

1 Michael Yesk (SB#130056)
2 70 Doray Dr., Suite 16
3 Pleasant Hill, CA 94523
4 925-849-5525
5 yesklaw@gmail.com
6 Attorneys for Plaintiff

7 WRIGHT, FINLAY & ZAK, LLP
8 T. Robert Finlay, Esq., SBN 167280
9 Ronald M. Arlas, Esq., SBN 59091
10 Nicholas G. Hood, Esq., SBN 238620
11 4665 MacArthur Court, Suite 280
12 Newport Beach, CA 92660
13 Tel: (949) 477-5050; Fax: (949) 477-9200
14 rarlas@wrightlegal.net; nhood@wrightlegal.net

15 ATTORNEYS FOR RESIDENTIAL CREDIT SOLUTIONS, INC.; JPMORGAN CHASE BANK,
16 NATIONAL ASSOCIATION; J.P. MORGAN MORTGAGE ACQUISITION CORP.; AND
17 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)**

20 SON P. DANG,
21 Plaintiff,
22 vs.

23) Case No. 5:14-cv-02587-
24)
25)
26)
27)
28)

29 RESIDENTIAL CREDIT SOLUTIONS, INC.;)
30 JPMORGAN CHASE BANK, NATIONAL)
31 ASSOCIATION (fka EMC MORTGAGE LLC);)
32 J.P. MORGAN MORTGAGE ACQUISITION)
33 CORP.; MORTGAGE ELECTRONIC)
34 REGISTRATION SYSTEMS, INC.; and DOES)
35 1 – 100, inclusive,)
36 Defendants.)
37)
38)

1 ASSOCIATION (f/k/a. EMC MORTGAGE LLC); J.P. MORGAN MORTGAGE ACQUISITION
2 CORP.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“Defendants”) (Plaintiffs
3 and Defendants collectively the “Parties”), by and through their counsel of record, Nicholas G. Hood of
4 Wright, Finlay & Zak LLP, hereby submit this Stipulation to Permit Plaintiff’s Filing of Amended
5 Complaint Without Motion for Leave to Amend.

6 **WHEREAS:**

- 7 1. Plaintiff filed his original complaint in pro per on May 5, 2014;
8 2. Plaintiff’s counsel substituted into this matter on July 8, 2014;
9 3. Plaintiff wishes to file an amended complaint with the assistance of his newly substituted
10 counsel; and
11 4. Defendants have no objection to Plaintiff’s filing of an amended complaint without
12 Plaintiff filing a motion for leave to amend;

13 **NOW, THEREFORE, IT IS HEREBY STIPULATED THAT:** Plaintiff may file an
14 amended complaint on or before August 22, 2014 without filing a motion for leave to amend.

15 DATED: August 18, 2014

16 /s/ Michael Yesk
17 MICHAEL YESK
18 YESK LAW
19 Attorneys for Plaintiff
20 SON P. DANG

21 DATED: August 18, 2014

22 /s/ Nicholas Hood
23 NICHOLAS G. HOOD
24 WRIGHT, FINLAY & ZAK LLP
25 Attorneys for Defendants
26 RESIDENTIAL CREDIT SOLUTIONS, INC.;
27 JPMORGAN CHASE BANK, NATIONAL
28 ASSOCIATION (f/k/a EMC MORTGAGE LLC); J.P.
MORGAN MORTGAGE ACQUISITION CORP.;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

29 **IT IS SO ORDERED:**

Ronald M. Whyte

DATED:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

1 Michael Yesk (SB#130056)
2 70 Doray Dr., Suite 16
3 Pleasant Hill, CA 94523
4 925-849-5525
5 m.yesklaw@gmail.com
6 Attorneys for Plaintiff

7
8 **UNITED STATES DISTRICT COURT**
9
10 **NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)**
11

12 SON P. DANG,) Case No.: 5:14-cv-02587-
13)
14 Plaintiff,)
15)
16 vs.)
17)
18 RESIDENTIAL CREDIT SOLUTIONS, INC.;)
19 JPMORGAN CHASE BANK, NATIONAL)
20 ASSOCIATION (fka EMC MORTGAGE)
21 LLC); J.P. MORGAN MORTGAGE)
22 ACQUISITION CORP.; MORTGAGE)
23 ELECTRONIC REGISTRATION SYSTEMS,)
24 INC.; and DOES 1 – 100, inclusive,)
25)
26 Defendants.)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)

1 injunctive relief.

