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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11) Case No:
12)
13) **PLAINTIFF'S FIRST AMENDED**
14) **COMPLAINT FOR**
15)
16) vs.) (1) VIOLATION OF THE ONE
17) ACTION RULE
18)
19) JPMORGAN CHASE BANK,) (2) BREACH OF CONTRACT
20) NATIONAL ASSOCIATION;
21) QUALITY LOAN SERVICE) (3) WRONGFUL FORECLOSURE
22) CORPORATION, A CALIFORNIA) (4) PROMISSORY ESTOPPEL
23) CORPORATION; and DOES 1-10,
24) INCLUSIVE,) (5) FRAUD
25)
26) DEFENDANTS.) (6) NEGLIGENCE
27) (7) NEGLIGENT
28) MISREPRESENTATION
29)
30) (8) VIOLATION OF THE
31) ROSENTHAL FAIR DEBT
32) COLLECTION PRACTICES ACT
33)
34) (9) CONVERSION
35)
36) (10) VIOLATION OF BUSINESS
37) AND PROFESSIONS CODE
38) SECTION 17200 ET SEQ.

1 Plaintiff hereby alleges as follows:

2 **PARTIES**

3 1. Plaintiff is an individual residing in Burbank, California.

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

10 3. Defendant Quality Loan Service Corp. (“Quality”) is a California
11 corporation doing business in the State of California.

12 4. Plaintiff is ignorant of the true names and capacities of defendants
13 sued herein as DOES 1-10 and therefore sues these defendants by such fictitious
14 names. Plaintiff will amend this complaint to allege their true names and
15 capacities when ascertained.

16 5. Defendants sued herein as DOES 1-10 are contractually, strictly,
17 negligently, intentionally, vicariously liable and or otherwise legally responsible in
18 some manner for each and every act, omission, obligation, event or happening set
19 forth in this Complaint, and that each of said fictitiously named Defendants is
20 indebted to Plaintiff as hereinafter alleged.

21 6. The use of the term “Defendants” in any of the allegations in this
22 Complaint, unless specifically otherwise set forth, is intended to include and
23 charge both jointly and severally, not only named Defendants, but all Defendants
24 designated as DOES 1 through 10 as well.

25 7. Plaintiff is informed and believe and thereon alleges that, at all times
26 mentioned herein, Defendants were agents, servants, employees, alter egos,
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1 superiors, successors in interest, joint venturers and/ or co-conspirators of each of
2 their co-defendants and in doing the things herein after mentioned, or acting within
3 the course and scope of their authority of such agents, servants, employees, alter
4 egos, superiors, successors in interest, joint venturers and/ or co-conspirators with
5 the permission and consent of their co-defendants and, consequently, each
6 Defendant named herein, and those Defendants named herein as DOES 1-10,
7 inclusive, are jointly and severally liable to Plaintiff for the damages and harm
8 sustained as a result of their wrongful conduct.

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

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

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

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

15
16 **STATEMENT OF FACTS**

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

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

6 14. On October 3, 2008, the U.S. Congress passed the Emergency
7 Economic Stabilization Act ("EESA"), 12 USC § 5201 et seq, which allocated
8 \$700 billion to the Treasury Department to restore liquidity and stability to the
9 financial system, and preserve home ownership.

10 15. Enabled by the authority granted in the EESA, the Treasury
11 Department and other federal agencies created the Making Home Affordable
12 Program on February 18, 2009, of which the Home Affordable Modification
13 Program ("HAMP") was a part of.

14 16. HAMP provides financial incentives to participating mortgage
15 servicers to modify the terms of eligible loans for the benefit of homeowners.
16

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

22 18. Plaintiff did not sign this loan modification agreement as the loan
23 payments were too high as a result of its non-compliance with the HAMP
24 guidelines. She was told by Chase that it would review the matter again and, as
25 long as the matter was being reviewed, there would be no foreclosure of her
26 property. The representative that Plaintiff spoke with never indicated that any
27 pending foreclosure would proceed.
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1 19. Prior to receiving the HAMP document attached hereto as Exhibit
2 “C,” Plaintiff had discussions with representatives of Chase, including Ms. Sharae
3 Cleveland, about modification of the payments on the second trust deed as well.
4 In that regard, on or about March 3, 2009, Ms. Cleveland sent Plaintiff a
5 Forbearance Agreement with respect to the Second Trust Deed, a copy of which is
6 attached hereto as Exhibit “D.” The transmittal letter which is included as part of
7 Exhibit “D” bears the date of March 6, 2010, which is a mistake as the first
8 payment of \$500 was to be made on or before November 20, 2009. In Paragraph
9 7 of the Forbearance Agreement it is stated that if a foreclosure sale has been
10 scheduled it will be postponed during the term of the agreement.

