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Attorneys for Plaintiff
XXXXXXX XXXXXX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF XXXXXXX XXXXXXX – UNLIMITED JURISDICTION

XXXXXXXX XXXXXX,

Plaintiff,

v.

JPMORGAN CHASE BANK; CALIFORNIA
RECONVEYANCE COMPANY, a California
corporation; BANK OF AMERICA,
NATIONAL ASSOCIATION ; and DOES 1-
250, inclusive

Defendants.

) Case No. CGC-09-XXXXXX

)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN OPPOSITION TO**
) **DEFENDANTS JPMORGAN CHASE**
) **BANK’s AND CALIFORNIA**
) **RECONVEYANCE COMPANY’s**
) **DEMURRER TO COMPLAINT**

) **Date: December 16, 2009**
) **Time: xxxxxxx**
) **Dept.: xxxxxxx**

I. INTRODUCTION

Plaintiff XXXXXX XXXXXX (“Plaintiff”) opposes the demurrer of Defendants
JPMorgan Chase Bank (“Chase”) and California Reconveyance Company (“CRC”) to Plaintiff’s

1 complaint (the “Complaint”). The grounds for this opposition are that the Complaint is proper
2 as to all causes of action. As a result of Chase’s and CRC’s misconduct and wrongful
3 foreclosure alleged in the Complaint, Plaintiff filed the present action to fight this wrongful
4 foreclosure, clear title the real property underlying this action (the “Subject Property”) and
5 recover damages. Chase’s and CRC’s arguments supporting their demurrer should fail because
6 Plaintiff’s Complaint alleges facts sufficient to maintain each cause of action presented therein.
7 Should the court find that Plaintiff has failed to sufficiently plead any cause of action in the
8 Complaint, Plaintiff hereby requests leave to amend that cause of action.

9 **II. ARGUMENT**

10 **A. Chase is a Proper Defendant In This Action and the Federal Financial** 11 **Institutions Reform, Recovery and Enforcement Act (“FIRREA”) Does Not** 12 **Exempt Chase From Liability Herein**

13 Chase contends that FIRREA exempts it from liability for Plaintiff’s claims herein due to
14 the facts that (1) Plaintiff has sued Chase as a successor in interest to Washington Mutual, NA
15 (“WAMU”); (2) the Federal Deposit Insurance Corporation (“FDIC”) was appointed as a
16 receiver for WAMU upon its collapse; (3) under FIRREA, FDIC had the power to assign certain
17 assets that allegedly included Plaintiff’s promissory note and deed of trust to Chase (see U.S.C.
18 1821(d)(2)(G)(i)); (4) FDIC purportedly assigned Plaintiff’s promissory note and deed of trust to
19 Chase pursuant to the purchase and assumption agreement attached as Exhibit 5 to Chase’s
20 request for judicial notice; (5) the purchase and assumption agreement contains an express
21 disclaimer in which Chase refused to accept liability for any “borrower claims” related to
22 WAMU’s loans; and (6) FDIC retained those liabilities under the purchase and assumption
23 agreement. On the basis of the foregoing, Chase asserts that it cannot be sued herein and that
24 Plaintiff must seek recovery for his claims herein from FDIC. Chase’s argument fails for the
25 following reasons.

1 First, Chase has offered no California statute or case precedent supporting its asserted
2 exemption from liability for each of Plaintiff's causes of action. The federal district court orders
3 attached as Exhibits 7 and 8 to Chase's request for judicial notice have no precedential value or
4 effect herein and the court is not bound to follow them on matters of substantive law. See
5 *People v. Williams* (1997) 16 Cal.4th 153, 190 ["Decisions of lower federal courts interpreting
6 federal law are not binding on state courts."]; see also accord at *Hayman v. Sitmar Cruises*
7 (1993) 14 Cal.App.4th 1499, 1506 ["Even though federal statutory law is involved, in the absence
8 of contrary provisions in the federal statute, the law of the state is controlling in all matters of
9 practice and procedure"]; *Service Employees Internat. Union v. County of Los Angeles* (1990)
10 225 Cal.App.3d 761, 768 ["In any event California courts are not bound by the decisions of
11 lower federal courts even on federal questions."]. While FIRREA authorized FDIC to transfer
12 WAMU's assets to Chase under the purchase and assumption agreement, FIRREA *does not*
13 immunize or exempt Chase from liability herein, and the question of whether the purchase and
14 assumption agreement precludes Plaintiff's action against Chase should be determined by
15 California law. See *Ibid.*

