

1 William E. Shapiro (SBN 222615)
LAW OFFICES OF WILLIAM E. SHAPIRO
244 California Street, Suite 300
2 San Francisco, CA 94111
Telephone: (415) 678-9209
3 Facsimile: (415) 358-8515

4 Mary Catherine Wiederhold (SBN 219429)
LAW OFFICES OF MARY CATHERINE WIEDERHOLD
5 1458 Sutter Street
San Francisco, CA 94109
6 Telephone: (415) 533-0735
Facsimile: (415) 749-1487

7 Attorney for Plaintiff RICHARD A. FRUSTERE
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 RICHARD A. FRUSTERE,) Case No.: 11-CV-06395-MMC
12 Plaintiff,)
13 vs.) **STIPULATION AND [PROPOSED]**
14 WELLS FARGO BANK, N.A., BRENDAN) **ORDER TO ALLOW FILING OF FIRST**
15 MURPHY, individually and as trustee of the) **AMENDED COMPLAINT**
16 MURPHY FAMILY TRUST, and DOES 1 to)
100)
17 Defendant) **Complaint Filed: June 2, 2011**

18 Plaintiff Richard A. Frustere ("Plaintiff") and defendant Wells Fargo Bank, N. A. ("Wells
19 Fargo"), by and through their counsel of record, stipulated agree as follows:

20 Whereas, Wells Fargo has filed a motion to dismiss pursuant to Federal Rule of Civil
21 Procedure 12(b)(6);

22 Whereas, on Monday February 6, 2012, counsel for Plaintiff requested that counsel for
23 Wells Fargo agree to allow Plaintiff to file a First Amended Complaint;
24
25

1 Whereas counsel for Wells Fargo agreed to file such a stipulation, provided Plaintiff file
2 any proposed first amended complaint in a timely manner so as not to delay disposition of this
3 case on its merits;

4 Whereas, the parties wish to avoid the time and expense of a hearing subsequent briefings
5 pursuant to Plaintiff's request for leave to file a first amended complaint;

6 Therefore, the parties stipulate, agree, and respectfully request, that the Court issue an
7 order allowing the plaintiff to file First Amended Complaint For Damages and Injunctive Relief
8 and Jury Trial Demanded, attached as Exhibit A to this stipulation.

9 Pursuant to this stipulation, Plaintiff agrees to file his first amended complaint, attached
10 hereto as Exhibit A, no later than three court days from the signing of the order approving this
11 stipulation.

12 The stipulation may be signed in counterparts. For the purposes of this stipulation, a
13 facsimile signature copy shall be deemed as valid as if the original.

14 Dated this February ____, 2012

15
16 William E. Shapiro
17 Mary Catherine Wiederhold
18 ATTORNEY FOR PLAINTIFF
19 Richard A. Frustere

20 Dated this February 7, 2012

21 Jason M. Richardson
22 Jason M. Richardson
23 ATTORNEY FOR DEFENDANT
24 Wells Fargo Bank, NA

25 Good cause appearing, the Court hereby orders that plaintiff be allowed to file the
attached First Amended Complaint. Plaintiff shall file his first amended complaint no later
than three court days from the filing of this order.
IT IS SO ORDERED.

Dated: February 14, 2012

Maxine M. Chesney
Hon. Maxine M. Chesney

1 Whereas counsel for Wells Fargo agreed to file such a stipulation, provided Plaintiff file
2 any proposed first amended complaint in a timely manner so as not to delay disposition of this
3 case on its merits;

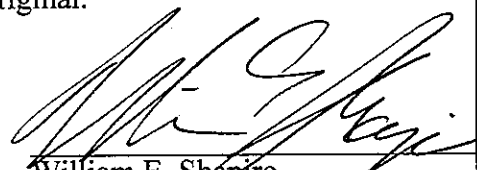
4 Whereas, the parties wish to avoid the time and expense of a hearing subsequent briefings
5 pursuant to Plaintiff's request for leave to file a first amended complaint;

6 Therefore, the parties stipulate, agree, and respectfully request, that the Court issue an
7 order allowing the plaintiff to file First Amended Complaint For Damages and Injunctive Relief
8 and Jury Trial Demanded, attached as Exhibit A to this stipulation.

9 Pursuant to this stipulation, Plaintiff agrees to file his first amended complaint, attached
10 hereto as Exhibit A, no later than three court days from the signing of the order approving this
11 stipulation.

