. Therefore,
14 Defendant is liable under a theory of negligence per se as he was engaged in criminal conduct.
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16 42. Additionally, Defendant failed to use reasonable skill and care in the
17 representation of Plaintiffs in that he failed to take any action other than filing a complaint in the
18 wrong judicial district. He did not advise and consult with Plaintiffs as to their options or the
19 ramifications of the Foreclosing Defendants' actions. Moreover, he failed to notify Plaintiffs of
20 the pending foreclosure or take any action to try to stop it through negotiation or otherwise.
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22 43. Plaintiffs are informed and believe, and on the basis of that information and
23 belief allege, that had Defendant used proper skill and care in the handling of Plaintiffs' matter,
24 Plaintiffs would have been able to save their home.

25 44. As a direct and proximate result of the negligence and carelessness of Defendant
26 as set forth above, Plaintiffs wasted several critical months which could have been used to stop
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1 the foreclosure of their property through negotiation or legal action resulting in general and
2 special damages to Plaintiffs in an amount to be determined at trial.

3 **THIRD CAUSE OF ACTION FOR**
4 **FRAUD**
5 **(AGAINST THE FORECLOSING DEFENDANTS)**

6 45. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
7 through 44, inclusive, as though fully set forth herein.

8 46. The Foreclosing Defendants engaged in a pattern and practice of defrauding
9 Plaintiffs in that, during the life of the mortgage loan, the Foreclosing Defendants failed to
10 properly credit payments made and foreclosed on the Subject Property based on Plaintiffs'
11 alleged non-payment which they knew to be false.

12 47. The Foreclosing Defendants had actual knowledge that the Plaintiffs' account
13 was not accurate but that the Foreclosing Defendants could use the inaccuracy to foreclose on
14 the Subject Property which had substantial equity, to recover its excessive fees, charges and
15 interest. Plaintiffs made such payments and provided proof of the payments based on the
16 improper, inaccurate, and fraudulent representations as to their account. The Foreclosing
17 Defendants also utilized amounts known to the Defendants to be inaccurate to determine the
18 amount allegedly due and owing for purposes of foreclosure.

19 48. Additionally, the Foreclosing Defendants concealed material facts known to them
20 but not to Plaintiffs regarding payments, notices, assignments, transfers, late fees and charges
21 with the intent to defraud Plaintiffs.

22 49. The Foreclosing Defendants made the above-referenced false representations,
23 concealments and non-disclosures with knowledge of the misrepresentations, intending to
24 induce Plaintiffs' reliance, which the unsuspecting Plaintiffs justifiably relied upon, resulting in
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1 damage to their credit standing, costs and loss of their property. Plaintiffs were unaware of the
2 true facts. Had Plaintiffs known the true facts, Plaintiffs, among other things, would not have
3 maintained the Foreclosing Defendants as their lender, servicer and trustee (and their alleged
4 agents) and/or would have taken legal action immediately to save their house.

5 50. As a result of the Foreclosing Defendants' fraudulent conduct, Plaintiffs have
6 suffered compensatory, general and special damages in an amount to proof. Additionally, the
7 Foreclosing Defendants acted with malice, fraud and/or oppression and, thus, Plaintiffs are
8 entitled to an award of punitive damages.
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10 **FOURTH CAUSE OF ACTION FOR**

11 **FRAUD**

12 **(AGAINST DEFENDANT)**

13 51. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
14 through 50, inclusive, as though fully set forth herein.

15 52. In or around February 2009, Plaintiffs retained Defendant to represent them in
16 connection with the defense of the foreclosure process which had been commenced by the
17 Foreclosing Defendants.
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19 53. Defendant falsely and fraudulently represented himself to be a licensed
20 California attorney. However, the truth was that he was neither licensed nor an attorney.

21 54. Defendant concealed the true facts for the purpose of defrauding Plaintiffs.
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23 55. Defendant made the above-referenced false representations, concealments and
24 non-disclosures with knowledge of the misrepresentations, intending to induce Plaintiffs'
25 reliance, which the unsuspecting Plaintiffs justifiably relied upon, resulting in general and
26 special damages as well as the loss of the Subject Property. Plaintiffs were unaware of the true
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1 facts. Had Plaintiffs known the true facts, Plaintiffs would not have retained Defendant Jones to
2 represent them and would not have paid Defendant anything.

3 56. As a result of Defendant fraudulent conduct, Plaintiffs have suffered
4 compensatory, general and special damages in an amount according to proof at trial.
5 Additionally, Defendant acted with malice, fraud and/or oppression and, thus, Plaintiffs are
6 entitled to an award of punitive damages.

