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Superior Court of California,
County of Orange

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

ABDULLAH ASLAMI, an individual; ALFREDO
DAVALOS, an individual; MAGDALENA
DAVALOS, an individual; ROBERT HEROD, an
individual; ROCHELLE HEROD, an individual,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, SPECIALIZED LOAN
SERVICING, LLC, SELECT PORTFOLIO
SERVICING, INC., JPMORGAN CHASE
BANK, N.A., and DOES 1-10,

Defendants.

Case No.: 30-2016-00844390-CU-OR-CJC

COMPLAINT FOR: Judge Craig Griffin

1. **INTENTIONAL MISREPRESENTATION**
2. **NEGLIGENT MISREPRESENTATION**
3. **VIOLATION OF CALIFORNIA HOMEOWNER BILL OF RIGHTS CALIFORNIA CIVIL CODE §2924.17**
4. **VIOLATION OF CALIFORNIA HOMEOWNER BILL OF RIGHTS CALIFORNIA CIVIL CODE §2923.55**
5. **UNFAIR, UNLAWFUL, AND FRAUDULENT BUSINESS PRACTICES (VIOLATION OF CALIFORNIA BUS & PROF. CODE §17200, ET. SEQ.)**
6. **WRONGFUL FORECLOSURE**

JURY TRIAL DEMANDED

1 **TO THE COURT AND ALL PARTIES HERETO AND THEIR COUNSEL:**

2 Plaintiffs ABDULLAH ASLAMI, ALFREDO DAVALOS, MAGDALENA DAVALOS,
3 ROBERT HEROD, and ROCHELLE HEROD (hereinafter “Plaintiffs”) bring this action NATIONAL
4 DEFAULT SERVICING CORPORATION, SPECIALIZED LOAN SERVICING, LLC, SELECT
5 PORTFOLIO SERVICING, INC., JPMORGAN CHASE BANK, N.A., and DOES 1-10 (hereinafter
6 “Defendants”) for Intentional Misrepresentation, Negligent Misrepresentation, Violation of California
7 Civil Code § 2924.17, Violation of Cal. Civil Code Section 2923.55, Unfair, Unlawful, And Fraudulent
8 Business Practices (Violation Of California Bus & Prof. Code §17200, *et. seq.*), and Wrongful
9 Foreclosure.

10 Plaintiffs reserve his right to join necessary parties to this action under California Civil
11 Procedure § 378 as those unknown parties become known to Plaintiffs. Plaintiffs shall request leave of
12 Court for such joinder matters.

13 **I. PARTIES**

14 1. Plaintiff, Abdullah Aslami is a resident of California. The property he previously owns
15 and had equitable possession of is located at: 2 Wayside Newport Beach, CA 92657 (The subject
16 property). At the time of this filing, the property is scheduled to be sold at foreclosure auction on April
17 5, 2016. All acts complained of herein occurred within the territorial jurisdiction of this court lying in
18 Orange County, California.

19 2. Plaintiffs, Alfredo and Magdalena Davalos are residents of California. The property they
20 own and have equitable possession of is located at: 12973 Golden Lantern Drive Moreno Valley, CA
21 92555 (The subject property). At the time of this filing, the property is scheduled to be sold at
22 foreclosure auction on June 6, 2016.

23 3. Plaintiffs, Robert P. Herod and Rochelle L. Herod are residents of California. The
24 property they previously owned and had equitable possession of is located at: 6862 East Bacarro Street
25 Long Beach, CA 90815 (The subject property). The property was sold at foreclosure auction on March
26 2, 2016.

27 4. Defendant National Default Servicing Corporation (“NDSC”) is a California Foreign
28 corporation filed on January 29, 1996. The company’s filing status is listed as Active and its Filing

1 Number is C1958993. The Registered Agent on file for this company is CT Corporation System located
2 at 818 West Seventh Street, Suite 930 Los Angeles, CA 90017. The company's principal address is
3 7720 North 16th Street, Suite 300 Phoenix, AZ 85020. Defendant NDSC has been doing business in the
4 territorial jurisdiction of this court and all acts complained of herein were within those same
5 boundaries.

6 5. Defendant Select Portfolio Servicing, Inc. ("SPS") is a California Foreign company filed
7 on August 9th, 1996. The company's filing status is listed as Active and its File Number is C1976598.
8 The Registered Agent on file for this company is a Corporation Service Company, which will do
9 business in California as CSC-Lawyers Incorporating Service located at 2710 Gateway Oaks Drive,
10 Suite 150N, Sacramento, CA, 95833. The company's principal address is 3815 S. West Temple, Salt
11 Lake City, UT, 84115. Defendant SPS has been doing business in the territorial jurisdiction of this
12 court and all acts complained of herein were within those same boundaries.

13 6. Defendant Specialized Loan Servicing, LLC ("SLS") is a California Foreign Limited
14 Liability Company filed on December 5th, 2003. The company's filing status is listed as ACTIVE and
15 its File Number is 200334710106. The Registered Agent on file for this company is National
16 Registered Agents, INC. (C1941323) and, as of April 4, 2016, the California Secretary of State
17 Database does not contain the agent's address. National Registered Agent, Inc.'s registered Agent on
18 file is CT Corporation System located at 818 West Seventh Street, Suite 930, Los Angeles, California
19 90017. The company's principal address is 8742 Lucent Blvd, Suite 300, Highlands Ranch, CO, 80129-
20 2386. Defendant SLS has been doing business in the territorial jurisdiction of this court and all acts
21 complained of herein were within those same boundaries.

22 7. Defendant JPMorgan Chase Bank, N.A. ("CHASE") is a California Foreign Corporation
23 filed on June 17, 2010. The company's filing status is listed as Surrendered and its File Number is
24 C3297309. The Registered Agent on file for this company is CT Corporation System and is located at
25 818 W Seventh St. Ste. 930, Los Angeles, CA 90017. The company's principal address is 10 South
26 Dearborn, Floor 19, Chicago, IL 60603. The company has one principal on record. The principal is
27 William Wulkan from Chicago, IL. CHASE was a business operating under the laws of the state of
28 California at all times relevant to this action.

1 **II. JURISDICTION**

2 8. The predicate acts complained of herein did occur within the territorial boundaries of
3 this court, and the corpus of the complaint centers on state law questions. Thus, jurisdiction is proper in
4 this court.

5 **III. VENUE**

6 9. Venue of this action is proper in this County because one of the three residential real
7 properties that is the subject of this action is situated in Orange County and the Defendants’ acts
8 complained of occurred in California.

9 **IV. FACTUAL BACKGROUND**

10 **A. General**

11 10. Defendant, NDSC, and Servicer Defendants SPS, SLS and CHASE, acting as the trustee
12 and the servicers for various mortgages and mortgage-back securities, have filed countless foreclosure
13 actions in state and federal courts in California, including against the Plaintiffs, under false pretenses,
14 alleging to be the owner or the holder of the underlying notes and mortgages when in fact it is not, and
15 without complying with California law governing its activities. SPS, SLS, and Chase may be referred
16 collectively to as “Servicer Defendants.” These filings represent a pattern of corrupt and illegal activity
17 as defined by California law through which the Defendants have charged thousands in fees, court costs,
18 and other expenses against the Plaintiffs.

19 11. Defendants are lacking possession of requisite legally enforceable, recorded
20 assignments, and Defendants are unable to verify and demonstrate the chain of ownership and
21 assignment of the mortgages from the actual mortgagee. Further, Defendants are lacking sufficient
22 evidence to support the claims of a default. Thus, Defendants’ pattern and practice of filing foreclosure
23 actions in state and federal courts while clearly lacking the right to do so is a clear violation of
24 Plaintiffs’ rights.

25 **B. Abdullah Aslami**

26 **a. Deed of Trust**

27 12. On April 17, 2007, Plaintiff signed a deed of trust (the “deed of trust”) for the subject
28 property located at 2 Wayside Newport Beach, CA 92657. (Exhibit 1.) According to the deed of trust,

1 Plaintiff was the “borrower,” and Home Loan Specialists, Inc. was the “lender,” MERS was named the
2 “beneficiary,” and North American Title Company was the “trustee.” (*Id.* at 2) The loan was an
3 adjustable rate mortgage in the amount of \$1,600,000

4 13. Paragraph twenty-two of the deed of trust explains the procedures required for the lender
5 to accelerate Plaintiff’s amount due under the loan and the lender’s other remedies. This section states
6 that, in the event of Plaintiff’s default, *the lender* must give Plaintiff notice of Plaintiff’s default and the
7 lender’s intent to accelerate, *prior to* acceleration. (*Id.* at 13).

8 The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a
9 date, not less than 30 days from the date the notice is given to Borrower, by which the
10 default must be cured; and (d) that failure to cure the default on or before the date
11 specified in the notice may result in acceleration of the sums secured by this Security
12 Instrument and sale of the Property. *The notice shall further inform Borrower of the
13 right to reinstate after acceleration and the right to bring a court action to assert the
14 non-existence of a default or any other defense of Borrower to acceleration and sale.*

13 14. Only after such notice is given, does the deed of trust entitle the lender to accelerate
14 Plaintiff’s amount due and invoke the lender’s power of sale.