2 2. Plaintiff owns real property located at 4134 Linetta Court, San Jose, CA 95148,
3 (“Subject Property”), secured by a Deed of Trust that was recorded in the Office of the Recorder
4 of Santa Clara County on July 27, 2007 as Instrument No. 19527766, and by a Promissory Note
5 (“Note”).

6 3. Plaintiff alleges, among other things, that Defendants were not entities authorized
7 to initiate foreclosure proceedings against the Subject Property.

8 4. Plaintiff alleges that an actual controversy has arisen and now exists between
9 Plaintiff and Defendants, and each of them.

10 5. Plaintiff requests a judicial determination and declaration of her rights with
11 respect to the Subject Property and its underlying Note and Deed of Trust.

12 **PARTIES**

13 6. Plaintiff SON P. DANG (“Plaintiff” or “Dang”) is allegedly the Trustor/Borrower
14 on a Deed of Trust recorded in the official records of Santa Clara County on or about July 27,
15 2007 as Instrument No. 19187342 (“Deed of Trust”). The Deed of Trust purportedly placed a
16 lien on the real property located at 4134 Linetta Court, San Jose, CA 95148, APN: 659-75-019
17 (“Subject Property”).

18 7. Plaintiff alleges on information and belief that Defendant RESIDENTIAL
19 CREDIT SOLUTIONS, INC. (“Defendant” or “Residential”) is a Delaware corporation with its
20 main office in Fort Worth, Texas.

21 8. Plaintiff alleges on information and belief that Defendant JPMORGAN CHASE
22 BANK, NATIONAL ASSOCIATION (“Defendant” or “Chase”) is a national banking
23 association organized under the laws of the United States with its main office in New York, New
24 York, and was at all relevant times conducting business in Santa Clara County, California.
25 Chase, a subsidiary of JPMORGAN CHASE & CO., whose principal place of business is in New
26 York, acquired all or substantially all of EMC Mortgage, LLC’s (“EMC”) assets in a de facto

1 merger. As such, Chase is liable for the conduct of EMC alleged herein.

2 9. Plaintiff alleges on information and belief that Defendant J.P. MORGAN
3 MORTGAGE ACQUISITION CORP. (“Defendant” or “J.P. MORGAN MORTGAGE
4 ACQUISITION CORP. ”) is a Delaware corporation with its principal place of business in New
5 York, New York. J.P. MORGAN MORTGAGE ACQUISITION CORP. is a direct, wholly-
6 owned subsidiary of Defendant Chase and at all times relevant was conducting business in the
7 state of California.

8 10. Plaintiff alleges on information and belief that Defendant MORTGAGE
9 ELECTRONIC REGISTRATION SYSTEMS, INC. (“Defendant” or “MERS”), is a Delaware
10 corporation that was at all relevant times conducting business in Santa Clara County, California.

11 11. Plaintiff is ignorant of the true names and capacities of the defendants sued as
12 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
13 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

14 **VENUE AND JURISDICTION**

15 12. This action is of a civil nature. Plaintiff is informed and believes that this Court
16 has jurisdiction over this case pursuant to 28 U.S.C. § 1331.

17 13. Venue is proper pursuant to 28 U.S.C. 1391(a)(2) because the unlawful conduct is
18 alleged to have occurred in Santa Clara County, California and the Subject Property is also
19 located in Santa Clara County, California.

