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8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12  
13  
14 **ANGELA ANSANELLI, an individual;**  
15 **CHARLES ANSANELLI, an individual,**

16 Plaintiffs,

17 v.

18 **JPMORGAN CHASE BANK, N.A;**  
19 **SEQUOIA PACIFIC MORTGAGE**  
20 **COMPANY, INC.;** and  
DOES 1 through 25, inclusive,

21 Defendants.

Case No. C-10-03892-WHA

**FOURTH AMENDED COMPLAINT  
FOR DAMAGES, RESTITUTION  
AND INJUNCTIVE RELIEF**

- (1) **BREACH OF CONTRACT**
- (2) **FRAUD AND DECEIT,  
AND/OR NEGLIGENT  
MISREPRESENTATION**
- (3) **NEGLIGENCE**
- (4) **VIOLATION OF RESPA**
- (5) **VIOLATION OF UNFAIR  
COMPETITION LAW**

**JURY TRIAL DEMANDED**

Judge: Hon. William Alsup

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1 **I. INTRODUCTION**

2 1. Small business owners and home owners have been hit especially hard by  
3 the economic downturn during the past several years. Plaintiffs Charles Ansanelli and  
4 Angela Ansanelli (“Plaintiffs”) fit into each of these categories. They purchased a home  
5 in 2000 and were persuaded to refinance that loan and take out equity from their home  
6 during the “boom” years by Defendant Sequoia Pacific Mortgage Company (“Sequoia”)  
7 and Defendant JPMorgan Chase Bank (“JPMorgan” or “Chase”) as well as by  
8 Washington Mutual Bank (“WaMu”) prior to it being purchased by JPMorgan. The result  
9 was more debt than the Plaintiffs could afford to pay, which Defendants knew would be  
10 the case when they provided the refinance loan and a second loan to the Plaintiffs.  
11 Unfortunately, instead of working with Plaintiffs to resolve these issues, Chase forced  
12 Plaintiffs to engage in a Sisyphean task of trying to receive a mortgage modification in  
13 order to reduce their debt and monthly payments to a manageable amount.

14 2. As a result of the Defendants’ conduct, Plaintiffs have been forced to take  
15 on significant debt in order to continue to make payments on their loans, they have just  
16 received notification that their home may be foreclosed upon, and Ms. Ansanelli’s  
17 previously excellent credit has been tarnished and significantly damaged. All of this is  
18 now coming to a head at a time when Plaintiffs are beginning to get back on their feet and  
19 their small business plans are recovering and expanding.

20 **II. PARTIES**

21 **A. Plaintiffs**

22 3. Plaintiff Charles Ansanelli is, and at all times herein was, a resident of  
23 Marin County, California.

24 4. Plaintiff Angela Ansanelli is, and at all times herein was, a resident of  
25 Marin County, California

26 **B. Defendants**

27 5. Defendant JPMorgan Chase Bank, N.A., (“JPMorgan” or “Chase”) is a  
28 National Association organized under the laws of the United States, having its principle

1 place of business in Seattle, Washington. JPMorgan conducts business in California.  
2 JPMorgan purchased Washington Mutual Bank (“WaMu”) on September 25, 2008.

3 6. Defendant Sequoia Pacific Mortgage Company (“Sequoia”) is a California  
4 Corporation doing business in Marin County, California.<sup>1/</sup>

5 **C. Other Defendants**

6 7. The true names and capacities, whether individual, corporate, associate, or  
7 otherwise, of Defendants DOES 1 through 25 are unknown to Plaintiff, who therefore  
8 sues said Defendants by such fictitious names pursuant to Code of Civil Procedure  
9 section 474. Plaintiff alleges that each of said fictitious Defendants is in some manner  
10 responsible for the acts hereinafter set forth. Plaintiff will amend this Complaint to show  
11 the true names and capacities of these DOE Defendants, as well as the manner in which  
12 each fictitious Defendant is responsible, when these facts are ascertained.

13 **D. Agency**

14 8. Plaintiffs are informed and believe, and on that basis allege, that at all times  
15 herein mentioned each of the Defendants was an agent, servant, employee, and/or joint  
16 venturer of each of the remaining Defendants, and was at all times acting within the  
17 course and scope of such agency, service, employment, and/or joint venture, and each  
18 Defendant has ratified, approved, and authorized the acts of each of the remaining  
19 Defendants with full knowledge of said facts.

20 **E. Aiding and Abetting/Conspiracy**

21 9. Defendants, and each of them, aided and abetted, encouraged, and rendered  
22 substantial assistance to the other Defendants in breaching their obligations to Plaintiffs,  
23 as alleged herein. In taking action, as alleged herein, to aid and abet and substantially  
24 assist the commissions of these wrongful acts and other wrongdoings complained of, each  
25

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26 <sup>1</sup> Plaintiffs filed their original and first amended complaints in Marin County  
27 Superior Court prior to obtaining counsel. Plaintiffs’ current counsel was appointed  
28 through the Federal Pro Bono Project by order of this Court on January 3, 2011. The  
prior complaints named three additional Defendants, the FDIC as receiver for WaMu,  
First American Title Company and Fidelity National Title Company. These Defendants  
have been dismissed from the case with prejudice by Plaintiffs.

1 of the Defendants acted with an awareness of its/his/her primary wrongdoing and realized  
2 that its/his/her conduct would substantially assist the accomplishment of the wrongful  
3 conduct, wrongful goals, and wrongdoing.