15 15. Paragraph fifteen of the deed of trust requires that, “[a]ll notices given by Borrower or
16 Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in
17 connection with this Security Instrument shall be deemed to have been given to Borrower when mailed
18 by first class mail or when actually delivered to Borrower’s notice address if sent by other means.” (*Id.*
19 at 10).

20 16. Additionally, paragraph twenty-four of the deed of trust allows the lender to appoint a
21 successor trustee only “by an instrument executed and acknowledged by Lender and recorded in the
22 office of the Recorder of the county in which the Property is located. The instrument shall contain the
23 name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument
24 is recorded and the name and address of the successor trustee.” (*Id.* at 13.)

25 **b. Proceeding Events**

26 17. On July 2, 2010, an Assignment of Deed of Trust was requested by MERS, which stated
27 that MERS “grant[ed], assign[ed], transfer[ed] to Citibank N.A... all beneficial interest under that
28 certain Deed of Trust dated 7-26-2006”

1 18. Plaintiff alleges that a loan contract and real property has been falsely encumbered by an
2 unlawful lien through the use of an alleged void assignment of Plaintiff's deed of trust by both
3 Defendants.

4 19. Plaintiff alleges that Defendants are claiming to be agents, purchasers and assignees of a
5 fictitious payee of the subject debt obligation.

6 20. NDSC recorded a Notice of Default ("NOD") on September 1, 2015.

7 21. The NOD indicated that Specialized Loan Servicing, LLC. was the servicer of the loan.
8 NDSC stated that, Plaintiff only has the "legal right to bring [the] account in good standing by paying
9 all of [the] past due payments plus permitted costs and expenses within the time permitted by law for
10 reinstatement of [the] account."

11 22. Nowhere in NDSC's NOD did NDSC state that Plaintiff had the right to bring a court
12 action to dispute the default as required by paragraph twenty-two of the deed of trust.

13 23. Plaintiff alleges that Defendants unlawfully, and with full knowledge and intent,
14 intentionally interfered with the subject contract promissory note and deed of trust for their own gain
15 and at the expense and detriment of Plaintiff. Plaintiff denies and refutes that Defendants are a valid
16 beneficiary or agent for beneficiary, a lawful assignee or entitled in any way under the contract deed of
17 trust and further alleges that both Defendants claim to be entitled in some way under the contract
18 without lawful or contractual authority.

19 24. Defendants both are experienced and sophisticated real estate professionals and
20 investors who have a duty of due diligence to investigate title issues prior to sale.

21 25. Plaintiff alleges that all Defendants worked together in a scheme to convert a personal
22 Instrument (Promissory Note) and subsequently real property to their own possession without lawful
23 authority.

24 26. A Notice Of Trustee's Sale (NOS) was then signed on March 8, 2016 and recorded by
25 NDSC.

26 27. Plaintiff alleges that any and all recorded instruments, including Notice of Default and
27 Notice of Trustee Sale are void because their purported authority flows from the void assignment
28 instruments as fully examined and alleged above.

1 28. Plaintiff’s home is scheduled to be foreclosed upon on April 5, 2016. Plaintiff brings
2 the present claim disputing Defendants’ rights to Plaintiff’s deed of trust and property.

3 29. Plaintiff alleges that a controversy exists as to whether or not all Defendants acquired
4 any rights to the loan contract. Defendants claim a beneficial or purchase interest in the contract and
5 real property at this time.

6 30. Plaintiff alleges Defendant SLS is instructing NDSC to foreclose and sell Plaintiffs
7 home without valid authority and is not the beneficiary.

8 31. Plaintiff alleges that NDSC is willfully, negligently, and with malice aforethought
9 proceeding with foreclosure sales without information from the beneficiary.

10 32. Despite repeated requests for documentation proving the existence of the rights and
11 authority of the trustee and servicers claimed by Defendants and the authority to instruct and move
12 forward with foreclosure sales, the requests have been denied and/or information that was provided did
13 not conform to the requirements of California law. Instead, NDSC instructed Plaintiff to contact SLS to
14 request information and refused to provide the information NDSC relied on to proceed with the
15 pending foreclosure sale.

16 33. Plaintiff alleges that all Defendants willfully, negligently and with malice aforethought,
17 filed, negligently relied upon or caused to be filed, a series of public documents known by both
18 Defendants to be false at the time of the execution and filing of the instruments in the public record
19 against public policy and against Plaintiffs’ contract and property interests.

20 34. Defendants claim an interest that is adverse to Plaintiff’s by intentionally interfering
21 with a contract without such authority, and by failing to evidence, after notice by Plaintiff and request
22 for such evidence, any document executed by the true beneficiary of the debt obligation, which
23 authenticates Defendant’s assertions that they are acting as bona fide agents and/or assignees for an
24 authenticated beneficiary to Plaintiff’s debt obligation.

25 35. Plaintiff alleges that he has rights to disclosures under Cal. Civ. Code §§ 2924.17(a),
26 2924.17(b). Plaintiff alleges that Defendants, as purported agent for the beneficiary and loan servicer,
27 had a duty to provide Plaintiff: “... the mortgage servicer will ensure that the document is accurate and
28 complete and supported by competent and reliable evidence.” Section 2924.17(a) states, “the mortgage

1 servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrowers
2 default and the right to foreclose.” Furthermore, 2924.17(b) states, “A beneficiary, or his or her
3 authorized agent, shall, within 21 days of the receipt of a written demand by an entitled person or his or
4 her authorized agent, prepare and deliver to the person demanding it a true, correct, and complete copy
5 of the note or other evidence of indebtedness with any modification thereto, and a beneficiary
6 statement.” Civil Code § 2943(b)(1).

7 36. Plaintiff alleges that Defendants did not perform any of the above described duties.
8 Plaintiff alleges that because of Defendants' acts and omissions, Plaintiff has been harmed and
9 prejudiced.

10 37. As a direct and proximate result of Defendants acts and omissions, Plaintiff’s loan
11 obligation has been accelerated by an unlawful means, forcing her to pay the entirety of his debt at one
12 time. Her credit has been damaged along with her ability to seek alternative financing. His loan
13 obligation has not been verified as to whom the payments are actually due and what exact amounts are
14 due, thus exposing her to duplicative payments. He is at immediate risk of losing possession to
15 Defendants due to an illegal and oppressive sale by Defendant’s acts and omissions; the property is
16 encumbered by who have no lawful interest in the loan contract or real property. He has suffered
17 emotional damages due to constant worry about whether or not the wrong party is going to dispossess
18 her of her home. He cannot negotiate the contract with a party that has been authenticated as the lawful
19 beneficiary to the debt obligation; he has been subjected to a wrongful foreclosure sale at the direction
20 and execution of all Defendants named herein.

21 38. Plaintiff alleges that he is not seeking a “free house”, as will undoubtedly be claimed by
22 the Defendants in the typical foreclosure mill style that has plagued this, and all California courts, for
23 eight years now.

24 **C. Alfredo and Magdalena Davalos**

25 **a. Deed of Trust**

26 39. On April 4, 2007, Plaintiffs signed a deed of trust (the “deed of trust”) for the subject
27 property located at 12973 Golden Lantern Drive Moreno Valley, CA 92555. (Exhibit 2.) According to
28 the deed of trust, Plaintiffs was the “borrower,” and Countrywide Home Loans, Inc. was the “lender.”

1 Recontrust, N.A. is named the “beneficiary,” and NDSC was the “trustee.” (*Id.* at 2) The loan was an
2 adjustable rate mortgage in the amount of \$379,812.

3 40. Paragraph twenty-two of the deed of trust explains the procedures required for the lender
4 to accelerate Plaintiffs’ amount due under the loan and the lender’s other remedies. This section states
5 that, in the event of Plaintiffs’ default, *the lender* must give Plaintiffs notice of Plaintiffs’ default and
6 the lender’s intent to accelerate, *prior to* acceleration. (*Id.* at 13).

7 The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a
8 date, not less than 30 days from the date the notice is given to Borrower, by which the
9 default must be cured; and (d) that failure to cure the default on or before the date
10 specified in the notice may result in acceleration of the sums secured by this Security
11 Instrument and sale of the Property. *The notice shall further inform Borrower of the
12 right to reinstate after acceleration and the right to bring a court action to assert the
13 non-existence of a default or any other defense of Borrower to acceleration and sale.*

14 41. Only after such notice is given, does the deed of trust entitle the lender to accelerate
15 Plaintiffs’ amount due and invoke the lender’s power of sale.

16 42. Paragraph fifteen of the deed of trust requires that, “[a]ll notices given by Borrower or
17 Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in
18 connection with this Security Instrument shall be deemed to have been given to Borrower when mailed
19 by first class mail or when actually delivered to Borrower’s notice address if sent by other means.” (*Id.*
20 at 10).

21 43. Additionally, paragraph twenty-four of the deed of trust allows the lender to appoint a
22 successor trustee only “by an instrument executed and acknowledged by Lender and recorded in the
23 office of the Recorder of the county in which the Property is located. The instrument shall contain the
24 name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument
25 is recorded and the name and address of the successor trustee.” (*Id.* at 13.)

