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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 MARGARET CARSWELL,) Case No. CV 10-5152-GW (PLAx)
12 Plaintiff,)
13 v.) JUDGE: HON. GEORGE H. WU
14 JP MORGAN CHASE BANK N.A.,) PLAINTIFF'S OPPOSITION TO
15 CALIFORNIA RECONVEYANCE) MOTION TO DISMISS FIRST
16 CO., and DOES 1-150, inclusive,) AMENDED COMPLAINT
17 Defendants.)
) DATE: January 6, 2011
) TIME: 8:30 AM
) CRTRM: 10

21
22 Plaintiff MARGARET CARSWELL respectfully submits the following Memorandum
23 of Points and Authorities in opposition to Defendants' Motion to Dismiss Plaintiff's
24 First Amended Complaint.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 1. INTRODUCTION

4 Defendants seek to dismiss Plaintiff's First Amended Complaint (FAC) claiming that
5 her ten causes of action are not supported by sufficient facts. Chase and CRC assert,
6 "the entire FAC consists of nothing but boilerplate conclusions of law and facts."
7 Boilerplate is text that can be reused in new contexts or applications without being
8 changed much from the original. It means standardized, commonplace, stereotyped,
9 unvaried. Perhaps when Defendants see so many lawsuits raising the same issues of
10 fraud, lack of standing, forgery, perjury, etc., they all start to look alike. Chase seeks to
11 harvest millions of houses across America without producing any paper from its vaults
12 that would support its claims.

13 Here are some of the "boilerplate" facts from numbered paragraphs in Plaintiff's
14 First Amended Complaint that Chase characterizes as commonplace and unvaried:

15 9. Plaintiff signed the mortgage documents on December 20, 2006 at her
16 home alone with BRUCE CUSTER a notary public. She was not given an
17 opportunity to review the documents. After she signed, the notary took all the
18 documents and told Plaintiff that WaMu or Alliance Title Company would
19 forward the finalized documents to her. Plaintiff never received any documents
20 from WaMu or Alliance, including disclosures required by the Truth in Lending
21 Act and Notice of Right to Cancel.

22 10. When Plaintiff finally received a copy of her loan application from
23 Chase in November 2009, she discovered that the application stated her income
24 to be \$50,300.00 per month and her "business," a nonprofit entity she had
25 formed called Earth First Construction, to have a net worth of \$1,000,000.
26 Plaintiff did not provide these fictitious figures to the broker or bank.

27 11. Plaintiff has not received notice that WaMu's beneficial interest has
28 been transferred to Chase.

1 12. WaMu securitized Plaintiff's single-family residential mortgage loan
2 through Washington Mutual Mortgage Securities Corp., evidenced by
3 Supplement to Prospectus dated January 11, 2007, WaMu Mortgage Pass-
4 Through Certificates, Series 2007-OA1 Trust. Plaintiff is informed and believes
5 that the trust was terminated on October 15, 2010, and that the lawful
6 beneficiary has been paid in full.

7 16. WaMu retained no beneficial interest in the loan that could be
8 transferred to Chase in a Purchase and Assumption Agreement dated September
9 25, 2008. On September 1, 2009, Deborah Brignac, Vice President of Chase,
10 Vice President of CRC, and "robo-signer" whose name and variant signatures
11 have attested to the truth of facts recited in declarations and affidavits in
12 hundreds of thousands of foreclosures, executed an Assignment of Deed of Trust
13 granting to Bank of America all beneficial interest in Plaintiff's Deed of Trust.

14 17. Neither WaMu, CRC, Chase, nor anyone else has recorded a transfer of
15 a beneficial interest in the Note or any other interest in the Property to Chase. If
16 Chase is a beneficiary, CRC has breached its fiduciary duty to Plaintiff under the
17 DOT by not recording the alleged transfer of the beneficial interest and/or
18 servicing duty from WaMu to Chase, by not indicating on the Notice of Default
19 that Chase is the alleged beneficiary, and by not recording a substitution of
20 trustee indicating that commencing on September 25, 2008, it was a trustee for
21 Chase rather than WaMu.

22 22. Clement Durkin did not have personal knowledge of the matters
23 described in his declaration, which purported to describe attempts by Chase to
24 contact Plaintiff as required by §2923.5.

25 23. On October 1, 2010, California Attorney General Jerry Brown sent a
26 letter to Chase (Exhibit 10) and ordered Chase to halt all foreclosures in
27 California. A copy of the letter is posted on the Attorney General's website....
28 Mr. Brown wrote, "JP Morgan Chase has now admitted that employees assigned

1 to handling foreclosures signed affidavits without first personally reviewing the
2 contents of borrowers' loan files. Thus, borrowers suffered the foreclosure of
3 their homes based on affidavits which JP Morgan Chase had not confirmed to be
4 accurate. This admission strongly suggests that any purported verification by JP
5 Morgan Chase that it complied with section 2923.5 before commencing a
6 foreclosure in California is similarly suspect.

7
8 And the FAC goes on. Boilerplate? Commonplace? Sadly, it appears to be so. The
9 Congressional Oversight Panel released a report on November 16, 2010. Plaintiff
10 requests that the Court take Judicial Notice of the COP report. It casts this lawsuit and
11 similar lawsuits in a different light than anything confronting the legal system in the
12 past.

13 In the fall of 2010, reports began to surface alleging that companies
14 servicing \$6.4 trillion in American mortgages may have bypassed legally
15 required steps to foreclose on a home. Employees or contractors of Bank of
16 America, GMAC Mortgage, and other major loan servicers testified that they
17 signed, and in some cases backdated, thousands of documents claiming personal
18 knowledge of facts about mortgages that they did not actually know to be true.

19 Allegations of “robo-signing” are deeply disturbing and have given rise to
20 ongoing federal and state investigations. At this point the ultimate implications
21 remain unclear. It is possible, however, that “robo-signing” may have concealed
22 much deeper problems in the mortgage market that could potentially threaten
23 financial stability and undermine the government's efforts to mitigate the
24 foreclosure crisis.

25 If documentation problems prove to be pervasive and, more importantly,
26 throw into doubt the ownership of not only foreclosed properties but also pooled
27 mortgages, the consequences could be severe. Clear and uncontested property
28 rights are the foundation of the housing market. If these rights fall into question,

1 that foundation could collapse. Borrowers may be unable to determine whether
2 they are sending their monthly payments to the right people (COP Report, Nov.
3 16, 2010, pp. 4-5).

4 GMAC Mortgage, a subsidiary of current TARP recipient Ally Financial,
5 announced on September 24, 2010 that it had identified irregularities in its
6 foreclosure document procedures that raised questions about the validity of
7 foreclosures on mortgages that it serviced. Similar revelations soon followed
8 from Bank of America, a former TARP recipient, and others. Employees of
9 these companies or their contractors have testified that they signed, and in some
10 cases backdated, thousands of documents attesting to personal knowledge of
11 facts about the mortgage and the property that they did not actually know to be
12 true.