12 The stipulation may be signed in counterparts. For the purposes of this stipulation, a
13 facsimile signature copy shall be deemed as valid as if the original.

14 Dated this February 9, 2012


William E. Shapiro
Mary Catherine Wiederhold
ATTORNEY FOR PLAINTIFF
Richard A. Frustere

18 Dated this February ____, 2012

19
20 Jason M. Richardson
ATTORNEY FOR DEFENDANT
Wells Fargo Bank, NA

21 Good cause appearing, the Court hereby orders that plaintiff be allowed to file the
22 attached First Amended Complaint.

23 IT IS SO ORDERED.

24 Dated:

25 _____
Hon. Maxine M. Chesney

EXHIBIT A

1 William E. Shapiro (SBN 222615)
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LAW OFFICES OF MARY CATHERINE WIEDERHOLD
1458 Sutter Street
5 San Francisco, CA 94109
6 Telephone: (415) 533-0735
7 Facsimile: (415) 749-1487

8 Attorney for Plaintiff RICHARD A. FRUSTERE

9 UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

10 CIVIL DIVISION

11 RICHARD A. FRUSTERE,)	Case No.: 3:11-cv-06395-MMC
)	
12 Plaintiff,)	FIRST AMENDED COMPLAINT FOR
)	DAMAGES AND INJUNCTIVE RELIEF
13 vs.)	
)	
14 WELLS FARGO BANK, N.A., BRENDAN)	JURY TRIAL DEMANDED
15 MURPHY, individually and as trustee of the)	
)	
16 MURPHY FAMILY TRUST, and DOES 1 to)	
)	
17 100)	
)	
18 Defendants)	

19
20 1. Richard A. Frustere (hereafter "plaintiff") is a natural person living in Westerly,
21 Rhode Island.

22 2. Wells Fargo Bank, N.A. (hereafter "Wells Fargo"), is a corporation organized
23 under the laws of the state of Delaware which is authorized to do business in the State of
24 California. Its principal place of business and headquarters is San Francisco County, California.

1 3. Brendan Murphy is a natural person and resident of San Mateo County, and
2 trustee of the Murphy Family Trust.

3 4. Plaintiff does not know the true names and capacities of defendants sued herein as
4 Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names
5 under the provisions of California Code of Civil Procedure section 474. Plaintiff will seek leave
6 to amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
7 informed and believes and thereon alleges that each of the fictitiously named defendants is
8 responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as
9 herein alleged were and continue to be proximately caused by such occurrences. Plaintiff is
10 informed and believes and thereon alleges that, at all times herein mentioned each of the
11 defendants sued herein was an employee of the remaining defendants. Plaintiff alleges that each
12 and every defendant alleged herein ratified the conduct of each and every other defendant.
13 Plaintiff further alleges at all times defendants were acting within the purpose and scope of such
14 agency and employment.

15 5. Plaintiff owns the real property known as 795 Park Avenue, Moss Beach,
16 California (hereafter "subject property"). Legal description of the real property is:

17 LOT 10 AND 11 IN BLOCK 1 AS SHOWN ON THAT CERTAIN MAP
18 ENTITLED "MA4" OF RIVERA OCEAN VILLA TRACT, SAN MATEO
19 COUNTY, CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY
20 RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON
21 JUNE 15, 1908 IN BOOK 6 OF MAPS AT PAGE 20.

22 APN NO. 0037-250-180

23 6. Plaintiff purchased the subject property on or about November 8, 1985, by virtue
24 of a note and deed of trust securing loans.

1 7. Plaintiff refinanced the subject property on or about October 13, 1993, through a
2 deed of trust and note securing the loan through Wells Fargo Bank.

3 8. Plaintiff is informed and believes and thereon alleges that at some point
4 subsequent to the 1993, the deed of trust was transferred by Wells Fargo Bank to another entity.
5 At that time, plaintiff is informed and believes and thereon alleges that Wells Fargo became a
6 loan servicer.

7 9. Plaintiff established an online bill pay system through Bank of America, where he
8 maintained an account, in order to pay the monthly payment on the deed of trust to Wells Fargo
9 bank. These payments began in approximately 2001 and continued to the present. Unknown to
10 plaintiff, beginning in August 2007, Wells Fargo ceased receiving the monthly transfers to pay
11 off the note held by Wells Fargo.