26 **b. Proceeding Events**

27 44. On June 10, 2011, an Assignment of Deed of Trust was requested by Bank of America,
28 which stated that MERS “grant[ed], assign[ed], transfer[ed], and convey[ed] to The Bank of New York
Mellon... all beneficial interest under that certain Deed of Trust.”

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1 45. Plaintiffs allege that a loan contract and real property has been falsely encumbered by an
2 unlawful lien through the use of an alleged void assignment of Plaintiffs' deed of trust by both
3 Defendants.

4 46. Plaintiffs allege that Defendants are claiming to be agents, purchasers and assignees of a
5 fictitious payee of the subject debt obligation.

6 47. Recontrust Company then recorded a Notice of Default ("NOD") and Election to Sell
7 under the Deed of Trust on August 12, 2011.

8 48. The NOD, signed by Recontrust Company, indicated that The Bank of New York
9 Mellon was the servicer of the loan. Recontrust Company stated that, Plaintiffs only have the "legal
10 right to bring [the] account in good standing by paying all of [the] past due payments plus permitted
11 costs and expenses within the time permitted by law for reinstatement of [the] account."

12 49. Nowhere in Recontrust's NOD did Recontrust state that Plaintiffs had the right to bring
13 a court action to dispute the default as required by paragraph twenty-two of the deed of trust.

14 50. Plaintiffs allege that Defendants unlawfully, and with full knowledge and intent,
15 intentionally interfered with the subject contract promissory note and deed of trust for their own gain
16 and at the expense and detriment of Plaintiffs. Plaintiffs deny and refutes that Defendants are a valid
17 beneficiary or agent for beneficiary, a lawful assignee or entitled in any way under the contract deed of
18 trust and further alleges that both Defendants claim to be entitled in some way under the contract
19 without lawful or contractual authority.

20 51. Defendants are experienced and sophisticated real estate professionals and investors who
21 have a duty of due diligence to investigate title issues prior to sale.

22 52. Plaintiffs allege that all Defendants worked together in a scheme to convert a personal
23 Instrument (Promissory Note) and subsequently real property to their own possession without lawful
24 authority.

25 53. Plaintiffs allege that any and all recorded instruments, including Notice of Default and
26 Notice of Trustee Sale are void because their purported authority flows from the void assignment
27 instruments as fully examined and alleged above.

28

1 54. NDSC executed and recorded three Notices of Sales. The first was recorded on June 19,
2 2014, the second was recorded on May 6, 2015, and the final Notice was recorded on August 24, 2015.
3 NDSC has postponed the sale multiple times.

4 55. On or around January 6, 2016, NDSC informed Plaintiffs in writing that the sale
5 scheduled for March 3, 2016 was postponed to April 4, 2016. In the letter, NDSC states that it is an
6 agent for the beneficiary.

7 56. Plaintiffs' home is currently scheduled to be foreclosed upon on June 6, 2016.
8 Consequently, Plaintiffs bring the present claim disputing Defendants' rights to Plaintiffs' deed of trust
9 and property.

10 57. Plaintiffs allege that a controversy exists as to whether or not all Defendants acquired
11 any rights to the loan contract. Defendants claim a beneficial or purchase interest in the contract and
12 real property.

13 58. Plaintiff alleges Defendant SPS is instructing NDSC to foreclose and sell Plaintiffs
14 home without valid authority and is not the beneficiary.

15 59. Plaintiff alleges that NDSC is willfully, negligently, and with malice aforethought
16 proceeding with foreclosure sales without information from the beneficiary.

17 60. Despite repeated requests for documentation proving the existence of the rights and
18 authority of the trustee and servicers claimed by Defendants and the authority to instruct and move
19 forward with foreclosure sales, the requests have been denied and/or information that was provided did
20 not conform to the requirements of California law. Instead, NDSC instructed Plaintiff to contact SPS to
21 request information and refused to provide the information NDSC relied on to proceed with the
22 pending foreclosure sale.

23 61. Plaintiffs allege that all Defendants willfully, negligently and with malice aforethought,
24 filed, negligently relied upon or caused to be filed, a series of public documents known by both
25 Defendants to be false at the time of the execution and filing of the instruments in the public record
26 against public policy and against Plaintiffs' contract and property interests.

27 62. Defendants claim an interest that is adverse to Plaintiffs' by intentionally interfering
28 with a contract without such authority, and by failing to evidence, after notice by Plaintiffs and request

1 for such evidence, any document executed by the true beneficiary of the debt obligation, which
2 authenticates Defendant's assertions that they are acting as bona fide agents and/or assignees for an
3 authenticated beneficiary to Plaintiff's debt obligation.

4 63. Plaintiffs allege that he has rights to disclosures under Cal. Civ. Code §§ 2924.17(a),
5 2924.17(b) Plaintiffs allege that Defendants, as purported agent for the beneficiary and loan servicer,
6 had a duty to provide Plaintiff: "... the mortgage servicer will ensure that the document is accurate and
7 complete and supported by competent and reliable evidence." Section 2924.17(a) states, "the mortgage
8 servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrowers
9 default and the right to foreclose." Furthermore, 2924.17(b) states, "A beneficiary, or his or her
10 authorized agent, shall, within 21 days of the receipt of a written demand by an entitled person or his or
11 her authorized agent, prepare and deliver to the person demanding it a true, correct, and complete copy
12 of the note or other evidence of indebtedness with any modification thereto, and a beneficiary
13 statement." Civil Code § 2943(b)(1).

14 64. Plaintiffs allege that neither Defendant performed any of the above described duties.
15 Plaintiffs allege that because of Defendants' acts and omissions has been harmed and prejudiced.

16 65. As a direct and proximate result of Defendants acts and omissions, Plaintiffs' loan
17 obligation has been accelerated by an unlawful means, forcing them to pay the entirety of their debt at
18 one time. Their credit has been damaged along with their ability to seek alternative financing. The loan
19 obligation has not been verified as to whom the payments are actually due and what exact amounts are
20 due, thus exposing her to duplicative payments. They are at immediate risk of losing possession to
21 Defendants due to an illegal and oppressive sale by Defendants' acts and omissions; the property is
22 encumbered by who have no lawful interest in the loan contract or real property. They have suffered
23 emotional damages due to constant worry about whether or not the wrong party is going to dispossess
24 them of their home. They cannot negotiate the contract with a party that has been authenticated as the
25 lawful beneficiary to the debt obligation; they have been subjected to a wrongful foreclosure sale at the
26 direction and execution of all Defendants named herein.

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1 66. Plaintiffs allege that they are not seeking a “free house”, as will undoubtedly be claimed
2 by the Defendants in the typical foreclosure mill style that has plagued this, and all California courts,
3 for eight years now.

4 **D. Robert P. Herod and Rochelle L. Herod**

5 **a. Deed of Trust**

6 67. On August 4, 2005, Plaintiffs signed a deed of trust (the “deed of trust”) for the subject
7 property located at 6862 East Bacarro Street Long Beach, CA 90815. (Exhibit 3.) According to the
8 deed of trust, Plaintiffs were the “borrower,” and Primedirect Mortgage was the “lender.” Primedirect
9 Mortgage is named the “beneficiary,” and Fidelity National Title Insurance Company was the “trustee.”
10 (*Id.* at 2). The loan was an adjustable rate mortgage in the amount of \$420,000.

11 68. Paragraph twenty-two of the deed of trust explains the procedures required for the lender
12 to accelerate Plaintiff’s amount due under the loan and the lender’s other remedies. This section states
13 that, in the event of Plaintiffs’ default, *the lender* must give Plaintiffs notice of Plaintiffs’ default and
14 the lender’s intent to accelerate, *prior to acceleration.* (*Id.* at 13).

15 The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a
16 date, not less than 30 days from the date the notice is given to Borrower, by which the
17 default must be cured; and (d) that failure to cure the default on or before the date
18 specified in the notice may result in acceleration of the sums secured by this Security
19 Instrument and sale of the Property. *The notice shall further inform Borrower of the*
20 *right to reinstate after acceleration and the right to bring a court action to assert the*
21 *non-existence of a default or any other defense of Borrower to acceleration and sale.*

22 69. Only after such notice is given, does the deed of trust entitle the lender to accelerate
23 Plaintiffs’ amount due and invoke the lender’s power of sale.

24 70. Paragraph fifteen of the deed of trust requires that, “[a]ll notices given by Borrower or
25 Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in
26 connection with this Security Instrument shall be deemed to have been given to Borrower when mailed
27 by first class mail or when actually delivered to Borrower’s notice address if sent by other means.” (*Id.*
28 at 10).

 71. Additionally, paragraph twenty-four of the deed of trust allows the lender to appoint a
successor trustee only “by an instrument executed and acknowledged by Lender and recorded in the

1 office of the Recorder of the county in which the Property is located. The instrument shall contain the
2 name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument
3 is recorded and the name and address of the successor trustee.” (*Id.* at 13.)

4 **b. Proceeding Events**

5 72. On August 18, 2005, an Assignment of Deed of Trust was requested by Fidelity
6 National Title, which stated that Primedirect made the decision to “grant, assign, and transfer to Encore
7 Credit Corp., a California Corporation all beneficial interest under that certain Deed of Trust dated
8 August 4, 2005.”

