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Plaintiff in *propia persona*

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Plaintiff *in propia persona*

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION
(SANTA ANA)**

Charles Edward Lincoln, III, §
Renada Nadine March, §
Daniel Mack; Joseph Cohen; Carol Cohen, §
Richard Mendez, Alicia Singh, §
Plaintiffs, §
v. §
The State of California, §
Jerry Brown, Attorney General of §
California, in his Official Capacity §
Arnold Alois Schwarzenegger, Governor of §
The State of California, in his Official §
Capacity, §
Steven David Silverstein, §
Ron Elter, John Rampello, §
GRE Development, Inc., individually §
and as agents and trustees of the §
4 Via Corbina Trust, Christopher Archuleta, §
MERS (Mortgage Electronic Registration §
Services), other unnamed Attorney §
Defendants John & Jane Does 1-10, §
Meglodon Financial, L.L.P., §
Lighthouse Trust #11 Catherine H. §
Meyer LLC, §
DNE associates LLP, §
Atlas Properties Real Estate, §
James Radwan, Rochelle Matkin §
Trustee Corps, Russell Bell, §
Quality Loan Service Corp., §
FIRST NEWPORT PROPERTIES, LLC, §
John Murk, Dianne D'Agnolo, §
The Honorable Sandra Hutchens, §
The Sheriff of Orange County, §
CAL-WESTERN Reconveyance, §
Dennis Stacy, Coldwell Banker, §
And JOHN & JANE DOES 11-20, §
Eric Holder, United States Attorney §
General, in his official capacity, §
Defendants. §

No. SACV09-1072 DOC (Ex)

**THIRD AMENDED
COMPLAINT**

**SUGGESTION OF CLASS for
CERTIFICATION UNDER
FRCP RULE 23**

**TRIAL-BY-JURY DEMANDED
OF ALL ISSUES SO TRIABLE
AT COMMON LAW, UNDER
THE 7th AMENDMENT
28 U.S.C. §1861 *et seq.***

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4 **THIRD AMENDED COMPLAINT**

5 Plaintiffs Charles Edward Lincoln and Renada N. March are now joined in this
6 Third Amended Complaint by Daniel C. Mack, Richard Mendez, Alicia Singh,
7 Joseph A. and Carol Cohen, who come together to complain jointly and severally of
8 Attorney Steven David Silverstein (bar no: 86466), the Honorable Sandra Hutchens,
9 Sheriff of Orange County, servicers working for and on the behalf of several banks
10 (Cal Western Reconveyance, California Reconveyance, MTC Financial), and an
11 array of investors, their officers, and real estate agents, employees, and co-
12 conspirators.

13 (1) Defendants have, together, utilized certain customs, practices, and policies
14 having the force of law of and in the State of California, and in particular of Orange
15 County and the California Superior Courts of Orange County, to effect numerous
16 violations of civil rights in connection with foreclosure of real estate notes and the
17 seizure (“forcible detainer” or “eviction”) cases.

18 (2) This court has Federal Question Jurisdiction under 28 U.S.C. §§1331, 1343,
19 and 42 U.S.C. §§1981, 1982, 1983, and 1988(a) to hear both suits for damages and
20 petitions for declaratory relief and venue is proper because most of the events giving
21 rise to the present causes of action took place in Orange County, California.

22 (3) Plaintiffs suggest under Fed. R. Civ. Pro. Rule 23 that this case involves issues
23 affecting such a large number of Plaintiffs, whose identity and whereabouts are
24 difficult to ascertain, that a class action is the most efficient, feasible, and judicially
25 economical means of resolving the issues herein raised, and that the Court should
26 utilize its discretion to appoint competent class counsel to represent the Plaintiffs in
27 this case and the class of plaintiffs of which they are members.
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3 **ADDITIONAL DEFENDANTS**

4 (4) Plaintiffs, through their Second and Third Amended Complaints have added
5 the following Defendants:

6 (5) The State of California, a state of the United States that entered the Union as
7 the 31st State in 1850.

8 (6) Defendant Arnold Alois Schwarzenegger, is the Governor of California and is
9 being sued in his official capacity. His office is located at the State Capitol Building
10 Sacramento, CA 95814.

11 (7) Defendant Edmund G. Brown, is the Attorney General of the State of
12 California and is being sued in his official capacity. His mailing address is: P.O. Box
13 944255 Sacramento, CA 94244-2550.

14 (8) Defendant Eric Holder, is the US Attorney General for the United States of
15 America and is being sued in his official capacity. His office is located at U.S.
16 Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.
17 Also pursuant to Rule 5.1 of the Federal Rules of Civil Procedure, U.S. Attorney
18 General Eric Holder will be asked to waive citation and summons under Rule 4.

19 (9) Defendant Lighthouse Trust #11, Catherine H. Meyer LLC (“#11 Lighthouse
20 Trust”) a limited liability corporation and the alleged “equity purchaser” of Plaintiffs
21 Joseph and Carol Cohen’s property. The corporation is unregistered in the state of
22 California therefore their address is unknown. Defendant Steven Silverstein
23 represented the entity during Plaintiff Joseph and Carol Cohen’s Unlawful Detainer
24 action.

25 (10) Defendants Catherine H. Meyer and Kenneth Meyer are together the
26 beneficiaries, trustees, managers or “heads” of Lighthouse Trust #11 LLC. Their
27 address is unknown.
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3 (11) Defendant Paul Margolis, aka Paul Margolis Management Retirement Trust is
4 the entity that foreclosed on the 2nd mortgage attached to Plaintiff Singh's property.
5 Margolis' address being: PO Box 3461 Santa Barbara, CA 93130.

6 (12) Defendant National T.D. Service is the entity that sold Plaintiff Singh's
7 property at a trustee's sale. They are located at: 950 County Square Drive, Suite
8 106, Ventura, CA 93003.

9 (13) NJB Investment LP, is a limited partnership and entity that purportedly bought
10 Plaintiff Singh's home located at: 1394 Arrowhead Dr. Placentia, CA 92870. NJB
11 Investment LP was represented by their attorney Defendant Steven Silverstein in the
12 pending UD Action.

13 (14) Defendant DNE associates LLP is a limited liability partnership unregistered
14 in the state of California as a business. It is the "equity purchaser" of Plaintiff Daniel
15 Mack's property. Their address is unknown. Defendant Steven Silverstein
16 represented the entity during Plaintiff Mack's Unlawful Detainer action.

17 (15) AEGIS Wholesale Corporation (from hereon referred to as "Aegis") is a
18 lender bank headquartered in Houston, Texas. It is a subsidiary of Aegis Mortgage
19 Corporation. The bank completely refinanced the loan/debt for Plaintiff Daniel (Dan)
20 Mack. CT Corporation System accepts service for Aegis at 818 W 7th St., Los
21 Angeles CA 90017.

22 (16) Wells Fargo Bank Corporation is the originating lender/bank for Hal Kuder
23 who assigned his rights and obligations arising from his execution of a mortgage,
24 deed of trust, and promissory note to Plaintiff Charles Lincoln. Corporation Service
25 Company is Wells Fargo's registered agent in the state of California, located at 2730
26 Gateway Oaks Dr. Suite 100, Sacramento CA 95833.

27 (17) Defendant Chase Bank is a lender bank headquartered in New York, New
28 York. The bank foreclosed on the loan/debt of Plaintiff Joseph Cohen. CT

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3 Corporation System accepts service for Aegis at 818 W 7th St., Los Angeles CA
4 90017.

5 (18) IndyMac Bank, a.k.a. OneWest Bank (“IndyMac”) is a federal savings bank
6 backed by the FDIC. IndyMac originated Plaintiff Renada March’s loan subject to
7 this suit. Corporation Services Company is IndyMac’s registered agent to accept
8 service in the state of California. CSC is located at: 2730 Gateway Oaks Dr., Suite
9 100, Sacramento CA 95833.

10 (19) Defendant MTC Financial aka “Trustees Corps” is the acting servicer
11 Defendant IndyMac. Richard Reynolds accepts service on the company’s behalf, his
12 address is: 16485 Laguna Canyon Road Suite 250.

13 (20) Defendant California Reconveyance Company is the servicer for Chase Bank.
14 CT Corporation System accepts service for them at 818 W 7th St., Los Angeles CA
15 90017.

16 **FACTUAL & LEGAL BACKGROUND**

17 (21) Plaintiffs were brought together by their mutual horror and disgust at the
18 illegal actions and opprobrious conduct of one particular attorney, Steven David
19 Silverstein, who appears to be among the leading practitioners implementing the
20 following customs, practices and policies having the force of law in California which
21 effect a systematic deprivation of the fundamental constitutional rights of the
22 Plaintiffs, and thousands of other plaintiffs whose identity is unknown:

23 (22) Conducting non-judicial foreclosure sales during negotiations for loan
24 modification in defraud and defeasance of the implied covenant of good faith and
25 fair dealing;

26 (23) Conducting non-judicial foreclosure sales during the pendency of material
27 disputes, including actual pending litigation concerning title and standing to collect
28 debts under color of laws which effectively preclude contests to title & standing;

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3 (24) Initiating eviction proceedings in California Superior Court without any
4 reasonable prior notice of sale of property, as the primary and preferred means of
5 informing occupants/mortgagors or their assignees, of the existence of sales;
6 (25) Imposing and conducting a system of judicial evictions in California Superior
7 Courts after non-judicial foreclosures, all of which are “rigged” in the sense of
8 outcomes predetermined in favor of evicting parties, in such a manner that title
9 disputes concerning the right to foreclose or evict from properties has been all but
10 abolished; California stands almost alone in the United States of America in not
11 giving disputes over title legal superiority and priority to disputes over possession;
12 (26) Imposing and conducting a system of judicial evictions in California Superior
13 Courts after non-judicial foreclosures which interfere with and impair the common
14 law and statutory obligations of contract in violation of the Constitution, and which
15 denies to certain classes of people, namely mortgagors, the equal rights to
16 (27) inherit, purchase, lease, sell, hold, and convey real and personal property
17 (within the meaning of 42 U.S.C. §1982) and
18 (28) to make and enforce contracts, to sue, be parties, give evidence, and to the full
19 and equal benefit of all laws and proceedings for the security of persons and property
20 (within the meaning of 42 U.S.C. §1981(a)).
21 (29) For purposes of this complaint, the term "make and enforce contracts"
22 includes the making, performance, modification, and termination of contracts, and
23 the enjoyment of all benefits, privileges, terms, and conditions of the contractual
24 relationship (within the meaning of 42 U.S.C. §1981(b);
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PART 1:
“RACE-BASED INITIATIVES
&
UNCONSTITUTIONAL FEDERAL LAWS
Which cannot survive Strict Scrutiny”

I. INTRODUCTION

(30) For purposes of this complaint, Plaintiffs contend that 42 U.S.C. §1981, and 42 U.S.C. §1982 are the key federal civil rights statutes because they together outline and guarantee general, federally secured and specified, equal civil rights in the making of contracts and ownership of property;

(31) Plaintiffs submit that these statutes, regardless of their Reconstruction-era origins, should be construed as “color blind” under modern Supreme Court interpretations of civil rights so that equal rights to make and enforce contracts, to sue, be parties, and give evidence concerning the rights arising therefrom, including the right to own property, should both be applied and construed as though they did not contain the nearly identical phrase, “as is enjoyed by white citizens” and/or “as is enjoyed by the white citizens thereof;”

(32) Plaintiffs submit and contend that the law must be applied in fact to guarantee civil rights in the making and enforcement of contracts and the ownership of property to all citizens, and not merely that non-white citizens may not be denied their civil rights “any more” than such rights are denied to white citizens, which is a possible construction of civil rights jurisprudence prior to 1989.