20 **STATEMENT OF FACTS**

21 14. Plaintiff SON P. DANG, (“Plaintiff”) is allegedly the Trustor/Borrower on a Deed
22 of Trust recorded on or about July 27, 2007 as Instrument No. 19527766 of Official Records in
23 the Office of the Recorder of Santa Clara County, California, purportedly putting a lien on the
24 real property located at 4134 Linetta Court, San Jose, CA 95148, APN: 659-75-019 (the “Subject
25 Property”). The Deed of Trust names First Magnus Financial Corporation (“First Magnus”), an
26 Arizona Corporation, as the lender, Alliance Title as the Trustee, and MERS as the beneficiary

1 and nominee for Lender.

2 15. On or around August 21, 2007, First Magnus filed for bankruptcy in Arizona
3 bankruptcy court.

4 16. From around August 31, 2010 to October 4, 2010, Plaintiff sent multiple letters
5 requesting verification of proofs of claim to EMC. On or around September 9, 2010, EMC
6 acknowledged receipt of Plaintiff's correspondence but never responded to the substance of
7 Plaintiff's request.

8 17. On or around November 17, 2010, a Notice of Default was recorded against the
9 Subject Property. The Notice of Default was signed by Defendant QLS as purported "agent for
10 the beneficiary." However, it is unclear on whose behalf QLS was acting. The Notice of Default
11 listed Defendant J.P. MORGAN MORTGAGE ACQUISITION CORP. as the party to contact
12 for payment and an employee of Defendant Chase purportedly signed the declaration of
13 compliance with California Civil Code Section 2923.5. QLS was a stranger to Plaintiff's Deed of
14 Trust at this point.

15 18. On or around June 1, 2012, Defendant MERS as nominee for First Magnus
16 executed an Assignment of Deed of Trust, assigning all beneficial interest in Plaintiff's Deed of
17 Trust (but not promissory note) to EMC.

18 19. On or around June 8, 2012, EMC executed a Substitution of Trustee by Defendant
19 Residential as its purported attorney-of-fact, substituting in QLS as trustee under the Deed of
20 Trust.

21 20. On or around July 10, 2012, Defendant QLS recorded a Notice of Trustee's sale
22 against the Subject Property.

23 21. On or around August 1, 2012, Defendant Residential as purported attorney-in-fact
24 for EMC assigned all beneficial interest in Plaintiff's Deed of Trust (but not promissory note) to
25 Defendant J.P. MORGAN MORTGAGE ACQUISITION CORP., the party that seemingly
26 authorized and directed the recordation of the initial Notice of Default two years prior on
November 17, 2010.

1 22. On or around November 7, 2012, Plaintiff sent a qualified written request
2 (“QWR”) pursuant to 12 U.S.C. § 2605 of the Real Estate Settlement and Procedures Act
3 (“RESPA”) to Defendant Residential, a letter Residential acknowledged but never responded to.

4 23. On or around April 9, 2014, Defendant QLS recorded another notice of trustee’s
5 sale against the Subject Property.

6 24. On or around April 25, 2014, Plaintiff sent a QWR to Defendants QLS and Chase.

7 25. Plaintiff alleges that Defendants and each of them lack the authority to foreclose
8 on the Subject Property as the recorded documents clearly indicate problems with the standing of
9 the entities directing and authorizing the foreclosure.

10 26. Plaintiff alleges that Defendant J.P. MORGAN MORTGAGE ACQUISITION
11 CORP. lacked the authority to initiate foreclosure proceedings through the recordation of a
12 Notice of Default against the Subject Property on November 17, 2010 as it held no beneficial
13 interest in Plaintiff’s Deed of Trust at the time. In fact, as evidenced by the recorded documents,
14 J.P. MORGAN MORTGAGE ACQUISITION CORP. did not receive any attempted transfer of
15 interest in Plaintiff’s Deed of Trust until nearly two years later when Defendant Residential as
16 purported attorney-in-fact for EMC executed an assignment of deed of trust in favor of J.P.
17 MORGAN MORTGAGE ACQUISITION CORP.