9 73. Plaintiffs allege that a loan contract and real property has been falsely encumbered by an
10 unlawful lien through the use of an alleged void assignment of Plaintiffs’ deed of trust by both
11 Defendants.

12 74. Plaintiffs allege that Defendants are claiming to be agents, purchasers and assignees of a
13 fictitious payee of the subject debt obligation.

14 75. Additionally, two other assignments were recorded under Plaintiffs’ deed of trust. The
15 first was recorded in November of 2008 which transferred Encore Credit Corporation’s interest to
16 MERS, and the second assignment was recorded in 2010 which transferred MERS’s interest to Bank of
17 America.

18 76. NDSC recorded a Notice of Default (“NOD”) under the Deed of Trust on September 8,
19 2015.

20 77. NDSC’s NOD indicated that Specialized Loan Servicing, LLC was the servicer of the
21 loan. NDSC stated that, Plaintiff only has the “legal right to bring [the] account in good standing by
22 paying all of [the] past due payments plus permitted costs and expenses within the time permitted by
23 law for reinstatement of [the] account.”

24 78. Nowhere in NDSC’s NOD did NDSC state that Plaintiffs had the right to bring a court
25 action to dispute the default as required by paragraph twenty-two of the deed of trust.

26 79. Plaintiffs allege that Defendants unlawfully, and with full knowledge and intent,
27 intentionally interfered with the subject contract promissory note and deed of trust for their own gain
28 and at the expense and detriment of Plaintiffs. Plaintiffs deny and refutes that Defendants are a valid

1 beneficiary or agent for beneficiary, a lawful assignee or entitled in any way under the contract deed of
2 trust and further alleges that both Defendants claim to be entitled in some way under the contract
3 without lawful or contractual authority.

4 80. Defendants both are experienced and sophisticated real estate professionals and
5 investors who have a duty of due diligence to investigate title issues prior to sale.

6 81. Plaintiffs allege that all Defendants worked together in a scheme to convert a personal
7 Instrument (Promissory Note) and subsequently real property to their own possession without lawful
8 authority.

9 82. Plaintiffs allege that any and all recorded instruments, including Notice of Default and
10 Notice of Trustee Sale are void because their purported authority flows from the void assignment
11 instruments as fully examined and alleged above.

12 83. Plaintiffs' home was foreclosed upon, and the Deed Upon Sale, executed by NDSC, was
13 recorded on March 15, 2016. Plaintiffs bring the present claim disputing Defendants' rights to
14 Plaintiffs' deed of trust and property.

15 84. Plaintiffs allege that a controversy exists as to whether or not all Defendants acquired
16 any rights to the loan contract. Defendants claim a beneficial or purchase interest in the contract and
17 real property at this time.

18 85. Plaintiff alleges Defendant Chase instructed NDSC to foreclose and sell Plaintiffs home
19 without valid authority and is not the beneficiary.

20 86. Plaintiff alleges that NDSC is willfully, negligently, and with malice aforethought
21 proceeding with foreclosure sales without information from the beneficiary.

22 87. Despite repeated requests for documentation proving the existence of the rights and
23 authority of the trustee and servicers claimed by Defendants and the authority to instruct and move
24 forward with foreclosure sales, the requests have been denied and/or information that was provided did
25 not conform to the requirements of California law. Instead, NDSC instructed Plaintiff to contact Chase
26 to request information and refused to provide the information NDSC relied on to proceed with the
27 pending foreclosure sale.

28 //

1 88. Plaintiffs allege that all Defendants willfully, negligently and with malice aforethought,
2 filed, negligently relied upon or caused to be filed, a series of public documents known by both
3 Defendants to be false at the time of the execution and filing of the instruments in the public record
4 against public policy and against Plaintiffs' contract and property interests.

5 89. Defendants claim an interest that is adverse to Plaintiffs' by intentionally interfering
6 with a contract without such authority, and by failing to evidence, after notice by Plaintiffs and request
7 for such evidence, any document executed by the true beneficiary of the debt obligation, which
8 authenticates Defendant's assertions that they are acting as bona fide agents and/or assignees for an
9 authenticated beneficiary to Plaintiffs' debt obligation.

10 Plaintiff alleges that he has rights to disclosures under Cal. Civ. Code §§ 2924.17(a), 2924.17(b).
11 Plaintiff alleges that Defendants, as purported agent for the beneficiary and loan servicer, had a duty to
12 provide Plaintiff: "... the mortgage servicer will ensure that the document is accurate and complete and
13 supported by competent and reliable evidence." Section 2924.17(a) states, "the mortgage servicer shall
14 ensure that it has reviewed competent and reliable evidence to substantiate the borrowers default and
15 the right to foreclose." Furthermore, 2924.17(b) states, "A beneficiary, or his or her authorized agent,
16 shall, within 21 days of the receipt of a written demand by an entitled person or his or her authorized
17 agent, prepare and deliver to the person demanding it a true, correct, and complete copy of the note or
18 other evidence of indebtedness with any modification thereto, and a beneficiary statement." Civil Code
19 § 2943(b)(1).

20 90. Plaintiffs allege that neither Defendant performed any of the above described duties.
21 Plaintiffs allege that because of Defendants' acts and omissions has been harmed and prejudiced.

22 91. As a direct and proximate result of Defendants acts and omissions, Plaintiffs' loan
23 obligation has been accelerated by an unlawful means, forcing them to pay the entirety of their debt at
24 one time. Their credit has been damaged along with their ability to seek alternative financing. Their
25 loan obligation has not been verified as to whom the payments are actually due and what exact amounts
26 are due, thus exposing them to duplicative payments. They have lost possession to Defendants due to
27 an illegal and oppressive sale by Defendant's acts and omissions; the property is encumbered by who
28 have no lawful interest in the loan contract or real property. They have suffered emotional damages due

1 to constant worry about whether or not the wrong party is going to dispossess her of her home. They
2 cannot negotiate the contract with a party that has been authenticated as the lawful beneficiary to the
3 debt obligation; they have been subjected to a wrongful foreclosure sale at the direction and execution
4 of all Defendants named herein.

5 92. Plaintiffs allege that they are not seeking a “free house”, as will undoubtedly be claimed
6 by the Defendants in the typical foreclosure mill style that has plagued this, and all California courts,
7 for eight years now.

8 **V. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**
10 **INTENTIONAL MISREPRESENTATION**
11 (Against All Defendants)

12 93. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of
13 the subsequent causes of action as though fully set forth herein.

14 94. Defendants, their principals, agents, and/or employees, and each of them acted to
15 deceive Plaintiffs in the manner and by the misrepresentations and statements identified and set forth
16 herein.

17 95. Plaintiffs are informed and believe, and based thereon allege, that Defendants 1) made
18 representations of facts as true, 2) the representations were not true, 3) Defendants knew the
19 statements were false, or made recklessly without regard for their truth, 4) with the intent that
20 Plaintiffs rely on these representations, 5) that Plaintiffs were ignorant of the falsity of the
21 Defendants’ representations and reasonably relied on the representations, 6) Plaintiffs were
22 harmed, and 7) Plaintiffs’ reliance on Defendants’ representations was a substantial factor, if not a
23 “but for” cause, in causing Plaintiffs’ harm.

24 96. Defendants made numerous misrepresentations orally, verbally, written, and/or by their
25 nonverbal conduct, including but not limited to publicly recorded documents, written and oral
26 communications to Plaintiffs, website postings, and other affirmative actions taken by Defendants.

27 97. Defendants’ statements were not mere opinions under the conditions and should be
28 treated as a statement of fact. A statement will be considered a statement of fact when (1) the Defendant
held himself out to be specifically qualified and the Plaintiffs were in a position to reasonably rely upon

1 the Defendant's knowledge; (2) the Defendants who made the statements were typically in fiduciary
2 and/or trusted positions; and (3) depending on the circumstance, Defendants either made the statements
3 as an existing fact or implied the facts in such a manner that justified a belief in the truth of the opinion.

4 98. Plaintiffs are informed and believe, and based thereon allege, that Defendants made
5 numerous misrepresentations as alleged herein.

6 99. Plaintiffs specifically allege that Defendants represented they were indeed valid
7 servicers and/or trustees with valid authority to foreclose.

8 100. Plaintiffs are informed and believe, and based thereon allege, Defendants represented
9 they had valid authority to foreclose based on information and instructions from the beneficiary.
10 However, despite numerous requests for the beneficiary statements, Defendants have refused to provide
11 the requested information. Instead, if and when information is provided, the information is from the
12 servicer and/or trustee records, not the beneficiary.

13 101. Defendants represented they are the holders of the notes and deeds of trust and that they
14 were operating under a valid power from the current holders of the notes and deeds of trust and
15 therefore had the right to proceed with the foregoing foreclosures.

16 102. Plaintiffs are informed and believe, and based thereon allege, Defendants knew these
17 representations to be false, or made the representations without regard for their truth.

18 103. Defendants knew these representations were false as they knew they were no longer the
19 note holders and/or made the representations recklessly without regard to the truth because they do not
20 know who actually owns the notes and deeds and do not know who holds or held the valid power to
21 foreclose on Plaintiffs. Defendants represented that they were the owners despite recording assignments
22 and transfers in public records that were to the contrary, inaccurate, and/or incomplete.