(33) Plaintiffs submit, in brief that the situation in the California Superior Courts relating to the enforcement and application of non-judicial foreclosures by judicial evictions has reached a crisis of epidemic or even pandemic proportions, especially in Orange County, and

(34) that the civil rights of mortgagors to “to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property” are being severely infringed under color of California law and in particular the judicial norms

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3 (35) which apply to the conduct and resolution of Superior Court cases challenging
4 the standing of certain servicers or entities claiming standing to foreclose on real-
5 estate notes, such that the very right “inherit, purchase, lease, sell, hold, and convey
6 real and personal property” is being infringed or even curtailed.

7 (36) The State of California has enacted these statutes as applied, in particular
8 §2924 of the Code of Civil Procedure and related statutes, are being so applied and
9 enforced as to effectively abolish both private property and the rights to full and
10 equal benefits of the laws for the security of persons and property.

11 (37) Governor Schwarzenegger, US Attorney Eric Holder and California Attorney
12 General Edmund G. Brown, are both named in this suit to comply with the Federal
13 Rules of Procedure Rule 5.1¹.

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¹ **RULE 5.1**

17 (a) Notice by a Party.

18 A party that files a pleading, written motion, or other paper drawing into question the
19 constitutionality of a federal or state statute must promptly:

20 (1) file a notice of constitutional question stating the question and identifying the paper that
21 raises it, if:

22 (A) a federal statute is questioned and the parties do not include the United States, one of its
23 agencies, or one of its officers or employees in an official capacity; or

24 (B) a state statute is questioned and the parties do not include the state, one of its agencies, or
25 one of its officers or employees in an official capacity; and

26 (2) serve the notice and paper on the Attorney General of the United States if a federal statute is
27 questioned — or on the state attorney general if a state statute is questioned — either by
28 certified or registered mail or by sending it to an electronic address designated by the attorney
general for this purpose.

(b) Certification by the Court.

The court must, under [28 U.S.C. § 2403](#), certify to the appropriate attorney general that a statute
has been questioned.

(c) Intervention; Final Decision on the Merits.

Unless the court sets a later time, the attorney general may intervene within 60 days after the
notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to
intervene expires, the court may reject the constitutional challenge, but may not enter a final
judgment holding the statute unconstitutional.

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3 (38) Although the present Plaintiffs are all white Anglo-Saxon and Protestant, they
4 know of no racial elements to this epidemic of civil rights violations, because they
5 allege that the class which should be certified in this case will include tens if not
6 hundreds of thousands of African Americans, Hispanic Surname Americans, Asian
7 Americans, and Native Americans as well as whites, and accordingly, they submit
8 that the essence of 42 U.S.C. §§1981, 1982, can be best preserved and applied
9 without the qualifying language “as is enjoyed by white citizens.”

10 (39) Further, the Plaintiffs submit that this United States District Court should
11 apply to 42 U.S.C. §§1981 and 1982 the principles articulated by the United States
12 Supreme Court repeatedly over the past twenty years that all government racial
13 classifications (including Federal classifications) must be analyzed by a reviewing
14 court under strict scrutiny in the modern line of equal protection cases going back to
15 the 1989 decision in *Richmond v. Croson*. *Adarand Constructors, Inc. v. Peña*, 515
16 U.S. 200, 227, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995), *Johnson v. California*, 336
17 F.3d 1117, 2003 Daily Journal D.A.R. 8295, (9th Cir., Jul 28, 2003), *Grutter v.*
18 *Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304, 2003 Daily Journal
19 D.A.R. 6800, (U.S., Jun 23, 2003), *Johnson v. California*, 543 U.S. 499, 125 S.Ct.
20 1141, 160 L.Ed.2d 949, 2005 Daily Journal D.A.R. 2118, (U.S., Feb 23, 2005), *City*
21 *of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 109 S.Ct. 706, 102 L.Ed.2d 854,
22 (U.S.Va., Jan 23, 1989).

23 (40) Plaintiffs Lincoln, March, Mack, Joseph and Carol Cohen herein submit and
24 suggest that (despite their dispositive relevance to this case) the racial element of 42

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27 (d) No Forfeiture.

28 A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

U.S.C. §1981 has largely if not entirely outlived its usefulness, and that if the word “white” (before citizens) in 42 U.S.C. §1981 is replaced (at least conceptually) by the word “all free, fully enfranchised”, then the law will acquire new and magisterial vigor in the modern world, and promote a more just and equitable society, especially in the context of the last seven years, in which more and more people (of all racial origins) have with increasing frequency and ferocity, been denied their equal right to access to the courts and to the formal and substantive rights and procedures essential to ensure true due process of law.

(41) Several of the Plaintiffs in this case (Lincoln, Mack, & March) are, to be sure, WASPS (i.e. “White Anglo-Saxon Protestant Suburbanites”) by racial and class categorization, but this classification itself is antique and pointless (and two Jewish Plaintiffs [Joseph & Carol Regina Cohen], one Hispanic [Richard Mendez] and one subcontinental Indian Plaintiff [Singh] all join in this Third Amended Complaint). The classes involved in this case are the mortgagors vs. the mortgagees, those who use and enjoy private property against those who wish to monopolize it, and on another level, real property holders vs. false debt collectors, all the while using the legislative enactments of the State as a shield to continue doing so.

COUNT I: CONSTITUTIONAL DECLARATORY JUDGMENT
REGARDING FEDERAL LAW: STRICT SCRUTINY APPLIES
TO ALL RACE-BASED SCHEMES

(42) Plaintiffs reallege ¶¶1-41 and incorporate the same by reference here below.

(43) Plaintiffs submit that there are two discriminatory federal race-based schemes which must be invalidated in light of the strict scrutiny in the modern line of equal protection cases going back to the 1989 decision in *City of Richmond v. J.A. Croson*

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3 *Co.*, 488 U.S. 469, 109 S.Ct. 706, 102 L.Ed.2d 854, ([U.S.Va.](#), Jan 23, 1989),
4 *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227, 115 S.Ct. 2097, 132
5 L.Ed.2d 158 (1995), *Johnson v. California*, 336 F.3d 1117, 2003 Daily Journal
6 D.A.R. 8295, (9th Cir., Jul 28, 2003), *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct.
7 2325, 156 L.Ed.2d 304, 2003 Daily Journal D.A.R. 6800, (U.S., Jun 23, 2003),
8 *Johnson v. California*, 543 U.S. 499, 125 S.Ct. 1141, 160 L.Ed.2d 949, 2005 Daily
9 Journal D.A.R. 2118, (U.S., Feb 23, 2005).

10 (44) The race-based limitations on the application of 28 U.S.C. §1443(1)¹ must be
11 discarded, because there is no rational basis for any race-based limitation on civil-
12 rights removal. Much less the Defendants or any other governmental party ever
13 come forward in this or any other case to show, to contend seriously, or even to
14 allege that the purely judicial “racial” gloss imposed on the non-racial language of 28
15 U.S.C. §1443(1) serves any compelling governmental interest or objective.

16 (45) So the race-based bias imposed on 28 U.S.C. 1443(1) has no basis in the
17 actual statutory text, but is a purely judicial creation, limiting to cases of express
18 statutory racial discrimination the full and broad potential impact of 28 U.S.C.
19 §1443(1) in the language actually adopted by Congress, entirely predates *J.A.*
20 *Croson* and even *Bakke v. Regents of the University of California*, so that strict
21 scrutiny must now be applied to see whether the *Greenwood v. Peacock* and
22 *Johnson v. Mississippi* limitations on civil rights removal ought to be tolerated by
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24 ¹ 28 U.S.C. 1443(1) provides, in broad, racially neutral, colour-blind terms:

25 Any of the following civil actions or criminal prosecutions, commenced in a State court may be
26 removed by the defendant to the district court of the United States for the district and division
embracing the place wherein it is pending:

27 (1) Against any person who is denied or cannot enforce in the courts of such State a right under any
law providing for the equal civil rights of citizens of the United States, or of all
persons within the jurisdiction thereof;

28 (2) For any act under color of authority derived from any law providing for equal rights, or for
refusing to do any act on the ground that it would be inconsistent with such law.

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3 any modern court or judge, in light of the OVERWHELMING subsequent
4 jurisprudence against such meaningless and archaic race-based schemata which just
5 sully and retard, and in no way advance or modernize the law or justice.

6 (46) Likewise, Plaintiffs submit that strict scrutiny should be applied to the texts of
7 42 U.S.C. §§1981 and 1982, and that a color blind notion of civil rights should be
8 applied by this court, so that equal rights shall be available to ALL citizens, and
9 these statutes can be used to enforce discrimination against the state-mandated
10 statutory creation of disadvantaged classes of a non-racial nature and origin, such as
11 defendants in forcible eviction/unlawful detainer proceedings following
12 constitutionally intolerable non-judicial foreclosures as these have been created by
13 the California legislature. Otherwise the concept of civil rights in a race-free and
14 color blind America becomes nugatory.

15 (47) The Supreme Court has mandated that ALL statutory race-based schemes
16 should be examined in the light of strict scrutiny, and no rational, much less
17 compelling, reason for applying 42 U.S.C. §§1981 and 1982 to racial minorities only
18 can be advanced, and these statutes should accordingly be construed “free of all
19 racial bias and prejudice, free of all of the incidents and badges of slavery” including
20 the heritage of 20th Century “Jim Crow” and *de jure* segregation in the south. It is
21 time for the Courts to recognize and announce, clearly and plainly, that ALL
22 Americans are entitled to civil rights, not just racial minorities, and that ALL
23 Americans who are deprived of equal access to the courts, or equal rights to make
24 and enforce contracts, or give evidence concerning the same, or equal rights to
25 possess and enjoy property, have the right to use the Federal Civil Rights laws to
26 challenge and overturn invidiously discriminatory state statutory plans.

27 (48) Plaintiff Renada N. March has previously tried to remove her state court claim
28 three separate times now and been denied each time, and this Court appears to have

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3 relied on the racial construction of 28 U.S.C. §1443 which is a judicial imposition of
4 affirmative action racial discrimination in favor of African-Americans on a statute
5 which is facially broad and completely racially neutral.

6 (49) Plaintiffs Joseph and Carol Cohen and other Defendants in Orange County (of
7 diverse ethnic backgrounds) have also removed their Unlawful Detainer cases to
8 U.S. District Court on the grounds that the outcome in California Superior Court is
9 predetermined, and they have been denied on similar grounds.