17 Second, California has a legitimate state interest in protecting borrowers from wrongful
18 foreclosure of their mortgages. See e.g., *Resolution Trust Corporation v. Bayside Developers*
19 (N.D. Cal. 1993) 817 F.Supp. 822, 827-828 ["...California has a valid state interest in the
20 protection of debtors, as [CCP] § 726 is designed to do." A true copy of this federal citation is
21 submitted in Plaintiff's Appendix of Non-California Authorities filed concurrently herewith].
22 Like Code of Civil Procedure § 726 which provides anti-deficiency protection to debtors, Civil
23 Code § 2924 provides consumer protection against wrongful foreclosure to California mortgage
24 debtors. See *Bank of America, N.A., v. La Jolla Group II et al.* (2005) 129 Cal. App. 4th 706
25

1 ["The statutory scheme governing nonjudicial foreclosures does not expand the beneficiary's sale
2 remedy beyond the parties' agreement, *but instead provides additional protection to the trustor.*"
3 Emphasis added.]. The gravamen of Plaintiff's Complaint against Chase is wrongful
4 foreclosure, and the Complaint alleges, inter alia, that Chase's own conduct violated Plaintiff's
5 consumer protection rights as codified in Civil Code §§ 2923.5 and 2924. Accordingly, the court
6 should decide Plaintiff's ability to maintain his action against Chase on the basis of California
7 law.

8 Third, California disfavors exculpatory clauses in contracts as a matter of public policy,
9 and this policy is codified at Civil Code § 1668 which provides the following:

10 "All contracts which have for their object, directly or indirectly,
11 to exempt any one from responsibility for his own fraud,
12 or willful injury to the person or property of another, or violation
13 of law, whether willful or negligent, are against the policy of the
14 law."

15 Paragraph 2.5 of Chase's purchase and assumption agreement with FDIC clearly purports to
16 exempt Chase, as WAMU's successor, from liability for all "borrower claims" even if Chase is
17 *directly responsible* for those claims. This result is clearly inequitable and against public policy,
18 particular where, as in Plaintiff's case, the notice of default and election to sell that CRC served
19 on Plaintiff, as required under Civil Code § 2924b, identifies *Chase* as the foreclosing
20 beneficiary (see Chase's RJN, Exhibit 3, page 2, ¶ 1). Thus, contrary to Chase's contentions, it
21 is not being sued herein *solely* as WAMU's successor in interest. Chase is also being sued for
22 misconduct independent of that status regarding its commencement of the foreclosure process.

23 As noted above, the gravamen of Plaintiff's Complaint is wrongful foreclosure, and the
24 Complaint's first and tenth causes of action effectively allege wrongful foreclosure against both
25 Chase and CRC ("The nature of a cause of action does not depend on the label the plaintiff gives

1 it or the relief the plaintiff seeks but on the primary right involved.” *Bird, Marella, Boxer &*
2 *Wolpert v. Superior Court* (2003) 106 Cal.App.4th 419, 427). The rule is well established that
3 wrongful foreclosure is a viable cause of action against the foreclosing beneficiary and trustee.
4 *Munger v. Moore* (1970) 11 Cal.App.3d 1; *Miller v. Cote* (1982) 127 Cal.App.3d 888. In
5 resolving a demurrer, a court should liberally construe the challenged pleading and overrule the
6 demurrer where the Plaintiff has alleged facts sufficient to advance his claim. *Colvig v. RKO*
7 *General, Inc.* (1965) 232 Cal.App.2d 56.

8 The first cause of action alleges, inter alia, that neither Chase nor CRC were properly
9 assigned the note and deed of trust that would allow them to lawfully foreclose on Plaintiff’s
10 property. Additionally, under California law, neither Chase nor CRC can properly exercise the
11 deed of trust’s power of sale without first recording the purported assignment thereof from FDIC
12 to Chase. On this point, Civil Code § 2932.5 provides the following:

13 “Where a power to sell real property is given to a mortgagee or other
14 encumbrancer, in an instrument intended to secure the payment of money,
15 the power is part of the security and vests in any person who by assignment
16 becomes entitled to payment of the money secured by the instrument.
17 *The power of sale may be exercised by the assignee if the assignment*
18 *is duly acknowledged and recorded.* [Emphasis added].