23 104. Plaintiffs based thereon allege Defendants do not have the information and/or
24 instructions from the current beneficiary and/or did not have the information, documentation, or
25 otherwise at the time they represented to be the valid trustees and/or servicers with authority to
26 foreclose.

27 //

28 //

1 105. Plaintiffs, based on the information herein, allege that Defendants did not have the
2 information, instructions, documentations, or otherwise from the actual beneficiary at the time
3 Defendants filed publicly recorded documents, including the Notice of Trustee Sale.

4 106. Plaintiffs allege that Defendants, without this information, filed false, misleading, and/or
5 inaccurate public documents in violation of California law.

6 107. Plaintiffs are informed and believe, and based thereon allege Defendants, each
7 individually and/or collectively, cannot determine the actual beneficiary, both presently and/or at the
8 time of the public filings referenced herein.

9 108. Plaintiffs are informed and believe, and based thereon allege, Defendants knowingly
10 relied on information they knew was false to file publicly recorded documents and/or filed the
11 documents recklessly without regard to the truth or willfully acted blindly in filing the documents.
12 Defendants did not act reasonably in determining the validity of the information they relied on to file
13 the publicly recorded documents.

14 109. Defendants made the misrepresentations with the intent of inducing Plaintiffs to rely
15 upon the misrepresentations alleged herein.

16 110. Defendants intended for Plaintiffs and the general public to rely upon any and all
17 instruments by placing it into the records of the respective County's Recorder's Office.

18 111. Defendants intended for Plaintiffs and the general public to rely upon the false
19 utterances in the public record for all person to rely.

20 112. Plaintiffs reasonably relied upon those statements as true and had cause to rely on those
21 statements by virtue of the sanctity of public records and the presumption that no party would
22 knowingly make and publish such false representations intentionally.

23 113. Plaintiffs reasonably relied on Defendants' statements, oral, written, conduct, or
24 otherwise, in regards to Defendants' authority, status, and relationship or partnership as to the other
25 Defendants and Plaintiff as referenced herein.

26 114. Plaintiffs were harmed by the misrepresentations made by Defendants.

27 115. Plaintiffs made substantial monthly payments to a party who had no authority to accept
28 those payments on behalf of a *bona fide* beneficiary to her loan contract.

1 116. Plaintiffs allege that the supposed beneficiary has received payments, whether from the
2 Plaintiffs themselves or another entity. Plaintiffs were harmed by Defendants' false utterances by
3 enduring the unlawful acceleration of their debt and by a party not authorized under her contract
4 publishing false statements leading Plaintiffs to an unlawful invocation of California's non-judicial
5 foreclosure statute.

6 117. Plaintiffs were wrongfully foreclosed upon based on Defendants' misrepresentations.

7 118. Plaintiffs' reliance on Defendants' representation was a substantial factor in causing
8 their harm.

9 119. As a result of such intentional misrepresentations Plaintiffs were damaged as described
10 herein. Without limiting the damages as described herein, Plaintiffs' damages arose directly from the
11 misrepresentations, or at the very least, the misrepresentations were a substantial factor in causing the
12 damages alleged herein, including but not limited to the loss of equity in their house, loan payments
13 falsely represented to be much lower than what they truly were, growth in their loan balances which
14 Defendants represented would not occur, costs and expenses related to protecting themselves, reduced
15 credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and
16 services tied to credit ratings, increased costs of those services, as well as fees and costs, including,
17 without limitation, attorneys' fees and costs.

18 120. Defendants' intentional, wide-scale, fraudulent conduct merits the imposition of punitive
19 damages.

20 **SECOND CAUSE OF ACTION**
21 **NEGLIGENT MISREPRESENTATION**
22 **(Against All Defendants)**

23 121. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of
24 the subsequent causes of action as though fully set forth herein.

25 122. Plaintiffs again allege, that Defendants made representations of facts as true there were
26 not true, and now states that although Defendants may have honestly believed the representation
27 was true, Defendants had not reasonable grounds for believing the representation was true when
28 the representations were made. Plaintiffs allege Defendants made the representations with the
intent that Plaintiffs rely on these representations, that Plaintiffs were ignorant of the falsity of the

1 Defendants' representations and reasonably relied on the representations, Plaintiffs were harmed,
2 and Plaintiffs' reliance on Defendants' representations was a substantial factor in causing
3 Plaintiffs' harm.

4 123. Plaintiffs are informed and believe, and based thereon allege Defendants made
5 representations described herein, and more fully set forth in First Cause of Action, without exercising
6 reasonable care.

7 124. Defendants are required to exercise reasonable care when filing publicly recorded
8 documents and knowing the information utilized to file the documents.

9 125. Defendants, and each of them, have an independent duty to exercise reasonable care and
10 may not eliminate this duty by relying upon others.

11 126. Defendants had a duty of care to know and understand the laws regarding transfers of
12 interests in real property as sophisticated professionals.

13 127. Defendants then made, or negligently relied upon, false statements that are admitted
14 (also by silence where Defendants had a duty to speak) as being false and executed by persons without
15 personal, first-hand knowledge of the facts contained within the instruments at issue here or by failing
16 to record necessary instruments.

17 128. Defendants are responsible for knowing the false representations contained in
18 communications, oral and written, publicly recorded instruments, and otherwise, known to be false by
19 Defendants, which led to the unlawful acceleration of debt instrument securing Plaintiffs' real property,
20 and inevitably willfully oppressive sale of Plaintiffs' real property by use of known and intentionally
21 false and omitted information contained within those recorded instruments.

22 129. Defendants knowingly and with willful intent prepared, negligently relied upon,
23 executed and published the instruments without lawful authority.

24 130. Defendants intended for Plaintiffs and the general public to rely on the recorded
25 instruments and notices filed, relied upon and executed by Defendants.

26 131. Plaintiffs did in fact rely on the representations, and did so in a reasonable manner.

27 132. Plaintiffs were harmed by the unauthorized acceleration of the debt and loss of their real
28 property interest. Defendants all were unjustly enriched by previously accepting payments from

1 Plaintiffs. Defendants were unjustly enriched by garnering profits, real property and fees from Plaintiffs
2 to their detriment. Plaintiffs have suffered legal costs incurred due to Defendants' acts and omissions,
3 loss of wages from personal time spent defending her real property under her contractual duties and
4 emotional distress and humiliation.

5 133. Plaintiffs' justifiable reliance on Defendants' predicate acts or material representations
6 and omissions was a substantial factor in causing the harms herein. Public records are considered as
7 sacred and Defendants, as the authors, or in negligent reliance upon the instruments at issue, bear the
8 burden of proof over real property records sanctity.

9 134. Defendants' actions were a substantial factor, if not the direct cause, of the harms
10 alleged and suffered herein as a result of Plaintiffs' reliance.

11
12 **THIRD CAUSE OF ACTION**
13 **VIOLATION OF CALIFORNIA HOMEOWNER BILL OF RIGHTS**
14 **CALIFORNIA CIVIL CODE §2924.17**
15 **(Against All Defendants)**

16 135. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of
17 the subsequent causes of action as though fully set forth herein.

18 136. Section 2924.17(a) imposes a duty on all mortgage servicers and those acting on their
19 behalf to ensure that all documents, including a notice of default, notice of sale, assignment of the deed
20 of trust, or substitution of trustee, filed in connection with a foreclosure subject to the requirements of
21 section 2924 "shall be accurate and complete and supported by competent and reliable evidence."

22 137. As such, Defendants and each of them had an independent duty to ensure that all of the
23 documents referenced herein and filed on their behalf were "accurate and complete and supported by
24 competent and reliable evidence."

25 138. Plaintiffs are informed and believe, and thereon allege Defendants, their principals,
26 agents, and/or employees, and each of them willfully or negligently violated California Civil Code
27 section 2924.17 in each and every document they publicly recorded herein by filing publicly recorded
28 instruments related to a foreclosure proceeding without being "accurate and complete and supported by
competent and reliable evidence.

1 139. Plaintiffs are informed and believe, and thereon allege Defendants breached this duty in
2 each and every document publicly recorded herein and subject to section 2924.17.

3 140. Plaintiffs bring this action pursuant to Cal. Civ. Code section 2924.12(a)-(b) to enjoin
4 material violations under section 2924.17.

5 141. Plaintiffs are informed and believe, and thereon allege Defendants has filed inaccurate
6 and/or incomplete documents, with falsities and alleges the documents are void as forgeries.

7 142. Plaintiffs are informed and believe, and thereon allege the documents filed by
8 Defendants were not supported by competent and reliable evidence, and instead filed by individuals
9 with no personal knowledge of Plaintiff's property, loan status, and/or alleged default.

10 143. Plaintiffs are informed and believe, and thereon allege Defendants filed documents
11 electronically, commonly called "Robo-signing," with no review of whether the evidence is competent
12 and/or reliable. Plaintiffs allege Defendants' standard business practice is to record public documents
13 without competent and reliable evidence in violation of Cal Civ. Code § 2924.17(b).