11 20. While Plaintiff was waiting for a review of the modification
12 agreement (Exhibit “C”), she made the first payment of \$500.00 to Chase as called
13 for in the Forbearance Agreement on November 22, 2009. A copy of the Western
14 Union receipt is attached hereto as Exhibit “E.” Even though the transmittal letter
15 included as part of Exhibit “D” expressly stated that the agreement was null and
16 void if the first \$500 payment was not made by November 20, 2009, Ms.
17 Cleveland of Chase confirmed receipt of the payment and the signed Forbearance
18 Agreement on Monday, November 23, 2009. Thus, although the Forbearance
19 Agreement was null and void, Plaintiff was not informed of that fact and Chase
20 accepted payments made thereunder.

21 21. On December 20, 2009, Plaintiff sent a payment of \$350.00 to Chase
22 by Western Union pursuant to the “null and void” Agreement. A copy of this
23 receipt is attached hereto as Exhibit “F.” Plaintiff spoke to Ms. Cleveland
24 thereafter and she acknowledged receipt of the payment.

25 22. However, on December 25, 2009, a man knocked on the door of
26 Plaintiff’s home and said his name was and that he was the new owner of
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1 Plaintiff's home. Plaintiff told Mr. that there must be some mistake. Plaintiff
2 called Ms. Cleveland at Chase the next business day, December 28, 2009, and
3 asked what was going on. Ms. Cleveland told Plaintiff that, according to Chase's
4 records, there was no foreclosure, Mr. was likely engaged in fraudulent conduct
5 and that she should continue to make her payments pursuant to the Forbearance
6 Agreement. Accordingly, on December 30, 2009, Plaintiff sent Chase a third
7 payment in the amount of \$ 400.00. A copy of the receipt from Western Union is
8 attached hereto as Exhibit "G." Chase never returned any of the payments made
9 by Plaintiff.

10 23. Thereafter, in January, 2010, Plaintiff received a 3 day notice to quit
11 her premises. She called Ms. Cleveland of Chase and asked for an explanation.
12 The representative at Chase told her that she could not discuss her loan
13 modification with her and advised her to consult an attorney.

14 24. Plaintiff was never advised of any foreclosure sale being scheduled
15 for December 15, 2009. She was first advised of this fact by Mr. sometime after
16 December 25, 2009. No notice of any foreclosure sale was ever posted on the
17 door of Plaintiff's residence which is easily accessible from the street.

18
19 **THE FORECLOSURE OF THE SUBJECT PROPERTY**

20 25. On February 19, 2009, Quality recorded a Notice of Default under the
21 FDOT. It is unknown who signed the Notice. However, the signature block states
22 that it was signed by "LSI Title Company, as Agent [for] Quality Loan Service
23 Corp., AS AGENT FOR BENEFICIARY" on February 18, 2009. A true and
24 correct copy of the Notice is attached hereto as Exhibit "H."

25 26. Thereafter, on April 3, 2009, Quality recorded a Substitution of
26 Trustee which substituted California Reconveyance Company for itself. The
27 Substitution was allegedly signed by "Christina Allen as Attorney in Fact [for]
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1 JPMorgan Chase Bank, National Association” on February 25, 2009. A true and
2 correct copy of said Substitution of Trustee is attached hereto as Exhibit “I.”

3 Thus, Quality executed and recorded the Notice of Default before it had the legal
4 authority to do so. Accordingly, the Notice of Default and all subsequent
5 documents are void and of no legal effect.

6 27. Moreover, based upon information and belief, Christina Allen did not
7 have the legal authority to sign on behalf of Chase. Additionally, the Substitution
8 is void because it was executed solely on behalf of Chase and did not subscribe
9 WaMu’s name to it. As there was not an assignment of the FDOT from WaMu to
10 Chase (or any evidence that the FDOT transferred to Chase), the failure to
11 subscribe WaMu to the Substitution rendered it invalid and void. Thus, Chase and
12 Quality acted beyond its legal authority.

13 28. Finally, Quality recorded a Notice of Trustee’s Sale on May 28, 2009.
14 A true and correct copy of the Notice is attached hereto as Exhibit “J.” As a duly
15 recorded and legally valid Notice of Default is required before a Notice of
16 Trustee’s Sale can be recorded, and the former never happened, the Notice of
17 Trustee’s Sale was also void and of no legal effect.