13 The Panel emphasizes that mortgage lenders and securitization servicers
14 should not undertake to foreclose on any homeowner unless they are able to do
15 so in full compliance with applicable laws and their contractual agreements with
16 the homeowner (COP Report, Nov. 16, 2010, p. 6).

17 If document irregularities prove to be pervasive and, more importantly,
18 throw into question ownership of not only foreclosed properties but also pooled
19 mortgages, the result could be significant harm to financial stability – the very
20 stability that the TARP was designed to protect. In the worst case scenario, a
21 clear chain of title – an essential element of a functioning housing market – may
22 be difficult to establish for properties subject to mortgage loans that were pooled
23 and securitized. Rating agencies are already cautious in their outlook for the
24 banking sector, and further blows could have a significant effect (COP Report,
25 Nov. 16, 2010, p. 7).

26 If irregularities in the foreclosure process reflect deeper failures to document
27 properly changes of ownership as mortgage loans were securitized, then it is
28 possible that Treasury is dealing with the wrong parties in the course of the

1 Home Affordable Modification Program (HAMP). This could mean that
2 borrowers either received or were denied modifications improperly. Some
3 servicers dealing with Treasury may have no legal right to initiate foreclosures,
4 which may call into question their ability to grant modifications or to demand
5 payments from homeowners, whether they are part of a foreclosure mitigation
6 program or otherwise. The servicers' tendency to cut corners may also have
7 affected the determination to modify or foreclose upon individual loans.

8 Many of the entities implicated in the recent document irregularities,
9 including Ally Financial, Bank of America, and JPMorgan Chase, are current or
10 former TARP recipients (p. 8).

11
12 Chase wants to take real property without offering any proof that might tend to
13 show who holds a beneficial interest in the promissory note on the grounds that it is a
14 big bank in the third year of negotiating a Purchase and Assumption Agreement with
15 FDIC. It is no wonder that all those lawsuits are beginning to look so much alike.

16 In Santa Barbara County, the Grantor-Grantee Index lists 10,844 Notices of
17 Default recorded between January 1, 2007 and December 1, 2010, and 8,423—78%—
18 resulted in a Notice of Trustee's Sale. With a population of 400,000, one in ten
19 residents have faced foreclosure since the foreclosure crisis began. In the preceding
20 three and a half years, 2,816 Notices of Default were recorded, resulting in 1,130
21 Notices of Trustee's Sale—40%. The number of Notices of Trustee's Sale recorded in
22 Santa Barbara County in the past 12 months was 2,438; only 116 were recorded during
23 a comparable period in 2005. There was a 21-fold increase in Trustee's Sales in four
24 years.

25 Nationally, RealtyTrac.com reports 2,188,585 million homes in foreclosure. Over
26 6 million people currently anticipate they will be escorted out of their homes by a
27 Sheriff. The Center for Responsible Lending reports 6.6 million foreclosures since
28 2007. It forecasts up to 12 million more during the next five years, resulting in eighteen

1 million foreclosures, a total of sixty million homeowners on the street. One in nine
2 homeowners is seriously delinquent on their mortgage, and one in four homeowners owe
3 more than the value of their property¹. The American Dream is becoming a nightmare.
4 Business-as-usual is a formula for collapse of our social and economic institutions.

5 The report of the Congressional Oversight Panel continues on page 25:

6 If it is unclear who owns the mortgage, clear title to the property itself
7 cannot be conveyed. If, for example, the trust were to enforce the lien and
8 foreclose on the property, a buyer could not be sure that the purchase of the
9 foreclosed house was proper if the trust did not have the right to foreclose on the
10 house in the first place. Similarly, if the house is sold, but it is unclear who owns
11 the mortgage and the note and, thus, the debt is not properly discharged and the
12 lien released, a subsequent buyer may find that there are other claimants to the
13 property. In this way, the consequences of foreclosure documentation
14 irregularities converge with the consequences of securitization documentation
15 irregularities: in either situation, a subsequent buyer or lender may have unclear
16 rights in the property.

17 These irregularities may have significant bearing on many of the participants
18 in the mortgage securitization process:

19 Sponsors, Servicers, and Trustees – Failure to follow representations and
20 warranties found in PSAs can lead to the removal of servicers or trustees and
21 trigger indemnification rights between the parties. Failure to record mortgages
22 can result in the trust losing its first-lien priority on the property. Failure to
23 transfer mortgages and notes properly to the trust can affect the holdings of the
24 trust. If transfers were not done correctly in the first place and cannot be
25 corrected, there is a profound implication for mortgage securitizations: it would
26 mean that the improperly transferred loans are not trust assets and MBS are in
27

28 ¹ responsiblelending.org/mortgage-lending/research-analysis/snapshot-of-a-foreclosure-crisis.html

1 fact not backed by some or all of the mortgages that are supposed to be backing
2 them. This would mean that the trusts would have litigation claims against the
3 securitization sponsors for refunds of the value given by the trusts to the
4 sponsors (or depositors) as part of the securitization transaction. If successful, in
5 the most extreme scenario this would mean that MBS trusts (and thus MBS
6 investors) could receive complete recoveries on all improperly transferred
7 mortgages, thereby shifting the losses to the securitization sponsors.

8 Borrowers/Homeowners may have several available causes of action.

9 They may seek to reclaim foreclosed properties that have been resold. They
10 may also refuse to pay the trustee or servicer on the grounds that these parties do
11 not own or legitimately act on behalf of the owner of the mortgage or the note.
12 In addition, they may defend themselves against foreclosure proceedings on the
13 claim that robo-signing irregularities deprived them of due process.

14 15 2. STATEMENT OF FACTS

16 Discovery has not commenced. Chase holds all the cards. They have vast resources
17 and privileged access to millions of documents that were in WaMu's possession when
18 FDIC was appointed receiver of WaMu on September 25, 2008. Yet all Chase offers
19 the Court as proof of their asserted claim to take Plaintiff's Property is a Purchase &
20 Assumption Agreement they are negotiating with FDIC. They offer no proof that
21 Plaintiff's loan was an asset on the books of WaMu on the effective date of the P & A
22 Agreement. This may seem like a commonplace matter to a bank, but if they have
23 proof, let's see it.

24 Defendants' Memorandum of Points and Authorities closely follows their memo of
25 Points and Authorities filed on August 9 in support of their first motion to dismiss.
26 However, they added a paragraph to their Statement of Facts on page 2:

27 As successor in interest to WaMu, JPMorgan had recorded an Assignment of
28 Deed of Trust on September 2, 2009, which transferred all beneficial interest

1 under the deed of trust to Bank of America, N.A., as successor by merger to
2 "LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificate
3 Series 2007-)A1 Trust". A copy of the Assignment is attached as Exhibit "2" to
4 the FAC.

5
6 The first notice printed on that Assignment of Deed of Trust, Plaintiff's Exhibit 2,
7 is so significant it is printed above the title to the document. The Assignment begins:

8 IMPORTANT NOTICE

9 NOTE: After having been recorded, this Assignment should be kept with the
10 Note and the Deed of Trust hereby assigned.