19 See also Civil Code § 2936 (“The assignment of a debt secured by mortgage carries with it
20 the security.”). Neither Chase nor CRC contend that Chase ever recorded receiving its purported
21 assignment of Plaintiff’s note and deed of trust from FDIC. Under Civil Code § 2932.5, such
22 recordation was required prior to Chase’s and CRC’s exercise of the deed of trust’s power of
23 sale. Furthermore, Chase’s purchase and assumption agreement with FDIC fails to identify
24 Plaintiff’s loan as contained in the pool of “assets” that were assigned to Chase. Thus, despite
25 the fact that there is no recorded evidence of FDIC’s assignment of Plaintiff’s debt and deed of

1 trust to Chase, the notice of default identifies *Chase* as the foreclosing beneficiary (see Chase's
2 RJN, Exhibit 3, page 2, ¶ 1).

3 Plaintiff's tenth cause of action similarly alleges wrongful foreclosure against Chase
4 and CRC for failure to comply with Civil Code § 2923.5 as a condition precedent to filing the
5 notice of default. Filing the notice of default is required under Civil Code § 2924, and the
6 procedures requiring such filing are strictly construed. *Miller v. Cote* (1982) 127 Cal.App.3d
7 888, 894; *Sweatt v. Foreclosure Co.* (1985) 166 Cal.App.3d 273, 278; *Wanger v. EMC Mortgage*
8 *Corporation* (2002) 103 Cal.App.4th 1125. A foreclosure process predicated on a statutorily
9 defective notice of default is invalid as a matter of law. *Miller v. Cote, supra*, at 894 [a
10 premature notice of default is fatally defective]. The workout opportunity and contact of
11 requirements of Civil Code § 2923.5 are mandatory, and the alleged failure to comply with this
12 statutory duty pleads negligence per se. See Evidence Code § 669(a) (1). Additionally, whether
13 a defendant has complied with a statutory mandate is a question of fact that cannot be resolved
14 on demurrer (see e.g., *Daum v. SpineCare Medical Group, Inc.* (1997) 52 Cal.App.4th 1285,
15 1306 holding that the question whether a party has complied with a statute is one of fact for the
16 jury).

17
18 As applied herein, Plaintiff's tenth cause of action alleges that Chase and CRC failed to
19 comply with Civil Code § 2923.5 before filing their notice of default. Like Plaintiff's allegations
20 regarding Chase's improper assignment from FDIC, these allegations relate to Chase's and
21 CRC's direct conduct *after* this purported assignment and have nothing to do with the origination
22 of Plaintiff's loan.

23 A third and final reason Chase's exemption argument fails is that Plaintiff's complaint
24 effectively presents a foreclosure defense action rather than one for affirmative claims against
25

1 Chase. See *Bolduc v. Beal Bank* (1st Cir. 1999) 167 F.3d 667, a true copy of which is submitted
2 in Plaintiff's Appendix of Non-California Authorities filed concurrently herewith. In *Bolduc*, the
3 plaintiffs obtained a loan from a bank that ultimately failed and went into receivership with
4 FDIC as receiver. FDIC conveyed the failed bank's assets to a successor bank under a purchase
5 and assumption agreement, and the plaintiffs sued the successor bank to enjoin its foreclosure on
6 their property.

7 The plaintiffs sued the successor bank for, inter alia, marital status discrimination
8 relating to the origination of their loan with the failed bank. The successor bank, like Chase
9 herein, contended that the plaintiffs were limited to administrative recovery against FDIC and
10 that they could not recovery from the successor bank. In rejecting this argument, the First
11 Circuit Appellate Court ruled that FIRREA did not apply to bar the plaintiff's claim against the
12 successor because her action was essentially one for foreclosure defense. Like the plaintiffs in
13 *Bolduc*, Plaintiff has alleged causes of action that effectively defend against Chase's wrongful
14 foreclosure on Plaintiff's property. As such, the Complaint against Chase is not barred by
15 FIRREA and Chase is properly joined as a defendant herein.

16
17 Furthermore, as discussed above, Plaintiff has sufficiently pleaded his first and tenth
18 causes of action against Chase and CRC. However, if the court finds that Plaintiff has failed to
19 sufficiently these causes of action in the Complaint, Plaintiff hereby requests leave to amend.