10 (50) Plaintiff Daniel Mack would like to exercise and *have the clear right* to
11 remove their state court cases based on civil rights violations but are threatened with
12 remand and subjugation to oppressive and predetermined outcomes in the California
13 Superior Courts.

14 (51) Plaintiff Charles Edward Lincoln would have removed Silverstein's forcible
15 detainer action against 4 Via Corbina in Rancho Santa Margarita, Orange County,
16 California, if his attorney in the summer of 2009, Dr. Orly Taitz, had paid sufficient
17 attention to her communications with Silverstein regarding that property to realize
18 that Silverstein was planning and had instituted a forcible eviction action.

19 (52) So all the Plaintiffs in this case have standing because they have been in a
20 position to utilize 28 U.S.C. §1443 removal, and they may be in the position to need
21 to use this provision again.

22 (53) The California Superior Courts, among other considerations, may be largely
23 "bought and paid for", denying any hope of honest judicial decision-making, due to
24 the extension and forgiveness or third-party repayment of real-estate secured loans to
25 the very Superior Court judges who must preside over the majority of California
26 Unlawful Detainer cases and/or state court forum challenges to wrongful foreclosure
27 and evictions.

28 (54) Plaintiffs submit that the racially biased affirmative action "gloss" or

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3 coloration of law imposed on 28 U.S.C. §1443 cannot survive strict scrutiny under
4 post *Bakke v. Regents of the University of California* developments in equal
5 protection law. The Supreme Court now commands that the civil rights laws of the
6 United States be construed in a racially neutral manner instead of the prevailing
7 political mindset of racial confrontation and division which dominated the several
8 social-reconstruction and civil rights movements of the sixties (both the 1860s and
9 the 1960s).

10 (55) By contrast, 42 U.S.C. §§1981-1982 are facially racially discriminatory, but
11 the racial language could be easily expunged from these statutes to their benefit and
12 to the greater dignity of the law, while altogether enhancing their majestic sweep as
13 pronouncements of values to be envied the world over.

14 (56) WHEREFORE, Plaintiffs move and request that this Court declare and
15 adjudge that the racial phrase 42 U.S.C. §1981, which now reads:

16 **(a) Statement of equal rights**

17 All persons within the jurisdiction of the United States shall have the
18 same right in every State and Territory to make and enforce contracts, to
19 sue, be parties, give evidence, and to the full and equal benefit of all
20 laws and proceedings for the security of persons and property as is
21 enjoyed by white citizens, and shall be subject to like punishment,
22 pains, penalties, taxes, licenses, and exactions of every kind, and to no
23 other.

24 **(b) “Make and enforce contracts” defined**

25 For purposes of this section, the term “make and enforce contracts”
26 includes the making, performance, modification, and termination of
27 contracts, and the enjoyment of all benefits, privileges, terms, and
28 conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by
nongovernmental discrimination and impairment under color of State
law.

(57) Should be ordered stricken, so that 42 U.S.C. §1981(a), will henceforth read:

All persons within the jurisdiction of the United States shall have the

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same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(58) Similarly, the racially discriminatory, “affirmative action” phrase of 42 U.S.C. §1982, which now reads:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

(59) Should be stricken so that 42 U.S.C. §1982 should henceforth read:

All citizens of the United States shall have the same right, in every State and Territory, thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

(60) Finally, Plaintiffs pray that Civil Rights Removal statute be given its full facial breadth, and that the racially limiting constructions of *Rachel v. Georgia*, *Greenwood v. Peacock*, and *Johnson v. Mississippi* be forever eliminated and declared constitutionally erroneous.

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PART II:
“CONSTITUTIONALITY OF STATE LAWS AND HOW
THEY ARE SUBSEQUENTLY APPLIED”

II. INTRODUCTION

(61) Plaintiffs reallege ¶¶(1)-(60) as if fully copied and restated herein.

(62) Plaintiffs assert that statutory laws that have been enacted by state legislatures can do a variety of things in relation to common law and the US Constitution such as: 1) augment existing common law doctrines, 2) “fill in the gaps” where common law doctrines either do not apply or do not specifically engage in certain localized developments and modernizations in society, 3) abolish common law doctrines through statute, in favor of new language replacing conceivably “old fashioned” or outdated ideals, 4) codify and enforce common law and constitutional law through local language.

(63) Plaintiffs assert that California laws pertaining to foreclosures and especially subsequent evictions do none of the above, preferring instead to simply ignore existing common law and the US Constitution. Doctrines and ideals that are essential elements of US law (right to petition, to due process, privity of contract, etc.) are circumvented in direct and blatant conflict with the Plaintiffs’ rights.

(64) The constitution will not tolerate the construction of paths through the maze of law, apparently open to all, from which there is no exit, or only one possible exit. The construction of such pre-determined outcomes or dead ends is anathema to due process of law, yet it is for such purposes that the California Superior Courts of Limited Jurisdiction, California Code of Civil Procedure §§1161-1162, and California Civil Code §§2924-2934 were constructed.

(65) The California Superior Courts of Limited Jurisdiction come into existence not pursuant to the California Constitution but to statutory provisions codified as California Code of Civil Procedure §§85-89. Plaintiffs now ask the Court to declare these sections of the Code of Civil Procedure Unconstitutional both on their face and as applied. These statutes in the Code of Civil Procedure created courts designed to

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3 protect institutional liars and thieves involved in the legal profession. These statutory
4 provisions deny both due process of law and equal access, for the selective benefit of
5 a certain class of tortfeasors, namely powerful fraudulent schemers involved in
6 deceptive credit finance applications, credit issuance, and collections, against honest
7 but situationally disadvantaged credit applicants or “debtors”.

8 (66) Central among the themes of unconstitutionality of California and Federal
9 laws relating to this case is that a constellation or coincidence of related statutes deny
10 due process by denying equality of meaningful opportunity to access to the courts,
11 i.e. availability of remedies, among arbitrarily or intentionally selected classes of
12 litigants in such a way as to determine outcomes.

13 (67) The United States Supreme Court redesigned U.S. Code Title 28 U.S.C.
14 §§1443(1) & 1447(b) from a statute of broad application available, according to its
15 facial language, to all Americans, into a statute of limited application available, in
16 effect, only to African-Americans expressly oppressed by state laws and expressly
17 relieved from such oppression by Federal Law. Thus, the judicial construction of
18 Civil Rights Removal is a fraud: the statute appears on its face to offer remedy and
19 relief, but no sooner did Congress open the door to the courthouse to the people,
20 broadly, for removal of state violations of federal rights than did the Justices shut it
21 in the face of all but a tiny minority of the people.

22 (68) Plaintiffs submit that it is a violation of both due process of law and equal
23 protection when a right opened by one law is foreclosed by another: due process
24 must mean that where a path begins in a maze, there must be a way out; equal
25 protection must mean that this path is open to all who are similarly situated without
26 regard to race, creed, colour, or other circumstances of birth, and that all fundamental
27 rights (such as equal access to the Courts for redress of grievances and to due process
28 of law once admitted therein, including a right to a trial-by-jury and application of

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3 the common law as modified by constitutional statutes) must be available to all who
4 are similarly situated without regard to economic status or relative wealth or even
5 education or literacy. Certain political rights may well, perhaps, be circumscribed,
6 but fundamental human rights must be afforded to all.

7 (69) Like 28 U.S.C. §§1443(1) and 1447(b), the California Courts of Limited
8 Jurisdiction are dead end paths, made NOT pursuant to fundamental law but to
9 statutes expressly designed to circumvent and circumscribe access to and
10 enforcement of the rights provided by fundamental constitutional law.

11 (70) The Courts of Limited Jurisdiction, by the terms of the statutes creating them,
12 “limit” only defendants by proscribing the presentation of evidence concerning many
13 issues and in effect preclude fair adjudication of many disputes. These Courts do not
14 limit but simultaneously ratify and empower the massive culture of lawlessness and
15 fraud inherent in the administration of non-judicial foreclosures under California
16 Civil Code §§2924-2934.

17 (71) The Courts of Limited Jurisdiction in this sense are expressly designed to
18 impair the obligations of contract by authorizing decisions in Unlawful Detainer
19 cases to which no defenses are allowed, and in which equality of access or treatment
20 by the judges is all but utterly unknown.

21 (72) In this Complaint, the Plaintiffs allege and will show to the Court that the
22 Non-Judicial system of foreclosures in California speaks, on its statutory face, a self-
23 perpetuating lie (namely the presumption of judicial foreclosure in the statute’s first
24 paragraph followed by a conditional “until” clause in that same paragraph, which by
25 §2924i has effectively eaten the entire presumption of due process and passed it out
26 onto the midden heap of history). Likewise, the Courts of Limited Jurisdiction
27 constitute the sole apparent concession to due process of law, but that this concession
28 wears only the false face of justice.

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3 (73) In fact, Courts of Limited Jurisdiction “perfect” the claims of false creditors
4 and their even falser agents in the traditional manner by which secured claims or
5 liens are “perfected”, which is to say by taking possession. In this sense, Courts of
6 Limited Jurisdiction designed to coerce surrender of real property by honest
7 homeowners to land pirates, such as Steven D. Silverstein and his clients in this
8 case. Land-pirates are those who take the fraudulent results of California fraudulent
9 non-judicial foreclosures (which themselves are often the result of “predatory
10 lending” or “solicited credit application” practices.

11 (74) The California Superior Courts of Limited Jurisdiction act to insulate and
12 immunize all the frauds and failures of the non-judicial foreclosure system from
13 effective judicial scrutiny by the conclusive presumptions of §2924i and judicial
14 constructions such as [those cited by Silverstein & Rothman] rendering a trustee’s
15 word an “irrebuttable presumption” of validity, and precluding inquiry even into
16 such matters as whether bona fide purchasers for value are in fact acting in good
17 faith and without knowledge or notice of competing claims or disputes.

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19 **COUNT II: CIVIL RIGHTS DECLARATORY**
20 **JUDGMENT & DAMAGES FOR ALL PLAINTIFFS**
21 **CAL. CIVIL CODE §§85-86**

22 (75) Plaintiffs reallege ¶¶(1)-(74) as if fully copied and restated herein.

23 (76) The California Civil Code §§85-86 frame the jurisdiction of the California
24 Superior Courts of Limited Jurisdiction in a manner which gives unequal power to
25 Plaintiffs and defendants to establish issues which may and frequently are
26 controverted. For example, with regard to the jurisdictional amount, which amount
27 alone defines entry into a court of limited jurisdiction, California law gives the
28 Defendant absolutely no say. The fact that after passing the gateway, set by a
Plaintiff, a Defendant’s ability to raise defenses, offer and introduce evidence, lodge

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3 counterclaims and cross-claims is so severely limited in a California Court of
4 Limited Jurisdiction as to constitute a systemic bar and systematic barrier to the
5 exercise of substantive or procedural due process rights, which is to say that the
6 procedural structure of the California Superior Courts of Limited Jurisdiction act as a
7 full and final bar to enjoyment of equal access to the courts in full-blown violation of
8 42 U.S.C. §§1981-1982 and the Fifth and Fourteenth Amendments.