12 10. On or about June 18, 2006, plaintiff traveled to Rhode Island to attend to his sick
13 mother. During the time he cared for his mother prior to her death, plaintiff notified Wells Fargo
14 in writing that he was not going to be at the subject property for an extended period. Plaintiff
15 directed Wells Fargo to send any notices to him at his Rhode Island address.

16 11. On or about November 12, 2007, Wells Fargo sent a notice of default to plaintiff
17 at the subject property and not at the new Rhode Island address which plaintiff had given Wells
18 Fargo in 2006. On or about November 22, 2007, plaintiff learned that the subject property was in
19 default and that his payments had not been received by Wells Fargo. He began contacting Wells
20 Fargo telephonically and in writing. After attempting to learn what had happened to his online
21 payments, plaintiff sent a facsimile to Wells Fargo Bank on December 24, 2007, informing them
22 of a number of issues related to the subject property. In his facsimile, plaintiff informed Wells
23 Fargo about his situation of caring for his ill mother who lived in Rhode Island and that all future
24 communications should be sent to his Rhode Island address..
25

1 12. Despite being informed of plaintiff's temporary Rhode Island address, Wells
2 Fargo continued to send all notices and communications to the subject property and did not send
3 them to plaintiff.

4 13. Plaintiff requested, on more than one occasion, that Wells Fargo representatives
5 tell him how to bring his account up to date, either by paying in one lump sum or via a payment
6 plan.

7 14. On or about December 20, 2008, plaintiff spoke with a representative of Wells
8 Fargo at telephone number 1-800-551-9808. Plaintiff asked the Wells Fargo representative if he
9 could make a full payment of the outstanding default amount. Plaintiff was told that he could not
10 pay through that department and through the representative he was speaking with.

11 15. On or about January 7, 2009, plaintiff spoke again with a representative of Wells
12 Fargo's collections department who identified himself as Raymond. He was informed that there
13 was a sale date on his property of January 12, 2009.

14 16. After January 7, Plaintiff again spoke with representatives of Wells Fargo to
15 negotiate terms and thereby prevent the foreclosure of his home. At some point during the
16 negotiations, Wells Fargo took the foreclosure sale date of the subject property off calendar. On
17 January 14, 2009, plaintiff was informed by a Wells Fargo representative who identified herself
18 as Gabriella at 1-800-416-1472 that there was no foreclosure date scheduled of the subject
19 property.

20 17. On or about January 23, 2009, Wells Fargo accepted plaintiff's payment in the
21 amount of \$2,780.

22 18. On or about January 29, 2009, Wells Fargo finally consented to a payment plan
23 with plaintiff. The first payment was wired by plaintiff to Wells Fargo or about January 29,
24 2009, in the amount of \$3,000 with the following payments being due on March 1, 2009. The
25 payment plan was expected to last through June 2009. Plaintiff made all payments required

1 under the plan. Receipt of plaintiff's first payment by Wells Fargo was confirmed by a Wells
2 Fargo representative, identified as Temeka at number 1-800-745-2426, on or about January 29,
3 2009.

4 19. Despite being on a mutually agreed payment plan with defendants, plaintiff is
5 informed and believes and thereon alleges that Wells Fargo continued to set dates for a trustee
6 sale of the subject property.

7 20. Plaintiff was instructed on January 29, 2009 by a Wells Fargo representative to
8 request a second payment plan prior to June 2009 in order to deal with a balloon payment on the
9 mortgage. Wells Fargo representatives then presented plaintiff with a second payment plan
10 which was double the amount of the previous payment plan, despite defendant being made fully
11 aware of plaintiff's financial situation.

12 21. While trying to negotiate a second payment plan with Well Fargo representatives,
13 plaintiff continued to make payments to Wells Fargo. Wells Fargo cashed plaintiff's checks and
14 continued to negotiate with plaintiff regarding the payment plan. Some of the tendered and
15 accepted money was later returned to plaintiff by Wells Fargo.

16 22. Eventually, on or about October 2, 2009, a Wells Fargo representative, who
17 identified herself as Vicky Davenport at telephone number 1-800-853-8516 x 40494, informed
18 plaintiff during a telephone conversation that the subject property was scheduled for a trustee
19 sale on November 9, 2009. In subsequent telephone conferences, plaintiff, Vicky Davenport, and
20 a representative of Wells Fargo's loss mitigation depart, who was identified as Fatriya, discussed
21 options to prevent the foreclosure sale of the subject property from going forward. During the
22 telephone conference call on October 2, 2009, Wells Fargo's representatives informed plaintiff
23 that if he made payments totaling \$4,049.70, the trustee sale of the subject property would be not
24 be held and rescheduled for a time after December 1, 2009. This way, plaintiff was told, it would
25

1 allow for either a loan modification or payment plan to be approved by Wells Fargo, allowing
2 plaintiff to keep the subject property.

