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7 DARYOUSH JAVAHERI

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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DARYOUSH JAVAHERI,) No. CV10 8185 ODW (FFMx)
Plaintiff,) **SECOND AMENDED COMPLAINT**
v.) 1) Violation of Cal Civ. Code §2923.5
JP MORGAN CHASE BANK N.A.,) 2) Wrongful Foreclosure
and DOES 1-50, inclusive,) 3) Quasi Contract
Defendants.) 4) No Contract
) 5) Quiet Title
) 6) Declaratory and Injunctive Relief
) 7) Intentional Infliction of Emotional
) Distress
)
) Jury Trial Demanded

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1 **INTRODUCTION**

2 1. During the past decade, Washington Mutual Bank (WaMu) and JPMorgan
3 Chase Bank (Chase) abandoned traditional underwriting practices and contributed
4 to a frenzy of real estate speculation by issuing predatory loans that ultimately
5 lowered property values in the United States by 30-60%. Kerry Killinger, CEO of
6 Washington Mutual, took home more than \$100 million during the seven years he
7 steered WaMu into bankruptcy. In March 2011, the FDIC filed a sixty-page
8 complaint against Killinger and Stephen Rotella, a former WaMU COO, alleging
9 gross negligence, breach of fiduciary duty, and fraudulent conveyance. *FDIC v.*
10 *Kerry Killinger, Stephen Rotella, et. al.*, Case No. 2:11-cv-00459 USDC (WD WA
11 Mar. 16, 2011) .

12 2. WaMu issued millions of predatory loans between 2001 and 2008 with the
13 knowledge that borrowers, including Plaintiff, would default and lose their homes.
14 WaMu filled in fictitious figures on Plaintiff's loan application so that it would
15 meet underwriting standards and WaMu could earn fees when it sold the loan to
16 investors and then acted as servicer without any risk of loss when the borrower
17 defaulted. Such blatant, systematic, and inexcusable acts of fraud constituted a
18 criminal enterprise. As a direct, foreseeable result of WaMu's illegal behavior, over
19 a million families will lose their homes if the courts do not intervene and permit
20 the borrowers to conduct discovery in order to determine who owns their loans.

21 3. Plaintiff DARYOUSH JAVAHERI is facing illegal foreclosure of his
22 home at a Trustee's Sale, currently scheduled for April 26, 2011. The loan
23 application he submitted to Washington Mutual, attached as **Exhibit 1**, shows that
24 his loan application consisted only of his name and address and three account
25 numbers. The rest of the application was filled in by unknown employees of
26 WaMu on or about September 8, 2006, to meet underwriting standards so that
27 WaMu would collect fees when it sold the loan to unsuspecting investors in
28 mortgage-backed securities and collateralized debt obligations.

PARTIES AND JURISDICTION

1
2 4. Plaintiff DARYOUSH JAVAHERI is the owner of the single-family
3 residence located at 10809 Wellworth Avenue, Los Angeles, California 90024,
4 APN 4325-005-014 (“the Wellworth Property”). He acquired it by a Grant Deed
5 recorded on December 11, 2006. The legal description is:

6 Lot 8 in Block 31 of Tract No 7803 in the City of Los Angeles, County of
7 Los Angeles, State of California, as per map recorded in Book 88, Pages 73
8 to 75 inclusive of Maps, in the Office of the County Recorder of said
9 County.

10 5. Defendant JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,
11 (“Chase”), a New York corporation licensed to do business in California, claims to
12 be a note holder, beneficiary, or servicer for investment trusts of a Note secured by
13 the Wellworth Property.

14 6. Defendants Does 1-50, inclusive, are sued under fictitious names. When
15 their true names and capacities are known, Plaintiff will amend this Complaint and
16 insert their names and capacities. Plaintiff is informed and believes and thereon
17 alleges that each of these fictitiously named defendants is legally responsible,
18 negligently or in some other actionable manner, for the events and happenings
19 hereinafter referred to and proximately thereby caused the injuries and damages to
20 plaintiff as hereinafter alleged, or claims some right, title, estate, lien, or interest in
21 the residence adverse to Plaintiff’s title and their claims constitute a cloud on
22 Plaintiff’s title to the property, or participated in unlawful or fraudulent acts that
23 resulted in injury to Plaintiff’s person or property. Upon information and belief,
24 Does 1-30 claim to have become successors in interest to the Subject Mortgage by
25 virtue of Plaintiff’s loan having been made a part of a securitization process
26 wherein certain residential mortgages and the promissory notes based thereon were
27 securitized by aggregating a large number of promissory notes into a mortgage
28 loan pool, then selling security interests in that pool of mortgages to investors by

1 way of items called "Secondary Vehicles".

2 7. There is diversity of citizenship between Plaintiff and Defendant Chase,
3 and the matter in controversy exceeds, exclusive of interest and costs, the sum of
4 \$75,000. This court has jurisdiction of the action pursuant to 28 U.S.C. 1332(a).
5 Declaratory relief is authorized under 28 U.S.C. 2210.

6
7 **JURY TRIAL DEMAND**

8 8. Plaintiff demands a jury trial on all issues.