9 (77) As has been discussed in relationship to Federal Court diversity jurisdiction,
10 the amount in controversy in suits for non-monetary remedies (such as “*possession*”
11 emphasized repeatedly by Plaintiffs seeking to defeat the removal to federal court in
12 Unlawful Detainer cases based on diversity), every Defendant must always and in all
13 cases have the option to answer and contradict (and ultimately to disprove) each
14 material allegation of any Plaintiff’s complaint, including those necessary to
15 establish jurisdiction. For every pathway into court, there must be at least two ways
16 out so long as there are two adverse parties, and a fifty-two year old California law
17 review seems never have been surpassed in its analysis, and should be applied by this
18 court as a constitutional test for equal protection under the laws concerning equal
19 access to courts and ability to make demands, offer defenses, and seek relief as may
20 be appropriate:

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22 The test of jurisdictional amount has been called the “pecuniary result to
23 either party.” *Ronzio v. Denver & R.G.W.R.R.*, 116 F.2d 604, 606
24 (10th Cir. 1940), relying on *Smith v. Adams*, 130 U.S. 167, 175 (1889),
25 and *Elliott v. Empire Natural Gas Co.*, 4 F.2d 493, 497, (8th Cir.
26 1925). Presumably, “result” therefore refers to the damage either party
27 would sustain in the event of an adverse decree. Limitations on the
28 extent to which future damage may enter into calculation of the
jurisdictional amount have therefore been suggested. One limitation
distinguishes immediate or direct results (which may be valued) from
collateral results (which may not). *Healy v. Ratta*, 292 U.S. 263, 268
(1934); *Elliott v. Empire Natural Gas Co.*, 4 F.2d 493, 500 (8th Cir.

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3 1925). But what constitutes a “collateral” as opposed to a “direct”
4 result is uncertain. A similar difficulty arises from a distinction between
5 “primary” and “secondary” rights as testing jurisdictional amount.
(further citations omitted).

6 ***California Law Review*, Vol. 46, No. 4, (Oct. 1958), pp. 601-609.**

7 (78) In a case for unlawful detainer/forcible eviction, the “pecuniary result to either
8 party” should be measured not merely by the amount of money which Plaintiff seeks
9 to extract from Defendant, but the value of the property of which Plaintiff seeks to
10 deprive the Defendant of “***possession***.” Each of Plaintiffs’ individual houses alone
11 have a current market value, even in this depression, exceeding \$75,000.00 in value.

12 (79) 4 Via Corbina is currently listed, in spite of this lawsuit for example, for
13 \$699,000.00.

14 (80) Where Defendants in an Unlawful Detainer case allege correctly that a
15 Plaintiff conducted a wrongful foreclosure, those Defendants should be allowed to
16 seek and indeed protected by the courts in their efforts to seek to assert that fact as a
17 defense, but California Civil Code §2924i and the statutory and customary, practical,
18 and political structure of the California Courts of Limited Jurisdiction all therefore
19 coordinate and conspire to permit a Plaintiff to compound the injuries of a wrongful
20 foreclosure by committing a wrongful eviction.

21 (81) In the modern real estate market in California, there is quite simply no
22 realistic scenario (aside, perhaps, from the sale of a doghouse on one sixteenth of an
23 acre of land) where it can be said that the complaint or petition filed by unlawful
24 detainer Plaintiffs ever seek or demand a pecuniary result to the Defendants which
25 will amount to a deprivation of less than \$25,000.00 in property, and the Defendants’
26 right to assert this should be, but is not, protected in real estate foreclosure and
27 eviction circumstances.

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3 (82) Such a lack of protection means that, in violation of 42 U.S.C. §§1981-1982,
4 Unlawful Detainer defendants in the California Superior Courts of Limited
5 Jurisdiction, both black and white, yellow, red, and brown equally, are uniformly
6 denied their rights to be free of state statutes impairing the obligations and rights of
7 contract, in violation of Article I, §10 of the Constitution, the right to petition for
8 redress of grievances in violation of the First Amendment, the right to due process of
9 law under the Fifth Amendment, the right to trial-by-jury under the Seventh
10 Amendment, the right to enforce the common and statutory law of contracts and
11 negotiable instruments reserved to the people by the Ninth Amendment, and the
12 equal protection of the laws under the Fourteenth Amendment.

13 (83) The language of California Code of Civil Procedure §86(a)(6) provides an
14 exception to the \$25,000.00 limitation which ought to be, but as a matter of
15 California Superior Court of Limited Jurisdiction never is, allowed to be asserted as
16 a defense to limited court jurisdiction or to the claims of Plaintiffs generally in
17 Unlawful Detainer actions. The second sentence of Cal. Code Civ. Pro. §86(a)(6)
18 states “However, where an action to enforce the lien affects property that is also
19 affected by a similar pending action that is not a limited case, or where the total
20 amount of the liens sought to be foreclosed against the same property aggregates an
21 amount in excess of twenty-five thousand dollars (\$25,000.00), the action is not a
22 limited civil case.” This provision is never allowed to interfere, as a matter of
23 custom, practice, and policy, with the exercise of limited Superior Court jurisdiction
24 over unlawful detainer cases, precisely because these cases always take as conclusive
25 the deceptive and outright fraudulent misrepresentations made by trustees and their
26 attorneys in California non-judicial foreclosures.

27 (84) As a matter of fact, Unlawful Detainer actions permits fraudulent tortfeasors
28 and their attorneys in California to lie with impunity, immunity, and security from all

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3 threats of liability for their conduct, and this culture of lawlessness is simply
4 intolerable in a civilized society under a constitutional regime which purports to
5 guarantee the fundamental rights herein enumerated above from the Constitution
6 itself and the civil rights statutes designed to enforce them.

7 (85) WHEREFORE Plaintiffs pray for this Court to find §§ 85-86 of the California
8 Civil Code unconstitutional and a breach of their rights to due process, rights to
9 petition the court and their right for a jury trial.

10 **COUNT III: CALIFORNIA SUPERIOR COURTS OF LIMITED**
11 **JURISDICTION IN UNLAWFUL DETAINER CASES**

12 (86) Plaintiffs reallege ¶¶(1)-(85) as if fully copied and restated herein.

13 (87) Plaintiffs now ask that this Court declare the California Superior Courts
14 authority over debtor/creditor UD actions unconstitutional because they are designed
15 to deny due process of law and to prevent equal access to Plaintiffs and Defendants
16 in different types of cases, thus denying the full equality of access to judicial process
17 to all residents of California demanded by 42 U.S.C. §§1981-1982.

18 (88) The superior courts of the state of California are in essence designed
19 deceptively so as to give the appearance of affording due process and meaningful
20 opportunity for hearing of parties who were “brought together” by the non-judicial
21 foreclosure process adjudicating the rights secured party/credit-applicant/borrower
22 issues and is a dishonest, prejudiced forum of predetermined outcomes, essentially
23 fixed by statutory law and/or custom, practice, and policy having the force and effect
24 of law for trying complicated ownership issues because of its summary nature. *See*
25 *Mehr v Superior Court* (1983) 139 CA3d 1044, 1049.

26 (89) Where any title defense issue comes before a UD judge, it is limited to
27 determining who is the owner of record [see CJER website]. As a result, the debtor
28 will be systematically deprived of their “day in court” to offer and interpose contract-

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3 and-chain of title defenses, or any other affirmative defenses and counterclaims to
4 properties, titles, rights, liens and interests when the alleged secured party takes
5 possession as an “incident” of the UD action.

6 (90) Plaintiffs herein submit that the customary, practical, and political limitations
7 placed on California Superior Courts of Limited Jurisdiction permit the
8 determination and “perfection” of secured claims to property by summary or
9 “incidental” actions, officially ignoring (while daily reaffirming) the reality that
10 eviction proceedings, in this case, are and were conclusions of Non-Judicial
11 foreclosure proceedings and that they effectively complete those administrative
12 proceedings because UD actions discern possession of properties.

13 (91) Plaintiffs submit that today as in Blackstone’s era, possession is “nine points
14 of the law” in regards to ownership and the mortgages tied to those homes constitute,

15 (92) “chattel property” as defined in the Uniform Commercial Code Article 9 § 9-
16 03(a) which states “(1) A security interest in chattel paper or negotiable documents
17 may be perfected by filing. A security interest in money or instruments (other than
18 certificated securities or instruments which constitute part of chattel paper) can be
19 perfected only by the secured party's taking possession, except as provided in
20 subsections (4) and (5) of this section and subsections (2) and (3) of Section 9-
21 306 on proceeds.”

22 (93) In short, the Creditor must take possession to “perfect” the wrongful
23 foreclosure through illegal possession in a strange parody the California Commercial
24 Code’s provisions relating to the “perfection” of a security interest (such as liens)
25 through taking possession.
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3 (94) Because a debtor/tenant can assert ownership or allege ownership through
4 possession the amount in controversy almost always exceeds the limited jurisdiction
5 of the lower courts as outlined in California Civil Code § 85¹ (25,000.00).

6 (95) For example, Plaintiffs Mendez and Singh specifically contend and submit
7 that in their case the UD Court almost certainly did not exercise any sort of
8 constitutionally valid jurisdiction because Defendant Paul Margolis foreclosed on a
9 loan that was the 2nd mortgage on Singh's property located at 1394 Arrowhead
10 Drive, Placentia, CA 92870.

11 (96) Plaintiffs Mendez and Singh submit and contend that the 1st mortgage on the
12 house was worth more than 200K and WAS CURRENT. Defendant Margolis
13 foreclosed on the house for a fraction of the cost meaning that there was still an
14 outstanding debt of 200,000.00 plus and the UD Court HAD NO
15 CONSTITUTIONALLY LEGITIMATE JURISDICTION, (nor even facially valid
16 jurisdiction by the letter of California statutes in the Code of Civil Procedure) but the
17 exercise thereof was utterly unconstitutional because the Plaintiffs herein, as
18 Defendants in the California (Orange County) Limited Jurisdiction Superior Court,
19 were not given equal rights to offer defenses or evidence in support of their defenses--
20 --they were not even permitted to contest the jurisdiction---even in the face of
21 Silverstein's misappropriation of the forum in defiance of law, logic, and any
22 traditional notice of justice and "fair play."

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25 ¹ An action or special proceeding shall be treated as a limited civil case if all of the following conditions are satisfied,
26 and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, an action or
27 special proceeding shall not be treated as a limited civil case unless all of the following conditions are satisfied: (a)
28 The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, "amount in
controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of
the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs. (b) The relief sought is a
type that may be granted in a limited civil case.

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3 (97) Plaintiffs submit that is an unconstitutional denial of due process to allow non-
4 judicial foreclosure to determine ownership absolutely, when ACTUAL ownership
5 of property depends upon possession, which is left to be determined by the sham
6 proceedings carried out in California Superior Courts of Limited Jurisdiction.