18 27. Plaintiff further alleges that both assignments of her Deed of Trust were invalid as
19 they were executed by parties that lacked standing and authority to do so.

20 28. Plaintiff alleges that the Assignment of Deed of Trust executed by MERS (as
21 nominee for Plaintiff’s lender First Magnus) in favor of EMC on June 1, 2012 was null and void
22 because as of April 1, 2011, EMC was a non-existent entity, having merged with Defendant
23 Chase at that time.

24 29. Plaintiff further alleges that the second Assignment of Deed of Trust Defendant
25 Residential as purported attorney-in-fact for EMC executed in favor of J.P. MORGAN
26 MORTGAGE ACQUISITION CORP. on or around August 1, 2012, was also null and void
because EMC was no longer in existence and could not have authorized such an assignment.

1 against the Subject Property on November 17, 2010. Because this notice initiating the
2 foreclosure proceedings was invalid, the subsequent foreclosure proceedings premised on such
3 notice were equally invalid.

4 36. Plaintiffs also allege that when Defendant J.P. MORGAN MORTGAGE
5 ACQUISITION CORP invoked this power of sale, it is unclear who the true holder of the
6 beneficial interest in Plaintiffs' mortgage was given that First Magnus was the record holder of
7 beneficial interest in Plaintiff's Deed of Trust but First Magnus itself filed for bankruptcy on or
8 around August 21, 2007.

9 37. Plaintiff further alleges that Defendant Chase (as successor in interest to EMC)
10 acted wrongfully when it illegitimately caused the Substitution of Trustee appointing Defendant
11 QLS to be recorded on or around June 8, 2012, despite lacking standing to do so. This was a
12 clear violation of Section 24 of Plaintiff's Deed of Trust, which provides that "Lender, at its
13 option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by
14 an instrument executed and acknowledged by Lender and recorded in the office of the original
15 Lender, Trustee and Borrower."

16 38. Defendant QLS also acted wrongfully when it recorded the subsequent notices of
17 trustee's sale against the Subject Property despite lacking the authority to do so.

18 39. Plaintiff alleges that Defendants and each of them must have standing in order to
19 initiate foreclosure proceedings against the Subject Property but the recorded documents clearly
20 demonstrate a lack of authority on the part of Defendants.

21 40. Defendants' actions in initiating foreclosure proceedings against Plaintiff were
22 wrongful because Defendants were not entities authorized to invoke the power of sale under
23 Plaintiff's Deed of Trust. This is an act prohibited by California's statutory non-judicial
24 foreclosure scheme, which requires that the entity initiating a non-judicial foreclosure on a deed
25 of trust have the legal power to do so. See Cal. Civ. Code § 2924(a)(1). California Civil Code
26 Section 2924 ("Section 2924") provides only "the trustee, mortgagee, or beneficiary, or any of

1 their authorized agents” may initiate foreclosure proceedings. Cal. Civ. Code § 2924.

2 41. For the reasons stated above, there is a likelihood that Plaintiff will prevail on the
3 merits of her wrongful foreclosure claim. If Defendants are permitted to rely on the
4 aforementioned void and invalid foreclosure documents, Plaintiff will wrongfully lose her
5 property. Such injury is irreparable and cannot be adequately compensated by financial means.
6 Real property is considered unique in California and monetary damages are deemed inadequate
7 to compensate Plaintiff for such loss. *Stockton v. Newman* (1957) 148 Cal. App. 2d 558, 564.