20 **B. Foreclosure is a Process Commencing With the Notice of Default and Plaintiff's**
21 **Claims for Wrongful Foreclosure are Ripe**

22 Chase and CRC contend, almost nonsensically, that Plaintiff's wrongful foreclosure
23 claims underlying the first and tenth causes of action are not "ripe" because foreclosure has not
24 yet occurred. The rule is well established that foreclosure is a process rather than an event, and
25 that it begins with filing the notice of default. See e.g., *Miller v. Cote* (1982) 127 Cal.App.3d

1 888; *Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830 [“The foreclosure process is commenced
2 by the recording of a notice of default and election to sell by the trustee.”] Indeed Chase’s and
3 CRC’s notice of default and election to sell states repeatedly that the foreclosure process has
4 begun even though the trustee’s sale has not yet occurred (see Chase’s RJN, Exhibit 3). Thus,
5 Chase’s and CRC’s own evidence scuttles their “ripeness” argument and the court should
6 overrule this demurrer.

7 Chase and CRC also assert that, in contradiction to their ripeness argument, the recitals in
8 a trustee’s deed create a conclusive presumption of the validity of a trustee’s sale. However, this
9 argument and referenced presumption have no application where, as here, the trustee’s sale has
10 not yet occurred; there is no bona fide purchaser for value; and a trustee’s deed has not been
11 delivered. See e.g., *Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 700 (“The conclusive
12 presumption in favor of the bona fide purchaser (Civ. Code, § 2924) does not take effect until
13 delivery of a trustee's deed.”); see also *Moeller v. Lien* (1994) 25 Cal.App.4th 822, 831 (the
14 conclusive presumptions validating a trustee’s sale apply only where there is a bona fide
15 purchaser). Therefore, the court should not be persuaded by this misguided argument.
16

17 Finally, Chase and CRC claim that they provided Plaintiff with “proper foreclosure
18 notices.” Chase and CRC have apparently addressed this argument to Plaintiff’s wrongful
19 foreclosure allegations. However, as discussed above, Plaintiff’s alleged improper assignment(s)
20 and violations of Civil Code § 2923.5 have nothing to do with the recitals or notices contained in
21 a non-existent trustee’s deed. Plaintiff has alleged that neither Chase nor CRC *contacted* him
22 prior to filing the notice of default as required under this statute and Civil Code § 2924.
23 Additionally, as noted above, the question whether a defendant has complied with a statutory
24 mandate is a question of fact that cannot be resolved on demurrer. See *Daum v. SpineCare*
25

1 *Medical Group, Inc.* (1997) 52 Cal.App.4th 1285, 1306. Thus, Chase’s and CRC’s contentions
2 regarding “proper...notices” have no application to the Complaint and the court should disregard
3 them and overrule their demurrer.

4 **C. The Complaint Alleges Facts Sufficient to Maintain Plaintiff’s Cause of Action
5 for Declaratory Relief**

6 In resolving a demurrer, a court should liberally construe the challenged pleading and
7 overrule the demurrer where the Plaintiff has alleged facts sufficient to advance his claim.

8 *Colvig v. RKO General, Inc.* (1965) 232 Cal.App.2d 56. The Complaint clearly states facts to
9 showing that there is an actual dispute regarding the validity of Chase’s and CRC’s foreclosure
10 on the Subject Property. Chase and CRC claim that they have legal authority to foreclose on
11 Plaintiff’s home, that Plaintiff’s mortgage loan transaction and related documentation were
12 entirely valid, and that Plaintiff remained obligated to under the terms thereof. The court has
13 broad discretion to grant declaratory relief. See *Schessler v. Keck* (1954) 125 Cal.App.2d 827.
14 Plaintiff seeks a declaratory determination from this court invalidating Chase’s and CRC’s
15 contentions herein and declaring their title to the Subject Property. See *Washington Mutual
16 Bank v. Blechman* (2007) 157 Cal.App.4th 662, 668 [disputed claims to title after a foreclosure
17 sale of property involved a controversy sufficient to maintain a claim for declaratory relief].
18 Thus, the Complaint alleges facts sufficient to seek declaratory relief and Chase’s and CRC’s
19 demurrer to Plaintiff’s cause of action for such relief should be overruled.
20

21 **D. The Complaint Alleges Facts Sufficient to Maintain Plaintiff’s Causes of Action
22 for Fraud and Fraudulent Concealment**

23 The Complaint alleges facts sufficient to maintain Plaintiff’s fraud claim. The elements
24 of fraud consist of the Chase’s and CRC’s knowing and intentionally false representation made
25 to induce the Plaintiff to reasonably rely thereon with resulting harm to the Plaintiff. *Vega v.*