7 (98) Because of this travesty the limited jurisdiction superior courts of California
8 are the deciding factor in determining or “proving” the facts and legal relationships
9 established by non-judicial foreclosure, and in so doing, these courts “perfect” the
10 crimes and constitute a state-assisted form of racketeering or “land-piracy” which is
11 unconstitutional, unconscionable.

12 (99) Plaintiffs Lincoln and Mack had their properties taken, first by non-judicial
13 foreclosures performed by stealth (without service of any meaningful kind in
14 Lincoln’s case, during the pendency of an automatic stay in Bankruptcy during
15 Mack’s case), but such events were only possible in the California Superior Courts
16 of Limited Jurisdiction where unlawful detainer actions are completed according to
17 superior court rules and regulations that quite simply preclude and prevent the
18 presentation of evidence and assertion of legal and equitable defenses of chain of
19 title and privity of contract that prevent any parties from addressing adequately, or
20 even “at all” the true complexities created by the intersection of common and
21 statutory commercial laws with financial and real estate customs, practices, and
22 policies which, although government-endorsed and sponsored, simply cannot be
23 reconciled with law without admitting the politically impalatable realities of the
24 credit-financed social-welfare state.

25 (100) The remaining Plaintiffs in this case (March, Cohen, and Mendez-Singh)
26 remain for the time being in their homes, but stand to have theses properties actually
27 and literally taken via unlawful detainer actions in superior courts so the same
28 allegations apply for their futures without any opportunity to offer up meaningful

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3 defenses, unless this court should justly, legally, and equitably intervene as allowed
4 under, for example, the provisions of 42 U.S.C. §1988(a) which allows the District
5 Court to fashion special remedies appropriate to the ends

6 (101) Given that California non-judicial foreclosure laws do not give a proper
7 platform for a Debtor to petition a Court to stay the proceedings, unlawful detainer
8 actions become de facto judicial foreclosures, and as such they deserve a proper
9 court, with proper jurisdiction to hear the case.

10 (102) Plaintiffs Lincoln and Mack can and truthfully do and will deny under oath
11 that they knowingly, willing or voluntarily accepted the incompetent services of
12 California Superior Courts, whereas Plaintiff March has tried repeatedly to remove
13 her UD action for civil rights violations.

14 (103) Plaintiffs Lincoln and Mack as well as many other Californians were denied
15 even the very limited due process that is nominally afforded in the summary eviction
16 action: 1) they were not granted a jury trial, a violation of the 7th amendment¹; 2)
17 while Californians all over the state were denied discovery, 3) ratification of
18 commencement, and other evidence required to support a claim.

19 (104) Form EJ-130 titled "Writ of Possession" is a form that is approved by the
20 judicial council that is usually served by the Sheriff and is not for mandatory use.
21 Given that it is an "optional" form and not mandatory, Plaintiffs assert that these
22 forms are not bound by any existing law and are used to directly circumvent, dumb
23 down and destroy Debtor/tenants' rights to due process.

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27 ¹ "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury
28 shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than
according to the rules of the common law."

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3 (105) On page 2 item 24a(1) of the form there is a check box which should be
4 checked if: "The Prejudgment Claim of Right to Possession was served in
5 compliance with CCP 415.46." The sheriff also serves a Notice to Vacate that states,
6 that it is the "Final Notice..." and goes on to say that "No claim of right to
7 possession can be filed if box 24a(1) located on the back of the writ is checked."

8 (106) The Judicial Council is also responsible for the training of court personnel to
9 the "one size fits all" by setting policies, customs, procedures and the rules of court.
10 Such policies, customs, procedures and rules of court are implemented as if they
11 have the force of law, and thus Plaintiffs are constantly told to seek counsel in
12 response to almost any question.

13 (107) Plaintiffs are often subjected to intimidation, humiliation, given false
14 information and belittled, all in the furtherance of the objectives of the Defendant
15 Co-conspirators. Each and every one of the Plaintiffs believe that no matter what is
16 written in their pleadings, no matter what evidence they present, they will not be
17 given a fair hearing and are therefore denied due process within the State Courts as a
18 result of the policies, customs and procedures such as those complained of herein.

19 (108) The Judicial Council has an extraordinary duty to prevent, or aid in the
20 prevention of, constitutional violations, of which they have refused or neglected to
21 do so. It also has a duty to protect the honor of our courts, the integrity of the law and
22 its processes, and the Plaintiffs' rights and owes a duty to act with due care; to not
23 intentionally cause Plaintiffs injury and to not deprive the Plaintiffs of the due
24 processes of the law to which they are entitled as an operation of the law and the
25 very fabric of our system of law.

26 (109) It is unlawful to interfere with the official duties of our public officers who are
27 conducting the People's business and are informed by a victim of a crime that a
28 material misrepresentation of the facts has been written on the face of an instrument

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3 that is intended to be filed in the official records of a court. In pursuit thereof,
4 Plaintiffs have had their rights to due process violated in the furtherance of the
5 obtainment of the *object*, which is their property, both real and personal, their title,
6 rights, lien and interests, equal protection of the law and due diligence.

7 **(110)** It is unreasonable to deprive the Plaintiffs of a forum that is of competent
8 jurisdiction. Judicial officers are well trained and knowledgeable of the law and
9 independent of the other branches of government, but are compelled by Defendant-
10 JC in the pursuit of “judicial economy” and the obligations of the UD Court, to get
11 90% of the cases off its books in 30 days and 100% in 45 days, as stated in the
12 following:

13 “2009 CALIFORNIA RULES OF COURT

14 Standard 2.2. Trial court case disposition time goals

15 **(i) Unlawful detainer cases**

16 The goals for unlawful detainer cases are:

17 (1) 90 percent disposed of within 30 days after filing; and

(2) 100 percent disposed of within 45 days after filing.

18 *(Subd (i) adopted effective January 1, 2004.)”*

19 **(111)** This practice encourages the court to ignore claims of due process violations
20 and punishes the victims whose complaints fall on deaf ears, while the mostly
21 professional violators know they will get away with such violations, which are inline
22 with the courts objectives of a speedy process. They are repeatedly rewarded for
23 such bad faith acts and Plaintiffs’ injuries are the result of the policies, customs and
24 procedures implemented by Judicial Council; as such, they are jointly and severally
25 liable with the State and other Defendant–Principals for the damages proximately
26 and legally resulting from each of their actions.

27 **(112)** WHEREFORE, Plaintiffs pray that this Court declare and adjudge to be
28 unconstitutional and thereby invalidate the California statutory provisions granting

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3 the Superior Court jurisdiction over debtor/tenant eviction proceedings that were
4 explicit augmentations and conclusions of non-judicial foreclosures. Furthermore,
5 Plaintiffs pray that this Court specifically makes this change of venue mandatory,
6 acknowledging the inherent complexities of such UD actions.

7 **COUNT IV: DUE PROCESS EFFECT OF CALIFORNIA CIVIL CODE**
8 **§§1695.13-1695.14 against and to RESCIND TRANSACTIONS**
9 **EFFECTED BY CALIFORNIA CIVIL CODE §2924i**

10 (113) Plaintiffs reallege ¶¶1-113 and incorporate the same by reference herein.

11 (114) Each of the Plaintiffs Charles Edward Lincoln, Renada Nadine March, Joseph
12 & Carol Regina Cohen, and Daniel Christian Mack are all claimants to property
13 taken from them by wrongful foreclosure by non-judicial procedures which omitted
14 or ignored large portions of the protections ostensibly afforded by California Civil
15 Code §§2924-2924i and other rights and procedural restrictions including so-called
16 “safeguards” set forth in California Civil Code §§2923-2934.

17 (115) Accordingly, the actions of Silverstein and the Bank Defendants and alleged
18 “Equity Purchaser” Defendants have infringed upon and violated the substantive
19 federally guaranteed rights of each of the Plaintiffs by and through the exercise of
20 the procedures of the California Superior Courts of Limited Jurisdiction described in
21 Count III acting under the provisions of California Code of Civil Procedure §§1161-
22 1162 and Civil Code §§1146, 2924 *et seq.*, as described in Count IV and the
23 unconstitutional immunities provided under California Civil Code §1714.10 &
24 §2924i, described in Counts V and IV respectively.

25 (116) Plaintiffs Renada Nadine March, Joseph & Carol Regina Cohen, & Daniel
26 Christian Mack have each prepared Notices of Rescission pursuant to California
27 Civil Code §§1695.13-1695.14 and attempted to file the same with the county
28 recorder for Orange County, California, being the county in which their property is
located, within the meaning and intention of California Civil Code §1695.14(b), all

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3 acting within less than one year of the non-judicial foreclosure and sale of their
4 properties as required by §1695.14(a).

5 (117) Plaintiffs March, Cohen, and Mack attach their proposed Notices of
6 Rescission as Exhibits A, B, and C but they allege, submit, and will testify that they
7 each have attempted, prior to the signing of this Third Amended Complaint, and
8 have been attempting, in the case of March since approximately September 7, 2010,
9 and in the case of Mack since approximately September 13, 2010, to file their
10 respective Notices of Rescission with the county recorder for Orange County,
11 California, but that these filings required by law to be filed in the County Recorder's
12 office have been refused, repeatedly and consistently, by the County Recorder,
13 apparently for the purpose of frustrating and defeating the legislative purpose in
14 enacting California Civil Code §1695.14(b).

15 (118) Plaintiffs March, Cohen, and Mack reserve the right to amend their pleadings
16 in this case to request a writ of mandamus to the County Recorder or Clerk of
17 Orange County to record these documents as required by law.

18 (119) Plaintiff Charles Edward Lincoln submits that he filed a lawsuit with this very
19 court and sued Wells Fargo Bank and California Reconveyance (as servicer) six
20 months prior to the sale of his property at 4 Via Corbina in Rancho Santa Margarita,
21 California 92688.

22 (120) Plaintiff Lincoln alleges, contends, and submits that his Federal lawsuit (08-
23 cv-01334-DOC, file in this Court and answered and disputed by the Defendants) was
24 adequate and sufficient notice to the public that the sale of his property should never
25 have taken place until and unless the litigation was completed.

26 (121) Plaintiff Lincoln accordingly also alleges, contends, and submits that his
27 lawsuit should be deemed to take the place of and did in fact give equivalent and
28 equally effective notice to the public actually taking the place of the recording of a

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3 mere notice pursuant to §1695.13-§1695.14(b), that the sale of his property during
4 the pendency of such litigation was, in and of itself, unconscionable conduct, and
5 that in general the circumstances of the allegedly “arms length” sale in April 2009
6 were such that NEITHER the GRE DEVELOPMENTS, INC., nor the 4 Via Corbina
7 Trust NOR ANY PURCHASER OF 4 Via Corbina from either Wells Fargo Bank or
8 California Reconveyance COULD EVER POSSIBLY BE OR HAVE BEEN A
9 BONA FIDE PURCHASER FOR VALUE WITHIN THE MEANING OF
10 §1695.14(c), because the sellers had a duty to disclose the pendency of the lawsuit to
11 potential purchasers, even if the lawsuit were not a matter of easily accessible public
12 record, which it was (and is).