8 42. Plaintiff is also not required to tender the amount due to challenge documents
9 recorded and clouding Plaintiff’s title to the Property. See e.g. *Dimock v. Emerald Properties,*
10 *Inc.* (2008) 81 Cal.App.4th 868; *Lona v. Citibank, N.A.* (2011) 202 Cal. App. 4th 89; *Tamburri v.*
11 *Suntrust Mortgage, Inc.* (N.D. Cal. 2011) 2011 WL 6294472, *4 (“where a sale is void, rather
12 than simply voidable, tender is not required”). “Tender is not required where the foreclosure sale
13 is void, rather than voidable, such as when plaintiff proves that the entity lacked the authority to
14 foreclose.” *Glaski, supra*, 218 Cal.App.4th at 1101, citing *Lester v. J.P. Morgan Chase Bank*, ___
15 *F.Supp.2d* ___, [2013 WL 633333 p. *8]; 4 *Miller & Starr, Cal. Real Estate* (3d ed. 2003) *Deeds of*
16 *Trust*, § 10:212, pg. 686 (emphasis added).

17 WHEREFORE, Plaintiff prays for judgment against defendants and each of them, as set
18 forth below:

19 **SECOND CAUSE OF ACTION**
20 **SLANDER OF TITLE**
21 **(Against All Defendants)**

22 43. Plaintiff re-alleges and incorporates by reference all prior paragraphs in this
23 complaint, as though fully set forth hereafter.

24 44. Plaintiff alleges that Defendants published false statements that disparaged
25 Plaintiff’s title to the Subject Property when: (1) Defendant MERS as nominee for First Magnus
26 executed an Assignment of Deed of Trust, purporting to assign all beneficial interest in
Plaintiff’s Deed of Trust (but not promissory note) to EMC (a non-existent entity at the time) on

1 or around June 1, 2012; (2) EMC (a no-longer-existent entity) executed a Substitution of Trustee
2 by Defendant Residential as its purported attorney-of-fact, substituting in QLS as trustee under
3 the Deed of Trust on or around June 8, 2012; (3) Defendant QLS recorded a Notice of Trustee’s
4 sale against the Subject Property on or around July 10, 2012; and (4) Defendant Residential as
5 purported attorney-in-fact for EMC assigned all beneficial interest in Plaintiff’s Deed of Trust
6 (but not promissory note) to Defendant J.P. MORGAN MORTGAGE ACQUISITION CORP.,
7 the party that seemingly authorized and directed the recordation of the initial Notice of Default
8 back on November 17, 2010, two years after the notice of default’s recordation.

9 45. Defendant QLS also slandered Plaintiff’s title to the Subject Property by
10 recording the subsequent notices of trustee’s sale despite lacking standing and authority to do so.

11 46. Plaintiffs allege that EMC (and Defendant Chase as successor in interest to EMC)
12 could not have received or transferred any beneficial interest in Plaintiff’s Deed of Trust, as it no
13 longer existed as an entity at the points of transfer.

14 47. Plaintiffs further allege that Defendant J.P. MORGAN MORTGAGE
15 ACQUISITION CORP. had no standing to even initiate foreclosure proceedings against the
16 Subject Property on November 17, 2010 as it had not even received an attempted transfer of
17 beneficial interest in Plaintiff’s Deed of Trust at that point.

18 48. Defendant acted with malice when they recorded false and void assignments of
19 deeds of trust, substitution of trustee, notice of default and notices of trustee’s sale. “For this
20 purpose, malice is defined as actual malice, meaning that the publication was motivated by
21 hatred or ill will towards the plaintiff or by a showing that the defendant lacked reasonable
22 grounds for belief in the truth of the publication and therefore acted in reckless disregard of the
23 plaintiff’s rights.” *Kachlon v. Markowitz*, 168 Cal.App.4th 316, 336 (2008) (citations omitted,
24 emphasis added).

25 49. Defendants acted in “reckless disregard of Plaintiff’s rights” when they initiated
26 foreclosure proceedings against Plaintiff despite lacking “reasonable grounds for belief in the

1 truth of the[se] publications.” See e.g. *Kachlon v. Markowitz*, 168 Cal.App.4th at 336.

2 50. Defendant J.P. MORGAN MORTGAGE ACQUISITION CORP. acted in
3 reckless disregard of Plaintiff’s rights when it recorded a notice of default against the Subject
4 Property, despite knowing that it had never received a transfer of beneficial interest in Plaintiff’s
5 Deed of Trust.