3 23. Plaintiff tendered the requested payment of \$4,049.70 on November 9, 2009.
4 Plaintiff's tendered payment was accepted by Wells Fargo on that date.

5 24. Plaintiff is informed and believes and thereon alleges that a new trustee sale was
6 scheduled by Wells Fargo. Despite the assurances of Wells Fargo representatives that a new
7 trustee sale would be scheduled for some time in the future, no earlier than December, the sale of
8 the subject property did, in fact, occur on November 23, 2009. Plaintiff did not discover that the
9 sale occurred until December 8, 2009.

10
11 **FIRST CAUSED OF ACTION**
12 **FRAUD**
13 **(As Against Wells Fargo)**

14 25. Plaintiff alleges and incorporates herein by reference all of the allegations
15 contained in each of the proceeding paragraphs as though fully set forth herein, with the
16 exception of any particular allegation that is expressly inconsistent with any allegation made in
17 this cause of action.

18 26. Plaintiff alleges that based upon the foregoing representations of defendant, and
19 each of them, plaintiff did in fact place his trust in the representations of defendant, and that such
20 trust was reasonable.

21 27. Plaintiff alleges that defendant presented plaintiff an option whereby either he
22 would obtain a loan modification or a payment plan which would allow him to bring his
23 mortgage up to date and reinstated fully. According to Wells Fargo representatives, these options
24 were contingent upon plaintiff making a payment of \$4,049.70 by November 9, 2009. According
25 to Wells Fargo representatives, this payment would secure a delay of time on the trustee sale

1 which will allow either option to be completed. Plaintiff timely made the November 9, 2009
2 payment.

3 28. Plaintiff alleges that defendant had a duty to disclose the deadlines involved in the
4 foreclosure process. Plaintiff alleges that defendant did not provide him with accurate
5 information, even in response to his continued inquiries during the negotiations for either a loan
6 modification or payment plan.

7 29. Plaintiff also alleges that defendant had a duty to disclose the date of the
8 foreclosure sale and when it happened.

9 30. Plaintiff was induced by the foregoing representations to and did make payments
10 to defendant based on its representations to him about bringing his mortgage up to date.

11 31. At the time defendant's statements were made to plaintiff, defendant knew that
12 the statements were untrue and that the representations were material representations.

13 32. Plaintiff was induced and did rely on defendant's representations through
14 deception. Plaintiff's reliance was justified as he believed defendant was working with him and
15 in his best interest. Defendant verbally promised to either modify or accept plaintiff's payment
16 plan, both of which were in place prior to the sale of the subject property and after plaintiff fully
17 complied with defendant's requests.

18 33. Plaintiff alleges that defendant knew at the time the representations were made to
19 plaintiff that they were untrue, and defendant knew at the time they were made in order to induce
20 plaintiff to rely upon the representations which were material to the negotiations between the two
21 parties.

22 34. Plaintiff alleges defendant fraudulently intended to convert his right, title and
23 interest to the subject property and any equity therein.

1 35. Plaintiff alleges that due to his reliance on defendant's representations, he has
2 been damaged and will contain suffer additional costs of moving out of the subject property and
3 the cost to relocate his permanent residence.

4 36. As a direct and proximate result of the above conduct, plaintiff has suffered and
5 continues to suffer physical, mental, and emotional pain, injury and distress, in an amount in
6 excess of this Court's jurisdictional minimum, including, but not limited to humiliation,
7 discomfort and annoyance all to his general damages and in an amount to be proven.

8 37. Plaintiff alleges that defendant had superior bargaining strength over him, and he
9 was offered only the opportunity to accept or reject the terms presented. Furthermore, defendant
10 dictated all terms related to any loan modification or payment plan and that no negotiations were
11 possible between plaintiff and defendant. Furthermore, defendant's contract was a contract of
12 adhesion.