4 **F. Alter Ego**

5 10. There is a unity of interest between Defendants, and each acts as the alter  
6 ego of the other.

7 **III. VENUE AND JURISDICTION**

8 11. This matter was removed to this Court by the Federal Deposit Insurance  
9 Corporation, who was formerly a Defendant in this action, on August 31, 2010. Counsel  
10 for Plaintiffs were appointed through the Federal Pro Bono Project on January 3, 2011.

11 12. This court further has jurisdiction under 28 U.S.C. § 1331 pursuant to 12  
12 U.S.C. § 2605.

13 13. This Court has personal jurisdiction over the parties in this action by the  
14 fact that Defendants are corporations that are licensed to do business in the state of  
15 California or otherwise conduct business in the state of California.

16 14. Venue is proper in this Court as the unlawful practices and conduct are  
17 alleged to have been committed in Marin County, California. Plaintiffs' home, which is  
18 the subject of this litigation, is in Marin County, California, all Defendants reside in this  
19 district within the meaning of 28 U.S.C. § 1391(c), and Defendants regularly conduct  
20 business in this district.

21 **IV. TOLLING OF STATUTES OF LIMITATION BY FRAUDULENT**  
22 **CONCEALMENT**

23 15. Any applicable statutes of limitation have been tolled by Defendants'  
24 continuing, knowing and active concealment of the facts alleged herein. By virtue of  
25 Defendants' concealment and misrepresentations to Plaintiffs, Plaintiffs could not and did  
26 not discover Defendants' actions.

27 16. In the alternative, Defendants should be estopped from relying on any  
28 statutes of limitation. Defendants owed Plaintiffs an affirmative duty of full and fair

1 disclosure, but knowingly failed to honor and discharge such duty. Finally, Defendants'  
2 conduct is not barred by any statutes of limitation because Defendants' conduct  
3 constitutes an ongoing violation of Plaintiffs' rights, which continues to the present.

4 **V. FACTUAL ALLEGATIONS**

5 **A. The Foreclosure Crisis**

6 17. For the past three years, the United States has been in a foreclosure crisis.  
7 In late 2009, one in eight U.S. mortgages was in foreclosure or default, and 2.8 million  
8 homeowners received foreclosure notices in 2009.

9 18. California has been one of the states hardest hit by this crisis. California  
10 had the highest number of foreclosures in the United States for all of 2009. RealtyTrac  
11 reports that the number of total California properties with foreclosure filings in 2009 was  
12 632,573. This represents a nearly 21% increase over 2008 and a 153% increase from  
13 2007. In the first quarter of 2010, California posted the nation's fourth highest  
14 foreclosure rate; during that period, California accounted for 23% of the nation's total  
15 foreclosure activity.

16 19. The foreclosure crisis "continues unabated," as a Congressional oversight  
17 panel stated in April 2010.

18 **B. JPMorgan's Purchase Of Washington Mutual**

19 20. In September of 2008, WaMu suffered a severe decline in value and was  
20 taken over by the Office of Thrift Supervision with the Federal Deposit Insurance  
21 Corporation as Receiver for WaMu.

22 21. On September 25, 2008 the FDIC as Receiver for WaMu and JPMorgan  
23 entered into a Purchase and Assumption Agreement. Pursuant to that agreement,  
24 JPMorgan agreed to pay \$1,888,000,000.00 to purchase WaMu. Pursuant to the Purchase  
25 and Assumption Agreement, JPMorgan serviced mortgages which were previously  
26 serviced by WaMu, including one of the loans at issue in this matter.<sup>2/</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> Pursuant to this Court's order on JPMorgan's Motion to Dismiss the Second  
Amended Complaint [Docket No. 97], Plaintiffs' allegations against JPMorgan rest upon  
its own conduct after purchasing WaMu from the FDIC, not the conduct of WaMu prior

1           **C.     Plaintiff’s Purchase Of Their Home And the Subject Loans**

2           22.     In April 2000, Plaintiffs purchased their home, located at 176 Wild Horse  
3 Valley Road, Novato, California (the “Home”). Plaintiffs paid a \$500,000 down payment  
4 and Plaintiff Angela Ansanelli obtained a loan for the remaining \$359,000.

5           23.     In March of 2006, Plaintiffs were suffering financially. They own a small  
6 business which faltered and left them with limited income. Defendant Sequoia assisted  
7 Plaintiffs in securing an offer from WaMu to allow Plaintiffs to refinance their high-  
8 interest mortgage with a lower interest loan based on Plaintiff Angela Ansanelli’s  
9 flawless credit. This transaction is referred to as Loan Number 3061620740. It is  
10 referred to herein as the “Refinance Loan.” This loan was for \$585,000.00.

11           24.     In obtaining the Refinance Loan, Plaintiffs were led to believe that the offer  
12 was an exclusive benefit to borrowers with outstanding credit. The loan contained a  
13 \$200,000 cash out which Plaintiffs planned to use to help them through their immediate  
14 financial crisis. At the advice of Defendant Sequoia and WaMu, Plaintiffs removed Mr.  
15 Ansanelli from the title to the home and used Mrs. Ansanelli’s credit to qualify.

16           25.     The Refinance Loan was secured by a Deed of Trust recorded against the  
17 Home. At all times during the application, Plaintiffs were honest and forthcoming with  
18 their financial information and complied with WaMu’s requests. Both WaMu and  
19 Defendant Sequoia represented to Plaintiffs that based on WaMu’s analysis of the  
20 financial information Mrs. Ansanelli provided, she would be able to meet all loan  
21 payments and urged her to enter into the transaction.