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8 **FIFTH CAUSE OF ACTION FOR**
9 **CANCELLATION OF A VOIDABLE CONTRACT UNDER REV & TAX CODE §§**
10 **23304.1, 23305A AND VIOLATION OF CAL. CORP. CODE §§ 191(C)(7)**
11 **(AGAINST THE FORECLOSING DEFENDANTS)**

12 57. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
13 through 56, inclusive, as though fully set forth herein.

14 58. MERS operates as a record-keeping database company in which MERS contracts
15 with lenders to track security instruments in return for an annual fee.

16 59. Based upon information and belief, MERS was at all times herein operating in
17 the State of California without registering as a foreign corporation to avoid paying taxes to the
18 state.

19 60. As a result of MERS's failure to comply with the California franchise tax laws,
20 the Deed of Trust alleged herein is voidable by Plaintiff pursuant to Rev & Tax Code §§
21 23304.1, 23304.1(b), and 23305a.

22 61. Moreover, MERS is not in the business of creating evidences, and it is not a
23 foreign lending institution. It does not originate loans, never had any true interest in the subject
24 loan or Deed of Trust, and thereby does not meet any legal exceptions to the registration
25 requirement for foreign corporations.
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1 62. MERS conducted business in California when it was not registered with the
2 Secretary of State. Specifically, it prepared and/or executed a Substitution of Trustee and
3 Assignment of Deed of Trust in April and May 2009. The substitution allowed the new Trustee,
4 MTC, to record a Notice of Default on the Subject Property.

5 63. At all relevant times herein, MERS was not registered in California and could not
6 prepare or execute the Assignment of Deed of Trust. MERS had no legal authority to take such
7 action. Deeds of Trust are contractual in nature. A contract made by a corporation doing
8 business in California while that corporation has failed to perform its franchise tax obligations is
9 voidable at the option of any party to the contract, other than the [delinquent] taxpayer. Thus,
10 MERS did not have the legal capacity to enter into a contract with Plaintiffs or anyone else, and
11 Plaintiffs have the option of voiding the contract. Therefore, any action that MERS took with
12 regard to assigning the within deed of trust and substituting the trustee would be ultra vires and
13 void.
14

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16 64. Plaintiffs hereby expressly request an adjudication to the effect that the
17 assignment of the deed of trust and substitution of trustee by MERS are void.

18 **SIXTH CAUSE OF ACTION**
19 **TO SET ASIDE TRUSTEE'S SALE**
20 **(AGAINST THE FORECLOSING DEFENDANTS)**

21 65. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
22 through 64, inclusive, as though fully set forth herein.

23
24 66. The Foreclosing Defendants never had the legal authority to foreclose, i.e., the
25 authority to exercise the power of sale as an assignee of the Note and Deed of Trust, because the
26 Foreclosing Defendants' interest was never acknowledged and recorded in violation of Civil
27 Code § 2932.5, resulting in the non-judicial foreclosure sale being void ab initio.
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1 67. Moreover, the Foreclosing Defendants never had the legal authority to foreclose
2 because the instrument (Deed of Trust), which permitted foreclosure if the borrower was in
3 default, is void as it was improperly assigned and/or transferred to the Foreclosing Defendants
4 from the original lender. Therefore, the Deed of Trust could not provide a basis for a
5 foreclosure, and the non-judicial foreclosure is void ab initio.

6 68. Accordingly, Plaintiffs hereby request an order of this Court that the Trustee's
7 Sale was irregular in that it was legally void and conducted without any right or privilege by the
8 Foreclosing Defendants.

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10 **SEVENTH CAUSE OF ACTION**

11 **TO VOID OR CANCEL TRUSTEE'S DEED UPON SALE**

12 **(AGAINST THE FORECLOSING DEFENDANTS)**

13 69. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
14 through 68, inclusive, as though fully set forth herein.

15 70. Although the trustee's deed upon sale appears valid on its face, it is invalid, and
16 of no force and effect, for the reasons set forth above including, inter alia, the fact the Deed of
17 Trust which purportedly secured the Note, which served as the basis for a claim to have the right
18 to conduct a non-judicial foreclosure was at all times void due to the wrongful and improper
19 assignment to the Foreclosing Defendants.

20 71. Plaintiffs are therefore entitled to an order that the Trustee's Deed Upon Sale is
21 void ab initio and cancelling such Trustee's Deed.