9
10 **CLAIM FOR RELIEF**

11 9. Plaintiff brings this action against JPMorgan Chase Bank, NA ("Chase")
12 and Does 1 through 50 for attempting to sell Plaintiff's Wellworth Property at a
13 trustee's sale and deprive Plaintiff of his residence without a lawful claim to the
14 Property. Plaintiff seeks to clear his title of Chase's claim.

15
16 **BACKGROUND FACTS**

17 10. Plaintiff is the owner of the Wellworth Property under the terms of a
18 Grant Deed executed by Helene Caron in favor of Daryoush Javaheri dated
19 October 19, 2006 (Exhibit 1).

20 11. To finance his purchase of the Wellworth Property, Plaintiff submitted a
21 loan application to Washington Mutual Bank ("WaMu") on September 8, 2006. A
22 copy of Plaintiff's Uniform Residential Loan Application, furnished to him by
23 WaMu with instructions to leave virtually all of the items blank, is attached hereto
24 as **Exhibit 2**.

25 12. Plaintiff purportedly signed an Adjustable Rate Note (**Exhibit 3**)
26 (hereinafter "Note") and a Deed of Trust (**Exhibit 4**) on November 14, 2006, at
27 Chicago Title Company. He was not given an opportunity to review the
28 documents, other than to quickly initial or sign some pages. After he signed, a

1 Chicago Title Company employee informed Plaintiff that WaMu would forward
2 the final documents to him. Plaintiff did not receive any documents from Chicago
3 Title or WaMu.

4 13. Plaintiff is named as Borrower on the Note and on the Deed of Trust
5 dated November 14, 2007 ("DOT"). Washington Mutual Bank, FA is identified on
6 the DOT as "Lender" as well as "the beneficiary under this security agreement."
7 Chicago Title Company is named as Trustee.

8 14. Plaintiff is informed and believes that between November 15 and
9 November 30, 2007, WaMu transferred Plaintiff's Note to Washington Mutual
10 Mortgage Securities Corporation. The Note was then sold to an investment trust
11 and became a part of, or was subject to, a Loan Pool, a Pooling and Servicing
12 Agreement, a Collateralized Debt Obligation, a Mortgage-Backed Security, a
13 Mortgage Pass-Through Certificate, a Credit Default Swap, an Investment Trust,
14 and/or a Special Purpose Vehicle. The security is identified as Standard & Poor
15 CUSIP # 31379XQC2, Pool Number 432551. Thereafter, WaMu acted solely as a
16 servicer of the loan, and was neither Lender nor Beneficiary after November 2007.

17 15. CHASE claims to be the note holder, lender, beneficiary, and servicer
18 for investment trusts of the Subject Mortgage. Chase has not recorded its claim of
19 ownership of the purported mortgage.

20 16. Plaintiff is informed and believes that California Reconveyance
21 Company ("CRC") is a wholly owned subsidiary of Chase.

22 17. On August 16, 2010, CRC recorded a Notice of Trustee's Sale ("NOTS")
23 stating that the Wellworth Property would be sold at public auction on September
24 7, 2010. The NOTS bears the purported signature of Deborah Brignac, Vice
25 President of California Reconveyance Company, as Trustee. The NOTS included
26 an unsigned "declaration" pursuant to Cal. Civil Code Section 2923.54 bearing the
27 name of Ann Thorn, First Vice President, JPMorgan Chase Bank, National
28 Association. Chase is identified as a servicer on the NOTS.

1 **FIRST CAUSE OF ACTION – VIOLATION OF CAL CIV CODE §2923.5**

2 18. Plaintiff re-alleges and incorporates by reference the allegations
3 contained in paragraphs 1 through 17.

4 19. On or about March 22, 2010, Chase Home Finance LLC in Jacksonville
5 FL mailed to Plaintiff a Notice of Collection Activity, attached hereto as **Exhibit 5**,
6 stating that Plaintiff had not made his monthly payments since November 2009. It
7 stated, "You may cure this default within thirty (30) days from date of letter" (sic)
8 and "your home loan may be eligible for a loan modification program."

9 20. Within 30 days, Plaintiff's lawyer, Fariba Banayan, faxed a letter to
10 Chase offices in Jacksonville FL, Columbus OH, and Glendale CO requesting the
11 bank's assistance to rectify the account. It stated, in part, "This office has been
12 retained to represent Daryoush Javaheri in reference to the above stated loan. All
13 future communications with Mr. Javaheri in this regard should be conducted
14 through this office.... Please provide my client with the alternatives available to
15 him at this time regarding this loan." The letter is attached as **Exhibit 6**. Chase did
16 not respond to Mr. Banayan's timely request for assistance.

17 21. California Civil Code § 2923.5 provides that a borrower may designate
18 an attorney to discuss options with the mortgagee, beneficiary, or authorized agent,
19 on the borrower's behalf, to avoid foreclosure. § 2923.5 (a) states:

20 (1) A mortgagee, trustee, beneficiary, or authorized agent may not file a
21 notice of default pursuant to Section 2924 until 30 days after contact is
22 made as required by paragraph (2) or 30 days after satisfying the due
23 diligence requirements as described in subdivision (g).