14 144. Section 2924.17(b) places the burden directly on mortgage servicers as follows:

15 “(b) Before recording or filing any of the documents described in subdivision (a), a
16 mortgage servicer shall ensure that it has reviewed competent and reliable evidence to
17 substantiate the borrower's default and the right to foreclose, including the borrower's
18 loan status and loan information.”

19 145. Plaintiffs are informed and believe, and thereon allege that Defendants did not review
20 their own right to foreclose and acted without regard to the truth they had no authority from the
21 beneficiary to foreclose.

22 146. Assignees and their agents of the original debt obligation and the security instrument are
23 necessarily required to provide a competent evidentiary foundation that the note and deed were lawfully
24 sold, transferred and accepted by the assignee.

25 147. As alleged previously, Plaintiffs allege that Defendants hold no beneficial interest in the
26 property and have no valid authority or right to foreclose on Plaintiff's property. Plaintiffs allege
27 Defendants did not act on behalf of the beneficiary and do not have evidence to support such claim.

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1 148. Plaintiffs have repeatedly notified Defendants they lack the authority to foreclose, lack
2 the authority to file publicly recorded documents against his property interest, and that the presently
3 recorded documents need to be rescinded.

4 149. However, Defendants continue to file publicly recorded documents in violation of
5 section 2924(a)(6), which states as follows:

6
7 “No entity shall record or cause a notice of default to be recorded or otherwise initiate
8 the foreclosure process unless it is the holder of the beneficial interest under the
9 mortgage or deed of trust, the original trustee or the substituted trustee under the deed of
10 trust, or the designated agent of the holder of the beneficial interest. No agent of the
11 holder of the beneficial interest under the mortgage or deed of trust, original trustee or
12 substituted trustee under the deed of trust may record a notice of default or otherwise
13 commence the foreclosure process except when **acting within the scope of authority
14 designated by the holder of the beneficial interest.**” [emphasis added].

15 150. Plaintiffs again allege that Defendants do not have the authority to commence the
16 foreclosure process as they have not yet been able to prove they have the authority from the beneficial
17 interest to foreclose.

18 151. Defendants are legally obligated to ensure that all facts contained within all material
19 instruments in the chain of title are true, correct and are verifiable by competent and reliable evidence
20 to support those facts. Plaintiffs are informed and believe, and thereon allege that Defendants have
21 willfully or at the least negligently breached their duty.

22 152. All assignments and all recorded instruments must contain truthful statements and facts
23 that are authenticated or verified by evidence and by a person with personal first-hand knowledge, or
24 the instrument is void.

25 153. Substantial competent and reliable evidence must be offered upon a challenge by the
26 borrower to support the recitals contained within all instruments that affect their title. The Plaintiffs
27 have invoked such a right under statute and deed of trust contract wherein it states that the borrower has
28 a duty to defend title against all others.

 154. Plaintiffs allege that Servicer Defendants had a duty which it has violated by failing to
ensure that documents (NOD, Substitution of Trustee, Notice of Trustee Sale, and Assignments of
Deed) were complete and supported by admissible, reliable evidence by persons with personal first-

1 hand knowledge of the facts contained within. Servicer Defendants’ violations of Section 2924.17 are
2 willful.

3 155. Defendants failed to produce evidence, upon request by the borrower, that a *bona fide*
4 beneficiary has directed the *valid* trustee to execute the acceleration of debt and that the *bona fide*,
5 authenticated beneficiary has executed and delivered a written “Declaration of Default and Demand for
6 Sale,” as stated in the NOD.

7 156. Servicer Defendants also failed to record a valid substitution of trustee granting NDSC
8 the power of sale contained as a clause in Plaintiff’s loan contract.

9 157. Defendants also failed to produce competent and reliable evidence, upon request by
10 Plaintiffs that all assignments of the deed of trust were executed by valid parties and that valuable
11 consideration was paid for each “grant” of interest (assignment) in the debt obligation. *See* Cal. Civ.
12 Code § 1066.

13 158. All documents executed and recorded by Defendants are alleged as being void and as
14 being forgeries by Plaintiffs.

15 159. Plaintiffs repudiate and refute the validity, truthfulness and accuracy of all statements
16 made by Defendants within the four corners of all instruments recorded and/or discussed herein.

17 160. Plaintiffs allege that Defendants have made, or negligently relied upon, false and
18 misleading statements within assignment instruments, notice of default, substitutions of trustee and
19 notice of sale documents exhibited by Plaintiffs. The falsity of those statements is alleged above in
20 Plaintiffs’ opening statement of facts.

21 161. Plaintiffs allege that Servicer Defendants caused his loan obligation to be unlawfully
22 accelerated.

23 162. Plaintiffs allege that Defendant NDSC has placed known false, forged instruments into
24 the permanent records of the respective counties.

25 163. Plaintiffs have been damaged as a result of Defendant’s violations in that their credit has
26 been destroyed, has suffered emotional distress and humiliation, and lost ownership and equitable
27 possession of Plaintiffs’ real property due to the actions of Defendants.

28 //

1 164. Plaintiffs allege Defendants have made multiple and repeated uncorrected violations of
2 section 2924.17(b) and are subject to civil penalties in an action by the government under section
3 2924.17(c).

4 165. Plaintiffs allege that Servicer Defendants directed the sale of the respective properties.
5 Defendant NDSC substantially relied upon, and directed, Notice of Trustee Sale without being
6 substituted as trustee and recording such authoritative instrument.

7 **FOURTH CAUSE OF ACTION**
8 **VIOLATION OF CALIFORNIA CIVIL CODE § 2923.55**
9 **(Against All Defendants)**

10 166. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of
11 the subsequent causes of action as though fully set forth herein.

12 167. Pursuant to Cal. Civil Code section 2923.55 a mortgage servicer, mortgagee, trustee,
13 beneficiary, or authorized agent may not record a notice of default until it satisfies the requirements of
14 section 2924 and sends the required information detailed in section 2923.55 (a)-(b).

15 168. Section 2923.55 (b)(1)(B)(iii) states a borrower may request “[a] copy of any
16 assignment, if applicable, of the borrower’s mortgage or deed of trust required to demonstrate the right
17 of the mortgage servicer to foreclose.”

18 169. Plaintiffs are informed and believe, and thereon allege Defendants, their principals,
19 agents, and/or employees, and each of them acted in violation of California Civil Code section 2923.55
20 by filing publicly recorded documents without the required information. Additionally, the documents
21 should never have been filed because Defendants did not have the required information at the time of
22 filing due to the fact Defendants were never in possession of the assignments required to demonstrate
23 the right of the servicer to foreclose.

24 170. Plaintiffs have requested the documents repeatedly from Defendants and are informed
25 and believe, and thereon allege that Defendants do not presently have the required documents to
26 demonstrate the right of the servicer to foreclose.

27 171. Additionally, Cal. Civil Code section 2924(a)(1) requires the trustee, mortgagee, or
28 beneficiary, or any of their authorized agents to file a notice of default within the county of the

1 property. Pursuant to Cal. Civil Code section 2924(a)(1)(C) notice of default shall include all of the
2 following:

3 “(C) A statement setting forth the nature of each breach *actually known to the*
4 *beneficiary* and of his or her election to sell or cause to be sold the property to satisfy
5 that obligation and any other obligation secured by the deed of trust or mortgage that is
6 in default.” (*Id.*) (emphasis added).

7 172. Plaintiffs are informed and believe, and thereon allege that Defendants never had this
8 statement as required. Plaintiffs believe that any statement alleged to satisfy the above requirements
9 was a forgery and/or made by someone without personal knowledge of the “breach known to the
10 beneficiary.”

11 173. Plaintiffs are informed and believe, and thereon allege that Defendants conduct in
12 violating the requirements of sections 2923.55 and 2924 was willful and material. Defendants were
13 placed on notice numerous times and did not provide the requested documentation, the “statement
14 setting forth the nature of each breach actually known to the beneficiary” and/or the documents proving
15 the right of the Defendants to foreclose on Plaintiff’s property. Defendants continued to record other
16 public documents in addition to the Notice of Deed, including assignments and Notices of Sale.
17 Defendants willfully relied on false information, even after repeated notice of the falsity, to file
18 documents in furtherance of the foreclosure process.

19 174. As alleged above, Defendants continued to file publicly recorded documents in violation
20 of the California Homeowners Bill of Rights despite being placed on notice of the violations and in
21 direct conflict with section 2924(a)(6). Defendants had no authority to foreclose as alleged herein.

22 175. It bears repeating that after the Notice of Default, Defendants continued to file publicly
23 recorded documents in violation of the California Homeowners Bill of Rights despite being placed on
24 notice of the violations. Pursuant to section 2924(a)(6):

25 “No entity shall record or cause a notice of default to be recorded or otherwise initiate
26 the foreclosure process unless it is the holder of the beneficial interest under the
27 mortgage or deed of trust, the original trustee or the substituted trustee under the deed of
28 trust, or the designated agent of the holder of the beneficial interest. No agent of the
holder of the beneficial interest under the mortgage or deed of trust, original trustee or
substituted trustee under the deed of trust may record a notice of default or otherwise

1 commence the foreclosure process except when acting within the scope of authority
2 designated by the holder of the beneficial interest.”

3 176. Plaintiffs again allege that Defendants do not have the authority to commence the
4 foreclosure process as they have not yet been able to prove they have the authority from the beneficial
5 interest to foreclose.