1 *Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282. Deceit may involve concealment or
2 the suppression of information that should have been revealed. *Agnew v. Cronin* (1957) 148
3 Cal.App.2d 117, 129-130. Even if there is no legal duty of disclosure, one who speaks must
4 speak the whole truth without omitting facts that make the statement misleading. *Doran v.*
5 *Milland Development Co.* (1958) 159 Cal.App.2d 322; *Vega v. Jones, Day, Reavis & Pogue*
6 (2004) 121 Cal.App.4th 282. The Complaint alleges an agency relationship among and between
7 all of the defendants herein. This alleged agency relationship is incorporated by reference into
8 Plaintiff's fraud cause of action. Moreover, Plaintiff has clearly alleged the elemental facts
9 necessary to pursue its fraud claim. See, e.g. *People ex rel. Sepulveda v. Highland Federal*
10 *Savings & Loan* (1993) 14 Cal.App.4th 1692, 1718. Therefore, the Complaint alleges facts
11 sufficient to maintain Plaintiff's fraud claim and Chase's and CRC's demurrer to Plaintiff's fraud
12 and concealment causes of action should be overruled. However, if the court finds that Plaintiff
13 has failed to sufficiently these causes of action in the Complaint, Plaintiff hereby requests leave
14 to amend.

15
16 **E. The Complaint Alleges Facts Sufficient to Maintain Plaintiff's
Cause of Action for Unconscionability**

17 In regard to Plaintiff's unconscionability cause of action, Plaintiff has effectively pleaded
18 grounds for a contract rescission claim ("The nature of a cause of action does not depend on the
19 label the plaintiff gives it or the relief the plaintiff seeks but on the primary right involved." *Bird,*
20 *Marella, Boxer & Wolpert v. Superior Court* (2003) 106 Cal.App.4th 419, 427). See also Civil
21 Code § 1689(b) (1) and (5). For the court to find a contract unconscionable, both procedural and
22 substantive unconscionability must be present. *Fitz v. NCR Corp.* (2004) 118 Cal.app.4th 702,
23 720-728; *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1407-1410; *Flores v. Transamerica*
24 *HomeFirst, Inc.* (2001) 93 Cal.App.4th 846; *Nyulassy v. Lockheed Martin Corp.* (2004) 120
25

1 Cal.App.4th 1267, 1280-1286. While both procedural and substantive unconscionability must
2 occur to render an agreement unenforceable, they need not occur in equal amounts. See *Harper*,
3 *supra*, 1403.

4 (1) *Procedural Unconscionability*

5 Procedural unconscionability arises from unequal bargaining power that allows the
6 stronger party to impose contractual terms on the weaker party without affording any opportunity
7 to negotiate those terms. See *Ibid*. The fact that there are alternative sources for a product or
8 service does not affect a court's unconscionability analysis, and the court can find procedural
9 unconscionability even where such alternatives exist. See e.g., *Armendariz v. Foundation Health*
10 *Psychcare Service, Inc.* (2000) 24 Cal.4th 83; see also *Szetela v. Discover Bank* (2002) 97
11 Cal.App.4th 1094. Moreover, adhesion is not required for a court to find procedural
12 unconscionability. See *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1408-1409; *Nyulassy v.*
13 *Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1267, 1280-1281, fn. 11. While adhesion is a
14 frequent component of procedural unconscionability, it is not a necessary element of this fatal
15 contract flaw. See *Ibid*. Procedural unconscionability also occurs where a contract's material
16 terms are hidden in a prolix of fine print or otherwise surprises the party who was unaware of
17 them. See *Fitz, supra*, 721-722; *Harper, supra*, 1406-1407. For example, such surprise occurs
18 where these terms are concealed or a contained in riders or addenda that are incorporated but not
19 attached to the agreement. See *Ibid*.

21 (2) *Substantive Unconscionability*

22 In deciding whether a contract is substantively unconscionable, the court should examine
23 the agreement's actual effect even if its language appears facially neutral. See e.g., *Fitz and*
24 *Harper, supra*. In view of the foregoing, Plaintiff hereby requests leave to rename and amend
25

1 this cause of action to include the following allegations of procedural and substantive
2 unconscionability:

3 Defendants CHASE, as successor in interest to WAMU, and DOES 1-250 were national
4 banks and mortgage lenders who at all times herein had superior bargaining power over
5 Plaintiff regarding (1) the type of loan that was offered to Plaintiff; (2) the material terms
6 of that loan including, without limitation, the interest rate(s) and repayment schedule; and
7 (3) the power of sale and right to foreclose in the event of Plaintiff's default.