24 (2) A mortgagee, beneficiary, or authorized agent shall contact the
25 borrower in person or by telephone in order to assess the borrower's
26 financial situation and explore options for the borrower to avoid
27 foreclosure. During the initial contact, the mortgagee, beneficiary, or
28 authorized agent shall advise the borrower that he or she has the right to
request a subsequent meeting and, if requested, the mortgagee, beneficiary,
or authorized agent shall schedule the meeting to occur within 14 days. The
assessment of the borrower's financial situation and discussion of options
may occur during the first contact, or at the subsequent meeting scheduled

1 for that purpose. In either case, the borrower shall be provided the toll-free
2 telephone number made available by the United States Department of
3 Housing and Urban Development (HUD) to find a HUD-certified housing
4 counseling agency. Any meeting may occur telephonically.

5 22. Chase did not contact Plaintiff or Mr. Banayan, either in person or by
6 telephone, to discuss Plaintiff's financial condition and the impending foreclosure.
7 Chase did not call, it did not write, and it did not provide a toll-free HUD number
8 to Plaintiff or his lawyer. Chase did not offer to meet with Plaintiff or his lawyer
9 and did not advise them that Plaintiff had a right to request a subsequent meeting
10 within 14 days.

11 23. California Civil Code § 2923.5(g) states that a notice of default may be
12 filed pursuant to § 2924 when a mortgagee, beneficiary, or authorized agent has
13 *not* contacted a borrower provided that the failure to contact the borrower occurred
14 despite the due diligence of the mortgagee, beneficiary, or authorized agent. Due
15 diligence is defined in (g) as:

16 (1) A mortgagee, beneficiary, or authorized agent shall first attempt to
17 contact a borrower by sending a first-class letter that includes the toll-free
18 telephone number made available by HUD to find a HUD-certified housing
19 counseling agency.

20 (2) (A) After the letter has been sent, the mortgagee, beneficiary, or
21 authorized agent shall attempt to contact the borrower by telephone at least
22 three times at different hours and on different days. Telephone calls shall be
23 made to the primary telephone number on file.

24 (B) A mortgagee, beneficiary, or authorized agent may attempt to
25 contact a borrower using an automated system to dial borrowers, provided
26 that, if the telephone call is answered, the call is connected to a live
27 representative of the mortgagee, beneficiary, or authorized agent.

28 (C) A mortgagee, beneficiary, or authorized agent satisfies the
telephone contact requirements of this paragraph if it determines, after
attempting contact pursuant to this paragraph, that the borrower's primary
telephone number and secondary telephone number or numbers on file, if
any, have been disconnected.

(3) If the borrower does not respond within two weeks after the

1 telephone call requirements of paragraph (2) have been satisfied, the
2 mortgagee, beneficiary, or authorized agent shall then send a certified letter,
with return receipt requested.

3 (4) The mortgagee, beneficiary, or authorized agent shall provide a
4 means for the borrower to contact it in a timely manner, including a toll-free
5 telephone number that will provide access to a live representative during
business hours.

6 (5) The mortgagee, beneficiary, or authorized agent has posted a
7 prominent link on the homepage of its Internet Web site, if any, to the
following information:

8 (A) Options that may be available to borrowers who are unable to
9 afford their mortgage payments and who wish to avoid foreclosure, and
10 instructions to borrowers advising them on steps to take to explore those
options.

11 (B) A list of financial documents borrowers should collect and be
12 prepared to present to the mortgagee, beneficiary, or authorized agent when
discussing options for avoiding foreclosure.

13 (C) A toll-free telephone number for borrowers who wish to discuss
14 options for avoiding foreclosure with their mortgagee, beneficiary, or
authorized agent.

15 (D) The toll-free telephone number made available by HUD to find a
16 HUD-certified housing counseling agency.

17
18 24. Chase did none of the above. Chase Fulfillment Center sent Plaintiff a
19 "Request Disqualification" on September 1, 2010, attached as **Exhibit 7**. It said,
20 "Unfortunately, because your initial request was less than seven (7) business days
21 from the date of the scheduled foreclosure sale on your home, you are no longer
22 eligible under Making Home Affordable ("MHA") Program guidelines." A second
copy was sent on September 7.

23
24 25. Chase and CRC recorded a Notice of Default against the Wellworth
25 Property in the Los Angeles County Recorder's Office on May 14, 2010 (**Exhibit**
26 **9**). Attached to the NOD was a Declaration of Compliance with Cal. Civil Code
27 §2923.5 certified under penalty of perjury by Renee Daniels on behalf of Chase.
28 She checked off a box that read, "The mortgagee, beneficiary or authorized agent

1 tried with due diligence but was unable to contact the borrower to discuss the
2 borrower's financial situation and to explore options for the borrower to avoid
3 foreclosure as required by Cal. Civ. Code Section 2923.5. Thirty days or more
4 have elapsed since these due diligence efforts were completed."

5 26. Renee Daniels either misrepresented the facts, if and when she signed
6 the declaration, or she did not have personal knowledge of the matters described in
7 her declaration when she asserted that Chase attempted to contact Plaintiff as
8 required by §2923.5. Since the contacts required by §2923.5 did not occur, the
9 foreclosure is illegal.

10

11 **SECOND CAUSE OF ACTION – WRONGFUL FORECLOSURE**

12 27. Plaintiff re-alleges and incorporates by reference the allegations
13 contained in paragraphs 1 through 26.

14 28. Soon after WaMu originated the loan, Plaintiff is informed and believes
15 that WaMu transferred all beneficial interest in the loan to a private investor.