13 38. Plaintiff is informed and believes and thereon alleges that defendant, and each of
14 them entered into a fraudulent scheme, the purpose of which is to make offers to him of either a
15 loan modification or payment plan. Defendant falsely represented to plaintiff that he would
16 qualify for either a loan modification or payment plan. In fact, plaintiff was not eligible for any
17 other type of financing or modification. Defendant's scheme was devised to extract illegal and
18 undisclosed compensation from plaintiff.

19 39. Plaintiff further alleges that the foreclosure sale of the subject property was not
20 executed in accordance with California Civil Code sections 1624, 2923.5, 2932.5, and
21 Commercial Code section 3302 et seq.

22 40. The actions of defendant, and each of them were fraudulent, oppressive, and
23 malicious so as to warrant the imposition of exemplary damages, and that by virtue of
24 defendant's conduct as set forth herein plaintiff is entitled to exemplary damages.
25

**SECOND CAUSE OF ACTION
INTENTIONAL MISREPRESENTATION
(As against Wells Fargo)**

1
2
3 41. Plaintiff alleges and incorporates herein by reference all of the allegations
4 contained in each of the proceeding paragraphs as though fully set forth herein, with the
5 exception of any particular allegation that is expressly inconsistent with any allegation made in
6 this cause of action.

7 42. Plaintiff is informed and believes thereon alleges that defendant's Notices of
8 Default were false in the following particulars, including, but not limited to, intentionally giving
9 him the wrong date for the foreclosure sale, demanding payments from him, and stating that such
10 payments would reinstate his loan, when defendant demonstrated no intention of reinstating the
11 loan.

12 43. Plaintiff alleges that based upon the foregoing representations of defendant,
13 plaintiff did in fact place his trust in the reputation of defendant and that such trust was
14 reasonable.

15 44. Plaintiff alleges defendant had a duty to disclose accurate deadlines involved in
16 the foreclosure process. Plaintiff alleges defendant did not provide him with accurate
17 information, including misrepresenting the date upon which the foreclosure sale would go
18 forward as well as the effect of the payments requested by defendant.

19 45. Plaintiff alleges that at the time that the statements were made, defendant was
20 aware that the statements were untrue and that these representations were material
21 representations.

22 46. Plaintiff alleges that defendant wrongfully, without justification, and without
23 privilege, conducted an invalid foreclosure sale against the subject property, thereby slandering
24 plaintiff's title thereto.
25

1 47. Furthermore, the aforementioned acts of defendant, and each of them was
2 motivated by oppression, fraud, malice in that defendant, and each of them, by their respective
3 acts, omissions, nonfeasance, misfeasance or malfeasance executed an invalid foreclosure sale on
4 the subject property. Defendant took this action in order to deny plaintiff's right of possession
5 and ownership, whereupon the foreclosure sale was defective as such and the subject property
6 must be restored to plaintiff or plaintiff is entitled to value thereof.

7
8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 et seq.**
10 **(As against Wells Fargo)**

11 48. Plaintiff alleges and incorporates herein by reference all of the allegations
12 contained in each of the proceeding paragraphs as though fully set forth herein, with the
13 exception of any particular allegation that is expressly inconsistent with any allegation made in
14 this cause of action.

15 49. The acts and practices, as described in the previous paragraphs, violate California
16 Business and Professions Code section 17200 et seq. because they violated the statutes listed
17 above and constitute unlawful business practices within the meaning of Business and Professions
18 Code section 17200 et seq.

19 50. The acts and practices, as described in previous paragraphs, violated Business and
20 Professions Code section 17200 et seq. because the acts of defendant constitute unfair business
21 practices within the meaning of Business and Professions Code section 17200 et seq.

22 51. As a result of the aforementioned acts and practices of defendants, plaintiff has
23 lost money or property and has, in fact, suffered injury. Defendant has received, continues to
24 retain, plaintiff's property.

1 52. As a further direct and approximate result of the aforementioned acts, defendant
2 received and continue to hold ill-gotten gains belonging to plaintiff, in that defendant has
3 profited in that amount from its unlawful activities.

4 53. Further, the foregoing conduct constitutes a violation of a consumer law,
5 including, or violates the policy or spirit of such law or otherwise significantly threatened or
6 harmed competition. Defendant's practices described above are likely to mislead the general
7 public, and therefore, constitute fraudulent business acts or practices within the meaning of
8 Business and Professions Code section 17200 et seq. Defendant's unfair, unlawful, and
9 fraudulent business practices and false and misleading advertising present a continuing threat to
10 members of the public, and other consumers will be defrauded. Plaintiff and other members of
11 the general public have no other adequate remedy at law.