6 51. Defendants MERS and Chase (as successor-in-interest to EMC) also acted in
7 reckless disregard of Plaintiff’s rights when they recorded assignments of interest in Plaintiff’s
8 Deed of Trust to and from EMC as an entity that no longer existed, because they lacked
9 reasonable grounds for believing such transfers would be valid.

10 52. Finally, Defendant QLS acted in reckless disregard of Plaintiff’s rights when it
11 recorded invalid notices of trustee’s sale against the Subject Property.

12 53. As a result, Plaintiff suffered direct pecuniary damages in the form of losing legal
13 title to their property based on a series of proceedings founded on false and void documents.
14 Plaintiff also suffered damages to the extent she made payments not credited to her account to an
15 entity that was not the true holder of beneficial interest under their Deed of Trust. The exact
16 amount of such damages is not known to Plaintiff at this time, and Plaintiff will move to amend
17 this complaint to state such amount when the same becomes known, or on proof at the time of
18 trial.

19 54. Plaintiff also alleges that the tender rule does not apply as “[t]ender is not required
20 where the foreclosure sale is void, rather than voidable, such as when plaintiff proves that the
21 entity lacked the authority to foreclose.” *Glaski*, supra, 218 Cal.App.4th at 1101, citing *Lester v.*
22 *J.P. Morgan Chase Bank*, ___ F.Supp.2d ___, [2013 WL 633333 p. *8]; 4 *Miller & Starr, Cal. Real*
23 *Estate* (3d ed. 2003) *Deeds of Trust*, § 10:212, pg. 686 (emphasis added). Though some courts
24 have held that tender must be alleged to maintain a cause of action for “irregularity in the sale
25 procedure,” see e.g. *Abdallah v. United Savings Bank*, 43 Cal.App.4th 1101, 1109, Plaintiff here
26 is not merely alleging an irregularity in the sale procedure but the complete lack of authority by

1 Defendants to foreclose on Plaintiff's property in the first place. As such, no tender by Plaintiff is
2 required.

3 55. The recording of the foregoing documents made it necessary for Plaintiff to retain
4 attorneys and to bring this action to cancel the instruments casting doubt on Plaintiff's title.
5 Therefore, Plaintiff is entitled to recover attorneys' fees and costs incurred in cancelling the
6 instrument. The exact amount of such damages is not known to Plaintiff at this time, and Plaintiff
7 will move to amend this complaint to state such amount when the same becomes known, or on
8 proof of same at the time of trial.

9 WHEREFORE, Plaintiff prays for judgment against defendants and each of them, as set
10 forth below:

11 **THIRD CAUSE OF ACTION**

12 **Violation of California Civil Code Section 2923.5**

13 **(By Plaintiff Against Defendants QLS and J.P. Morgan Mortgage Acquisition Corp.)**

14 56. Defendants QLS and J.P. MORGAN MORTGAGE ACQUISITION CORP.
15 violated California Civil Code Section 2923.5 ("Section 2923.5"), which provides that "[a]
16 mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to
17 Section 2924 until 30 days after contact is made [with the borrower]." Cal. Civ. Code §
18 2923.5(a).

19 57. As Plaintiffs have already alleged, Defendants could never have validly complied
20 with this provision because they were never the "mortgagee, trustee, beneficiary, or authorized
21 agent" under Plaintiff's Deed of Trust. Defendant J.P. MORGAN MORTGAGE ACQUISITION
22 CORP. did not receive any transfer of beneficial interest in Plaintiff's Deed of Trust when it
23 recorded the notice of default on November 17, 2010. Moreover, Defendant J.P. MORGAN
24 MORTGAGE ACQUISITION CORP. did not receive a valid transfer of beneficial interest even
25 after EMC (through Defendant Residential as its attorney in fact) purported to assign all
26 beneficial interest to Defendant J.P. MORGAN MORTGAGE ACQUISITION CORP. two years

1 after the recordation of notice of default on August 1, 2012 because EMC never received a valid
2 transfer of beneficial interest to Plaintiffs' Deed of Trust, and could not validly transfer any
3 interest.