22
23 **EIGHTH CAUSE OF ACTION**

24 **TO VOID OR CANCEL ASSIGNMENT OF DEED OF TRUST**

25 **(AGAINST THE FORECLOSING DEFENDANTS)**

1 72. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
2 through 71, inclusive, as though fully set forth herein.

3 73. The assignment of the deed of trust is invalid, and of no force and effect, for the
4 reasons set forth above including, inter alia, the fact the MERS did not have standing or the legal
5 authority to assign the deed of trust which purportedly secured the Note, and which served as the
6 basis for a claim to have the right to conduct a non-judicial foreclosure. Thus, the assignment of
7 the deed of trust was at all times void.
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9 74. Plaintiffs are therefore entitled to an order that the Assignment of the Deed of
10 Trust is void ab initio and cancelling such Assignment.

11 **NINTH CAUSE OF ACTION**
12 **WRONGFUL FORECLOSURE**
13 **(AGAINST THE FORECLOSING DEFENDANTS)**

14 75. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
15 through 74, inclusive, as though fully set forth herein.
16

17 76. Plaintiffs are informed and believe and thereon allege that after the origination
18 and funding of their loan, it was sold to investors as a “mortgage backed security” and that none
19 of the Foreclosing Defendants in this action owned this loan, or the corresponding note.
20 Moreover, none of the Foreclosing Defendants in this action were lawfully appointed as trustee
21 or had the original note assigned to them. Accordingly, none of the Foreclosing Defendants in
22 this action had the right to declare default, cause notices of default to be issued or recorded, or
23 foreclose on Plaintiffs’ interest in the Subject Property. The Foreclosing Defendants were not
24 the note holder or a beneficiary at any time with regard to Plaintiffs’ loan.
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26 77. Plaintiffs further allege on information and belief that none of the Foreclosing
27 Defendants in this action are beneficiaries or representatives of the beneficiary and, if the
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1 Foreclosing Defendants allege otherwise, they do not have the original note to prove that they
2 are in fact the party authorized to conduct the foreclosure.

3 78. Plaintiffs' further allege on information and belief that the loan was sold or
4 transferred without notifying the Plaintiffs in writing. Therefore, the loan is void of legal rights
5 to enforce it.

6 79. Additionally, The Foreclosing Defendants violated California Civil Code
7 §2923.5(a), which requires a "mortgagee, beneficiary or authorized agent" to "contact the
8 borrower or person by telephone in order to assess the borrower's financial situation and explore
9 options for the borrower to avoid foreclosure. "Section 2923.5(b) requires a default notice to
10 include a declaration "from the mortgagee, beneficiary, or authorized agent" of compliance with
11 section 2923.5, including attempt "with due diligence to contact the borrower as required by this
12 section."

13 80. None of the Foreclosing Defendants contacted Plaintiffs to discuss their financial
14 situation. Moreover, none of the Foreclosing Defendants explored options with Plaintiffs to
15 avoid foreclosure. Additionally, none of the Foreclosing Defendants informed Plaintiffs of the
16 right to have a meeting within 14 days of said contact. Accordingly, the Foreclosing Defendants
17 did not fulfill their legal obligation to Plaintiffs.

18 81. Thus, the Foreclosing Defendants engaged in a fraudulent foreclosure of the
19 Subject Property in that the Foreclosing Defendants did not have the legal authority to foreclose
20 on the Subject Property and, alternatively, if they had the legal authority, they failed to comply
21 with Civil Code Section 2923.5 and 2923.6.

22 82. As a result of the above alleged wrongs, Plaintiffs have suffered general and
23 special damages in an amount to be determined at trial.

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27 **TENTH CAUSE OF ACTION FOR**

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BREACH OF CONTRACT

(AGAINST THE FORECLOSING DEFENDANTS)

83. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 82, inclusive, as though fully set forth herein.

84. Plaintiffs' original loan agreement set forth dates by which monthly principal and interest payments were due, and when late fees and other charges could be assessed.

85. Alternatively, if the original note and deed of trust were properly assigned to Defendants, Defendants breached the note and deed of trust that Plaintiffs signed in July 2007. The terms of the note required payments made by Plaintiffs to be applied properly to the note.

86. The Foreclosing Defendants breached the note and deed of trust by failing to apply the payments made by Plaintiffs in August and September 2008 to Plaintiffs' loan, the result of which led to the Foreclosing Defendants eventually foreclosing on the Subject Property.