16 29. Neither WaMu, Chicago Title, CRC, nor Chase has recorded a transfer
17 of beneficial interest in the Note to Chase.

18 30. Chase does not have standing to enforce the Note because Chase is not
19 the owner of the Note, Chase is not a holder of the Note, and Chase is not a
20 beneficiary under the Note. Chase does not claim to be a holder of the Note or a
21 beneficiary. Chase describes itself as a loan servicer in the Notice of Trustee's Sale.
22 If Chase can prove that it is a servicer, Chase cannot foreclose on Plaintiff's
23 property without authorization from the Lender under the terms of the Deed of
24 Trust.

25 31. Plaintiff is informed and believes that Chase cannot produce an original
26 Note. Chase does not own the loan and cannot identify the owner of the loan.
27 Chase did not purchase the loan when it took over WaMu in September 2008
28 because WaMu had sold its beneficial interest in the loan two years earlier.

1 32. A power of sale is conferred by the mortgage under Cal. Civ. Code
2 §2924. The Adjustable Rate Note attached as Exhibit 3 states, "Lender or anyone
3 who takes this Note by transfer and who is entitled to receive payments under this
4 Note is called the "Note Holder." The Note states in paragraph 7(C): "Notice of
5 Default. If I am in default, the Note Holder may send me a written notice telling
6 me that if I do not pay the overdue amount by a certain date, the Note Holder may
7 require me to pay immediately the full amount." The Note gives the right to
8 collect, if timely payments are not made, to the Lender and anyone who takes the
9 Note by transfer. This does not include a servicer who is not the Note Holder.

10 33. According to Plaintiff's Deed of Trust, the "Lender" is WASHINGTON
11 MUTUAL BANK, FA, and the "Trustee" is Chicago Title Company.

12 Consistent with the language of the Note, only the Lender is authorized
13 under paragraph 22 of the DOT to accelerate the loan:

14 "Lender shall give notice to Borrower prior to acceleration
15 following Borrower's breach of any covenant of agreement in this
16 Security Instrument...

17 "If Lender invokes the power of sale, Lender shall execute or
18 cause Trustee to execute a written notice of the occurrence of an event
19 of default and of Lender's election to cause the Property to be sold.
20 Trustee shall cause this notice to be recorded in each county in which
21 any part of the Property is located." (DOT page 13, paragraph 22).

22 34. Washington Mutual Bank remained the Lender for no more than a few
23 days until it sold the loan. Thereafter, it was a servicer of the loan. The Note
24 Holder or Lender was the Investment Trust or that funded the loan.

25 35. Paragraph 24 of the DOT (Plaintiff's Exhibit 4) states:

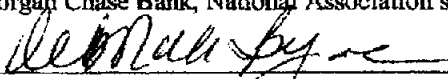
26 24. Substitute Trustee. Lender, at its option, may from time to time
27 appoint a successor trustee to any Trustee appointed hereunder by an
28 instrument executed and acknowledged by Lender and recorded in the
office of the Recorder of the county in which the property is located.

1 The instrument shall contain the name of the original Lender, Trustee
2 and Borrower, the book and page where this Security Instrument is
3 recorded and the name and address of the successor trustee. Without
4 reconveyance of the property, the successor trustee shall succeed to all
5 the title, powers and duties conferred upon the Trustee herein and by
6 Applicable Law. This procedure for substitution of trustee shall govern
7 to the exclusion of all other provisions for substitution.

8 Chase seeks to proceed with foreclosure of Plaintiff's property even though
9 it cannot identify the Lender and therefore is incapable of substituting the Trustee.

10 36. On May 3, 2010, CRC recorded a Substitution of Trustee (**Exhibit 8**)
11 signed by Deborah Brignac, Vice President of JPMorgan Chase Bank. The
12 signature of Deborah Brignac on the Substitution of Trustee does not resemble the
13 signature of Deborah Brignac, Vice President of California Reconveyance
14 Company on the Notice of Trustee's Sale (**Exhibit 10**). It is a forgery.


15 37. The Substitution of Trustee purports to substitute CRC as Trustee in
16 place of Chicago Title. Brignac's forged signature is acknowledged by Loren
17 Lopez, a California Notary Public. It is not remotely similar to the Deborah
18 Brignac signatures appearing on the recorded documents attached hereto as
19 **Exhibits 11, 12, 13, and 14.**

20 DATE: April 30, 2010
21 JPMorgan Chase Bank, National Association successor in interest to Washington Mutual Bank, FA
22 
23 Deborah Brignac, Vice President

24 STATE OF CALIFORNIA
25 COUNTY OF LOS ANGELES
26 Substitution of Trustee, Exhibit 8 – recorded on May 3, 2010)

27 DATE: 08-16-2010 SEE ATTACHED EXHIBIT

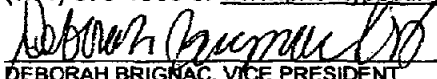
28 CALIFORNIA RECONVEYANCE COMPANY, as Trustee
(714) 259-7850 or www.fidelityasap.com
(714) 573-1985 or www.priorityposting.com


DEBORAH BRIGNAC, VICE PRESIDENT
9200 OAKDALE AVE
CALIFORNIA RECONVEYANCE COMPANY
COLLECTOR ATTEMPTING TO COLLECT A
Notice of Trustee's Sale, Exhibit 10, recorded on Aug. 16, 2010