18
19 **FIRST CAUSE OF ACTION FOR VIOLATION OF THE ONE ACTION**

20 **RULE AGAINST CHASE AND DOES 1-10**

21 29. Plaintiff incorporates herein by reference the allegations made in
22 paragraphs 1 through 28, inclusive, as though fully set forth herein.

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

26 31. However, there was no Forbearance Agreement in effect. Instead,
27 Chase kept the funds and foreclosed on December 15, 2009.
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1 32. Accordingly, this “set-off” action, whereby Chase attempted to satisfy
2 a debt secured by real property by attaching property other than the secured real
3 property, is a clear violation of Code of Civil Procedure (“CCP”) §726, also
4 known as the “One Action Rule”.

5 33. Said violation of CCP §726 and Chase’s refusal to return the set-off
6 funds rendered Chase’s FDOT and SDOT null and void. Accordingly, Chase’s
7 security interests in the Subject Property did not exist at the time of foreclosure
8 sale. Therefore, the foreclosure sale was invalid and void as well.

9 34. As a proximate result of Chase’s violation of the One Action Rule,
10 Plaintiff has suffered, and will continue to suffer, general and special damages in
11 an amount according to proof at trial.

12 **SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT AGAINST**
13
14 **CHASE AND DOES 1-10**

15 35. Plaintiff incorporates herein by reference the allegations made in
16 paragraphs 1 through 34, inclusive, as though fully set forth herein.

17 36. Chase representatives reiterated and assured Plaintiff that they would
18 not proceed with a foreclosure of Plaintiff’s property while they were reviewing
19 the proposed loan modification agreement of the first trust deed issued pursuant to
20 HAMP. Plaintiff was still waiting for the results of this review when defendant
21 Chase apparently instructed Quality to proceed with the foreclosure sale on
22 December 15, 2009.

23 37. Accordingly, Chase breached the oral agreement it entered into with
24 Plaintiff to not foreclose while it was reviewing the loan modification agreement.

25 38. Additionally, Chase entered into a Servicer Participation Agreement
26 ("SPA") with Fannie Mae (acting as an agent of the federal government) on July
27 31, 2009, in which Chase agreed to apply the Treasury Department's HAMP
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1 criteria to all of the loans it services, including Plaintiff's. Based upon information
2 and belief, a true and correct copy of the SPA is attached hereto as Exhibit "K."

3 39. Pursuant to the SPA and HAMP, Chase agreed to suspend all pending
4 foreclosure proceedings until the HAMP analysis is complete for all homeowners,
5 including Plaintiff. Plaintiff is a third party beneficiary of this agreement.

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

9 41. Chase breached the SPA agreement with the federal government of
10 which Plaintiff was a third party beneficiary by not offering Plaintiff a HAMP
11 Trial Period at a payment level of 31 percent of her income.

12 42. As a proximate result of Chase's breaches, Plaintiff has suffered, and
13 will continue to suffer, general and special damages in an amount according to
14 proof at trial.

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16 **THIRD CAUSE OF ACTION FOR WRONGFUL FORECLOSURE**
17 **AGAINST ALL DEFENDANTS**

18 43. Plaintiff incorporates herein by reference the allegations made in
19 paragraphs 1 through 42, inclusive, as though fully set forth herein.

20 44. Plaintiff is informed and believes and thereon alleges that after the
21 origination and funding of their loan, it was sold or transferred to investors other
22 other entities and that Chase did not own the loan or the corresponding note at the
23 time of the foreclosure sale and/or WaMu did not own the loan or corresponding
24 note at the time Chase acquired WaMu's assets. Moreover, Quality was not
25 lawfully appointed as trustee. Accordingly, none of the Defendants in this action
26 had the right to declare default, cause notices of default to be issued or recorded,
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1 or foreclose on Plaintiff's interest in the Subject Property. Chase was not the note
2 holder or a beneficiary at any time with regard to Plaintiff's loan.

3 45. Plaintiff further alleges on information and belief that none of the
4 Defendants in this action are beneficiaries or representatives of the beneficiary
5 and, if the Defendants allege otherwise, they do not have the original note to prove
6 that they were in fact the party authorized to conduct the foreclosure.

7 46. Plaintiff further alleges on information and belief that the loan was
8 sold or transferred without notifying the Plaintiff in writing. Therefore, the loan is
9 void of legal rights to enforce it.