13 (122) If the filing of a Federal Lawsuit is not sufficient notice to the world of a
14 claim, and if the Orange County Clerk refuses to file such notices of rescission
15 pursuant to Civil Code §1695.14(b), then this Court must construe and define the
16 meaning and effect of the words notice, knowledge, and unconscionable actions
17 under §§1695.13-14.

18 (123) Plaintiff Lincoln submits further that GRE Developments and the 4 Via
19 Corbina Trust are entities owned by, in privity with, or exist as mere alteregos of
20 Defendant Steven D. Silverstein because they share (or shared in 2009) office space
21 with Silverstein at and before the time of the April 2009 foreclosure sale, also
22 precluding the immunities of California Civil Code §§1714.10 and 2924i to
23 Silverstein, GRE Developments, or the 4 Via Corbina Trust.

24 (124) Plaintiff Renada Nadine March alleges and submits that she was in ongoing
25 modification negotiations with OneWest as successor to Indymac and that the sale of
26 her property was unconscionable, and that no purchaser of this Plaintiff’s property
27 could have been a bona fide purchaser for value within the meaning of §1695.14(c).
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3 (125) Plaintiffs Joseph & Carol Regina Cohen allege and submit that Carol H.
4 Meyer, Kenneth Meyer, and the 11 Lighthouse Trust were never properly authorized
5 to do business in California, that these individuals are like “shape-shifters” who
6 constantly change their identity for purposes of making fraudulent purchases in bad
7 faith, acting often if not always in concert with Steven D. Silverstein, such that no
8 purchaser of these Plaintiffs’ property could have done so in good faith, or otherwise
9 qualified as bona fide purchasers for value within the meaning of §1695.14(c).

10 (126) Plaintiff Daniel Christian Mack alleges and submits that there were multiple
11 forgeries in the paperwork constituting the closing documents of his loan, that these
12 forgeries were either actually known or constructively known by operation
13 of *respondeat superior* to the originators and grantors of his last mortgage, who were
14 urging him to invest his equity funds with them. Accordingly Plaintiff Mack also
15 alleges and submits that no purchaser from anyone in actual or apparent privity with
16 his lenders could have been a bona fide purchaser for value within the meaning of
17 §1695.14(c).

18 (127) Finally, all plaintiffs, each jointly and severally, allege, contend, and submit
19 that each and every one of the purchasers of their respective several properties, either
20 directly or indirectly through their association with Attorney Steven D. Silverstein,
21 possessed actual knowledge of the fraudulent nature of the transactions to which they
22 were parties, that they agreed with Silverstein and the “foreclosing party sellers” to
23 effect the unlawful ends of these sales, and that

24 (128) Each and every one of the Defendants were then and there completely aware
25 and cognizant of the lack of legal privity of contract and the utter and complete
26 equitable failure of any of the banks, agents, trustees, or their servicers to maintain
27 holder-in-due course status of any of the relevant mortgage notes.
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3 (129) To establish their rights and obligations as a matter of due process of law
4 under the 5th and 14th Amendments, Plaintiffs seek a declaratory judgment pursuant
5 to 42 U.S.C. §§1983 & 1988(a) that California Civil Code §§1695.13-1695.14
6 partially but generally nullifies California Civil Code §§2924-2924i.

7 (130) Plaintiffs further seek a declaratory judgment that the provisions of California
8 Civil Code §§1695.13-1695.14 authorize and create a judicially enforceable right of
9 rescission in defiance of the facial provisions and California appellate-judicial
10 construction of California Civil Code §§2924-2924i where a transaction, and

11 (131) Plaintiffs ask this Court to declare and adjudge that California Civil Code
12 §§1695.13-1695.14 cover and include the unilateral power of a distressed
13 homeowner or homeowner faced with or victimized by a wrongful exercise of the
14 power of non-judicial foreclosure under §§2924-2924i resulting from one or more
15 unconscionable actions taken in advantage of property owner in foreclosure, even
16 where such unconscionable actions would otherwise be protected and immunized
17 from civil liability or prosecution under California Civil Code §1714.10 and §2924i.

18 (132) Plaintiffs accordingly ask and pray that this United States District Court
19 declare and adjudge the rights and obligations of all parties pursuant to California
20 Civil Code §§1695.13-1695.14, that the Court define the effect of actual notice and
21 knowledge of competing claims on the concept of bona fide purchaser, and the effect
22 of actually knowledge of industry customs, practices, and policies regarding the
23 enforcement or verification of equitable standing as holders-in-due-course of notes
24 (pursuant to California Business & Commere Code and of privity of contract under
25 and pursuant to the common law.

26 (133) In particular, the Court must distinguish between the effect of “Notice” under
27 California Civil Code §1695.14(b) and actual knowledge or other constructive
28 notice, such as the filing of federal lawsuits now universally available officially

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3 through PACER and JUSTITIA websites and often “SCRIBBED” and blogged
4 additionally on the world-wide web.

5 (134) The Court should evaluate the legislative purpose of §§1695.13-14, and
6 declare and adjudge what exactly are the contours of “rescission” under this
7 provision with regard to transactions which were neither constitutional, consensual
8 nor bi-lateral (i.e. the non-judicial foreclosures and sales pursuant to §§2924-2924i
9 wherein fundamental rights such as freedom from impairment of the obligations of
10 contract and freedom to petition for redress of grievances, etc., are all denied as an
11 express, facial, and generally well-known and understood purpose of a state statutory
12 program, and the construction of the same by the State Courts of California).

13 (135) It has become obvious that the purpose of California statutory Unlawful
14 Detainer actions is merely to “perfect” the unlawful taking of property in wrongful
15 foreclosure proceedings, already all but insulated from review by "illegal privileges *
16 & immunities" combination of California Civil Code Sections 1710.14 with 2924i).

17 (136) The core illegality of Unlawful Detainer procedure is that it creates ("lies into
18 being") an unconstitutional legal fiction which straddles the line between an
19 involuntarily imposed contract and involuntary status: a bizarre landlord-tenant
20 “contract of adhesion” which is so strong as to effectively constitute the former
21 homeowner as an involuntary servant of the new purchasing “master” for purposes
22 of the Unlawful Detainer action, thereby rendering the provisions unconstitutional by
23 violating the Thirteenth Amendment to the Constitution)(when a servant has no
24 power to opt out of an inferior non-equal economic relationship, even if this is
25 temporary, it is certainly a taking of both his liberty and property analogous to
26 imprisonment or slavery).

27 (137) Plaintiffs submit that at least two California State Courts have previously
28 approached the construction proposed here that §§1695.13-14 trump §§2924-2924i,

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3 namely *Boquilon v. Beckwith*, 49 Cal.App.4th 1697, 57 Cal.Rptr.2d 503 (1996)
4 and *Salma v. Capon*, 161 Cal.App.4th 1275, 74 Cal.Rptr.3d 873 (2008).

5 (138) Plaintiffs pray for judgment in their favor on these matters, and for judgment
6 as a matter of Fifth and Fourteenth Amendment due process, and Fourteenth
7 Amendment Equal Protection of the law, as well as pursuant to a racially unbiased
8 construction of 42 U.S.C. §§1981-1982, that §§1695.13-14 trump and eviscerate the
9 unconstitutional portions of §§2924-2924i, *et seq.*, along with related portions of
10 §§2923-2934.

11 (139) Similarly and finally Plaintiffs pray that this Court apply the same analytical
12 procedures to California Civil Code §2923.5-2923.52 which have been construed to
13 create a common law action for wrongful foreclosure against the balance of §§2924-
14 2924i, see *Mabry v. Superior Court*, 185 Cal.App.4th 208 (2010) 110 Cal.Rptr.3d
15 201, 10 Cal. Daily Op. Serv. 6885, 2010 Daily Journal D.A.R. 8169 (Orange County,
16 California 2010).

17 **COUNT V: CIVIL RIGHTS DECLARATORY**
18 **JUDGMENT & DAMAGES FOR ALL PLAINTIFFS**
19 **(42 U.S.C. §§1981, 1982, 1983, 1988(a))**

20 (140) Plaintiffs reallege ¶¶ (1)-(139) as if fully copied and restated herein below.

21 (141) Plaintiffs Lincoln, March, Mack, Mendez, Singh, Joseph and Carol Regina
22 Cohen allege that it is the custom, practice, and policy of Defendant Steven David
23 Silverstein, other attorneys similarly situated (Defendants Doe 1-10) the Sheriff of
24 Orange County, and the Judges and Clerks of the Superior Court of Orange County
25 to violate 42 U.S.C. §§1981-1982 by administering and imposing a judicial regime
26 wherein mortgagors are always, in all cases dispossessed by forcible detainers, often
27 with no prior notice of sale or transfer of interest in their properties.

28 (142) These customs, practices and policies are upheld by State laws that circumvent
the federal supremacy upheld in Article VI, clause 2 of the United States

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3 Constitution¹. California, through its horrible policies have violated the laws of the
4 land, the Plaintiffs accordingly request that this Court invalidate them by holding
5 them to be unconstitutional.

6 (143) The consistently enforced pro-Plaintiff results of Orange County evictions can
7 be demonstrated statistically and by narrative evidence to show that there is no
8 equality of access to the courts, nor any equal right “to sue, be parties, give evidence,
9 and to the full and equal benefit of all laws and proceedings for the security of
10 persons and property” all under color of law in violation of the First, Fifth, Ninth and
11 Fourteenth Amendments to the Constitution.

12 (144) Silverstein utilized his self-proclaimed status as a specialized eviction
13 attorney, who has been licensed and admitted to the California Bar since May 1979,
14 to violate each Plaintiff’s constitutional rights under the First, Fifth, Ninth and
15 Fourteenth Amendments, as well as 42 U.S.C. §§1981, 1982, to equal access to the
16 courts, the right to enforce contracts, to sue, be parties, give evidence, and to the full
17 and equal benefit of all laws and proceedings for the security of persons and property
18 including the right assert lawful defenses to claims, have due process notice and
19 opportunity to object to proceedings for the taking of liberty and property interests,
20 including several episodes relating to each defendant exemplified by (but not limited
21 to) Silverstein’s surreptitious eviction suit conducted by stealth, in occult manners,
22 without actual notice to Lincoln or his attorney Orly Taitz, likewise including the
23 equally abusive but in this case continuous and unrelenting assault on Renada
24 Nadine March and her mother Fay March, and further including but not limited to

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26 ¹ This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all
27 Treaties made, or which shall be made, under the Authority of the United States, shall be the *supreme Law of the*
28 *Land*; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State
to the Contrary notwithstanding.

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3 Silverstein's specifically and patently illegal eviction against Plaintiff Daniel Mack
4 in violation of Federal Law, in that Plaintiff Mack's automatic stay which he
5 received from his chapter 13 bankruptcy petition (*see Exhibit D*).

6 (145) Title 11 of the United States Code provides relief from all actions that might
7 convey, transfer or sell assets of a bankruptcy Debtor.