22           26.     The Refinance Loan was a no document, interest only loan, secured by the  
23 Home, based on what Sequoia and WaMu knew to be an unreasonably inflated appraisal  
24 value, which was procured by WaMu and Sequoia in order to permit WaMu to make the  
25 Refinance Loan. After obtaining the Refinance Loan from WaMu, Mr. Ansanelli was  
26 added back onto the title by means of an Interspousal Transfer Grant Deed.

27  
28  
\_\_\_\_\_

to that purchase.



1           27.     One year later, in April 2007, Plaintiff's financial situation had continued to  
2 deteriorate. A second time they used Defendant Sequoia to procure a loan in order to  
3 have a safety net for their family. Sequoia arranged for a \$200,000 Home Equity Loan  
4 for Plaintiffs through JPMorgan Chase Bank, N.A. This transaction is referred to as  
5 Reference Number 070781310420 or Account Number 0918463286. It is referred to  
6 herein as the "HEL."

7           28.     The HEL was also a no document, interest only loan. The amount of the  
8 monthly payment was calculated based on a 360 month term, but the HEL required a  
9 balloon payment after 180 months.

10          29.     In April 2007, Plaintiffs signed a closed-end Deed of Trust securing the  
11 HEL with the Home.

12          30.     In processing the HEL, Defendants JPMorgan and Sequoia did not perform  
13 a credible analysis of Plaintiffs' ability to repay the loan. Defendant Sequoia executed the  
14 entire HEL loan application with no input from Plaintiffs.

15          31.     Defendants Sequoia and JPMorgan represented to Plaintiffs that, based on  
16 JPMorgan's analysis of the financial information supplied by Sequoia, they would be able  
17 to meet the obligations of the HEL. Plaintiffs signed the pre-completed loan documents  
18 under the direction of Sequoia. The HEL was also based on an appraisal contracted by  
19 Sequoia. This appraisal was knowingly and unreasonably inflated.

20          32.     As a result of these two loans, the Home secured \$785,000 of debt and  
21 Plaintiffs were obligated to make monthly payments which were well beyond their means.

22          33.     Plaintiffs believed at all times that Defendants JPMorgan and Sequoia were  
23 acting in good faith and in Plaintiffs' best interests. Plaintiffs trusted Defendants to  
24 competently assist them throughout the loan process. Plaintiffs had no knowledge of real  
25 estate transactions. Contrary to Plaintiffs' belief at the time, Defendants JPMorgan and  
26 Sequoia conspired to induce Plaintiffs into signing predatory loans which Defendants  
27 knew or should have known Plaintiffs would be unable to repay.

28

1           34. In September of 2008, Mr. Ansanelli was forced to undergo knee surgery  
2 which immobilized him for nearly one year and drastically reduced his ability to work.  
3 Plaintiffs also incurred other serious and expensive family medical issues. In January  
4 2009 the sewer pipes under Plaintiff's home ruptured due to a root infestation requiring  
5 extensive and expensive repair and replacement. These unexpected and unforeseen  
6 events put Plaintiffs in an incredibly precarious financial position.

7           35. Plaintiffs borrowed money and struggled along, and were able to fulfill their  
8 obligations under the loans and make all loan payments on both the Refinance Loan and  
9 HEL for a year and a half. However, by November 2008, Plaintiffs recognized they could  
10 not sustain the full monthly payments on the loans and were in imminent danger of  
11 default.

12           **D. Plaintiffs' Attempts To Modify The Loans With JPMorgan**

13           36. In December 2008, Plaintiffs contacted JPMorgan to request a modification  
14 to the Refinance Loan and HEL in order to reduce their monthly payments and attempt to  
15 avoid defaulting. Plaintiffs did not receive a response until March of 2009 to their  
16 request.<sup>3/</sup>

17           37. On February 13, 2009, Plaintiffs filed a complaint with the Office of the  
18 Comptroller of the Currency ("OCC") which included a letter of hardship and their  
19 complete financial file. Plaintiffs sent copies of this letter to JPMorgan and again  
20 requested a loan modification for each of their loans.

21           38. On March 4, 2009, Plaintiffs received letters from JPMorgan responding to  
22 the OCC complaint, indicating and assuring them that the matter was being investigated  
23 and promising a prompt response to the matter.

24           39. During the time between March 4, 2009 and August 10, 2009 JPMorgan  
25 dragged the Plaintiffs along through a slow, frustrating, redundant and fraudulent

26 \_\_\_\_\_  
27 <sup>3</sup> Defendant JPMorgan kept the Refinance Loan and HEL separate during the  
28 modification process. However, JPMorgan was responsible for servicing both loans,  
although for much of the time it continued to do so in WaMu's name. Plaintiffs  
repeatedly requested that the two loans be considered for consolidation together, yet  
Defendant JPMorgan refused to do so.

1 modification process. JPMorgan continually demanded piecemeal and duplicative  
2 paperwork, indicated that the file was both complete and incomplete and that the process  
3 was stalled and proceeding.

4 40. JPMorgan systematically ignored Plaintiffs written and verbal inquiries and  
5 misled Plaintiffs about the status of their modification request in order to extract full  
6 payments from Plaintiffs and to discourage Plaintiffs from seeking legal counsel.

7 41. On August 10, 2009, Plaintiffs received a letter on JPMorgan letterhead  
8 stating that their request to modify the Refinance Loan had been denied purportedly  
9 because their Loan To Value (“LTV”) ratio was too low and because Plaintiffs allegedly  
10 had excessive cash reserves. Both the LTV calculation and the cash reserve amount on  
11 which the denial was based were erroneous and known to be erroneous by JPMorgan.