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DATE: 10-02-2009

CALIFORNIA RECONVEYANCE COMPANY, as Trustee
(714) 259-7850 or www.fidelityasap.com
(714) 573-1965 or www.priorityposting.com




DEBORAH BRIGNAC, VICE PRESIDENT
9200 OAKDALE AVE
MAILSTOP N110612
CHATSWORTH, CA 91311

CALIFORNIA
COLLECTOR
INFORMATION

Exhibit 11 – recorded on Oct. 6, 2009

DATE: 10-01-2009

CALIFORNIA RECONVEYANCE COMPANY, as Trustee
(714) 259-7850 or www.fidelityasap.com
(714) 573-1965 or www.priorityposting.com



DEBORAH BRIGNAC, VICE PRESIDENT
9200 OAKDALE AVE
MAILSTOP N110612
CHATSWORTH, CA 91311

CALIFORNIA
COLLECTOR
INFORMATION

Exhibit 12 – recorded on Oct. 8, 2009

DATE: 10-01-2009

CALIFORNIA RECONVEYANCE COMPANY, as Trustee
(714) 259-7850 or www.fidelityasap.com
(714) 573-1965 or www.priorityposting.com

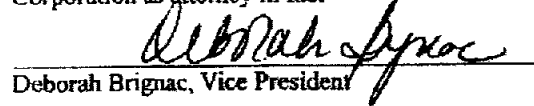


DEBORAH BRIGNAC, VICE PRESIDENT
9200 OAKDALE AVE
MAILSTOP N110612
CHATSWORTH, CA 91311

CALIFORNIA
COLLECTOR
INFORMATION

Exhibit 13 – recorded on Oct. 8, 2009

DATE: September 29, 2010
Wells Fargo Bank, National Association as Trustee for the Certified
Bear Stearns Mortgage Funding Trust 2007-AR2 Mortgage Pass
Corporation as attorney in fact


Deborah Brignac, Vice President

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Exhibit 14 – recorded on Sept. 30, 2010

1 Courts are putting a stop to the epidemic of forgery and robo-signing that
2 infected the banking industry during the past ten years. Deborah Brignac's diverse
3 signatures and Loren Lopez's acknowledgment of them are fraudulent and illegal.

4 38. On May 14, 2010, CRC recorded a Notice of Default ("NOD"), attached
5 hereto as Exhibit 9, describing the Wellworth Property with instructions that
6 Plaintiff contact JPMORGAN CHASE BANK, NATIONAL ASSOCIATION to
7 stop the foreclosure. The NOD was signed by Silvia Freeberg, Assistant Secretary.
8 The "Declaration of Compliance (Cal Civil Code Section 2923.5(b))" attached to
9 the NOD was signed under penalty of perjury by Renee Daniels on behalf of
10 JPMorgan Chase Bank, National Association. Chase is described in the
11 Declaration of Compliance as "The undersigned mortgagee, beneficiary or
12 authorized agent." Washington Mutual is described in the body of the NOD as
13 beneficiary. However, Chase's interest, if any, was acquired from WaMu in
14 September 2008, and WaMu's beneficial interest had terminated when WaMu sold
15 the Note to investors in 2006.

16 39. Chase was not the beneficiary and Brignac had no authority to act on
17 behalf of the beneficiary when someone forged her signature to the Substitution of
18 Trustee. The Substitution of Trustee was unauthorized and fraudulent, so CRC was
19 not authorized to initiate foreclosure against Plaintiff on May 14, 2010, when it
20 recorded the Notice of Default, and it was not acting for the Lender when it filed
21 the Notice of Trustee's Sale on August 16, 2010.

22

23 **THIRD CAUSE OF ACTION – QUASI CONTRACT**

24 40. Plaintiff re-alleges and incorporates by reference the allegations
25 contained in paragraphs 1 through 39.

26 41. Chase demanded monthly mortgage payments from Plaintiff starting in
27 October 2008, and continued to collect payments from Plaintiff for twelve months.
28 Plaintiff reasonably relied upon Chase's assertion that it was entitled to payments

1 for the reason that it had acquired certain assets from WaMu under an agreement
2 with the FDIC.

3 42. Chase knowingly accepted the payments and retained them for its own
4 use knowing that WaMu was not a beneficiary under Plaintiff's Note on the date
5 that its assets were transferred to Chase and therefore Chase did not acquire any
6 right from WaMu to accept or keep Plaintiff's payments. It would be inequitable
7 for Chase to retain the payments it received from Plaintiff. The equitable remedy
8 of restitution when unjust enrichment has occurred is an obligation created by the
9 law without regard to the intention of the parties, and is designed to restore the
10 aggrieved party to his or her former position by return of the thing or its equivalent
11 in money.

12 43. The DOT states in Paragraph 23: "Upon payment of all sums secured
13 by this Security Instrument, Lender shall request Trustee to reconvey the Property
14 and shall surrender this Security Instrument and all notes evidencing debt secured
15 by this Security Instrument to Trustee." The obligations to WaMu under the DOT
16 were fulfilled when WaMu received the balance on the Note as proceeds of sale
17 through securitization to private investors. Chase has been unjustly enriched by
18 collecting monthly payments from Plaintiff.

19 44. Plaintiff seeks restitution for any payments he made to Chase that were
20 not paid to the lender or beneficiary, if any.