8 (146) Plaintiff Daniel C. Mack is a resident of Orange County, California, his
9 homestead property address is 6 Carey Court, Aliso Viejo, California 92656.
10 California Recoveyance Company, based in Chatsworth California, sold Plaintiff
11 Daniel C. Mack's property in June 2010. On July 20th, 2010 Plaintiff Mack filed a
12 Chapter 13 Bankruptcy Petition with the US Bankruptcy Court (case no: 8:10-bk-
13 19917-TA, *docket attached as Exhibit E*) at 10:30, Tuesday morning.

14 (147) Mack was scheduled for eviction at 5:00 the same day, but the Sheriff, upon
15 receiving a notice of bankruptcy from Mack stayed the eviction proceedings, but
16 expressly advised only for another week. The house was bought by Defendant DNE
17 associates LLP, an unregistered California business represented by Defendant Steven
18 D. Silverstein.

19 (148) Plaintiff Mack has tried to find Defendant DNE associates' address through
20 the Secretary State's website and could not find them as a registered business in the
21 state of California. Defendant DNE associates did not ask for relief from stay from
22 the United States Bankruptcy Court (evident by the docket sheet, *see Exhibit*). They
23 are not registered to do business in the state of California. And they are both in
24 violation of the California Professionals Code and title 11 of the United States
25 Bankruptcy Code.

26 (149) DNE associates obtained the property illegally through an invalid unlawful
27 detainer process, which was filed by their attorney (and Defendant in this case)
28 Steven D. Silverstein.

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3 (150) Plaintiffs allege that Defendants DNE associates, GRE development, #11
4 Lighthouse Trust, Megladon Financial, NJB Investment LP are “shell” companies
5 with no recorded or real documentation proving that they are actual, legal entities,
6 corporations or partnerships.

7 (151) California state statutes coupled with the UD Courts that uphold them allow
8 for gross misconduct and illegal actions from non-entities such as the Defendants
9 listed in this complaint.

10 (152) Superior Courts in the State of California do not recognized the complexities
11 of eviction cases are collateral actions related to eviction cases, and because of their
12 willful ignorance, routine assessment and power regarding evictions the Plaintiff’s
13 homes have been taken from them with little or no due process.

14 (153) The State of California is guilty of upholding and encouraging the wantonly
15 frivolous and extreme nature of the Superior Courts through protective legislation
16 that violates the Supremacy clause in Article IV section II of the US Constitution.

17 (154) Plaintiff Charles Lincoln held possession over his home by creating lease with
18 a tenant on 4 Via Corbina. Lincoln went further by clouding the title with a Federal
19 Complaint for Quiet Title regarding his property on 4 Via Corbina.

20 (155) Silverstein used both the Anti-SLAPP statutes of California and his status of a
21 card carrying member of the bar to undermine and ignore the 1) lease Lincoln had
22 with his tenant and 2) the Federal Complaint Lincoln had pending, and take control
23 over the house.

24 (156) Furthermore, by talking directly with Lincoln’s then tenant was tortious
25 interference with contract and

26 (157) His subsequent illegal transference of the property located at 4 Via Corbina
27 through the sale and eviction system constitutes a conspiracy to Slander Title of the
28 property through his co-conspirators GRE Development and Megladon.

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3 (158) Silverstein represented a company named NJB Investment LP in an unlawful
4 detainer action against Plaintiff Alicia Singh. The UD action was filed on or about
5 July 28, 2010. On or about August 2nd, 2010 Plaintiff Singh, as defendant in the UD
6 action filed a notice of motion and motion to dismiss scheduling a hearing for
7 September 2nd, 2010 pertaining to those motions.

8 (159) After getting notice that the Clerk had somehow “misplaced” her motion
9 Singh refilled the motion to dismiss and notice of motion to dismiss and ended up
10 setting up an ex-parte hearing for August 18th, 2010.

11 (160) Her boyfriend, Plaintiff Richard Mendez, went with Singh to the hearing for
12 support. Mendez handed file marked copies of Singh’s motions only to have
13 Silverstein quickly hand write an opposition (*see Exhibit F*) to Singh’s motion to
14 dismiss, in which he alleged that Mendez was guilty of UPL.

15 (161) Silverstein was whisked back into the Judges’ chambers and came out 15
16 minutes later with word from the Judge that Singh’s motion to dismiss had been
17 denied.

18 (162) Plaintiffs Singh and Mendez allege that Silverstein knew or should have
19 known that the amount in controversy exceeded 200K because of the outstanding
20 debt relating to the 1st mortgage that was not foreclosed on or sold. Plaintiffs Singh
21 and Mendez accuse Silverstein of knowingly ignoring the fact that the UD Court
22 HAD NO JURISDICTION TO HEAR THE CASE.

23 (163) All Plaintiffs in this case accuse Silverstein of upholding unconstitutional
24 policies of the State of California.

25 (164) Wherefore, Plaintiffs pray that this Court declare and adjudge the nature of the
26 Orange County Superior Court custom, practice or policy concerning the resolution
27 of non-judicial foreclosures and judicial evictions, as well as the allied and related
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3 policy of the Orange County Clerks and Sheriff's department in administering and
4 enforcing this policy, and that thereupon the Court

5 (165) Declare and adjudge that these customs, practices, and policies administered
6 and enforced in Orange County are wholly unconstitutional and offensive to
7 principles of due process of law, the right to petition, and the rights of the people
8 secured by 42 U.S.C. §§1981-1982, as well as the 5th and 14th amendments, such that

9 (166) All such policies should be declared unconstitutional, null and void and all
10 decisions reached and transfers of title thereunder during the past year likewise be
11 declared null and void and finally that

12 (167) Steven David Silverstein, Orange County Sheriff Sandra Huchens, and all of
13 their agents or employees be now and forever enjoined from continuing or
14 perpetuating these customs, practices, and policies in Orange County or elsewhere.

15 (168) Wherefore, Plaintiffs pray for their costs of suit incurred in obtaining these
16 declaratory judgments, and that a permanent injunction shall issue against all the
17 Defendants, their employees, assigns, officers, and successors in interest never again
18 to enforce unconstitutional non-judicial foreclosures and judicial evictions in
19 violation of 42 U.S.C. §§1981, 1982.

20 **COUNT VI: CALIFORNIA CIVIL CODE**
21 **SECTION 1714.10 IS UNCONSTITUTIONAL**

22 (169) Plaintiffs reallege ¶¶(1)-(168) as if fully recopied and restated herein below.

23 (170) Plaintiffs allege that each of them, individually, jointly, and severally, have
24 been personally and directly injured by Silverstein's actual or perceived, *de facto*
25 and/or *de jure*, immunity provided by Civil Code §1714.10.

26 (171) Plaintiffs allege that §1714.10 bestows upon attorneys a special class of
27 privileges and immunities to a certain class of professional practitioners whose
28 membership is controlled by "admission to the bar" under terms mandated and

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3 outlined by the state of California itself, such that §1714.10 has the force and effect
4 of a law erecting or defining a title of nobility, unconstitutionally impairing the
5 obligations of contract by exempting certain actors from contractual ethics or duties
6 including but not limited to the implied duty of good faith and fair dealing in
7 contractual dealings, as well as the general obligation to abstain from common law
8 tortuous or civil law delictual conduct which leads to civil injuries arising not from
9 but from Anglo-America tort or Continental Civil [aka “Napoleonic”] Code delict.

10 (172) The California law providing that

11 No cause of action against an attorney for a civil conspiracy with his or
12 her client arising from any attempt to contest or compromise a claim or
13 dispute, and which is based upon the attorneys’ representation of the
14 client, shall be included in a complaint or other pleading unless the
15 court enters an order allowing the pleading that includes the claim for
civil conspiracy to be filed after the court determines that the party
seeking to file the pleading has established that there is a reasonable
probability that the party will prevail in the action.

16 (173) violates 42 U.S.C. §1981 in that it creates special classes of privileged
17 citizenry and denies both equal protection of the law and due process of law to
18 certain classes of citizens (including all non-lawyers who might be defrauded by
19 lawyers or non-lawyers who have hired lawyers to assist them in the commission of
20 their frauds, and/or breaches of contract and/or the implied duty of good faith and
21 fair-dealing in contractual relations).

22 (174) The Court should declare and adjudge that California Civil Code §1714.10 is
23 facially unconstitutional under the First, Fifth, Ninth, and Fourteenth Amendments to
24 the Constitution as a denial of the right to Petition, denial of due process,
25 infringement upon the rights reserved to the people, and a violation of equal
26 protection of laws by creating a privileged class.

27 (175) The creation of this privileged class of attorneys also and further violates both
28 Article 1, §9, Cl. 8 & §10, Cl. 1, of the United States Constitution by effectively

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3 creating a title of nobility, as well as violating the privileges and immunities clause
4 of Article IV, §1, Cl. 2 by creating for California lawyers a special privilege and
5 immunity not available to citizens of any other of the several states.

6 (176) No state can grant to any of its citizens special privileges or immunities that
7 discriminate against citizens of other states or create an inequality between citizens
8 of one state and those of another, but Cal Civil Code §1714.10 has this precise effect.

9 (177) Plaintiffs allege that BUT FOR the provisions of §1714.10, Steven David
10 Silverstein would not have been free (or perceived himself as free) to engage in fraud
11 or assist his multiple clients in committing fraud. Thus the provisions of §1714.10
12 are the direct and proximate, and therefore legal, causes of Plaintiff's injuries. This
13 provision of California statutory law (along with Civil Code §§1946, 2924 and Code
14 of Civil Procedure §§1161-1162) has so deprived Plaintiffs of their common law
15 rights in violation of the fundamental guarantees of the United States Constitution
16 that these provisions must all be struck down.

17 (178) Plaintiffs do not here allege that the common law cannot be changed by
18 statute. Rather Plaintiffs submit that the statutes cannot indirectly impair the
19 obligations of contract without straightforwardly modifying the nature of contractual
20 obligations *ab initio*, which is to say prior to the decision to enter into or agree to
21 certain contractual relations or not. In short, statutes cannot transform contracts into
22 licenses to STEAL, without the expressed knowledge and consent of all (potentially)
23 contracting parties.

24 (179) Plaintiffs submit that because both the California legislature and the United
25 States Congress never abrogated common law contractual doctrines (such as "holder
26 in due course" or "privity of contract") that means that the State of California cannot
27 insulate anyone from violating the law as it still exists (through statutory provisions
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3 or the judicial construction of those statutory provisions, cf. e.g. 42 U.S.C. §§1981-
4 1982).

5 (180) The laws cannot essentially reverse the actual action. It's as if the State of
6 California is in full view of a standard transaction between two parties, from one to
7 the other, only to give the complete opposite account of the event itself afterward.

8 (181) If the State of California or the United States should wishes to abrogate the
9 law of trusts, so that trustees no longer owe duties to grantors as potential
10 beneficiaries under deeds in trust, or the laws defining "holders in due course" or
11 "privity of contract," it can do so, but all borrowers must henceforth be advised, so
12 that they may recognize, that they are paying servicers or entities who have no legal
13 or equitable interest or stake in the original contracts or "loan" transactions.