4 58. As such, Defendant QLS could never have been the "authorized agent" of the
5 beneficiary when the November 17, 2010 Notice of Default was recorded because First Magnus
6 was the record holder of beneficial interest and MERS was the beneficiary. MERS is not listed
7 anywhere on the Notice of Default and does not appear to be the party initiating the foreclosure
8 proceedings through such notice.

9 59. Though there is a purported Declaration of Compliance attached to the Notice of
10 Default signed by Defendant Chase, there is no true statement of compliance because Defendants
11 were never entities authorized to initiate foreclosure proceedings against the Subject Property.

12 60. Defendants' failure to comply with Section 2923.5 renders the Notice of Default,
13 and all subsequent foreclosure proceedings based on the Notice, invalid and void. See Mabry v.
14 Superior Court, 185 Cal. App. 4th 208, 236-37 (2010) (notice of default which fails to comply
15 with Section 2923.5 is invalid and a non-judicial foreclosure may only proceed if a new, valid
16 Notice of Default is recorded).

17 WHEREFORE, Plaintiff prays for judgment against defendants and each of them, as set
18 forth below:

19 **FOURTH CAUSE OF ACTION**
20 **Violation of 12 U.S.C. § 2605**
21 **(By Plaintiff Against Defendants Chase, Residential and QLS)**

22 61. Plaintiff re-alleges and reincorporates by reference the allegations in all
23 paragraphs above as though fully set forth herein.

24 62. Pursuant to RESPA procedures for the resolution of loan servicing disputes under
25 12 U.S.C. § 2605, Plaintiff submitted a Qualified Written Request ("QWR") to Defendants EMC
26 (or Chase as successor-in-interest to EMC), Residential, QLS and Chase on multiple occasions,

1 seeking information pertaining to Plaintiff's Note transaction and related indebtedness.

2 63. Defendants violated RESPA, 12 U.S.C. § 2605(e)(2), by failing to properly
3 respond to Plaintiff's multiple QWRs. Plaintiff further allege that no response has been received
4 to date and Defendants violated § 2605(e)(2)(A) by failing to provide a response within sixty
5 (60) days of receiving the letter.

6 64. At the time Plaintiffs' QWRs were posed to Defendants, the fact was that there
7 was no identifiable beneficial interest holder. There are no valid recorded transfers of beneficial
8 interest in Plaintiff's Deed of Trust.

9 65. As such, Defendant cannot accurately or truthfully identify the party on whose
10 behalf they were acting in initiating foreclosure proceedings on the Subject Property as of the
11 dates of Plaintiff's QWRs and more importantly, into whose pockets Plaintiff's mortgage
12 payments were being deposited. In doing so, Defendants acted in furtherance of a fraud upon
13 Plaintiffs and the true beneficial interest owner under the Deed of Trust. Defendants also acted in
14 violation of the QWR disclosure requirements of RESPA. But for the wrongful actions by
15 Defendants in disguising and concealing the true owner of the Note, Plaintiff would have been
16 properly credited for payments of principal and interest toward the purchase of the their property.

17 66. Plaintiff has suffered damages arising out of the violations of RESPA as alleged
18 herein. Plaintiff's actual damages include but are not limited to mortgage payments that were not
19 properly credited to her account, devastation of her reputation and credit rating, monetary
20 damages, and the loss of title to their property through the potential wrongful foreclosure upon
21 their home. Plaintiff alleges damages in an amount to be proven at trial.

22 67. Plaintiff's general damages also include mental anguish, inconvenience, and
23 worries through the loss of her home, as well as late fees, all of which have been found to be
24 recoverable under *Johnstone v. Bank of America, N.A.*, USDC, N.D. Illinois, Case No. 01 C 292
25 (Nov. 15, 2001).