11 ASSIGNMENT OF DEED OF TRUST

12
13 Plaintiff's Note was never in the possession of Bank of America. Bank of America
14 disclaims any interest in Plaintiff's mortgage. The Declaration of Margaret Carswell,
15 attached to her First Amended Complaint as Exhibit 2, states at paragraph 17:

16 I did a search at the County Recorder's Office that led to the discovery of an
17 Assignment of Deed of Trust to Bank of America concerning "WaMu Mortgage
18 Pass-Through Certificates Series 2007-OA1Trust". On January 29, 2010, I
19 visited the manager of our local BofA, who informed me unequivocally that
20 BofA had no interest in my mortgage.

21 That one paragraph contains more relevant evidence than all the evasive posturing
22 that fills hundreds of pages of documents filed by Defendants in this case so far.
23 Inasmuch as the Assignment of Deed of Trust is evidence of a break in the chain of
24 title, it raises a triable issue of fact. BofA says they have no interest and no record in
25 their database describing Plaintiff's Property, supporting Plaintiff's contention that
26 Defendants have no interest in her Property.

27 Defendants cite *Yeomalakis v. FDIC*, 562 F.3d 56 (C.A. 1, Apr. 3, 2009).

1 Yeomalakis sued WaMu for charging penalties retroactively to a credit card prior to
2 the bank's demise on September 25, 2008. The District Court held that the borrower's
3 claims were preempted and that Yeomalakis failed to state his claims in a way that
4 avoided the presumption of preemption. The subject matter of the lawsuit, an illegal
5 penalty tacked on to a credit card, was obviously a liability of WaMu. In *Carswell*,
6 there is no liability claim. Plaintiff alleges that WaMu did not have any interest in
7 Plaintiff's property when its assets were assumed by Chase. Chase now asserts it can
8 prove that WaMu was a servicer. If they succeed, then the question for the court will
9 be whether WaMu's role as a servicer transformed Plaintiff's Property into an asset.

10 The material allegations in the First Amended Complaint are teeming with triable
11 issues. A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
12 complaint's sufficiency. *North Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 581
13 (9th Cir. 1983). All material allegations in the complaint, "even if doubtful in fact," are
14 assumed to be true. The court must assume the truth of all factual allegations and must
15 "construe them in a light most favorable to the nonmoving party." *Gompper v. VISX,*
16 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *Walleri v. Fed. Home Loan Bank of Seattle*, 83
17 F.3d 1575, 1580 (9th Cir. 1996). The court must accept as true all reasonable
18 inferences to be drawn from the material allegations in the complaint. *Barker v.*
19 *Riverside County Office of Education*, 584 F.3d 821, 824 (9th Cir. 2009).

20 The Complaint alleges facts in support of Plaintiff's contention that Chase cannot
21 prove it is authorized to take her home, and CRC is under a duty to reconvey the Deed
22 of Trust to Plaintiff.

23 24 3. WRONGFUL FORECLOSURE – FIRST CAUSE OF ACTION

25 Chase has not attempted to prove to this Court that it acquired any interest in
26 Plaintiff's residence. Only Chase knows whether plaintiff's loan was on the books as an
27 asset of WaMu on September 25, 2008, when Chase "acquired certain assets." If it was
28 not, then Chase did not acquire any beneficial interest in Plaintiff's loan.

1 Defendants allege in their Memorandum, "JPMorgan obtained WaMu' servicing
2 interests in the Subject Loan pursuant to P & A Agreement with the FDIC."
3 (Defendants' Memorandum of Points and Authorities 7:5-6). This is an evidentiary fact
4 that cannot be proven in argument supporting a Motion to Dismiss. There is nothing in
5 the P & A Agreement that shows whether WaMu had any servicing interest in
6 Plaintiff's loan on September 25, 2008. If the proposition alleged by defense counsel is
7 not true, then the next fact alleged in their Memorandum must also not be true:
8 "Accordingly, contrary to Plaintiff's allegations, JPMorgan and CRC have properly
9 initiated the foreclosure proceedings in regard to the Subject Property." (7:7-8).

10 Where factual findings or the contents of the documents are in dispute, those
11 matters of dispute are not appropriate for judicial notice. *Caravantes v. California*
12 *Reconveyance Co.*, 2010 WL 4055560, 9 (SD.Cal. 2010), citing *Darensburg v.*
13 *Metropolitan Transp. Comm'n*, 2006 WL 167657, at *2 (N.D.Cal. Jan.20, 2006).

14 WaMu did not form a contract with Plaintiff because WaMu intended that Plaintiff
15 would breach. WaMu sold its beneficial interest in Plaintiff's property, receiving no
16 less than the balance on Plaintiff's note, and retained merely a duty to service the loan.
17 Chase claims that it obtained WaMu' servicing interests. Therefore, Chase acquired no
18 beneficial interest in Plaintiff's loan and has no right to sell her property unless it can
19 prove that the beneficiary is getting its share of the proceeds. A servicer is not a black
20 hole.

21 There was a time, not long ago, when servicers were trusted. Times have changed.
22 People no longer trust the institutions they once revered. Stated in the Congressional
23 Oversight Panel's report at page 14:

24 Effective transfers of real estate depend on parties being able to answer
25 seemingly straightforward questions: who owns the property? how did they
26 come to own it? can anyone make a competing claim to it? The irregularities
27 have the potential to make these seemingly simple questions complex. As a
28 threshold matter, a party seeking to enforce the rights associated with the

1 mortgage must have standing in court, meaning that a party must have an
2 interest in the property sufficient that a court will hear their claim and can
3 provide them with relief. *See* Stephen R. Buchenroth and Gretchen D. Jeffries,
4 *Recent Foreclosure Cases: Lenders Beware* (June 2007; *Wells Fargo v. Jordan*,
5 914 N.E.2d 204 (Ohio 2009) (“If plaintiff has offered no evidence that it owned
6 the note and mortgage when the complaint was filed, it would not be entitled to
7 judgment as a matter of law.”); Christopher Lewis Peterson, *Foreclosure,*
8 *Subprime Mortgage Lending, and the Mortgage Electronic Registration System,*
9 *University of Cincinnati Law Review*, Vol. 78, No. 4, at 1368-1371 (Summer
10 2010); *MERSCORP, Inc. v. Romaine*, 861 N.E. 2d 81 (N.Y. 2006) (URL's
11 redacted per local rule). Accordingly, a second set of problems relates to the
12 chain of title on mortgages and the ability of the foreclosing party to prove that
13 it has legal standing to foreclose. While these problems are not limited to the
14 securitization market, they are especially acute for securitized loans because
15 there are more complex chain of title issues involved.

16
17 Chase argues that it acquired the right to sell Plaintiff's property when it acquired
18 WaMu's assets through the Purchase and Assumption Agreement. Chase could only
19 acquire what WaMu owned in September 2008. At that time, WaMu no longer owned
20 Plaintiff mortgage, if indeed it ever did. Perhaps the identity of the beneficiary can be
21 proven, but it remains unknown.