21

22 **FOURTH CAUSE OF ACTION - NO CONTRACT**

23 45. Plaintiff re-alleges and incorporates by reference the allegations
24 contained in paragraphs 1 through 44.

25 46. Plaintiff is informed and believes that WaMu routinely approved
26 predatory real estate loans to unqualified buyers in 2006 and 2007 and
27 implemented unlawful lending practices by encouraging brokers and loan officers
28 to falsify borrowers' income and assets to meet underwriting guidelines when

1 borrowers were not qualified.

2 47. Plaintiff followed WaMu's instructions when he submitted a Uniform
3 Residential Loan Application to WaMu that contained only his basic identifying
4 information, such as name, address, phone number, social security number, and
5 bank account number. WaMu employees filled out the application.

6 48. Plaintiff is informed and believes that WaMu pre-sold Plaintiff's
7 mortgage. Immediately after he signed the Note, WaMu transferred all of its
8 interest in the Note to an investment bank that bundled Plaintiff's Note with
9 numerous other residential mortgages into residential mortgage-backed securities
10 ("RMBS") which were structured into synthetic collateralized debt obligations
11 ("CDOs") and sold to investors in Pool Number 432551 identified in Standard &
12 Poor's registry as CUSIP # 31379XQC2.

13 49. Plaintiff is informed and believes that the investment bank intended to
14 short the portfolio it helped to select by entering into credit default swaps to buy
15 protection against the certain event that the promissory notes would default. WaMu
16 expected that Plaintiff would not have the ability to repay the loan. It was not a
17 matter of being unconcerned with the possible outcome that Plaintiff would
18 default; WaMu expected he would default.

19 50. Washington Mutual Bank, the sponsor of the securitization transaction,
20 was a wholly owned subsidiary of Washington Mutual Inc. Securitization of
21 mortgage loans was an integral part of Washington Mutual Inc.'s management of
22 its capital. It engaged in securitizations of first lien single-family residential
23 mortgage loans through Washington Mutual Mortgage Securities Corporation, as
24 depositor, beginning in 2001. WaMu acted only as a servicer of Plaintiff's loan.

25 51. WaMu failed to disclose to Plaintiff that its economic interests were
26 adverse to Plaintiff and that WaMu expected to profit when Plaintiff found it
27 impossible to perform and defaulted on his mortgage.

28 52. A necessary element in the formation of an enforceable contract under

1 the common law is a *meeting of the minds*. Two or more parties must share some
2 expectation that a future event will occur. Plaintiff expected that he would borrow
3 money from WaMu, he would pay it back, and then he would own the Property.
4 WaMu expected that Plaintiff would borrow money, he would not be able to pay it
5 back, and then WaMu or the investors would own the Property. Since there was no
6 shared expectation—no meeting of the minds—no contract was formed between
7 Plaintiff and WaMu.

8 53. In addition to WaMu's expectation that Plaintiff would lose title to the
9 Wellworth Property through foreclosure, WaMu anticipated transferring the Note
10 to investors immediately after Plaintiff signed the Note. Plaintiff is informed and
11 believes that WaMu purchased credit default insurance so that WaMu would
12 receive the balance on the Note when Plaintiff defaulted, in addition to any money
13 WaMu received when it securitized the Note.

14 54. Not only did WaMu dispense with conventional underwriting practices
15 in 2006, it also paid premium fees and other incentives to mortgage brokers who
16 signed up the riskiest borrowers. Fueled by spiraling profits to Chase, WaMu, and
17 other bankers, common law principles of contract formation, customary
18 underwriting practices, and statutory procedures for transferring interests in real
19 property, including the recordation of transfers of interests in real property,
20 disintegrated and the system collapsed.

21 55. WaMu expected that Plaintiff would not perform as merely one victim
22 in a scheme in which:

- 23 (1) WaMu's fees as servicer would be greater as the number of loans increased;
- 24 (2) WaMu's fees as servicer would be greater as the balances of loans increased;
- 25 (3) WaMu would recover the unpaid balance of Plaintiff's loan through credit
26 default insurance when Plaintiff inevitably defaulted; and
- 27 (4) All risk of loss in the event of Plaintiff's default would be borne by investors,
28 not WaMu as the servicer.

1 56. Plaintiff's participation in the mortgage contract was procured by overt
2 and covert misrepresentations and nondisclosures. The parties did not share a
3 single expectation with respect to any of the terms of the mortgage contract and
4 therefore the contract was void *ab initio*.

5 57. No enforceable contract was formed between Plaintiff and WaMu, so his
6 DOT and Promissory Note were not assets of WaMu that could be acquired or
7 assumed by Chase from the Federal Deposit Insurance Corporation (FDIC) as
8 receiver after WaMu was closed by the Office of Thrift Supervision on September
9 25, 2008.

10 58. Chase Bank has no right to receive payment under Plaintiff's mortgage
11 loan and has no right to foreclose on his Wellworth Property. Plaintiff does not
12 seek rescission of the contract. He alleges that the contract was void *ab initio*.

13
14 **FIFTH CAUSE OF ACTION - QUIET TITLE**

15 59. Plaintiff re-alleges and incorporates by reference the allegations
16 contained in paragraphs 1 through 58.