10 47. Chase breached its obligation to Plaintiff to modify the loan by
11 proceeding with a foreclosure of her home when Chase had agreed not to do so.
12 Moreover, Defendants failed to follow the statutory provisions for foreclosure of a
13 deed of trust pursuant to Civil Code Section 2924(f) in that Defendants never
14 posted a notice of foreclosure sale on the door of Plaintiff's property. Defendants
15 further breached the provisions of Civil Code Section 2924g(c)(1) which requires
16 postponement of a foreclosure sale by "mutual agreement, whether oral or in
17 writing, of any trustor and any beneficiary."

18 48. Additionally, Chase breached the SPA by failing to review the
19 financial information of Plaintiff and determining a fair loan modification with
20 Plaintiff. Plaintiff is informed and believes that Chase received over Five Hundred
21 Million Dollars of TARP funds from the federal government, a condition of which
22 was that Chase comply with the provisions of the SPA. As Chase breached its
23 obligation not to foreclose during the review period, the trustee's deed upon sale
24 was issued in violation of the SPA and should be cancelled.

25 49. Additionally, Defendants violated California Civil Code §2923.5(a),
26 which requires a "mortgagee, beneficiary or authorized agent" to "contact the
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1 borrower or person by telephone in order to assess the borrower's financial
2 situation and explore options for the borrower to avoid foreclosure. "Section
3 2923.5(b) requires a default notice to include a declaration "from the mortgagee,
4 beneficiary, or authorized agent" of compliance with section 2923.5, including
5 attempt "with due diligence to contact the borrower as required by this section."

6 None of the Defendants assessed Plaintiff's financial situation correctly.

7 Accordingly, the Defendants did not fulfill their legal obligation to Plaintiff.

8 50. Also, as a result of Chase's violation of the One Action Rule, Chase
9 no longer had a security interest in the Subject Property at the time of foreclosure.

10 51. Consequently, Defendants engaged in a fraudulent foreclosure of the
11 Subject Property in that Defendants did not have the legal authority to foreclose on
12 the Subject Property and, alternatively, if they had the legal authority, they failed
13 to comply with Civil Code Sections 2923.5 and 2923.6.

14 52. As a result of the above-described breaches and wrongful conduct,
15 the sale of Plaintiff's home on December 15, 2009, is void and of no legal effect.
16 Accordingly, the court should remedy the error by issuing an order cancelling the
17 foreclosure trustee's deed upon sale issued with respect to the foreclosure sale held
18 on December 15, 2009.

19 53. Also, as a result of the above alleged wrongs, Plaintiff has suffered
20 general and special damages in an amount according to proof at trial.

21 **FOURTH CAUSE OF ACTION FOR PROMISSORY ESTOPPEL**
22 **AGAINST CHASE AND DOES 1-10**
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24 54. Plaintiff incorporates herein by reference the allegations made in
25 paragraphs 1 through 53, inclusive, as though fully set forth herein.

26 55. Chase made written representations in the Forbearance Agreement
27 that if the agreement proceeded, any scheduled foreclosure would be postponed.
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1 Chase's representatives, including Ms. Cleveland and others, made numerous oral
2 promises that if Plaintiff complied with the terms of the Forbearance Agreement
3 and cooperated with modification efforts, there would be no foreclosure. Plaintiff
4 was never informed by Chase that she did not comply with the Forbearance
5 Agreement and it never took effect.

6 56. Plaintiff relied on the written and oral representations of Chase to her
7 detriment. The Forbearance Agreement was supported by consideration as shown
8 by the payments made to Chase that were not returned to her. Moreover, had
9 Plaintiff known that her home was being foreclosed upon while she was told
10 otherwise, she could have taken legal action sooner or explored the possibility of
11 refinancing as there was substantial equity in the Subject Property. Accordingly,
12 Chase should be estopped from taking any action that is contrary to the written and
13 oral promises made to Plaintiff.

14 57. Additionally, Pursuant to the SPA and HAMP, Chase promised to
15 suspend all pending foreclosure proceedings until the HAMP analysis is complete
16 for all homeowners, including Plaintiff. Plaintiff is a third party beneficiary of this
17 agreement.

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

21 59. Chase breached the SPA agreement with the federal government of
22 which Plaintiff is a third party beneficiary. Accordingly, Chase should be
23 estopped from claiming any benefit from the foreclosure due to its violation of the
24 SPA.
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1 60. As a result of Chase's fraudulent promises and misrepresentations,
2 Plaintiff suffered special and general damages in an amount according to proof at
3 trial.