22 Even if Chase does have possession of the original Note, which is unlikely given
23 their strategy, there has still been a break in the chain of title. The Transfer of the Deed
24 of Trust to Bank of America (Plaintiff's Exhibit 2 attached to First Amended
25 Complaint) was recorded on September 2, 2009, when Defendants filed their first
26 Notice of Default. Therefore the transfer was done after the fact. The Assignment of
27 Deed of Trust was subscribed by Debora Brignac, a robo-signer whose signature is
28 probably a forgery. Plaintiff has obtained certified copies of documents showing

1 sixteen different signatures with the name Deborah Brignac, which were recorded in
2 Santa Barbara County.

3 Under the terms of Plaintiff's Deed of Trust, Section 24, an assignment can only be
4 accomplished by the lender, which Chase is not. It claims to be a servicer.

5 24. Substitute Trustee. Lender, at its option, may from time to time appoint a
6 successor trustee to any Trustee appointed hereunder by an instrument executed
7 and acknowledged by Lender and recorded in the office of the Recorder..."

8
9 Bank of America did not become the owner of the Note when it acquired LaSalle
10 Bank's trustee duties under the Certificate Trust. The Trust has been terminated and no
11 record of it appears in the IRS records for first quarter filings 2010. BofA may have a
12 "beneficial interest" under the DOT, pursuant to a faulty Assignment of Deed of Trust,
13 but it is not the owner or holder of the Note. The Declaration of Margaret Carswell,
14 attached to Defendants' motion as Exhibit 1, states at paragraph 17:

15 17. I did a search at the County Recorder's Office that led to the discovery of an
16 Assignment of Deed of Trust to Bank of America concerning "WaMu Mortgage
17 Pass-Through Certificates Series 2007-OA1Trust". On January 29, 2010, I
18 visited the manager of our local BofA, who informed me unequivocally that
19 BofA had no interest in my mortgage. Subsequent research into this "Trust"
20 revealed that my Note was bundled along with thousands of other mortgage
21 notes on or before January 1, 2007, securitized by Pacific Investment
22 Management Company and listed with at least two companies, Transamerica
23 Funds and Allianz Global Investors. Several of the mortgages contained in the
24 Trust have already been foreclosed.

25 Chase cannot foreclose on Plaintiff's property without joining the owner of the
26 note because Chase is not a real party in interest. *In re Foreclosure Cases*, 521 F.Supp.
27 3d 650, 653 (S.D. Ohio).

28 Defendants argue that Chase assumed no *liability* for actions taken by WaMu prior

1 to September 25, 2008 in regard to the subject loan. This obscures the issue. Plaintiff
2 alleges that Chase acquired no *asset* that authorizes it to proceed with foreclosure of
3 Plaintiff's property as a result of actions taken by WaMu prior to September 25, 2008.
4 Plaintiff does not base her complaint on a liability of WaMu that might have been
5 assumed by FDIC during the liquidation of WaMu and the pending transfer of its
6 assets and liabilities to Chase. Plaintiff alleges that WaMu did not have any interest in
7 Plaintiff's residence on September 25, 2008. Her property was not an asset of WaMu.
8 WaMu did not hold any beneficial interest in Plaintiff's property, and therefore Chase
9 could not, did not, and will not acquire any interest in Plaintiff's residence under the
10 pending P & A Agreement. This is not a liability case.

11 Chase seems to assert that it can foreclose on any residence in the world by
12 authority of the P & A Agreement on the grounds that WaMu might have had some
13 interest in the property at some time, even in the absence of a contract with the owner,
14 or even if WaMu had sold its interest in the loan several times to investors.

15 Plaintiff alleges in ¶59 of her FAC that WaMu securitized plaintiff's single-family
16 residential mortgage loan through Washington Mutual Mortgage Securities Corp.,
17 evidenced by Prospectus Supplement to Prospectus dated January 11, 2007, WaMu
18 Mortgage Pass-Through Certificates, Series 2007-OA1 Trust. If WaMu retained no
19 beneficial interest in the promissory note when it brokered the deal, Chase cannot
20 acquire what WaMu never had.

21 If WaMu transferred all of its beneficial interest in the note at the inception of the
22 loan and never entered it in its books as an asset, and entered no corresponding reserve
23 on its ledger as a liability in the event of Plaintiff's default, then Chase could not
24 acquire ownership of the note by purchasing WaMu's assets because WaMu had
25 nothing to sell. This is a question of fact. Plaintiff alleges in ¶19 of the FAC that Chase
26 does not have standing to sell plaintiff's property because Chase is not the holder of the
27 Note and Chase did not pay any consideration to plaintiff. Chase does not own the loan
28 and cannot identify the owner of the loan. Chase did not purchase the loan for value

1 when it took over WaMu in September 2008.

2 Chase has no beneficial interest in the note and can only proceed if it proves that it
3 is the servicer and joins the owner of the note in this action. To dismiss this lawsuit
4 before ascertaining the truth of these allegations would be unjust. Chase could produce
5 the evidence in its files, but it prefers that Plaintiff be denied her day in court.

6 In *Saxon Mortgage v. Hillery*, Case No. C-08-4357 (N.D. Cal. 2008), the court
7 ruled that the foreclosing party, Consumer, must demonstrate that it is the holder of the
8 deed of trust and the promissory note. The *Saxon* court cited *In re Foreclosure Cases*,
9 521 F.Supp.2d 650, 653 (S.D. Ohio, 2007), which held that to show standing in a
10 foreclosure action, the plaintiff must show that it is the holder of the note and the
11 mortgage at the time the complaint was filed.

12 For a valid assignment, there must be more than just assignment of the deed alone;
13 the note must also be assigned. "The note and mortgage are inseparable; the former as
14 essential, the latter as an incident. An assignment of the note carries the mortgage with
15 it, while an assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S.
16 271, 274 (1872).

17 In *In re Nosek*, 2008 WL 1899845 (Bkrcty.D.Mass. 2008), the court awarded Rule
18 9011 sanctions against a lender for falsely representing that it was holder of the note
19 and mortgage, when the lender had sold the note and mortgage five days after closing.

20 *In re Foreclosure Cases* involved 27 foreclosure actions filed in the Southern
21 District of Ohio, in which the court questioned whether the plaintiff lenders had
22 standing when the foreclosure complaint was filed and whether the court had subject
23 matter jurisdiction to hear the cases at the time the foreclosure complaint was filed.
24 Judge Thomas M. Rose wrote, [This Court] "will not tolerate a lender's or servicer's
25 disregard for the rules that govern litigation, including contested matters, in the federal
26 courts. It is the creditor's responsibility to keep a borrower and the Court informed as
27 to who owns the note and mortgage and is servicing the loan, not the borrower's or the
28 Court's responsibility to ferret out the truth." *In re Foreclosure Cases*, 521 F.Supp.2d

1 650, 652 (S.D. Ohio, 2007).