6 177. Plaintiffs are informed and believe, and thereon allege Defendants continue to willfully
7 and blindly act in their own self-interest to foreclose on Plaintiff’s property without proper authority.
8 Instead, Defendants look to each other as servicer and trustee to instruct each other in the process,
9 acting in complete disregard for the law and the necessity of authority from the beneficial interest.

10 178. Even when Plaintiffs contact Defendants, and each of them, refer to the other entity for
11 information, skirting the law and attempting to put Plaintiffs in limbo as to whom must answer
12 questions relating to his foreclosure. Meanwhile. Defendants proceed with the foreclosure process
13 without the necessary information, statements, and/or documentation required proving both the default
14 and the right to foreclose, both of which Plaintiffs contend Defendants do not hold.

15 179. Defendants’ violations of the sections herein has been willful, material, repeated, and
16 with malice to Plaintiffs. Defendants have acted in self-interest without regard to the law and/or
17 Plaintiff’s rights.

18 180. Defendants and each of them are not entitled to immunity from liability under Cal. Civil
19 Code section 2924(b) because Defendants have not acted in good faith. Defendants have not relied on
20 information “provided in good faith by the beneficiary regarding the nature and the amount of the
21 default under the secured obligation, deed of trust, or mortgage.” Instead, Defendants have relied on
22 information from one another, relied on patently false information, filed false information in publicly
23 recorded documents, and/or simply do not have information or instructions from the beneficiary as
24 required.

25 181. Plaintiffs pursue this action under Cal. Civil Code section 2924.12(a)-(b) for an
26 injunction for Defendants to remedy the violations and damages resulting from Defendants’ actions in
27 pursuing foreclosure without the required statements and authority to foreclose.

28 //

1 182. Defendants have improperly collected payments, fees, fines, principal, and Plaintiffs
2 have incurred loss of credit, equity, increased expenses for credit, loss of availability of credit, and loss
3 of his property due to Defendants' actions. Defendants ignored Plaintiffs' numerous requests for
4 information and acted in complete disregard for the law.

5 183. Plaintiffs are entitled to an injunction for Defendants to remedy and/or rescind the
6 improperly filed documents, damages, statutory or treble damages pursuant to section 2924.12 (b) and
7 for attorney's fees and costs pursuant to section 2924.12(i).

8 **FIFTH CAUSE OF ACTION**
9 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET. SEQ.**
10 **UNFAIR COMPETITION LAW**
11 **(Against All Defendants)**

12 184. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of
13 the subsequent causes of action as though fully set forth herein.

14 185. California's Unfair Competition Law (UCL) prohibits any unfair competition defined as
15 any "unlawful, unfair, or fraudulent business act or practice." Bus. & Prof. Code § 17200.

16 186. Defendants have engaged in unlawful business practices as described above and herein,
17 by conducting business practices that are unlawful. *See Olszewski v. Scripps Health* (2003) 30 Cal.4th
18 798, 135 Cal. Rptr.2d 1 ("A business practice is unlawful 'if it is forbidden by any law'")

19 187. Defendants violated various state and federal laws, including but not limited to those
20 alleged herein. Defendants provided false and/or misleading information in response to Plaintiffs'
21 complaints, providing false or misleading information, and failing to honor proper state law mandated
22 foreclosure proceedings. These violations are standard practice for Defendants and are intended to
23 deceive and harm Plaintiffs and the general public.

24 188. Defendants have *clearly* violated the unfair business practices prong of the UCL as set
25 forth in the Complaint and herein.

26 189. Courts have defined "unfair" as a practice that offends public policy or is immoral,
27 unethical, oppressive, unscrupulous or substantially injurious to consumers or required courts to weigh
28 the utility of Defendants' conduct against the gravity of the harm to the alleged victim. *Graham v. Bank*

1 of America (2014) 226 Cal.App.4th 594, 612. Plaintiffs alleging an unfair business practice must show
2 Defendants' conduct is tethered to an underlying constitutional, statutory, or regulatory provision or
3 that it threatens an incipient violation of an antitrust law, or violates the policy or spirit of an antitrust
4 law. *Id.* at 613.

5 190. Defendants' acts alleged herein are unfair insofar as they intentionally failed to properly
6 notify Plaintiffs of their rights to dispute an alleged default per the signed Deed of Trust, California
7 law, and California public policy, cure the alleged default in a timely manner, notify and allow
8 Plaintiffs to seek legally permissible alternatives to foreclosure, and wrongful foreclosure. Plaintiffs
9 were forced to watch as Defendants claimed rights to issue Notices of Default, Notices of Sale, and
10 authority to sell Plaintiff's respective property.

11 191. Defendants' acts are unfair insofar as they failed to record Substitutions of Trustee, not
12 only for Plaintiffs, but for a large part of the general public, as required by the Deed of Trust, California
13 law, and California public policy. This failure deceives both Plaintiffs and the general public as to the
14 identity of the true Trustee and/or true holder of the note.

15 192. Defendants' acts are unfair insofar as they failed to notify Plaintiffs of the acceleration
16 of Plaintiff's debt as required by the Deed of Trust, California law, and California public policy, not
17 only for Plaintiffs, but for many individuals in the general public, as this is standard practice for
18 Defendants.

19 193. Defendants unfairly held themselves out as having proper authority to file publicly
20 recorded documents and foreclose on Plaintiff's property. Although Plaintiffs relied on this apparent
21 authority, Plaintiffs and the general public were ignorant of the fact that Defendants did not own the
22 notes and were not lawful agents, beneficiaries, or trustees for the true and legal owner of the note.
23 Consequently, Plaintiffs unfortunately relied on this improper authority.

24 194. Defendants continuously engaged in fraudulent business practices pursuant to section
25 17200. In order to show fraudulent business practices, Plaintiffs "need only show that members of the
26 public are *likely* to be deceived." *Bank of the West v. Sup. Ct.* (1992) 2 Cal.4th 1254, 1267.

27 195. Defendants acted fraudulently in a manner that was likely to not only deceive Plaintiffs,
28 but was likely to deceive the general public, including but not limited to making material

1 misrepresentations or omissions, knowingly filing false instruments for the general public to view,
2 knowingly filing false instruments without required declarations, failing to properly notify Plaintiffs of
3 their rights to dispute alleged defaults and wrongful foreclosure in a manner that constitutes fraudulent
4 business acts and practices as prohibited by Cal. Bus. & Prof. Code § 17200, *et. seq.*

5 196. Defendants unlawfully filed public documents including Notices of Default and Notices
6 of Trustee’s Sale without the authority to do so as the Defendants were not owners of the note or lawful
7 trustees, beneficiaries, or agents for the true and legal owner of the note at the time of filing.

8 197. Defendants fraudulently continued this scheme of filing false documents and attempting
9 to sell property in order to profit, knowing their actions were illegal, unfair, and fraudulent but acting
10 with complete disregard to Plaintiffs, along with numerous homeowners throughout California.

11 198. Defendants’ unlawful, unfair, and fraudulent business practices are alleged throughout
12 this complaint and it is plainly clear that at the very least, Plaintiffs and the public was likely to be
13 deceived by Defendants’ practices.

14 199. Business & Professions Code Section 17204 provides a private right of action for a
15 person who is injured and lost money or property as a result of the unfair competition.

16 200. Plaintiffs “may pursue representative claims or relief on behalf of others” according to
17 Business & Professions Code Section 17203.

18 201. Business & Professions Code Section 17205 provides that “the remedies or penalties
19 provided by this chapter are cumulative to each other and to the remedies or penalties available under
20 all other laws of this state.”

21 202. Plaintiffs request that this Court enter such orders or judgments as may be necessary to
22 enjoin Defendants from continuing its “unlawful, unfair, and/or fraudulent business act or practices”
23 and to restore Plaintiffs any money or property which Defendants acquired by such unfair competition
24 under California Business & Professions Code Section 17200, *et. seq.*

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SIXTH CAUSE OF ACTION
WRONGFUL FORECLOSURE
(Against All Defendants)

203. Plaintiffs incorporate all preceding and subsequent paragraphs of the Complaint as though fully set forth herein.

204. Defendants and DOES (unknown beneficiary) have claimed an interest in Plaintiffs' contract note and deed of trust.

205. Plaintiffs are informed and believe, and based thereon allege Defendants are not the holders of the notes and deeds of trust and are not operating under a valid power from the current holders of the notes and deeds of trust, Defendants did not have the right to proceed with the foregoing foreclosures.

206. Plaintiffs allege that Defendants have no right, title, or interest in his deed of trust or his real property; thus, a controversy exists.

207. Defendants are alleged to have used false statements contained within recorded instruments as fully alleged herein.

208. Plaintiffs are informed and believe, and based thereon allege Defendants' Instruments as being forgeries.

209. The burden of proving an assignment falls upon the party asserting rights thereunder. In an action by an assignee to enforce an assigned right the evidence must not only be sufficient to establish the fact of assignment when that fact is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and positive to protect an obligor from any further claim by the primary obligee. *See Cockerell v. Title Ins. & Trust Co.*, 42 Cal. 2d 284, 292, 267 P.2d 16, 21 (1954).