12 42. Plaintiffs’ attempt to modify the HEL was equally muddled, frustrating and  
13 contradictory. JPMorgan’s “processing” of the modification request lasted three months  
14 and Plaintiffs were informed that their file was both complete and incomplete and that the  
15 process was both stalled and proceeding.

16 43. On June 8, 2009, JPMorgan agreed to place Plaintiffs on a trial  
17 modification plan, guaranteeing that the modification would become permanent if  
18 Plaintiffs made payments on time and in full for the three month trial period, which  
19 covered the months of June, July and August of 2009. Plaintiffs requested this Trial Plan  
20 Agreement in writing. JPMorgan, however, refused to provide the agreement in writing,  
21 with the intention of disavowing the agreement if it became advantageous for them to do  
22 so.

23 44. Plaintiffs made timely payments of the modified amount in June, July and  
24 August of 2009.

25 45. On August 17, 2009, Plaintiffs received a letter from JPMorgan stating that  
26 the HEL was “currently in default.” This came as a surprise to Plaintiffs as they had  
27 never missed a payment and had made the three trial period payments as required and  
28 requested by JPMorgan. Plaintiffs contacted JPMorgan and spoke to Mr. Mike Harris

1 about their concerns. Mr. Harris represented that Plaintiffs' trial payments were being  
2 held in a suspense account, were not being applied correctly and that default notices were  
3 sent out automatically. Additionally, Mr. Harris indicated that the defaults would  
4 adversely affect Plaintiffs' credit rating.

5 46. This information was **directly in conflict** with representations made by Mr.  
6 Chuck Ely, and employee of JPMorgan, at the outset of the trial payment period. Mr. Ely  
7 stated that the Plaintiffs' credit would remain intact and would not be affected by the trial  
8 modification.

9 47. The damage done to the Plaintiffs' credit made it impossible for them to  
10 obtain financial products and loans from other institutions to assist Plaintiffs in making  
11 the full payments on their Refinance Loan and HEL.

12 48. Plaintiffs were told that the representative who initiated Plaintiffs Trial Plan  
13 Agreement had been transferred to another department and that Plaintiffs could not speak  
14 with him about their modification agreement.

15 49. Plaintiffs spoke with Mr. Roger Conner, yet another JPMorgan employee  
16 who represented to Plaintiffs that they were still current on their trial modification plan  
17 and instructed them to continue paying the modified amount. This information was given  
18 to Plaintiffs despite the fact that they were receiving collection calls from JPMorgan as  
19 early as 7 a.m. during this time period. Plaintiffs again sought to receive written  
20 confirmation or a written Trial Plan Agreement from JPMorgan. Again, JPMorgan  
21 deliberately refused to provide this information with the intent of disavowing the  
22 agreement in the future.

23 50. On September 10, 2009, after paying the modified payments for four  
24 months, Plaintiffs were contacted by Ms. Olga Danilova, a JPMorgan employee and  
25 informed that Plaintiffs did not have enough funds to qualify for a modification to the  
26 HEL. Ms. Danilova further indicated that all payments going forward needed to be of the  
27 full amount, and that the "outstanding balance" needed to be paid to JPMorgan, which  
28 inexplicably included late fees and penalties as a result of paying the lower, agreed upon

1 modified amount. Amazingly, this meant that Plaintiffs had been denied modification of  
2 the Refinance Loan because they had “excessive” cash reserves and “denied”  
3 modification of the HEL because they did not have enough cash reserves. This “denial”  
4 occurred after Plaintiffs had fully complied with their obligations under the trial  
5 agreement by making on time payments of the modified amount for more than three  
6 months.

7 51. The next day, on September 11, 2009, confused, bewildered and frustrated  
8 by the modification process, Plaintiffs contacted the executive offices of JPMorgan to  
9 contest the cancellation of their modification. Mr. Steve Regul, a JPMorgan employee,  
10 represented to Plaintiffs that JPMorgan would work with them on a modification plan for  
11 both the HEL and Refinance Loan.

12 52. One week later, Mr. Bob Smith, a JPMorgan employee, contacted Plaintiffs  
13 to “finalize” their loan modification. As part of this process Mr. Smith requested all of  
14 the financial documents and information which Plaintiffs had provided to JPMorgan  
15 several times during the previous six months.

16 53. At the same time JPMorgan was allegedly “finalizing” the loan  
17 modifications, the payments Plaintiffs were making on the HEL were taking progressively  
18 longer to post to their account. This resulted in Mr. Smith informing Plaintiffs on  
19 October 14, 2009 that the trial payment for September had not been made. Plaintiffs  
20 produced detailed payment records demonstrating that the payments had been made and  
21 had cleared Plaintiffs’ checking account on time. Mr. Smith admitted that the problem  
22 was an accounting error by JPMorgan. Mr. Smith instructed Plaintiffs to continue paying  
23 the modified amounts and to ignore the default notices. Mr. Smith represented that all  
24 future payments would be accurately and properly applied to their account.

25 54. Despite JPMorgan’s representation that both loans would be modified and  
26 despite the agreement between JPMorgan and Plaintiffs to modify the HEL if Plaintiffs  
27 made on time payments for three months, JPMorgan refused to provide any information  
28 in writing about the modifications. Between October 11, 2009 and February 19, 2010,

1 Plaintiffs contacted JPMorgan several times to ensure that they were still on the  
2 modification plan for the HEL. Each time JPMorgan confirmed that they were, but for  
3 the first time represented that the HEL modification would not become permanent until  
4 the Refinance Modification was approved.