2 If WaMu transferred its beneficial interest in Plaintiff's loan through a Pooling and
3 Service Agreement, Chase cannot foreclose against Plaintiff without joining the Real
4 Party in Interest and showing that it is acting with that party's knowledge and blessing.

5
6 4. CAL CIVIL CODE §2923.5 – SECOND CAUSE OF ACTION

7 Defendants cite *Mabry v. Aurora Loan Services*, 185 Cal.App.4th 208 (2010) in
8 support of the proposition that the NOD satisfies the requirements of Cal. Civil Code
9 §2923.5 since it recites the form language of the statute, regardless of whether or not it
10 includes a declaration under penalty of perjury. However, this misses the point of the
11 statute. §2923.5 requires contact with the borrower, not form language stapled to a
12 form. If the party sending the Notice does not attach a declaration under penalty of
13 perjury, the NOD has no evidentiary value in proving compliance with the notice
14 requirements.

15 The Court of Appeal ruled in *Mabry* that a borrower has a private right of action
16 under § 2923.5 and is not required to tender the full amount of the mortgage as a
17 prerequisite to filing suit, since that would defeat the purpose of the statute. Under the
18 court's narrow construction of the statute, §2923.5 merely adds a procedural step in the
19 foreclosure process. Since the statute is not substantive, it is not preempted by federal
20 law. The declaration specified in §2923.5 does not have to be signed under penalty of
21 perjury, and if the notice is defective, the borrower's remedy is limited to getting a
22 postponement of a foreclosure while the lender files a new notice of default that
23 complies with §2923.5.

24 On remand from the Court of Appeal, the *Mabry* trial court found on November
25 23, 2010, that the Notice of Default did contain the statutorily required form language
26 stating that the lender contacted the borrower, tried with due diligence to contact the
27 borrower, etc. However, the declaration on the Notice of Default was not signed under
28 penalty of perjury, and therefore it had no evidentiary value in proving whether or not

1 the defendants satisfied the notice requirements of section 2923.5. After considering
2 declarations of the parties in an evidentiary hearing, the court found that defendant did
3 not make the necessary contacts as required by §2923.5 and granted Mabry's
4 application for a preliminary injunction to stay foreclosure proceedings until the
5 defendant complied with the requirements of Civil Code §2923.5. As a decision of the
6 California Superior Court, the Mabry ruling may not be precedent, but the court's logic
7 is persuasive. Defendants cannot satisfy the requirements of §2923.5 by stamping the
8 statutory language on the Notice of Default. They must prove that they made the
9 necessary contacts required by the statute, and an unsigned or unsworn declaration has
10 no evidentiary value. Therefore, to show compliance with the notice requirements of
11 the statute, an evidentiary hearing is necessary.

12 13 5. UNJUST ENRICHMENT – THIRD CAUSE OF ACTION

14 Defendants argue that Plaintiff pleads no facts indicating that JPMorgan's mere
15 receipt of payments from Plaintiff on the Subject Loan is somehow unjust. The FAC
16 alleges:

17 After WaMu originated the loan, it transferred all beneficial interest in the loan
18 (¶16). WaMu retained no beneficial interest in the loan that could be transferred to
19 Chase in a Purchase and Assumption Agreement (¶16). Neither WaMu, CRC, Chase,
20 nor anyone else has recorded a transfer of a beneficial interest in the Note or any other
21 interest in the Property to Chase. (¶17). Chase does not have standing to enforce the
22 Note because Chase is not the owner of the Note, Chase is not a holder of the Note,
23 and Chase is not a beneficiary under the Note. Only a noteholder or beneficiary under
24 the DOT has the capacity to exercise a power of sale. Chase does not claim to be a
25 holder of the note or a beneficiary. Chase merely describes itself as a servicer in the
26 Notice of Trustee's Sale (¶19). Chase has no interest in Plaintiff's mortgage (¶28).

27 It is not the receipt of payments that makes the payments unjust, but rather the lack
28 of entitlement to the payments coupled with the repeated written, published, and

1 recorded threat of foreclosure and eviction.

2 Chase may or may not have a servicing interest, depending on facts under Chase's
3 control. If Chase can show that it obtained "servicing interests" in Plaintiff's loan, then
4 perhaps Chase can also show whether it actually forwarded payments of \$107,766.00
5 from plaintiff to the beneficial owner of the loan. If Chase kept the money, it has been
6 unjustly enriched at plaintiff's expense. In what republic could any bank, regardless of
7 size, presume the right to take money without naming the beneficiary or accounting for
8 its disbursement, then seize a private house when the homeowner asks where the
9 payments are going?

10
11 6. RESPA AND TILA VIOLATIONS – FOURTH CAUSE OF ACTION

12 No one should be compelled to pay money to a party to whom the money is not
13 owed. During the past year Plaintiff has requested documents from Chase, both in
14 correspondence and through a Qualified Written Request under RESPA sent on April
15 30, 2010 (attached to FAC as Exhibit 5). Chase has refused to produce any relevant
16 material. Plaintiff cannot ascertain the facts to prove her case if Chase refuses to
17 respond with information in its possession. This is not an isolated incident. Chase and
18 other big banks are systematically blocking efforts of borrowers to obtain information
19 as part of a cover-up. They are ignoring virtually everyone's QWR and seeking the
20 blessing of the courts to shield them from disclosure under RESPA and during
21 discovery.

22 Chase asserts that Plaintiff has not been harmed by its statutory violations. Chase
23 cites *Eronini v. JP Morgan Chase Bank, NA*, No. 08-55929, 2010 WL 737841 (9th Cir
24 Mar.3, 2010) in support of its assertion that Plaintiff must allege damages to support of
25 a RESPA claim. The 9th Circuit court stated in *Enronini*, "This disposition is not
26 appropriate for publication and is not precedent."

27 Chase's assertion that damages must be asserted to state a cause of action for
28 violation of a statutory requirement to furnish information, where the bank has refused

1 to provide information requested in a Qualified Written Request, is like insisting that a
2 party pursuing discovery specify its damages when seeking a discovery order after
3 interrogatories have been ignored. Such a rule would invite mayhem. How does a party
4 with dramatically inferior access to information prove damages when a party with \$2
5 trillion dollars in assets and thousands of lawyers under contract ignores a QWR and
6 refuses to respond to discovery?

7 Paragraph 35 of the FAC alleges damages. "As a direct and proximate result of
8 Defendants' failure to comply with RESPA, Plaintiff has suffered and continues to
9 suffer actual damages in that she is unable to ascertain the basis for Defendants' claims
10 to her property, she cannot identify the owner of the beneficiary of the Note, she
11 cannot determine whether her payments to Chase in excess of \$100,000 were
12 converted by Chase or paid to the beneficiary, and she has no evidence upon which to
13 conclude that Defendants are acting in good faith with lawful authority in their
14 attempts to foreclose the Property."