8 Plaintiff alleges further that Defendant CHASE at all times herein knew of Plaintiff's
9 inferior financial condition and credit history, and on the basis of that information knew
10 that Plaintiff's would be unable to qualify for a conventional mortgage through another
11 lender. Plaintiff further alleges that CHASE prepared the pre-printed form documents
12 that Plaintiff was required to sign as a condition to obtaining the mortgage; that CHASE
13 presented these form loan documents to Plaintiff in a "take it or leave it" manner with no
14 opportunity for Plaintiff to negotiate the mortgage interest or payment terms; and that
15 CHASE used its superior bargaining power to convince Plaintiff that he could not obtain
16 more favorable mortgage terms from any other lender.
17

18 Additionally, the loan payment(s) increased dramatically via a complex formula that
19 Plaintiff, as an unsophisticated mortgage consumer, could neither avoid nor understand.
20 The loan agreements were entirely one-sided in that they allowed CHASE to enjoy
21 usurious profits on the basis of non-negotiable interest rates while Plaintiff could never
22 realize true home ownership because he could never repay a mortgage which, by its
23 terms, guaranteed CHASE's foreclosure.
24
25

1 The foregoing allegations clearly plead both procedural and substantive
2 unconscionability in a manner sufficient to maintain a rescission cause of action. Accordingly,
3 Plaintiff requests leave to amend the Complaint to include the foregoing allegations.

4 **F. The Complaint Alleges Facts Sufficient to Maintain Plaintiff's Cause of Action**
5 **for Unfair Debt Collection Practices**

6 Plaintiff has alleged facts showing that Chase and CRC wrongfully instituted foreclosure
7 proceedings against them. Specifically, Plaintiff alleges that Chase and CRC failed to conform
8 to the statutory mandates of Civil Code Sections 2923.5 et seq. The Complaint has also alleged
9 that CRC, as the purported trustee, served Plaintiff with a notice of trustee's sale despite the fact
10 that Chase and CRC, due to improper substitutions and assignments regarding the loan
11 documents, had no right to foreclosure on Plaintiff's home. Thus, the Complaint alleges facts
12 sufficient to maintain Plaintiff's cause of action for unfair debt collection practices and Chase's
13 and CRC's demurrer should be overruled.

14 **G. The Complaint Alleges Facts Sufficient to Maintain Plaintiff's Cause of Action**
15 **for Injunctive Relief**

16 Chase's and CRC's entire objection to Plaintiff's cause of action for injunctive relief is
17 based on its contention that no such cause of action exists. Chase and CRC are wrong. Indeed
18 the propriety of filing an action for injunctive relief is well-established under California law. See
19 e.g., *Tonini v. Ericsson* (1933) 218 C. 43; *San Pedro v. Southern P.R. Co.* (1920) 101 C. 333.

20 Plaintiff has sufficiently pleaded his cause of action for injunctive relief. However, if the
21 court finds that Plaintiff has failed to sufficiently these causes of action in the Complaint,
22 Plaintiff hereby requests leave to amend.

23 \\
24 \\
25

1 requests leave to amend his Complaint to allege additional facts showing that Chase and CRC
2 conspired with the remaining defendants to defraud Plaintiff into believing and relying upon
3 Chase's and CRC's false representations that they had the legal right to foreclose on Plaintiff's
4 property.

5 **J. Plaintiff Requests Leave to Amend His Quiet Title Cause of Action to Comply**
6 **With Code of Civil Procedure § 761.020**

7 Plaintiff concedes that his quiet title cause of action fails to comply with the pleading and
8 verification requirements of Code of Civil Procedure § 761.020. Accordingly, Plaintiff hereby
9 requests leave to amend to comply with this statute.

10 **CONCLUSION**

11 For the foregoing reasons, Plaintiff respectfully requests that the court overrule Chase's
12 and CRC's demurrer herein. Alternatively, Plaintiff requests that the court grant him leave to
13 amend to plead additional facts in support of his Complaint.

14
15 Dated: December 2, 2009

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17 XXXXXXXX XXXXXX.
18 Attorney for Plaintiff
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