5 55. On February 19, 2010 Plaintiffs received a letter from JPMorgan thanking  
6 them for participating in HAMP and informing them that their file was missing critical  
7 documents necessary to evaluate their modification request as required by the Trial Plan  
8 Agreement previously sent to them. Plaintiffs had never received a written Trial Plan  
9 Agreement, despite their repeated requests for written verification and agreement about  
10 the modification plan, and had sent all the necessary documentation to JPMorgan several  
11 times.

12 56. Plaintiffs ceased making the modified payments on the HEL in February  
13 2010. Plaintiffs have not missed any payments and are current on the Refinance Loan.  
14 The Refinance Loan is currently scheduled to reset to a significantly higher monthly  
15 payment and interest rate in April, 2011. Plaintiffs fear they will not be able to make  
16 these payments unless the loan is modified.

17 57. In order to make the payments, Plaintiffs were forced to borrow more than  
18 \$60,000 against their credit cards, cashed out approximately \$400,000 in equity from their  
19 home and approximately \$100,000 on a line of credit through Bank of America.<sup>4/</sup>

20 58. On December 2, 2009, Plaintiffs sent an official Qualified Written Request  
21 (“QWR”) as defined by the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §  
22 2605(e)(1)(B), to JPMorgan stating and detailing the reasons for Plaintiffs’ belief that  
23 their HEL account was in error. Plaintiffs received an acknowledgment of receipt of the  
24 QWR from Ms. Kay Jackson, an employee at JPMorgan’s Home Lending Executive  
25 Office on January 6, 2010. The acknowledgment promised that JPMorgan would provide  
26 a “complete and accurate response as soon as possible.” Plaintiffs have never again heard

27 \_\_\_\_\_  
28 <sup>4</sup> Plaintiffs no longer have the credit line through Bank of America as a result of the  
damage done to their credit by the actions of JPMorgan in issuing notices of default on  
the HEL even though Plaintiffs were making timely payments.

1 from Ms. Jackson or the Home Lending Executive Office regarding their QWR. This was  
2 the second QWR sent to JPMorgan by Plaintiffs.

3 59. On or about January 20, 2011, Plaintiffs received a letter from JPMorgan  
4 indicating that the HEL was in default and that foreclosure proceedings had been initiated  
5 on the account. The letter provided a phone number for the California Reconveyance  
6 Corporation, who was identified as the “foreclosure attorneys” for JPMorgan and  
7 instructed Plaintiffs to contact them for further information. That phone number, (813)  
8 775-2340, was and continues to be inactive.

9 **VI. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **BREACH OF CONTRACT**

12 **(Breach of Contract**

13 **Against Defendant JPMorgan Chase Bank, N.A.)**

14 60. Plaintiffs reallege each and every allegation above as if set forth in its  
15 entirety in this Cause of Action.

16 61. Plaintiffs entered into an oral Trial Period Plan (“TPP”) contract with  
17 JPMorgan regarding the HEL. JPMorgan made an oral TPP offer to Plaintiffs on or about  
18 June 8, 2009. Plaintiffs formed a binding, enforceable agreement with JPMorgan when  
19 they made the three trial period payments in June, July and August of 2009.<sup>5/</sup> Payments  
20 made in accordance with the oral TPP offer constitute consideration. In the alternative,  
21 the TPP Contracts or offers, coupled with Plaintiffs’ payments constitutes an implied  
22 contract.

23 62. JPMorgan failed to perform under the TPP contract with Plaintiffs.  
24 JPMorgan’s refusal to perform its duties under the TPP contract was unlawful, without  
25 justification and/or excuse, and constituted a total and material breach of the TPP contract  
26 between the parties.

27  
28 

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<sup>5</sup> Plaintiffs made payments pursuant to the TPP from June 2009 through February 2010.

1 63. JPMorgan breached the TPP contract with Plaintiffs by failing to offer  
2 Plaintiffs a permanent HAMP modification after payment of the trial period payments  
3 was made on time and in full.

4 64. Plaintiffs gave consideration that was fair and reasonable, and have  
5 performed all conditions, covenants, and promises required to be performed under their  
6 contract with JPMorgan.

7 65. As a result of JPMorgan’s breach of the TPP contract, Plaintiffs suffered  
8 and continue to suffer reasonable and foreseeable consequential damages, including  
9 payment of increased interest, longer loan payoff times, higher principle balances,  
10 deterrence from seeking other remedies to address their default and/or unaffordable  
11 mortgage payments, damage to their credit, additional income tax liability, costs and  
12 expenses incurred to attempt to prevent and fight pending foreclosure, and other damages  
13 for breach of contract.

14 66. Plaintiffs have been damaged by JPMorgan’s breach of the TPP contract in  
15 an amount to be proven at trial.

16 67. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are  
17 entitled to recover reasonable attorney’s fees, costs, and expenses incurred in bringing  
18 this action.

19 **SECOND CAUSE OF ACTION**

20 **FRAUD AND DECEIT AND/OR NEGLIGENT MISREPRESENTATION**

21 **(Fraud and Deceit, and/or Negligent Misrepresentation**

22 **Against All Defendants)**

23 68. Plaintiffs reallege each and every allegation above as if set forth in its  
24 entirety in this Cause of Action.