15 A mobster holds a gun to a woman's head and says, "Gimme all your dough." Her
16 heart races. A cop comes along. The gunman shrugs and says, "What's the harm? I was
17 just kidding."

18 Defendants argue that Chase should not have any liability under TILA for WaMu's
19 actions, citing *Cacres* (9:15-19). "*Cacres*" is not defined in Defendants' Memo of
20 Points and Authorities.

21 22 7. NO CONTRACT – FIFTH CAUSE OF ACTION

23 No contract was formed between WaMu and Plaintiff because there was no
24 meeting of the minds and no shared expectation. A contract is not simply words on
25 paper. WaMu did not disclose to Plaintiff that it committed underwriting fraud by
26 altering Plaintiff's loan application to satisfy underwriting requirements for the loans.
27 WaMu's intent was evidenced by WaMu's failure to provide Plaintiff with copies of
28 documents as required by Section 17 of the Deed of Trust and provisions of TILA.

1 Chase asserts that the one-year Statute of Limitations has expired, but the failure of
2 WaMu to provide documents at closing, a clear violation of federal law, serves another
3 evidentiary purpose. It shows that WaMu had a motive. WaMu didn't fund the
4 mortgage from its own assets, but rather brokered the loan with funds provided by
5 PIMCO, which obtained the funds from institutional investors. WaMu did not provide
6 the borrower with a copy of the loan application it forged because it didn't want to
7 alert the borrower to the fact that it was manufacturing toxic waste for unsuspecting
8 investors to consume. This is not a question of whether Chase assumed a liability in
9 the P & A Agreement with FDIC. It shows that Plaintiff and WaMu never came to a
10 mutual understanding.

11 Between December 28 and 31, 2006, WaMu transferred Plaintiff's Promissory
12 Note to the Custodian of the Certificate Trust for WaMu Mortgage Pass-Through
13 Certificates Series 2007-OA1 Trust, otherwise known as the Depositor. This entity was
14 named WaMu Asset Acceptance Corp. WaMu did not assign the Deed of Trust at the
15 time it transferred the Note to the Custodian, thereby causing a break in the chain of
16 title. The Certificate Trust was a Real Estate Mortgage Investment Conduit (REMIC),
17 a complex pool of mortgage securities created for the purpose of acquiring collateral in
18 which the base was divided into varying classes of securities backed by mortgages
19 with different maturities and coupons. Pursuant to the terms of the Pooling and
20 Servicing Agreement, the REMIC could not own the mortgages for tax reasons.

21 Chase did not acquire the Custodian's assets through the Purchase & Assumption
22 Agreement. Chase only acquired the assets of Washington Mutual Bank.

23 Some recent decisions have suggested that lenders do not have a duty to ascertain
24 the ability of borrowers to repay home loans. The failure of some big banks to follow
25 traditional underwriting practices during the past decade has received the approval of
26 some courts, but not others, in the early rounds of the foreclosure debacle. If lenders
27 have no duty to weigh the likelihood that borrowers can demonstrate even a remote
28 ability to repay bank loans, then our time-tested system governing transfers of interest

1 in real estate is collapsing.

2 Evaporation of the duty of the lender to follow commonly accepted underwriting
3 practices does not settle an even more troubling issue raised by the current economic
4 crisis. It was not just that banks didn't care if the homeowners could pay back their
5 loans that crippled our economy. They made loans knowing that the unsophisticated
6 borrowers could never possibly pay them back. That is how the law of contract came
7 tumbling down. If one party enters into an agreement knowing full well that the other
8 party will default, there is no contract. It doesn't rise to a question of duty or liability.
9 There is no contract because there is no shared expectation.

10 They made loans to dead guys. They made home loans for empty lots without
11 looking at the property. They fired loan officers who asked questions such as, "How
12 can a short-order cook making \$16,000 a year pay for a \$800,000 home?" They made
13 up numbers and typed them on loan applications for borrowers to sign without giving
14 them an opportunity to read the application. Plaintiff signed a blank application and
15 was not shown a copy of the completed form. Twenty-something year-old MBAs on
16 Wall Street referred to these "products" as "toxic assets" as they rated them triple-A
17 and sold them to unsuspecting investors. It was unprecedented. Congress did not
18 foresee it, so there were no statutes regulating this unruly behavior. There is no legal
19 precedent, so the courts must turn to Common Law principles.

20 Income figures were written on Plaintiff's loan application without her knowledge
21 after she signed the papers. The notary came to her home at 8:00 PM on the winter
22 solstice to get her signature on the final documents—at home, alone, at night, four days
23 after the sudden, unexpected death of her mother. (See Declaration of Margaret
24 Carswell, page 2, filed July 13, 2010).

25 Meeting of the minds is a necessary element in the formation of a contract, a
26 notion that dates back to the origins of contract law. Consent of the parties is one of the
27 requisites of a valid contract for the sale of realty. *Ussery v. Jackson*, 78 Cal. App. 2d
28 355 (1947). It is essential to the creation of such a contract that there be a meeting of

1 the minds of the parties and a mutual agreement on the terms of the contract. *Holland*
2 *v. McCarthy*, 173 Cal. 597 (1916); *German Sav. & Loan Soc. v. McLellan*, 154 Cal.
3 710 (1908); *Lonergan v. Scolnick*, 129 Cal. App. 2d 179 (1954); *Cook v. Mielke*, 3 Cal.
4 App. 2d 736 (1935).

5 The writing must evince a free and mutual understanding of the parties and show
6 that they both agreed on the same thing in the same sense, *Estes v. Hardesty*, 66 Cal.
7 App. 2d 747 (1944), or the writing has no binding effect on either. *Patterson v.*
8 *Clifford F. Reid, Inc.*, 132 Cal. App. 454 (1933); *Scott v. Los Angeles Mountain Park*
9 *Co.*, 92 Cal. App. 258 (1928). When the writing shows that there was no meeting of
10 the minds on the material terms of the proposed agreement, no contract exists, no
11 obligation to convey rests on the vendor, and the purchaser is under no duty to accept
12 the property or pay for it. *Burgess v. Rodom*, 121 Cal. App. 2d 71 (1953); *Salomon v.*
13 *Cooper*, 98 Cal. App. 2d 521 (1950). In such a case it is immaterial that the signature
14 of the party charged, *Patterson v. Clifford F. Reid, Inc.*, 132 Cal. App. 454 (1933), or
15 of both parties, is affixed. *Morton v. Foss*, 48 Cal. App. 2d 117 (1941).

16 It is indispensable to a valid memorandum of an agreement to sell and convey land
17 that it be complete evidence of the terms to which the parties have assented. If it
18 establishes that there was in fact no contract, if it discloses that upon essential and
19 material terms the minds of the parties did not meet and that such terms were left open
20 for future settlement, then there is no binding obligation upon the seller to convey or
21 the buyer to accept and pay for the land. It will be regarded as merely an inchoate
22 effort. Implications will not be indulged. *Salomon v. Cooper*, 98 Cal.App.2d 521, 522-
23 523 (1950).