87. As a proximate result of Defendants' breaches, Plaintiffs have suffered compensatory damages in an amount to be proven at trial.

ELEVENTH CAUSE OF ACTION FOR

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(AGAINST THE FORECLOSING DEFENDANTS)

88. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 87, inclusive, as though fully set forth herein.

89. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. This implied covenant of good faith and fair dealing requires that no party will do anything that will have the effect of impairing, destroying, or injuring the rights of the other party to receive the benefits of their agreement. The covenant

1 implies that in all contracts each party will do all things reasonably contemplated by the terms of
2 the contract to accomplish its purpose. This covenant protects the benefits of the contract that
3 the parties reasonably contemplated when they entered into the agreement.

4 90. Alternatively, if the note and deed of trust was validly and properly assigned to
5 the Foreclosing Defendants, the Foreclosing Defendants did not act in good faith and did not
6 deal fairly with Plaintiffs in connection with the note and deed of trust when they refused to
7 properly apply the August and September 2008 payments to their loan and thereafter foreclosed
8 on the Subject Property even though Plaintiffs provided proof of payments for the allegedly
9 skipped months and thereafter refused to resolve the mistake with Plaintiffs in an equitable
10 fashion.
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12 91. The Foreclosing Defendants enjoyed substantial discretionary power affecting the
13 rights of Plaintiff during the events alleged in this Complaint. They were required to exercise
14 such power in good faith.
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16 92. The Foreclosing Defendants engaged in such conduct to drive Plaintiffs into
17 foreclosure so that they could acquire the Subject Property with its large equity at a bargain
18 basement price. These actions were a bad faith breach of the contract between Plaintiffs and the
19 Foreclosing Defendants which show that they had no intention of performing the contract,
20 consisting of the original note and deed of trust, in good faith.
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22 93. MERS willfully breached their implied covenant of good faith and fair dealing
23 with Plaintiff when MERS allowed their alleged agent to execute the Assignment of the Deed of
24 Trust in order to appoint a new Trustee to begin foreclosure on the Subject Property.

25 94. As a result of the Foreclosing Defendants' breaches of this covenant, Plaintiffs
26 have suffered general and special damages in an amount to be determined at trial.

27 **TWELFTH CAUSE OF ACTION FOR**
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1 **UNJUST ENRICHMENT**

2 **(AGAINST THE FORECLOSING DEFENDANTS)**

3 95. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
4 through 94, inclusive, as though fully set forth herein.

5 96. By their wrongful acts and omissions, the Foreclosing Defendants have been
6 unjustly enriched at the expense of Plaintiffs, and thus Plaintiffs have been unjustly deprived.

7 97. By reason of the foregoing, Plaintiffs seek restitution from the Foreclosing
8 Defendants, and an order of this Court disgorging all profits, benefits, and other compensation
9 obtained by the Foreclosing Defendants from their wrongful conduct.
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11 **THIRTEENTH CAUSE OF ACTION FOR**

12 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS**

13 **17200 ET SEQ.**

14 **(AGAINST THE FORECLOSING DEFENDANTS)**

15 98. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
16 through 97, inclusive, as though fully set forth herein.
17

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

21 100. As more fully described above, the Foreclosing Defendants’ acts and practices
22 are likely to deceive, constituting a fraudulent business act or practice. This conduct is ongoing
23 and continues to this date.
24

25 101. Specifically, the Foreclosing Defendants engage in deceptive business practices
26 with respect to mortgage loan servicing, assignments of notes and deeds of trust, foreclosure of
27 residential properties and related matters by
28

- 1 (a) Assessing improper or excessive late fees;
- 2 (b) Improperly characterizing customers' accounts as being in default or
3 delinquent status to generate unwarranted fees;
- 4 (c) Instituting improper or premature foreclosure proceedings to generate
5 unwarranted fees;
- 6 (d) Misapplying or failing to apply customer payments;
- 7 (e) Failing to provide adequate monthly statement information to customers
8 regarding the status of their accounts, payments owed, and/or basis for fees assessed;
- 9 (f) Seeking to collect, and collecting, various improper fees, costs and charges,
10 that are either not legally due under the mortgage contract or California law, or that are in excess
11 of amounts legally due;
- 12 (g) Mishandling borrowers' mortgage payments and failing to timely or properly
13 credit payments received, resulting in late charges, delinquencies or default;
- 14 (h) Treating borrowers as in default on their loans even though the borrowers
15 have tendered timely and sufficient payments or have otherwise complied with mortgage
16 requirements or California law;
- 17 (i) Failing to disclose the fees, costs and charges allowable under the mortgage
18 contract;
- 19 (j) Ignoring grace periods;
- 20 (k) Executing and recording false and misleading documents; and
- 21 (l) Acting as beneficiaries and trustees without the legal authority to do so.