12 54. Business and Professions Code section 17203 provides that the Court may restore
13 to any person in interest any money or property which may have been acquired by means of such
14 unfair competition or unlawful business practice, and order disgorgement of all profits gained by
15 defendants by operation of the unlawful practices alleged herein. Plaintiff is entitled to restitution
16 pursuant to Business and Professions Code sections 17203 and 17208 for all funds paid to
17 defendant. Likewise, defendant should be required to disgorge the ill-gotten gains that they have
18 taken from plaintiff as a result of their false statements, misrepresentations, and unlawful or
19 unfair acts.

20
21 **FOURTH CAUSE OF ACTION**
22 **BREACH OF CONTRACT**
23 **(As Against Wells Fargo)**

24 55. Plaintiff alleges and incorporates herein by reference all of the allegations
25 contained in each of the proceeding paragraphs as though fully set forth herein, with the
exception of any particular allegation that is expressly inconsistent with any allegation made in

1 this cause of action.

2 56. Plaintiff and defendant entered into a series of agreements, both written and
3 verbal, including a note and deed in trust, whereby the subject property was refinanced and
4 plaintiff would make monthly mortgage payments. Plaintiff and defendant then further agreed
5 that the mortgage payments would be made to defendant by direct deposit withdrawals from
6 plaintiff's bank account.

7 57. At the time payments were due, plaintiff had sufficient funds to be transferred and
8 accepted by direct deposit transfer to defendant.

9 58. Plaintiff performed all conditions, covenants, and promises required on his part to
10 be performed in accordance with the terms and conditions of the agreement.

11 59. Defendant's actions, by failing to perform after accepting the money from the
12 plaintiff after the agreement between the parties, constituted a breach of the agreement between
13 the parties.

14 **FIFTH CAUSE OF ACTION**
15 **WRONGFUL EVICTION**
16 **(As Against Murphy Family Trust)**

17 60. Plaintiff alleges and incorporates heard by reference the allegations contained in
18 the preceding paragraphs as though fully set forth herein, with the exception of any particular
19 allegation that is expressly inconsistent with any allegation made in this cause of action.

20 61. Plaintiff is informed and believes, and thereupon alleges, that on or about
21 November 23, 2009, defendant Wells Fargo conducted an invalid trustee sale at which time the
22 subject property was purchased by Brendan Murphy, in his capacity as trustee for the Murphy
23 Family Trust.

24 62. Because of the ongoing dispute with defendant Wells Fargo, plaintiff had
25 previously posted signs at the subject property. These signs stated the subject property was the

1 residence of plaintiff and that plaintiff could be contacted by various means including a Rhode
2 Island telephone number and a mailing address.

3 63. Plaintiff is informed and believes and thereupon alleges that at some point after
4 December 8, 2009, the signs were taken down by agents acting on behalf of the Murphy Family
5 Trust. On or around December 8, 2009, the locks at the subject property were also changed by
6 agents acting on behalf of the Murphy Family Trust.

7 64. After obtaining title through the defective trustee sale, agents of the Murphy
8 Family Trust did not cause any notice to quit to be served on plaintiff nor were any unlawful
9 detainer proceedings instituted prior to his lock out at the subject property.

10 65. As a direct and proximate result thereof, plaintiff has suffered, and continues to
11 suffer, pain, discomfort, inconvenience, anxiety, economic loss, loss of use, and mental anguish,
12 all to his detriment in amount to be determined at trial.

13 66. Defendant acted in knowing violation or reckless disregard of plaintiff's rights
14 under California Code of Civil Procedure, and plaintiff thereby entitled to damages according to
15 proof. Furthermore, defendant's actions were both oppressive and malicious within the meaning
16 of Civil Code section 3294, and subjected plaintiff to cruel and unjust hardship in willful
17 conscious disregard of his rights and safety, thereby entitled plaintiff to an award of punitive
18 damages to be proven at trial.

19
20 **SIXTH CAUSE OF ACTION**
21 **TRESPASS**
22 **(As Against Murphy Family Trust)**

23 67. Plaintiff realleges incorporates heard by reference the allegations contained in the
24 preceding paragraphs as though fully set forth herein, with the exception of any particular
25 allegation that is expressly inconsistent with any allegation made in this cause of action.