24 An action for damages for breach of contract for the purchase or sale of real
25 property will not lie unless the writing contains the essential terms and material
26 elements of such an agreement without recourse to parole evidence of the intention of
27 the contracting parties. *Dillingham v. Dahlgren*, 52 Cal.App. 322, 326-327 (1921).
28 The law does not provide a remedy for breach of an agreement to agree in the future,

1 and the court may not speculate upon what the parties will agree. *Autry v. Republic*
2 *Productions, Inc.*, 30 Cal.2d 144, 151, 152 (1947).

3 "Plaintiff's evidence does not establish the indispensable 'meeting of the minds'
4 regarding the material terms of this transaction and, therefore, the existence of an
5 enforceable contract." *Martin Deli v. Schumacher*, 52 N.Y.2d 105, 109, 436 N.Y.S.2d
6 247, 417 N.E.2d 541 (1981).

7 "If no meeting of the minds has occurred on the material terms of a contract, basic
8 contract law provides that no contract formation has occurred. If no contract formation
9 has occurred, there is no settlement agreement to enforce pursuant to (C.C.P.) section
10 664.6 or otherwise." *Weddington Productions, Inc. v. Flick*, 60 Cal.App.4th 793, 801
11 (1998).

12 David Horton wrote in the UCLA Law Review this year, "The perception that
13 adherents (to standard form contracts) did not read and could not understand fine-print
14 terms made it difficult to identify the requisite 'meeting of the minds' or 'mutual assent'
15 of contract formation." David Horton, "The Shadow Terms: Contract Procedure and
16 Unilateral Amendments," 57 UCLA Law Review 605 (February, 2010).

17 William R. Hubbard wrote in 2009, "Contracts enjoy substantial communication
18 advantages over patents. One advantage with contracts is that the parties to a contract
19 dispute are typically the same parties involved in the contract's formation. For
20 example, the core of a contract is the parties' *meeting of the minds*, which both parties
21 will want to memorialize clearly. If a dispute arises regarding the meaning of a
22 contract term, both parties can provide evidence regarding the *meeting of the minds*.
23 "Efficient Definition and Communication of Patent Rights: the Importance of Ex Post,
24 Santa Clara Computer and High Technology Law Journal (January, 2009).

25 26 8. FRAUD AND CONCEALMENT – SIXTH CAUSE OF ACTION

27 Chase quotes *Hahn v. Mirda*, 147 Cal.App.4th 740, 745 (2007). "To state a cause of
28 action for fraudulent concealment, the defendant must have been under a duty to

1 disclose some fact to the plaintiff." Let's start with Plaintiff's loan application, which
2 was filled in with fraudulent figures by WaMu's agents. No documents were given to
3 Plaintiff, in violation of statutory duties spelled out in TILA. Defendants' argument
4 continues, "Plaintiff has failed to allege that WaMu's conduct exceeded a typical
5 money lender and thus fails to state a claim." So *everybody* was doing it. Plaintiff can
6 only hope and pray that Chase Bank and CRC make this argument in front of the jury.

8 9. QUIET TITLE – SEVENTH CAUSE OF ACTION

9 Defendants argue that tender of the full amount of the debt is necessary, citing
10 *Nool, Pagtalunan, Miller, and Caravantes*. However, if Chase has no enforceable
11 claim to the Property, and cannot produce any evidence that it acquired or possesses
12 any rights to the property, then full tender would be an absurd requirement to stop their
13 frivolous claim. Anyone could maliciously file a Notice of Trustee's Sale and evict a
14 homeowner. If a lack of resources to tender the outstanding balance on the loan
15 prevented the homeowner from having his day in court, how would that tend to prove
16 that the crook had a legitimate claim? *Mabry* is correct that a requirement of tender
17 defeats the purpose of the statute.

18 The core issue in this case is to ascertain who is the mortgagee. Plaintiff did not
19 borrow money from Chase. Plaintiff's pre-discovery inquiries indicate that WaMu did
20 not own the loan on September 25, 2008, and therefore Chase is not the mortgagee.
21 This issue cannot be brushed aside on the pretense that California is a non-judicial
22 state. Non-judicial does not mean *outlaw*. If Chase is not the mortgagee, it would be
23 unjust to dismiss the complaint and allow Chase to seize Plaintiff's home. She has a
24 grant deed (FAC Exhibit 9). Chase has a hotly contested Purchase and Assumption
25 Agreement that generates millions of dollars in lawyers' fees per month.

26 Plaintiff acknowledges that she received the funds. She is ready, willing and able
27 to resume monthly payments to the owner of the note. Is Chase legally entitled to
28 repayment of these funds from Plaintiff? Chase must produce the original promissory

1 note and show that Chase is the beneficiary of the note, or that it is working on behalf
2 of the beneficiary with the beneficiary's blessing. Plaintiff is informed and believes
3 that Chase cannot produce the necessary instruments. She will show at trial that the
4 promissory note was bundled into a presold "Trust" which was then securitized and
5 offered for investment many times over. In other words, the note was "atomized" and
6 no longer exists as an enforceable mortgage document.

7 Chase can only have acquired from WaMu assets that were owned by WaMu.
8 Plaintiff asserts on information and belief that the funds received by Plaintiff were not
9 recorded in the accounting ledgers of WaMu. She further asserts that Chase is unable
10 to produce any proof that these funds were properly accounted for in WaMu's ledger.
11 Chase does not have any legal right to demand payment or sell the property for failure
12 to pay.

13 Defendant quotes *Nool v. Homeq Servng*, "The cloud upon his title persists until
14 the debt is paid." But the question is, paid to whom? Plaintiff didn't borrow money
15 from Chase. If Plaintiff could identify the owner of the note, she would pay the
16 mortgagee until the debt was paid and then the Deed of Trust would be reconveyed to
17 her. She requests that her title be quieted because the purported debt has been spread
18 over a multitude of unidentifiable investors unknowingly involved in her mortgage
19 during that chaotic decade when the system was broken by the banks.

20 Multiple banks may attempt to foreclose upon the same property. Borrowers
21 who have already suffered foreclosure may seek to regain title to their homes
22 and force any new owners to move out. Would-be buyers and sellers could find
23 themselves in limbo, unable to know with any certainty whether they can safely
24 buy or sell a home. If such problems were to arise on a large scale, the housing
25 market could experience even greater disruptions than have already occurred,
26 resulting in significant harm to major financial institutions. For example, if a
27 Wall Street bank were to discover that, due to shoddily executed paperwork, it
28 still owns millions of defaulted mortgages that it thought it sold off years ago, it

1 could face billions of dollars in unexpected losses. (COP Report, Nov. 16, 2010,
2 pp. 4-5)

3
4 10. DECLARATORY/INJUNCTIVE RELIEF – EIGHTH CAUSE OF ACTION

5 Plaintiff's home has been scheduled by Defendant CRC to be sold on the Santa
6 Barbara Courthouse steps every thirty days since 07-22-2010. A Trustee's Sale of
7 Plaintiff's home is currently scheduled for January 3, 2011. There is clearly a
8 significant and grueling controversy brewing between the parties and a pressing need
9 for a judicial determination of the parties' rights and duties concerning the validity of
10 the Promissory Note and Deed of Trust and Defendants' rights to proceed with a sale
11 of the Property.