25 69. Defendants colluded in the facilitation and procurement of the Refinance  
26 Loan and the HEL, which were predatory in nature and injurious to Plaintiffs.

27 70. Defendants at various times throughout the origination and servicing of the  
28 loans knowingly misrepresented, inter alia, the following:



- 1 a. The nature and terms of the loans;
- 2 b. That the loans were a good financial decision for Plaintiffs;
- 3 c. The modification process of the loans; and
- 4 d. The value of the Plaintiffs' Home which was used to justify the
- 5 loans.

6 71. Defendants knowingly or negligently defrauded Plaintiffs, causing them to  
7 agree to enter into loans which Defendants knew Plaintiffs were unlikely to ever be able  
8 to pay off. Because of Plaintiffs' desperation and desire to stay in their Home, they  
9 justifiably relied on Defendants' misrepresentations about the terms of the loans, their  
10 ability to afford the loans and the value of their home. This reliance was detrimental to  
11 the Plaintiffs.

12 72. Defendant JPMorgan falsely represented to Plaintiffs that the trial  
13 modification of the HEL loan would become permanent if Plaintiffs remitted the  
14 modified payment for three months, on time and in full. JPMorgan knew this was false,  
15 per its own policies and procedures. Defendant JPMorgan intentionally or negligently  
16 misrepresented to Plaintiffs that they were still on a trial modification plan, when in fact,  
17 Plaintiffs' modified payments were being recorded as insufficient. Plaintiffs justifiably  
18 relied on these statements as JPMorgan is the servicer and originator of the HEL loan and  
19 had authority to approve the requested modification. JPMorgan's misrepresentation  
20 resulted in escalating late fees, penalties and other charges and ultimately sent the HEL  
21 into default and now places the Home at risk of foreclosure.

22 73. Defendant Sequoia committed fraud when it knowingly misrepresented  
23 Plaintiffs' income on the loan applications. Plaintiffs did not report, nor were they asked  
24 to report their actual income for the purpose of determining whether they qualified for the  
25 loans. Defendant Sequoia knew of the falsity because, without the confidential  
26 employment information that could **only** be supplied by Plaintiffs, the income information  
27 included on the application is necessarily false. Sequoia intentionally entered the false  
28

1 information on the applications in order to qualify Plaintiffs for predatory loans which  
2 they had no ability to repay.

3 74. It was in Sequoia's best interest to see that all loans it brokers be  
4 consummated, regardless of ability to repay or propriety of entering into the loans.  
5 Plaintiffs justifiably relied on Defendant Sequoia to comply with reasonable standards of  
6 professional conduct and ethics in using its expertise to match them with an appropriate  
7 loan product.

8 75. As a result of Defendants' misrepresentations, Plaintiffs have been  
9 damaged in an amount to be proven at trial.

10 76. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are  
11 entitled to recover their reasonable attorney's fees, costs, and expenses incurred in  
12 bringing this action.

13 **THIRD CAUSE OF ACTION**

14 **NEGLIGENCE**

15 **(Negligence - Cal. Civ. Code §§ 1714(a) and 3333**

16 **Against All Defendants)**

17 77. Plaintiffs reallege each and every allegation above as if set forth in its  
18 entirety in this Cause of Action.

19 78. All Defendants owed a duty of care to avoid foreseeable injury to Plaintiffs  
20 person or property. Defendants breached that duty by colluding to lure Plaintiffs into  
21 predatory loans that Defendants knew or should have known Plaintiffs would default on.

22 79. As a direct and foreseeable result of Defendants' behavior, Plaintiffs  
23 suffered harm, including but not limited to the destruction of their credit, being forced to  
24 borrow excessive amounts of money, having the equity stripped from their home and,  
25 now, facing foreclosure.

26 80. Defendant JPMorgan processed and approved the HEL under a "Stated  
27 Income" program that requires employment verification but does not require income  
28 verification.

1           81. JPMorgan had a duty to investigate the reasonableness of the stated income  
2 and confirm that Plaintiffs had the ability to repay the loans. JPMorgan breached that  
3 duty when they qualified Plaintiffs for the HEL loan based on the overstated income  
4 supplied by Defendant Sequoia.

5           82. JPMorgan also breached their duty when they qualified Plaintiffs for the  
6 initial interest-only payment, with knowledge that the initial interest-only payment was  
7 scheduled to convert to a fully amortized payment. JPMorgan failed to qualify Plaintiffs  
8 at the fully indexed, fully amortized payment amount.

9           83. JPMorgan had a duty to competently and reasonably work with Plaintiffs in  
10 their efforts to modify their two loans. JPMorgan's conduct breached this duty in the  
11 following ways:

- 12           (a) By failing to respond for three months to Plaintiffs' initial request to discuss  
13           modification options related to the Refinance Loan and HEL;
- 14           (b) By demanding piecemeal and duplicative paperwork from Plaintiffs in  
15           processing Plaintiffs' modification requests;
- 16           (c) By systematically ignoring Plaintiffs' written and verbal inquiries regarding  
17           the status of their modification requests;
- 18           (d) By providing misleading information regarding the status of Plaintiffs'  
19           modification requests;
- 20           (e) By failing to accurately assess Plaintiffs' LTV ratio;
- 21           (f) By making erroneous assessments of Plaintiffs' cash reserves;
- 22           (g) By providing conflicting information about the reasons Plaintiffs' two  
23           modification requests were denied;
- 24           (h) By failing to properly apply payments made by Plaintiffs to their accounts  
25           during the Trial Period Plan;
- 26           (i) By failing to provide complete and accurate information regarding the  
27           impact of the Trial Period Plan on Plaintiffs' credit; and,
- 28

1 (j) By providing inaccurate information to Plaintiffs in written correspondence,  
2 including providing a disconnected phone number for the “foreclosure  
3 attorneys” of JPMorgan Chase (identified as California Reconveyance  
4 Corporation) in a letter dated January 14, 2011.