4 **FIFTH CAUSE OF ACTION FOR FRAUD AGAINST ALL DEFENDANTS**

5 61. Plaintiff incorporates herein by reference the allegations made in
6 paragraphs 1 through 60, inclusive, as though fully set forth herein.

7 62. Chase, orally and in writing, represented to Plaintiff that her home
8 would not be foreclosed during the time that a loan modification was being
9 reviewed for the first trust deed and during the time that the written Forbearance
10 Agreement was in effect. The oral representations were made by various
11 employees of Chase who were employed in the loan mitigation Division. Plaintiff
12 heard the same representations from Sharae Cleveland, the loan mitigation
13 specialist who was employed by Chase to supervise the issuance of the
14 Forbearance Agreement that Plaintiff believed went into effect on November 20,
15 2009.
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17 63. Plaintiff relied on the oral and written representations of Chase and
18 Chase's written Forbearance Agreement that no foreclosure would take place
19 during the loan modification and forbearance process. Plaintiff failed to disclose
20 to Plaintiff that the Forbearance Agreement never went into effect and was null
21 and void as a result of her first payment being late. Instead, Chase continued to
22 accept payments from Plaintiff as though the Forbearance Agreement was in
23 effect. Moreover, Chase fraudulently treated the FDOT and SDOT as though they
24 were being serviced and held by two separate entities so as to confuse and mislead
25 Plaintiff who believed that Chase was Chase whenever she communicated with it.

26 64. The representations of Chase were false and fraudulent as Chase
27 caused a trustee's sale to be scheduled on Decameter 15, 2009, without Plaintiff's
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1 knowledge and without complying with the posting of notice requirements of Civil
2 Code Section 2924(f). As a proximate result of the Defendant's fraudulent
3 misrepresentations, Plaintiff lost her home of 19 years and inflicted great
4 emotional distress and suffering on Plaintiff.

5 65. Accordingly, as a result of Defendants' fraudulent conduct, Plaintiff
6 has suffered, and will continue to suffer, compensatory, general and special
7 damages in an amount to proof. Additionally, Defendants acted with malice, fraud
8 and/or oppression and, thus, Plaintiff is entitled to an award of punitive damages.

9 **SIXTH CAUSE OF ACTION FOR NEGLIGENCE AGAINST ALL**
10 **DEFENDANTS**

11 66. Plaintiff incorporates herein by reference the allegations made in
12 paragraphs 1 through 65, inclusive, as though fully set forth herein.

13 67. At all times relevant herein, Chase, acting as Plaintiff's lender and
14 servicer, had a duty to exercise reasonable care and skill to maintain proper and
15 accurate loan records and to discharge and fulfill the other incidents attendant to
16 the maintenance, accounting and servicing of loan records, including, but not
17 limited, disclosing to Plaintiff the status of any foreclosure actions taken by it,
18 refraining from taking any action against Plaintiff that it did not have the legal
19 authority to do, and providing all relevant information regarding the loans Plaintiff
20 had with it to Plaintiff.

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

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

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

17 71. In taking the actions alleged above, and in failing to take the actions
18 as alleged above, Quality breached its duty of care and skill to Plaintiff by failing
19 to follow California law with regard to foreclosures, taking actions against
20 Plaintiff that it did not have the legal authority to do, and failing to immediately
21 remit payment to Plaintiff of all surplus funds from the foreclosure sale for which
22 there were no competing claims.

23 72. As a direct and proximate result of the negligence and carelessness of
24 the Defendants as set forth above, Plaintiff suffered, and continues to suffer,
25 general and special damages in an amount to be determined at trial.
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1 **SEVENTH CAUSE OF ACTION FOR NEGLIGENT**

2 **MISREPRESENTATION AGAINST CHASE AND DOES 1-10**

3 73. Plaintiff incorporates herein by reference the allegations made in
4 paragraphs 1 through 72, inclusive, as though fully set forth herein.

5 74. Under the circumstances alleged, Chase owed a duty to Plaintiff to
6 provide her with accurate information about the status of her mortgage loan
7 accounts.

8 75. Chase represented to Plaintiff on multiple occasions that it was
9 working to provide her with a loan modification, that she need not worry about
10 making her full mortgage payment while the loan modification was being
11 processed, and that her house was not being foreclosed upon while the loan
12 modification was being processed.

13 76. Chase's representations were false, negligent and material.