22 102. The Foreclosing Defendants fail to act in good faith as they take fees for services
23 but do not render them competently and in compliance with applicable law.
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1 107. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
2 through 106, inclusive, as though fully set forth herein.

3 108. Plaintiffs are the equitable owners of the Subject Property which has the
4 following legal description:

5
6
7 109. Plaintiffs seek to quiet title against the claims of Defendants US Bank ; ALL
8 PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE,
9 ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT
10 ADVERSE TO PLAINTIFF’S TITLE, OR ANY CLOUD ON PLAINTIFF’S TITLE
11 THERETO; and DOES 1 through 20 (collectively referred to herein as the “Title Defendants”)
12 as the Title Defendants hold themselves out as entitled to fee simple ownership of the Subject
13 Property by and through their purchase of the property at the trustee’s sale held on or about May
14 4, 2009. In fact, the Title Defendants had no right to title or interest in the Subject Property and
15 no right to entertain any rights of ownership including the right to foreclosure, offering the
16 Subject Property for sale at a trustee’s sale, demanding possession or filing cases for unlawful
17 detainer. Nevertheless, the Title Defendants proceeded with a non-judicial foreclosure sale,
18 through MTC as alleged trustee, illegally and with unclean hands. Plaintiffs are willing to
19 tender the amount received subject to equitable adjustment for the damage caused to the
20 Plaintiffs by the Title Defendants’ activities.
21
22

23 110. In July 2007, Plaintiffs executed the Deed of Trust which listed the trustee as
24 T.D. Service Company. Later, MTC foreclosed on the Subject Property. At the time that MTC
25 signed the Notice of Default, MTC had not been substituted as the trustee in place of T.D.
26 Service Company. As the Notice of Default must be signed by the trustee, either original or
27
28

1 substituted, and the beneficiary or trustee, either original or substituted, must comply with
2 California Civil Code Section 2923.5, the trustee's sale is void because MTC was not the trustee
3 at the time that it signed the Notice of Default and allegedly complied with Section 2923.5.
4 Thus, the trustee and beneficiary failed to follow the statutory rules for a valid foreclosure under
5 the California Civil Code and it is, therefore, void.

6 111. Additionally, the trustee's sale is void because the requirements of Civil Code
7 Section 2923.5 were not complied with by MTC or any of the Foreclosing Defendants.
8

9 112. Plaintiffs seek to quiet title as of July 5, 2007. Plaintiff seeks a judicial
10 declaration that the title to the Subject Property is vested in Plaintiffs alone and that the Title
11 Defendants and each of them be declared to have no interest estate, right, title or interest in the
12 subject property and that the Title Defendants, their agents and assigns, be forever enjoined from
13 asserting any estate, right title or interest in the Subject Property subject to Plaintiffs' rights.
14

15 **FIFTEENTH CAUSE OF ACTION FOR**
16 **SLANDER OF TITLE**
17 **(AGAINST THE FORECLOSING DEFENDANTS)**

18 113. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1
19 through 112, inclusive, as though fully set forth herein.

20 114. Pursuant to, among others, California Civil Code section 2924(a)(1)(C), only the
21 beneficiary of a Deed of Trust or a beneficiary's assignee or the agent of a beneficiary or its
22 assignee may cause to be recorded against real property either a Notice of Default or a Notice of
23 Trustee's Sale.
24

25 115. MTC, purportedly but falsely acting as either the trustee or the agent of the
26 beneficiary of the Deed of Trust or the agent of US Bank, wrongfully and without privilege,
27 caused a Notice of Default to be recorded against the Subject Property.
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2. For issuance of an Order canceling all Trustee's Deed Upon Sale.

3. To vacate the Trustee's Deed.

4. To vacate and set aside the foreclosure sale.

5. To quiet title in favor of Plaintiff and against Defendants.

6. For compensatory, special, general and punitive damages according to proof against all Defendants.

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

8. For civil penalties pursuant to statute, restitution, injunctive relief and reasonable attorneys fees according to proof.

9. For reasonable costs of suit and such other and further relief as the Court deems proper.

DATED: May 4, 2010

LAW OFFICES OF CAMERON H. TOTTEN

By: _____
Cameron H. Totten
Attorney for Plaintiffs