5 84. Defendant Sequoia was negligent in directing Plaintiffs into loans for which  
6 they were not qualified. Sequoia was Plaintiff’s broker in the origination of both the  
7 Refinance Loan and HEL. As Plaintiffs’ broker and fiduciary, Sequoia owed a duty to  
8 Plaintiffs to execute decisions in the best interests of the Plaintiffs. Sequoia breached that  
9 duty when it negligently qualified Plaintiffs for loans without reasonable (or any)  
10 investigation into whether or not Plaintiffs could sustain payments on the loans.  
11 Defendant made no effort to educate Plaintiffs as to the nature, risks or possible  
12 consequences associated with the loans.

13 85. As a result of Defendants’ conduct, Plaintiffs have and will continue to  
14 suffer reasonable and foreseeable consequential damages resulting from such actions and  
15 representations, including payment of increased interest, longer loan payoff times, higher  
16 principle balances, deterrence from seeking other remedies to address their default and/or  
17 unaffordable mortgage payments, damage to their credit, additional income tax liability,  
18 costs and expenses incurred to prevent or fight foreclosure, and other damages for breach  
19 of contract.

20 86. Plaintiffs have been damaged by Defendants’ actions and inactions in an  
21 amount to be proven at trial.

22 **FOURTH CAUSE OF ACTION**

23 **VIOLATION OF RESPA**

24 **(Violation of 12 U.S.C. § 2605(e) (RESPA) - Failure to Respond to QWR**

25 **Against Defendant JPMorgan)**

26 87. Plaintiffs reallege each and every allegation above as if set forth in its  
27 entirety in this Cause of Action.

28

1 88. Plaintiffs sent a QWR to Defendant JPMorgan on two occasions, August  
2 26, 2009, and December 2, 2009. Pursuant to 12 U.S.C. § 2605(e)(2), Defendant had  
3 sixty (60) days to respond to the QWR and twenty (20) days to acknowledge receipt of the  
4 QWR.

5 89. The August 26, 2009 correspondence from Plaintiffs to JPMorgan stated the  
6 names of Plaintiffs and their partial account numbers, information sufficient to identify  
7 the account of the borrower. The letter further stated the errors Plaintiffs believed  
8 JPMorgan was making in misapplying loan payments, based on their paying a modified  
9 amount on their HEL and seeking to ensure that the mistaken actions JPMorgan was  
10 taking did not hurt their credit and seeking corrections of those mistakes by JPMorgan.

11 90. The December 2, 2009 correspondence from Plaintiffs to JPMorgan  
12 included the name and loan numbers (for both the Refinance Loan and the HEL) of  
13 Plaintiffs. The letter further stated it was a “Qualified Written Request” under RESPA.  
14 Enclosed with the December 2, 2009 letter was a letter sent from Plaintiffs to the OCC  
15 detailing Plaintiffs belief as to why their account was in error and the actions taken by  
16 JPMorgan which Plaintiffs believed were incorrect in denying the modifications and  
17 misapplying payments.

18 91. JPMorgan violated RESPA because it failed to provide a written response  
19 acknowledging receipt of the first QWR within 20 days of the receipt of the first request.  
20 JPMorgan also failed to make appropriate corrections to Plaintiffs’ account in response to  
21 this QWR, or to investigate or to explain why it would not or could not do so.

22 92. Plaintiffs received acknowledgment of the receipt of the second QWR on  
23 January 6, 2010. However, Plaintiffs never received any further response to their QWR.

24 93. Defendant JPMorgan thus violated RESPA by failing to make appropriate  
25 corrections to Plaintiffs’ account in response to any of their QWRs, or to investigate or to  
26 explain why it would or could not do so.

27 94. Upon information and belief, JPMorgan has violated RESPA, 12 U.S.C. §  
28 2605(e)(3), by providing information to consumer reporting agencies regarding overdue

1 payments allegedly owed by Plaintiffs that were related to their QWRs, many of which  
2 were neither late nor overdue.

3 95. As a result of JPMorgan’s violations of RESPA Plaintiffs have suffered  
4 actual damages, including but not limited to devastation of their credit, monetary  
5 damages, and threatened foreclosure of their home.

6 96. As a result of Defendants’ violations of RESPA, Plaintiffs have been  
7 damaged in an amount to be proven at trial.

8 97. Pursuant to 12 U.S.C. § 2605(f)(3), Plaintiffs are entitled to recover their  
9 reasonable attorney’s fees and costs incurred in bringing this action

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATION OF THE UNFAIR COMPETITION LAW**

12 **(For Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 et seq.**  
13 **Against All Defendants)**

14 98. Plaintiffs reallege each and every allegation above as if set forth in its  
15 entirety in this Cause of Action.

16 99. The California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et  
17 seq. (“UCL”), defines unfair competition to include any “unlawful,” “unfair,” or  
18 “deceptive” business act or practice. Cal. Bus. & Prof. Code § 17200. The UCL  
19 authorizes this Court to issue whatever orders or judgments may be necessary to prevent  
20 unfair or unlawful practices, or to “restore to any person in interest any money or  
21 property, real or personal, which may have been acquired by means of such unfair  
22 competition.” Id. § 17203.