68. On or about December 1, 2009, plaintiff was in possession of the subject property.

1 69. On December 1, 2009, the subject property was plaintiff's home and primary
2 residence, which it had been since 1985.

3 70. On or about December 1, 2009, without the consent or authority and against the
4 will of plaintiff, defendant entered onto the subject property.

5 71. The effect of defendant's conduct, as alleged in this complaint, has inflicted
6 irreparable harm, including the loss of plaintiff's personal property located at the subject
7 property.

8 72. As a result of defendant's conduct, as alleged in this complaint, plaintiff has
9 been deprived of the use of the subject property since approximately December 1, 2009 until the
10 present.

11 73. Defendant failed to conform with applicable statutory schemes for conducting a
12 proper, valid foreclosure, as alleged in this complaint. Furthermore, defendant's actions were
13 done negligently and with disregard of the duties owed of defendant to plaintiff.

14 74. As an approximate result of defendant's conduct, as alleged in this complaint,
15 plaintiff suffered mental anguish and emotional distress, all to his general damages. Defendant's
16 conduct was malicious and oppressive, and was conducted by defendant in willful conscious
17 disregard of plaintiff's rights and subjected plaintiff to cruel and unjust hardship. Plaintiff is
18 therefore entitled to recover punitive damages.

19
20 **SEVENTH CAUSE OF ACTION**
21 **CONVERSION**
22 **(As against Murphy Family Trust)**

23 75. Plaintiff realleges incorporates heard by reference the allegations contained in the
24 preceding paragraphs as though fully set forth herein, with the exception of any particular
25 allegation that is expressly inconsistent with any allegation made in this cause of action.

1 76. At all times herein mentioned, and in particular on or about December 1, 2009,
2 plaintiff was and still is entitled to the possession of the following personal property, specifically
3 stock certificates for his Pacific Gas & Electric Company (hereinafter "PG&E") shares.

4 77. On or about December 1, 2009, and at Moss Beach, California, the above
5 mentioned personal property had a value to be proven at trial.

6 78. On or about December 1, 2009, defendant took the above mentioned personal
7 property from plaintiff's possession and converted the same to their own use.

8 79. Per California Civil Code section 3336, as a proximate result of defendant's
9 conversion, plaintiff suffered the following damages which are the natural, reasonable, and
10 proximate result of the conversion in an amount to be determined at trial, all to his damage.

11 80. Between the time of defendant's conversion of the above-mentioned personal
12 property, defendant's own use and the filing of this action, plaintiff expended time and money in
13 pursuit of the converted property, all to plaintiff's further damages in an amount to be determined
14 at trial.

15 81. The aforementioned acts of defendant were willful, wanton, malicious, and
16 oppressive, and were undertaken with the intent to defraud or oppress plaintiff and justify the
17 award of exemplary and punitive damages in an amount to be determined at trial.

18
19 **EIGHTH CAUSE OF ACTION**
20 **NEGLIGENCE**
21 **(As against Wells Fargo and Murphy Family Trust)**

22 82. Plaintiff alleges and incorporates herein by reference all of the allegations
23 contained in each of the preceding paragraphs as though fully set forth herein, with the
24 exception of any particular allegation that is expressly inconsistent with any allegation made in
25 this cause of action.

A. Negligent Foreclosure As to Wells Fargo

1 83. Defendant, as a fiduciary agent of plaintiff, owed plaintiff a duty to conduct a
2 legal, proper foreclosure sale.

3 84. Furthermore, defendant owed, at a minimum, the ordinary duty of care to plaintiff
4 to conduct a legal, proper foreclosure sale.

5 85. Plaintiff is informed and believes in thereon alleges that defendant and each of
6 them, by virtue of their education, training, and experience in the foreclosure process, knew or
7 should have known of the procedural requirements as alleged above.

8 86. Defendant Wells Fargo and their agents, under California Civil Code section
9 1714, owed plaintiff the duty to exercise reasonable care in the administration of the deed of trust
10 and note.

11 87. Notwithstanding this knowledge, defendant negligently conducted the foreclosure
12 sale, and negligently culminating in wrongful foreclosure to plaintiff's damage.

13 88. As a result of the wrongful foreclosure by defendant, plaintiff has suffered
14 damages in an amount according to proof at trial.