210. Defendants have unlawfully invoked Cal. Civ. Code § 2924 for non-judicial foreclosure by using or relying upon known forgeries in recorded instruments and without contractual or lawful authority.

211. Under the Uniform Commercial Code, a negotiable instrument, such as a promissory note secured by a mortgage, may only be enforced by the holder or a person with the rights of a holder. Com. Code §3-301. For instruments payable to an identified person, such as a lender, a holder is generally recognized as the payee or one to whom the negotiable instrument has been negotiated. This

1 requires transfer of possession and endorsement by the prior holder. Com. Code §3-201. Unless the
2 parties otherwise provide, the mortgage follows the note. Cal. Civ. Code §2936.

3 212. Though in California, the assignment of a note generally carries with it an assignment of
4 the mortgage, it is still required in California that the holder of the note or a person operating with
5 authority from that holder be the foreclosing party and that the mortgage not have been assigned away
6 from that note.

7 213. Defendants no longer own the notes it originated and there is just no way of knowing
8 who now owns the Plaintiffs' mortgages because the Defendants do not know who owns these
9 mortgages. Indeed, the Defendants do not know where it is that they obtained their alleged rights to
10 collect money from Plaintiffs thereunder.

11 214. Once separated from the note, the trust deed is unenforceable and of no legal value. For
12 negotiable instruments payable to an identified person, such as a lender, a holder is generally
13 recognized as the payee or one to whom the negotiable instrument has been negotiated. This requires
14 transfer of possession and endorsement by the prior holder. (Com. Code §3-201). Unless the parties
15 otherwise provide, the mortgage follows the note. (Civ. Code §2936; *see also Carpenter v. Longan*
16 (1872) 83 U.S. 271, 275).

17 215. Cal. Civil Code §2936 provides: "the assignment of a debt secured by mortgage carries
18 with it the security." Defendants have no evidence that they own the notes or have any power to
19 enforce them from the rightful owners

20 216. Plaintiffs have sufficiently alleged and incorporated herein that the recorded Assignment
21 of Deed of Trust, Substitution of Trustee, Notice of Trustee Sale, Notice of Default, and any other
22 recorded documents contain false statements that were memorialized by Defendants against the
23 interests of Plaintiffs.

24 217. Plaintiffs allege Defendant had a duty of care to verify all facts contained in those
25 instruments but failed to fulfill those duties.

26 218. Defendants acted repeatedly to violate Plaintiffs' rights under California law as alleged
27 herein, despite repeated attempts by Plaintiffs to request legally required documentation from
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1 Defendants and Defendants repeatedly refuse to provide documentation, affidavits, and/or otherwise to
2 prove authority, status, and/or rights to foreclose on Plaintiffs.

3 219. Defendants acted outrageously and persistently with actual malice in performing the acts
4 alleged in this cause of action. Accordingly, Plaintiffs are entitled to exemplary and punitive damages
5 in a sum according to proof and to such other relief as is set forth below in the section captioned Prayer
6 for Relief which is by this reference incorporated herein.

7 220. Plaintiffs allege that he has been harmed as a direct and proximate result of Defendants'
8 acts and omissions and Plaintiffs substantially relied on Defendants' acts and omissions to his
9 detriment.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs pray for judgment against the Defendants and each of them as set
13 forth below:

14 First Cause of Action: Intentional Misrepresentation

- 15 1. For general and special damages in an amount according to proof at trial.
- 16 2. For punitive and exemplary damages in an amount appropriate to punish Defendants and
17 deter others from engaging in similar conduct.

18 Second Cause of Action: Negligent Misrepresentation

- 19 3. For general and special damages in an amount according to proof at trial.
- 20 4. For punitive and exemplary damages in an amount appropriate to punish Defendants and
21 deter others from engaging in similar conduct.

22 Third Cause of Action: Violation of California Homeowner Bill of Rights, California Civil 23 Code section 2924.17

- 24 5. For general and special damages in an amount according to proof at trial.
- 25 6. For a finding and determination that Plaintiffs are the rightful holders of the title to their
26 respective properties and that Defendants herein, and each of them, have no estate, right, title, lien or
27 interest in said properties.

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1 7. For immediate rescission of all instruments exhibited herein and injunctive relief
2 enjoining Defendants from any act in furtherance of rights under Plaintiffs' contract deed of trust and
3 real property.

4 8. For cancellation/rescission of the Assignments of Deed of Trust, Notices of Trustee Sale
5 and/or Notices of Default.

6 9. For the maximum penalties allowed per false filing of publicly recorded documents.

7 10. For a judgment that not one of the Defendants has any unencumbered legal interest in
8 the notes and/or deeds of trust.

9 11. For Court Order and Decree cancelling Defendants' recordings and for the court to
10 execute full deed of reconveyance of the deed of trust in favor of Plaintiffs.

11 12. For reasonable attorney's fees and costs pursuant to section 2924.12(i) upon injunction
12 and/or damages.

13 13. For punitive and exemplary damages in an amount appropriate to punish Defendants and
14 deter others from engaging in similar conduct.

15 Fourth Cause of Action: Violation of California Civil Code section 2923.55

16 14. For general and special damages in an amount according to proof at trial.

17 15. For a finding and determination that Plaintiffs are the rightful holder of the title to their
18 respective properties and that Defendants herein, and each of them, have no estate, right, title, lien or
19 interest in said properties.

20 16. For a judgment that not one of the Defendants has any unencumbered legal interest in
21 the notes and/or deeds of trust.

22 17. For Court Order and Decree cancelling Defendants' recordings and for the court to
23 execute full deed of reconveyance of the deed of trust in favor of Plaintiffs.

24 18. Enjoining any trustee sale contemplated against Plaintiffs' respective properties until a
25 determination is made that the violations of the statute have been remedied.

26 19. For statutory damages to the fullest extent of the law if any of the Defendants records a
27 Trustee's Deed Upon Sale against Plaintiffs' interests without correcting the violations described
28 herein.

1 20. For reasonable attorney’s fees and costs pursuant to section 2924.12(i) upon injunction
2 and/or damages.

3 21. For punitive and exemplary damages in an amount appropriate to punish Defendants and
4 deter others from engaging in similar conduct.

5 Fifth Cause of Action: Unfair, Unlawful, And Fraudulent Business Practices (Violation Of
6 California Bus & Prof. Code §17200, et. Seq.)

7 22. For general and special damages in an amount according to proof at trial.

8 23. For restitution to restore to Plaintiffs any, and all, monies and property acquired by
9 means of Defendants’ unlawful/unfair/fraudulent conduct.

10 24. For a permanent injunction pursuant to Business and Professions Code section 1703
11 restraining and enjoining Defendants from conducting or attempting to conduct foreclosure
12 proceedings, foreclosure attempts, communications regarding foreclosure, and/or publicly recording
13 Notices of Default and/or Notices of Trustee Sale.

14 25. During the pendency of this action, a preliminary injunction issued pursuant to Business
15 and Professions Code section 17203 to enjoin and restrain Defendants from the acts of unfair
16 competition set forth above.

17 26. For restitution to restore other victims any, and all, monies and properties acquired by
18 means of Defendants’ conduct.

19 27. For such orders or judgment as may be necessary to prevent the
20 unlawful/unfair/fraudulent practices which constitute unfair competition.

21 28. For punitive and exemplary damages in an amount appropriate to punish Defendants and
22 deter others from engaging in similar conduct.

23 Sixth Cause of Action: Wrongful Foreclosure

24 29. For general and special damages in an amount according to proof at trial.

25 30. For restitution to restore to Plaintiffs any, and all, monies and property acquired by
26 means of Defendants conduct.

27 31. The unwinding of Defendants’ wrongful foreclosure sales, and return of title to
28 Plaintiffs.

1 32. For a finding and determination that Plaintiffs are the rightful holders of the title to their
2 respective properties and that Defendants herein, and each of them, have no estate, right, title, lien or
3 interest in said properties.

4 33. For a judgment that not one of the Defendants has any unencumbered legal interest in
5 the notes and/or deeds of trust.

6 34. For Court Order and Decree cancelling Defendants' recordings and for the court to
7 execute full deed of reconveyance of the deed of trust in favor of Plaintiffs.

8 35. For a permanent injunction enjoining Defendants from conducting or attempting to
9 conduct foreclosure proceedings, foreclosure attempts, communications regarding foreclosure, and/or
10 publicly recording Notices of Default and/or Notices of Trustee Sale related to said properties.

11 36. For punitive and exemplary damages in an amount appropriate to punish Defendants and
12 deter others from engaging in similar conduct.

13 37. For reasonable attorney's fees.

14 38. For costs of suit herein.

15 39. For such other and further relief as the court deems just and proper.

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19 Dated: April 4, 2016

Respectfully submitted,

BROOKSTONE LAW, PC

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22 By: 

Jonathan Tarkowski
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

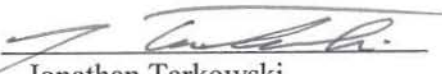
Plaintiffs hereby demand a jury trial in the above-entitled action.

Dated: April 4, 2016

Respectfully submitted,

BROOKSTONE LAW, PC

By:


Jonathan Tarkowski
Attorneys for Plaintiffs