23 100. JPMorgan’s acts and practices alleged herein are unlawful business  
24 practices in that they violate state and law, including but not limited to violations of  
25 RESPA and Cal. Civ. Code §§ 1714(a) and 3333, as alleged in this Complaint.

26 101. Sequoia’s acts and practices alleged herein are unlawful business practices  
27 in that they violate state law, including but not limited to violations of Cal. Civ. Code §§  
28 1714(a) and 3333.

1           102. JPMorgan’s acts and practices alleged herein constitute unfair business  
2 practices, including, without limitation, the following practices:

- 3           a. Failing to perform loan servicing functions consistent with its  
4 responsibilities to Plaintiffs and its responsibilities under HAMP;
- 5           b. Failing to properly supervise its agents and employees, including  
6 without limitation, its loss mitigation and collection personnel,  
7 foreclosure personnel, and personnel implementing its modification  
8 programs;
- 9           c. Failing to permanently modify loans and/or provide alternatives to  
10 foreclosure, and using unfair means to keep Plaintiffs in temporary  
11 modification contracts, including, without limitations, routinely  
12 demanding information it already had and failing to communicate  
13 accurately or consistently with Plaintiffs about the status of their loan  
14 modification applications;
- 15           d. Making inaccurate calculations and determinations of Plaintiffs’  
16 eligibility for permanent modifications; and
- 17           e. Engaging in acts and practices that prolong of the HAMP process.

18           103. Sequoia’s acts and practices alleged herein constitute unfair business  
19 practices, including, without limitation steering Plaintiffs into loans Sequoia knew  
20 Plaintiffs could not ever repay and breaching the fiduciary duty owed to Plaintiffs in order  
21 to increase its own profits by closing the mortgage transaction.

22           104. JPMorgan’s acts and practices alleged herein constitute fraudulent business  
23 practices, including, without limitation, the following practices:

- 24           a. JPMorgan made misrepresentations and omissions of material facts  
25 that induced Plaintiffs to enter TPP contracts in order to obtain a  
26 permanent modification;
- 27
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- 1           b.     JPMorgan made misrepresentations and omissions of material fact
- 2                     regarding the status of Plaintiffs' loan modifications and loan
- 3                     payments;
- 4           c.     JPMorgan's misrepresentations and omissions are likely to deceive
- 5                     the reasonable consumer, and did in fact deceive Plaintiffs;
- 6           d.     JPMorgan's misrepresentations are objectively material to the
- 7                     reasonable consumer, and therefore reliance upon such
- 8                     representations may be presumed as a matter of law, and Plaintiffs
- 9                     did in fact believe the misrepresentations were reasonable and did in
- 10                    fact rely upon them.

11           105.   Sequoia's acts and practices as alleged herein constitute fraudulent business  
12 practices, including, without limitation making misrepresentations and omissions of  
13 material facts that induced Plaintiffs to enter into predatory loans which they could not  
14 repay.

15           106.   Plaintiffs justifiably and reasonably relied upon these misrepresentations  
16 and omissions of material facts.

17           107.   As a result of these violations and unlawful, unfair, and fraudulent business  
18 practices, Plaintiffs suffered injury in fact and lost money, including but not limited to,  
19 payment of increased interest, longer loan payoff times, higher principle balances, and  
20 payment of other charges collected by JPMorgan.

21           108.   Pursuant to California Business and Professions Code section 17200 *et seq.*,  
22 Plaintiffs are entitled to enjoin the practice of unfairly denying and failing to enter into  
23 permanent loan modifications for homeowners who have complied with the contractual  
24 obligations of a TPP Contract, and grant such other and further relief as the Court may  
25 deem proper and just.

26           109.   Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to  
27 recover their reasonable attorney's fees, costs, and expenses incurred in bringing this  
28 action.



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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For Equitable relief, including an Order for JPMorgan to rescind all Notices of Default against Plaintiffs’ account and to engage in reasonable efforts to restore Plaintiffs’ credit to its previous standing;
2. The Court grant a Temporary Restraining Order preventing foreclosure against the Plaintiffs’ Home;
3. The Court enter a judgment declaring JPMorgan’s acts and practices complained of herein to constitute a breach of contract, and all Defendants’ acts and practices complained of herein to be unlawful, unfair and fraudulent as well as a declaration that JPMorgan is required by the doctrine of promissory estoppel to offer permanent modifications of the loans to Plaintiffs;
4. For injunctive relief against Defendants to prevent future wrongful conduct;
5. For actual statutory damages according to proof at trial for violations of the breach of contract, or in the alternative, that JPMorgan be ordered to make restitution to Plaintiffs pursuant to Cal. Bus. and Prof. Code § 17203;
6. For punitive damages pursuant to Cal. Civ. Code § 3294 *et seq.*;
7. For an award of attorneys’ fees and costs pursuant to Cal. Code of Civ. Proc. § 1021.5 and 12 U.S.C. 2605(f)(3);
8. For such other and further relief as this Court may deem proper.

Dated: May 12, 2011

**COTCHETT, PITRE & McCARTHY, LLP**

By:           /s/ Eric J. Buescher            
ERIC J. BUESCHER  
*Attorneys for Plaintiffs*

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of each and every claim so triable.

Dated: May 12, 2011

**COTCHETT, PITRE & McCARTHY, LLP**

By:           /s/ Eric J. Buescher            
ERIC J. BUESCHER  
*Attorneys for Plaintiffs*