14 77. Plaintiff relied on Chase's misrepresentations and acted as instructed
15 to by Chase.

16 78. Chase intentionally foreclosed on Plaintiff's property despite
17 reassurances that this would not occur during the loan modification process,
18 inflicting significant damages on Plaintiff. Plaintiff's reliance on Chase's
19 misrepresentations was thus to her detriment.

20 79. As a proximate result of Chase's negligent conduct, Plaintiff has
21 suffered, and will continue to suffer, general and special damages in an amount
22 according to proof at trial.

23 **EIGHTH CAUSE OF ACTION FOR VIOLATION OF THE ROSENTHAL**

24 **FAIR DEBT COLLECTION PRACTICES ACT AGAINST CHASE AND**

25 **DOES 1 THROUGH 10**
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1 80. Plaintiff incorporates herein by reference the allegations made in
2 paragraphs 1 through 79, inclusive, as though fully set forth herein.

3 81. Plaintiff is a consumer and the obligation between the parties is a debt
4 owed pursuant to the subject notes and trust deeds and is a consumer debt pursuant
5 to the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”).

6 82. Chase is a lender and mortgage servicing company that is in the
7 business of collecting and processing mortgage payments.

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

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

21 85. As a proximate result of Chase’s violations of the Rosenthal Act,
22 Plaintiff is entitled to actual and statutory damages, attorneys fees and costs, and
23 such other relief as the court determines is due.
24

25 **NINTH CAUSE OF ACTION FOR CONVERSION AGAINST QUALITY**

26 **AND DOES 1-10**

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

3 87. Plaintiff was, and still is, entitled to the surplus funds from the
4 foreclosure sale wrongfully being held by Quality. Quality, by and through the
5 acts alleged herein, did exercise dominion and control over the property
6 of Plaintiff in taking unto itself the surplus funds from the foreclosure sale
7 belonging to Plaintiff which were in excess of \$54,000, and owing and payable to
8 Plaintiff.

9 88. As a proximate result of Quality’s conversion of Plaintiff’s surplus
10 funds, Plaintiff has suffered compensatory, general and special damages in an
11 amount to proof. Additionally, Quality acted, and is acting, with malice, fraud
12 and/or oppression and, thus, Plaintiff is entitled to an award of punitive damages.
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14 **TENTH CAUSE OF ACTION FOR VIOLATION OF BUSINESS AND**
15 **PROFESSIONS CODE SECTION 17200 ET SEQ. AGAINST CHASE,**
16 **QUALITY AND DOES 1 THROUGH 10**

17 89. Plaintiff incorporates herein by reference the allegations made in
18 paragraphs 1 through 88, inclusive, as though fully set forth herein.

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

23 91. As more fully described above, Defendants’ acts and practices are
24 likely to deceive, constituting a fraudulent business act or practice. This conduct
25 is ongoing and continues to this date.
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1 92. Specifically, Defendants engage in deceptive business practices with
2 respect to mortgage loan servicing, assignments of notes and deeds of trust,
3 foreclosure of residential properties and related matters by

4 (a) Instituting improper or premature foreclosure proceedings to
5 generate unwarranted fees;

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

7 (c) Violating the One Action Rule;

8 (d) Demanding and accepting payments for debts that are non-
9 existent;

10 (e) Acting as beneficiaries and trustees without the legal authority to
11 do so.

12 (f) Failing to follow HAMP guidelines; and

13 (g) Misrepresenting the foreclosure status of their properties to
14 borrowers;

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

19 94. Plaintiff alleges that Defendants' misconduct, as alleged herein, gave,
20 and have given, Defendants an unfair competitive advantage over their
21 competitors. The scheme implemented by Defendants is designed to defraud
22 California consumers and enrich the Defendants.

23 95. The foregoing acts and practices have caused substantial harm to
24 California consumers.

25 96. Plaintiff alleges that as direct and proximate result of the
26 aforementioned acts, Defendants have prospered and benefitted from Plaintiff by
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1 collecting mortgage payments, and have been unjustly enriched from their act of
2 foreclosing on Plaintiff's home when they had agreed not to do so.

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

10 **PRAYER FOR RELIEF**

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

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

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

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

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

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

DATED: June 24, 2010 LAW OFFICES OF CAMERON H. TOTTEN

By: _____
Cameron H. Totten
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a jury trial for all claims set forth herein.

DATED: June 24, 2010 LAW OFFICES OF CAMERON H. TOTTEN

By: _____
Cameron H. Totten
Attorney for Plaintiff