15 89. Defendant's breach was a substantial factor in causing and was the direct and
16 proximate causes of damages to plaintiff. Said damages include but are not limited to: physical
17 injuries such as severe emotional distress, total loss of the subject property, moving expenses,
18 increased costs for rent and other damages. Some of these damages are continuing and
19 permanent in nature, the value of which will be presented at trial.

20 **B. Negligent Eviction As to Murphy Family Trust**

21 90. Defendant Murphy Family Trust, and their agents under California Civil Code
22 section 1714, owed plaintiff the duty to exercise reasonable care in the ownership, management,
23 maintenance, and control of the premises.

24 91. The duty to exercise reasonable care owed by defendant Murphy Family Trust to
25 plaintiff also included, but was not limited to the following duties: the duty to refrain from

1 interfering with plaintiff's full use and quiet enjoyment of the subject property, and the duty to
2 refrain from terminating plaintiff's occupancy or possession except in good faith compliance
3 with applicable law.

4 92. Defendant's breach of duty was a substantial factor in causing and were the direct
5 and proximate causes of damages to plaintiff. These damages include but are not limited to:
6 physical injuries such as severe emotional distress, moving expenses, increased costs for rent and
7 other damages. Some of these damages are continuing and permanent in nature, the value of
8 which will be presented at trial.

9 93. The aforementioned duties breached by defendant were done with knowing or
10 reckless disregard for plaintiff's rights, safety and health.

11
12 **NINTH CAUSE OF ACTION**
13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
14 **(As against Wells Fargo and Murphy Family Trust)**

15 94. Plaintiff alleges and incorporate herein by reference all of the allegations
16 contained in each of the proceeding paragraphs as though fully set forth herein, with the
17 exception of any particular allegation that is expressly inconsistent with any allegation made in
18 this cause of action.

19 95. Defendants' failure to conform with applicable statutory schemes for conducting a
20 proper valid foreclosure, as alleged in this complaint, were knowing, intentional, willful, and
21 done with a reckless disregard of the probability of causing plaintiff severe emotional distress.

22 96. As a proximate result of defendants' conduct, as alleged in this complaint,
23 plaintiff suffered mental anguish and emotional distress, all to his general damages.

24 97. Defendants' conduct was malicious and oppressive in that it was carried on by
25 defendants in willful conscious disregard of plaintiff's rights and subjected plaintiff to cruel and
unjust hardship. Plaintiff is therefore entitled to recover punitive and exemplary damages.

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**TENTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(As against all Defendants)**

98. Plaintiff alleges and incorporates herein by reference all of the allegations contained in each of the proceeding paragraphs as though fully set forth herein, with the exception of any particular allegation that is expressly inconsistent with any allegation made in this cause of action.

99. Defendants failed to conform with applicable statutory schemes for conducting a proper valid foreclosure, as alleged in this complaint. Furthermore, defendants actions were done negligently and with the disregard of the duties owed of them, as alleged above, to plaintiff as well as done with the probability of causing plaintiff emotional distress.

100. As a proximate result of defendants' conduct, as alleged in this complaint, plaintiff suffered mental anguish and emotional distress, all to his general damage.

101. Defendants' conduct was malicious and oppressive, and that was carried on by defendants with the willful conscious disregard of plaintiff's rights and subjected plaintiff to cruel and unjust hardship. Plaintiff is therefore entitled to recover punitive damages.

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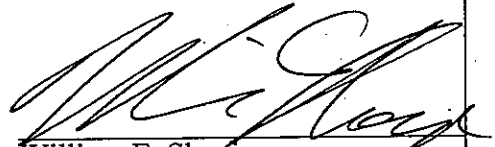
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1 WHEREFORE, plaintiff prays for judgment as follows:


- 2 1. For general damages according to proof at time of trial;
- 3 2. For special damages according to proof at time of trial;
- 4 3. For injunctive relief as provided for by law;
- 5 4. For declaratory relief as provided for by law;
- 6 5. For exemplary damages subject to proof at time of trial;
- 7 6. For reasonable attorneys' fees provide for by contract or statute;
- 8 7. For other and further relief as the court may deem just and proper.

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10 Dated this February 6, 2012


William E. Shapiro
Mary Catherine Wiederhold
ATTORNEYS FOR PLAINTIFF
Richard A. Frustere

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16 Plaintiff hereby demands a trial by jury.

17 Dated this February 6, 2012


William E. Shapiro
Mary Catherine Wiederhold
ATTORNEYS FOR PLAINTIFF
Richard A. Frustere