17 60. Plaintiff seeks to quiet title against the claims of Defendants and all
18 persons claiming any legal or equitable right, title, estate, lien, or adverse interest
19 in the Wellworth Property as of the date the Complaint was filed (Cal Code Civil
20 Procedure §760.020)

21 61. Plaintiff is the titleholder of the Wellworth Property according to the
22 terms of the Grant Deed recorded on December 11, 2006.

23 62. WaMu securitized Plaintiff's single-family residential mortgage loan
24 through Washington Mutual Mortgage Securities Corp. Plaintiff is informed and
25 believes that the lawful beneficiary has been paid in full.

26 The DOT states in paragraph 23:

27 23. Reconveyance. Upon payment of all sums secured by this Security
28 Instrument, lender shall request Trustee to reconvey the Property and

1 shall surrender this Security Instrument and all notes evidencing debt
2 secured by this Security Instrument to trustee. Trustee shall reconvey the
3 Property without warranty to the person or persons legally entitled to it...

4 ///

5 63. The DOT does not state that Plaintiff must pay all sums, only that all
6 secured sums must be paid. Plaintiff alleges that the obligations owed to WaMu
7 under the DOT were fulfilled and the loan was fully paid when WaMu received
8 funds in excess of the balance on the Note as proceeds of sale through
9 securitization(s) of the loan and insurance proceeds from Credit Default Swaps.

10 64. Defendants' claims are adverse to Plaintiff because Plaintiff is informed
11 and believes that none of the defendants is a holder of the Note, none of them can
12 prove any interest in the Note, and none of them can prove that the Note is secured
13 by the DOT, as well as for the reasons set forth in the preceding causes of action.
14 As such, Defendants have no right, title, lien, or interest in the Wellworth Property.

15 65. Plaintiff therefore seeks a judicial declaration that the title to the
16 Wellworth Property is vested solely in Plaintiff and that Defendants have no right,
17 title, estate, lien, or interest in the Property and that Defendants and each of them
18 be forever enjoined from asserting any right, title, lien or interest in the Property
19 adverse to Plaintiff.

20

21 **SIXTH CAUSE OF ACTION - DECLARATORY & INJUNCTIVE RELIEF**

22 66. Plaintiff re-alleges and incorporates by reference the allegations
23 contained in paragraphs 1 through 65.

24 67. An actual controversy has arisen and now exists between Plaintiff and
25 Defendants concerning their respective rights and duties. Plaintiff contends:

26 (a) that Chase is not the present holder in due course or beneficiary of a
27 Promissory Note executed by Plaintiff. However, Defendants contend that Chase is
28 the present owner and beneficiary of a Promissory Note executed by Plaintiff.

1 (b) that Defendants are not real parties in interest, do not have standing, and
2 are not entitled to accelerate the maturity of any secured obligation and sell the
3 Wellworth Property because they are not a beneficiary or authorized agent of
4 beneficiaries under the purported Note. However, Defendants assert that they are
5 entitled to sell the Property.

6 (c) that the Substitution of Trustee recorded in Los Angeles County on May
7 3, 2010, which purports to substitute CRC in place of Chicago Title Co. as Trustee
8 under the Deed of Trust dated 11-14-2007, was subscribed with a forged signature
9 of Deborah Brignac and fraudulently acknowledged, and therefore CRC is not a
10 trustee authorized to file a Notice of Default or a Notice of Trustee's Sale on the
11 Wellworth Property. However, Defendants contend that CRC is a trustee duly
12 authorized to file said Notices.

13 68. Plaintiff desires a judicial determination of his rights and duties as to the
14 validity of the Note and DOT, and Defendants' rights to proceed with nonjudicial
15 foreclosure on the Wellworth Property. Unless restrained, Defendants will sell
16 Plaintiff's residence, or cause it to be sold, to Plaintiff's great and irreparable
17 injury, for which pecuniary compensation would not afford adequate relief.

18 69. Defendants' wrongful conduct, unless and until restrained by order of
19 this court, will cause great irreparable injury to Plaintiff as the value of the
20 residence declines under threat of foreclosure and Plaintiff faces the prospect of
21 eviction from his residence. Plaintiff designed and built this home himself. It is
22 unique and cannot be replicated.

23 70. If the foreclosure sale is allowed to proceed, the burden on Plaintiff
24 significantly outweighs the benefit to Defendants, and each of them. By contrast,
25 if the foreclosure sale is enjoined, the burden to defendants is minimal and is not
26 outweighed by the benefit to Plaintiff.

27 71. Plaintiff has no adequate remedy at law for the injuries currently being
28 suffered and that are threatened. It will be impossible for Plaintiff to determine the

1 precise amount of damage that he will suffer if Defendants' conduct is not
2 restrained and Plaintiff must file a multiplicity of suits to obtain compensation for
3 his injuries.

4

5 **SEVENTH CAUSE OF ACTION - INTENTIONAL INFLICTION OF**
6 **EMOTIONAL DISTRESS**

7 72. Plaintiff re-alleges and incorporates by reference the allegations
8 contained in paragraphs 1 through 71.

9 73. Between October 2008 and November 2009 Chase cashed Plaintiff's
10 monthly checks and kept the money when a cursory review of WaMu's records,
11 under Chase's control, would have revealed that Chase had no right to keep the
12 money. When Plaintiff stopped paying, Chase notified Plaintiff in 2010 that it
13 would take his family home—a house that he had built himself. There was no
14 signature or name on Chase's correspondence, so Plaintiff cannot identify the
15 authors prior to commencement of discovery.