26 68. In addition, pursuant to 12 U.S.C. § 2605(f)(3), Plaintiff is entitled to recover her

1 reasonable attorney's fees and costs incurred in bringing this action.

2 WHEREFORE, Plaintiff prays for judgment against defendants and each of them, as set
3 forth below:

4 **FIFTH CAUSE OF ACTION**
Violation of the Unfair Business Practices Act

5 **(By Plaintiff Against All Defendants)**

6 69. Plaintiff re-alleges and reincorporates by reference the allegations in all
7 paragraphs above as though fully set forth herein.

8 70. California Business and Professions Code Section 17200 ("Section 17200")
9 prohibits unlawful, unfair, or fraudulent business practices. Section 17200 is a derivative cause
10 of action and Plaintiffs' ability to pursue this cause of action depends on the success or failure of
11 their substantive causes of action.

12 71. Defendants engaged in business practices that violate Section 17200 because they
13 executed and recorded (or caused to be recorded) invalid Assignments of Deed of Trust on June
14 1, 2012 and August 1, 2012, an invalid Substitution of Trustee on June 8, 2012, an invalid Notice
15 of Default on November 17, 2010, and invalid Notices of Trustee's Sale thereafter, despite
16 knowing that they were not the legal beneficiaries under Plaintiff's Deed of Trust.

17 72. Defendants then used the false assignments of deeds of trust, substitution of
18 trustee, notice of default and notices of trustee's sale to form the basis of their attempts to
19 foreclose upon Plaintiff's home. Defendant's actions were wrongful and constitute an unlawful
20 and unfair business practice under California Civil Code Section 2924 et seq. and California
21 Civil Code Section 2923.5.

22 73. Defendants' actions caused substantial harm to Plaintiff and if they are permitted
23 to continue engaging in such wrongful and unlawful business practices, Plaintiff will not be the
24 only California consumer harmed.

25 74. Defendants' violations of Civil Code Section 2924 et seq. and California Civil
26 Code Section 2923.5 also constitute violations of Business and Professions Code Section 17200.

1 As a direct and proximate cause of Defendants' actions, Plaintiff has suffered an injury in fact
2 because a cloud has been placed on Plaintiff's title and her interest in the Subject Property has
3 been placed in jeopardy by the impending wrongful foreclosure proceedings. These injuries have
4 caused Plaintiff monetary damages in an amount to be proved at trial.

5 **Prayer for Relief**

6 WHEREFORE, Plaintiff SON P. DANG prays for a judgment against the Defendants,
7 and each of them, as follows:

8 1. For a judgment declaring that the Assignments of Deed of Trust recorded on June
9 1, 2012 and August 1, 2012, in the Santa Clara County Recorder's Office, are invalid and any
10 subsequent proceedings or recorded documents based on these document are also invalid;

11 2. For a judgment declaring that the Notice of Default recorded by QLS as agent for
12 J.P. MORGAN MORTGAGE ACQUISITION CORP. November 17, 2010 was invalid as
13 Defendant was not the beneficial interest order of Plaintiff's Deed of Trust at that time;

14 3. For a judgment declaring that all subsequent foreclosure documents recorded that
15 were premised on these invalid assignments of interest and notice of default were likewise
16 invalid;

17 4. For a temporary restraining order, a preliminary injunction, and a permanent
18 injunction, enjoining Defendants and their respective agents, servants, and employees, and all
19 persons acting under, in concert with, or for them, from asserting any interest in the Subject
20 Property or otherwise attempting in any manner to dispossess Plaintiff from possession of the
21 Subject Property; or taking any action to enforce any other remedy purportedly provided to them
22 by the Deed of Trust;

23 5. For a judgment forever enjoining Defendants from claiming any estate, right, title
24 or interest in the subject property;

25 6. For an order compelling Defendants to transfer legal title and possession of the
26 subject property to Plaintiff herein;