12 Documentation irregularities could also have major effects on Treasury's
13 main foreclosure prevention effort, the Home Affordable Modification Program
14 (HAMP). Some servicers dealing with Treasury may have no legal right to
15 initiate foreclosures, which may call into question their ability to grant
16 modifications or to demand payments from homeowners. The servicers' use of
17 “robo-signing” may also have affected determinations about individual loans;
18 servicers may have been more willing to foreclose if they were not bearing the
19 full costs of a properly executed foreclosure. Treasury has so far not provided
20 reports of any investigation as to whether documentation problems could
21 undermine HAMP. It should engage in active efforts to monitor the impact of
22 foreclosure irregularities, and it should report its findings to Congress and the
23 public.

24 The housing market and the broader economy remain troubled and thus
25 vulnerable to future shocks. In short, even as the government's response to the
26 financial crisis is drawing to a close, severe threats remain that have the
27 potential to damage financial stability (COP Report, Nov. 16, 2010, pp. 5-6).
28

1 Plaintiff requests a Temporary Restraining Order and Preliminary Injunction
2 restraining defendants from conducting a Trustee's Sale of the Property during the
3 pendency of this action.
4

5 11. SLANDER OF TITLE – NINTH CAUSE OF ACTION

6 Defendants make a closing argument when they state that a disparaging remark
7 must cause damages to be actionable. Causation is not an element that can be proven
8 before the Court in a motion to dismiss. Plaintiff has adequately pled that she suffered
9 an injury as a direct result of Defendants' actions. Defendants have cratered the market
10 value of Plaintiff's Property and caused her extreme emotional distress. To say there is
11 no damage as a result of Defendants' public humiliation of Plaintiff is calloused. See
12 *Sullivan v. Wash. Mut. Bank, FA*, 2009 WL 3458300, at *4-5 (N.D.Cal. Oct.23, 2009)
13 (concluding that the initiation of foreclosure proceedings put the plaintiff's interest in
14 her property sufficiently in jeopardy to allege an injury under § 17200); *Rabb v. BNC*
15 *Mortgage, Inc.*, 2009 WL 3045812, at *2 (C.D.Cal. Sept.21, 2009) (same). To assert
16 that defamatory, damaging publications are protected by a privilege justifying
17 dismissal of Plaintiff's claim at the pleading stage is untenable. No one can record a
18 groundless Notice of Default and publish a Notice of Trustee's Sale against an
19 unsuspecting neighbor and then hide behind a privilege under California law—not
20 even Chase Bank. Plaintiff can prove that her drop in property value was proximately
21 caused by the NOD and NOTS.
22

23 12. INTENTIONAL EMOTIONAL DISTRESS – TENTH CAUSE OF ACTION

24 "The pursuit of economic interests does not qualify as 'outrageous' conduct," argue
25 Defendants, citing *Trerice v. Blue Cross*, 209 Cal.App3d 878 (1989)

26 Times have changed since 1989. It would be difficult to find three people on the
27 street who would not agree that the mortgage meltdown of the past decade was
28 outrageous. Defendants' conduct as alleged in the First Amended Complaint was so

1 outrageous that it exceeded all bounds tolerated in a civilized society. Forged
2 documents, systemic perjury, underwriting fraud, selling worthless junk to
3 unsuspecting retirement funds in order to make a buck. Criminal.

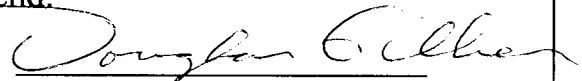
4 Defendants conclude by citing *Kruse v. Bank of America*, 202 Cal.App.3d 38, 67
5 (1988), which states there is no claim for intentional infliction of emotional distress
6 where lender simply attempted to collect a debt due under a security interest. Depends
7 on who's the lender, and that is why this motion to dismiss must be denied.

8 **Public Faith in Due Process Could Suffer.** If the public gains the
9 impression that the government is providing concessions to large banks in order
10 to ensure the smooth processing of foreclosures, the people's fundamental faith
11 in due process could suffer (COP Report, Nov. 16, 2010, p. 84)².

12
13 **13. CONCLUSION**

14 For the foregoing reasons, Plaintiff Margaret Carswell respectfully requests that
15 the Court deny Defendants' Motion to Dismiss in its entirety. If any claims are
16 insufficiently plead, Plaintiff requests leave to amend.

17 Date: December 3, 2010



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19 Attorney for Plaintiff
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21 Santa Barbara, CA 931056
22 douglasgillies@gmail.com
(805) 682-7033

23 ² **About the Congressional Oversight Panel.**

24 In response to the escalating financial crisis, on October 3, 2008, Congress provided Treasury with
25 the authority to spend \$700 billion to stabilize the U.S. economy, preserve home ownership, and
26 promote economic growth. Congress created the Office of Financial Stability (OFS) within Treasury
27 to implement the TARP. At the same time, Congress created the Congressional Oversight Panel to
28 "review the current state of financial markets and the regulatory system." The Panel is empowered to
hold hearings, review official data, and write reports on actions taken by Treasury and financial
institutions and their effect on the economy (COP Report, Nov. 16, 2010, p. 124)

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6 Attorney for Plaintiff
7 MARGARET CARSWELL

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 MARGARET CARSWELL,

11 Plaintiff,

12 v.

13 JP MORGAN CHASE BANK N.A.,
14 CALIFORNIA RECONVEYANCE CO., and DOES
15 1-150, inclusive,

16 Defendants.

) Case No. CV 10-5152-GW (PLAx)

)
) **PROOF OF SERVICE BY MAIL**
)

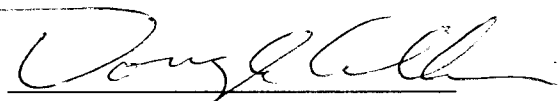
17 I declare that I am over the age of 18 years, employed in the County of Santa Barbara, State of
18 California, and not a party to the above-entitled action.

19 On December 3, 2010, I served a true copy of the foregoing document described as **Plaintiff's**
20 **Opposition to Motion to Dismiss First Amended Complaint and Request for Judicial Notice in**
21 **Opposition to Motion to Dismiss First Amended Complaint** by placing it in a sealed Priority Mail
22 envelope and depositing it in the U.S. Post Office postage prepaid addressed to the following:

22 Michael B. Tannatt
23 Adorno Yoss Alvarado & Smith
24 633 W. Fifth Street, Suite 1100
25 Los Angeles, CA 90017

26 Place of Mailing: Santa Barbara, CA. Executed on: December 3, 2010 in Santa Barbara, CA.

27 I hereby certify that I am a member of the Bar of the United States District Court, Central
28 District of California, and that the foregoing is true and correct.


Douglas Gillies