16 74. In March 2010, Plaintiff hired a lawyer to negotiate with Chase and
17 explore options to foreclosure. Chase ignored his lawyer's letters, which were
18 faxed to Chase's offices in three states.

19 75. Knowing that it was a servicer, not a beneficiary or lender of Plaintiff's
20 loan, Chase pretended to transfer the deed of trust to its subsidiary, CRC, on April
21 30, 2010, so CRC could record a fraudulent Notice of Default on May 14, 2010.

22 76. Plaintiff contends that the acts and omissions of the Defendants, and
23 each of them, constitute extreme and outrageous conduct.

24 77. Plaintiff further contends that Defendants, and each of them, engaged in
25 such conduct either intentionally or with reckless disregard as to the effect on
26 Plaintiff.

27 78. As a result of said extreme and outrageous conduct by Defendants, and
28 each of them, Plaintiff has suffered severe emotional distress in the amount of

1 \$5,000,000.00.

2 ///

3 **PRAYER**

4 WHEREFORE, Plaintiff requests judgment as follows:

5 1. That this court issue an Order to Show Cause and, after a hearing, issue a
6 Temporary Restraining Order and Preliminary Injunction restraining Defendants,
7 and each of them, during the pendency of this action, from continuing with their
8 efforts to conduct a Trustee's Sale of the Wellworth Property.

9 2. That the attempted foreclosure of the Wellworth Property be declared illegal
10 and that Defendants be forever enjoined and restrained from selling the Property or
11 attempting to sell it or causing it to be sold, either under power of sale pursuant to
12 trust deed or by foreclosure action, and from posting, publishing, or recording any
13 notice of default or notice of trustee's sale contrary to state or federal law.

14 3. That the underlying loan transaction be declared void as a result of
15 Defendants' and WaMu's misrepresentations, fraud, concealment, and predatory
16 loan practices.

17 4. That Defendants make restitution to Plaintiff according to proof.

18 5. For a judgment determining that Plaintiff is the owner in fee simple of the
19 Wellworth Property against the adverse claims of Defendants and that Defendants
20 have no interest in the subject property adverse to Plaintiff.

21 6. For damages in an amount of \$5,000,000.00.

22 6. For costs of suit and reasonable attorney fees.

23 7. For any and all other and further relief that may be just in this matter.

24

25 Date: April 11, 2011

26

Douglas Gillies, Attorney for Plaintiff

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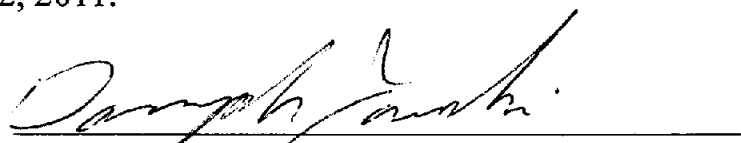
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VERIFICATION

Daryoush Javaheri declares:

I am the plaintiff in the above-entitled action. I have read the foregoing Second Amended Complaint and know its contents. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California, on April 12, 2011.



Daryoush Javaheri

PLAINTIFF'S EXHIBITS

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<u>Exhibit</u>	<u>Description</u>
1	Grant Deed recorded 12/11/2006
2	Uniform Residential Loan Application 9/8/2006
3	Adjustable Rate Note 11/14/2007
4	Deed of Trust 11/14/2007
5	Notice of Collection Activity 3/22/2010
6	Attorney Fariba Banayan's fax to Chase 4/19/2010
7	Request Disqualification (Chase) 9/1/2010 and 9/7/2010
8	Substitution of Trustee 4/30/2010
9	Notice of Default 5/14/2010
10	Notice of Trustee's Sale 8/16/2010
11-14	Deborah Brignac's signatures 10/2/2009 – 9/29/2010

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4 Santa Barbara, CA 93105
5 (805) 682-7033
6 Attorney for Plaintiff
7 DARYOUSH JAVAHERI

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

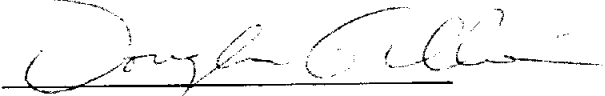
10 DARYOUSH JAVAHERI,) Case No. CV10 8185 ODW (FFMx)
11 Plaintiff,)
12 v.) **PROOF OF SERVICE**
13 JP MORGAN CHASE BANK N.A.,)
14 CALIFORNIA RECONVEYANCE)
15 CO., and DOES 1-150, inclusive,)
16 Defendants.)

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

20 On April 11, 2011, I served a true copy of the SECOND AMENDED COMPLAINT by
21 depositing it in the US Mail, postage prepaid, addressed as follows:

22 THEODORE E. BACON
23 SCOTT J. STILMAN
24 FRANCES Q. JETT
ALVARADOSMITH
633 W. 5th Street, Suite 1100
Los Angeles, California 90071

25 I hereby certify that I am a member of the Bar of the United States District Court, Central
26 District of California, and that the foregoing is true and correct. Executed on: April 11, 2011 in Santa
27 Barbara, CA.

28 
Douglas Gillies, attorney