14 (182) WHEREFORE, Plaintiffs pray that California Civil Code §1714.10 be
15 declared unconstitutional, null and void for all purposes and applications, and will
16 grant them all their reasonable costs of suit as well as permitting them to sue
17 Silverstein for all their actual damages resulting from his collusion and conspiracy
18 with other Defendants and non-Defendants, including Superior Court Judges who
19 may be immune from suit.

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21 **COUNT VII: CALIFORNIA CIVIL CODE**
§1714.10 DOES NOT IMMUNIZE SILVERSTEIN

22 (183) Plaintiffs reallege ¶¶(1)-(182) as if fully copied and restated herein below.

23 (184) Plaintiffs allege that Silverstein and Elter and several Defendants John Doe are
24 partners and investors in the real properties seized in eviction proceedings.

25 (185) In particular, GRE Development shares an office with Steven David
26 Silverstein and the 4 Via Corbina trust, and Plaintiffs allege that Silverstein is acting
27 not merely in the course of representation of a client in Lincoln's case (4 Via
28 Corbina/GRE Development) at least, but on his own behalf and for his own benefit.

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3 (186) There was no arms length transaction involving the sale of 4 Via Corbina and
4 so GRE Development and/or the 4 Via Corbina Trust are not bona fide purchasers
5 for value---they could not have been bona fide purchasers in any event because they
6 took from Cal-Western Reconveyance nine months after Charles Edward Lincoln
7 tendered payment in full to Wells Fargo Bank and Cal-Western Reconveyance,
8 asking only for proof of Wells Fargo's status as "holder in due course" which is
9 merely "conditional" in the sense that Wells Fargo prove its entitlement to collect so
10 much as one dime on the subject property 4 Via Corbina in Rancho Santa Margarita.

11 (187) Plaintiffs further allege that any rule, even if not facially unconstitutional, is
12 unconstitutional as applied according to a state judicial norm "which requires a
13 judicial determination of reasonable probability of success prior to permitting the
14 filing of an action against an attorney based on a claim of civil conspiracy with a
15 client" because such a rule (as articulated by Defendants) constitutes a per se denial
16 of equal access to the courts due process and of equal access to the courts and legal
17 processes in violation of 42 U.S.C. §1981.

18 (188) Access to discovery of facts is a key element of due process of law and equal
19 access to the Courts as discovery procedures are often critical to the determination of
20 the accuracy or inaccuracy of any legal complaint, suit at law, or equitable action.

21 (189) Plaintiffs allege that Steven David Silverstein's relationship with the Judges of
22 the Orange County Superior court is so close and intimate that there exists a
23 continuing and ongoing agreement and understanding between them in derogation of
24 due process of law and equal protection of persons and property, in violation of 42
25 U.S.C. §§1981, 1982 and also of the 5th and 14th Amendments.

26 (190) WHEREFORE, Plaintiffs pray that (in the alternative to the previous count)
27 even if California Civil Code §1714.10 is not unconstitutional on its face, it is either
28 unconstitutional as applied to Steven David Silverstein or simply does not, as a

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3 matter of fact or law, apply to Silverstein at all, and Plaintiffs pray that this Court
4 will so declare and adjudge, granting them all their costs of suit, in addition to the
5 full and unfettered right to recover from Silverstein all of their damages for civil
6 conspiracy with other Defendants and non-defendants, including collusion or
7 conspiracy with Superior Court Judges who may be otherwise immunized from suit.

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9 **COUNT VIII: CAL. CIVIL CODE §2924**
UNCONSTITUTIONALLY IMPAIRS CONTRACT

10 (191) Plaintiffs reallege ¶¶(1)-(190) as if fully copied and restated herein below.

11 (192) California Civil Code §2924 is expressly designed to impair the obligations
12 and rights of and arising under contracts relating to mortgages and promissory notes,
13 and to create grossly favored and unfavored classes of property owners based in
14 large part on willingness to lie and nothing else; any statute designed to create
15 unequal classes of litigants in Court directly violates 42 U.S.C. §1981, and California
16 Civil Code §2924 irrationally and unfairly grants certain classes of individuals
17 superior rights “to make and enforce contracts, to sue, be parties, give evidence, and
18 to the full and equal benefit of all laws and proceedings for the security of persons
19 and property” and thereby also creates unequal classes of people with regard to the
20 rights “to inherit, purchase, lease, sell, hold, and convey real and personal property.”

21 (193) California Civil Code §2924 provides in part:

22 (c) A recital in the deed executed pursuant to the power of sale of
23 compliance with all requirements of law regarding the mailing of copies
24 of notices or the publication of a copy of the notice of default or the
25 personal delivery of the copy of the notice of default or the posting of
26 copies of the notice of sale or the publication of a copy thereof shall
constitute prima facie evidence of compliance with these requirements
and conclusive evidence thereof in favor of bona fide purchasers and
encumbrancers for value and without notice.

27 (194) This provision irrationally denies equal rights to sue and give evidence to
28 mortgagees whose properties were the victims of fraudulent foreclosures

(foreclosures instituted or prosecuted by any party, principal, witness, or attorney willing either knowingly or negligently to present false recitations regarding compliance with statutory provisions regarding service and delivery of notices).

(195) All Plaintiffs in this case can and truthfully do and will deny under oath that Defendants Cal-Western Reconveyance, MERS, Quality Loan Service, or Trustee Corps, or Steven David Silverstein or any of their agents or employees actually complied with all or in fact any of the procedural requirements of noticing default or notice of sale or of three day notice to quit prior to initiating eviction actions.

(196) For a law to provide that mere recitation in a deed of certain facts will constitute *conclusive evidence* which acts to bar or determine the outcome of any judicial proceeding does itself constitute a statutory denial of due process of law and a discriminatory disadvantage to those who are the victims of fraudulent foreclosures (foreclosure by parties, principals, witnesses and attorneys who make false statements of fact, such as claims to lawful right to fore, such as, Plaintiffs' evidence will show, are nearly all the foreclosures in California today, because in fact most foreclosures are conducted by parties without contractual entitlement to do so).

(197) Plaintiffs Joseph and Carol Cohen assert that Defendant Silverstein has wrongfully used §2924 to defraud them of their property by using a "dummy" trust that is not even recognized as a business entity of any kind by the State of California.

(198) Plaintiffs Joseph and Carol Cohen received a notice of Unlawful Detainer action from the "Catherin H. Meyer Lighthouse Trust", by and through their attorney, Steven D. Silverstein.

(199) Plaintiffs Joseph and Carol Cohen, after having tried to contact the Trust received a letter from the Secretary of the State of California that the business entity

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3 was unregistered (*see Exhibit G*), a violation of California Business and Professions
4 Code Section 145¹.

5 (200) Plaintiffs assert that this proves Silverstein has acted in collusion with a
6 fraudulent business entity for the purpose of utilizing a broken, corrupt system in his
7 unlawful detainer action against Plaintiffs Joseph and Carol Cohen.

8 (201) Plaintiffs submit that the non-judicial foreclosure laws of the state of
9 California, especially but not limited to Civil Code §2924(c) quoted above, expressly
10 and unequivocally constitute (1) an impairment of the right to make and enforce
11 contracts and to give evidence for the security of persons and property, (2) deny due
12 process of law in the making and enforcing of contracts and to give evidence
13 regarding the same for the security of persons and property, (3) deny equal
14 protection of the law in the making and enforcing of contracts and to give evidence
15 regarding the same for protection of persons and of property.

16 (202) WHEREFORE, Plaintiffs pray and request that this Court declare and adjudge
17 that California Civil Code §2924(c) is unconstitutional on its face, and as such that
18 all foreclosure sales against any of the Plaintiffs or persons similarly situated in the
19 State of California are null and void and that Plaintiffs and persons similarly situated
20 are entitled to a rescission of sale and restoration of their property.

21 (203) WHEREFORE, additionally, Plaintiffs pray and request that this court declare
22 and adjudge that all elements of contractual provisions, and of compliance with
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25 ¹ 145. The Legislature finds and declares that: (a) Unlicensed activity in the professions and
26 vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and
27 safety of the people of the State of California. (b) The law enforcement agencies of the state
28 should have sufficient, effective, and responsible means available to enforce the licensing laws of
the state. (c) The criminal sanction for unlicensed activity should be swift, effective, appropriate,
and create a strong incentive to obtain a license.

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3 contractual and statutory requirements for the proof of compliance, are equally
4 subject to challenge and the presentation of evidence by any party to a contract or
5 person legitimately interested in the subject matter of the contract.

6 (204) No non-judicial foreclosure should be upheld judicially if the truth of the
7 underlying facts, including the status of a buyer as a bona fide purchaser for value, is
8 disputed or contested by competent witnesses presenting competent evidence, and
9 accordingly no presumptions which create either the certainty or even the strong
10 likelihoods that one side or another of any contractual dispute should prevail should
11 ever withstand challenge under 42 U.S.C. §§1981, 1982, or the Fifth or Fourteenth
12 Amendments to the Constitution of the United State, when (read as color blind)
13 statutes and constitutional provisions affording equal protection of the laws to all
14 citizens and legal residents of the United States of America.

15
16 **COUNT VIV: CAL. CIVIL CODE §2924**
UNCONSTITUTIONAL AS APPLIED

17 (205) Plaintiffs reallege ¶¶(1)-(204) as if fully copied and restated herein below.

18 (206) Defendants, but especially Defendant Steven David Silverstein in his Express
19 Foreclosure business, all depend upon the California Courts' unconstitutional glosses
20 and applications of and upon California Civil Code §2924 in addition to the statute's
21 facial infringement upon the equal rights of all persons to make and enforce
22 contracts, to sue and present evidence.

23 (207) Silverstein expressly relies upon the California case of *Homestead Savings v.*
24 *Darmiento*, 230 Cal.App.3d 424, 436, 437 (1991) which held that:

25 Where the evidence establishes that the trustee conveys title to a
26 bona fide purchaser and the trustee's deed contains the language
27 specified in §2924, the sale is not voidable.

27 And

28 The purchaser's title is free and clear of all rights of the trustor or
 anyone claiming under or through the trustor, including liens that have

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3 attached to the property after the execution of the foreclosed deed of
trust.

4 (208) These above-and-forgoing judicially formulated normative applications of
5 §2924 violate, respectively, the same equal right to make and enforce contracts and
6 to sue and give evidence for the security of persons and property secured by 42
7 U.S.C. §1981 and the equal rights of all persons to purchase, lease, sell, hold, and
8 convey real and personal property guaranteed by 42 U.S.C. §1982.

9 (209) Furthermore the sheer fact that Silverstein would cite such an outrageous case
10 on his behalf simply adds to the Plaintiffs arguments against him. We all know “the
11 system is rotten”, as Leonard Cohen once said, but must it be rubbed in the Plaintiffs
12 faces so blatantly?

13 (210) Silverstein also expressly relies on *Napue v. Gor-Mey West, Inc.*, 175 Cal.
14 App.2d 608, 620-621, 220 Cal.Rptr. 799 (Cal.App. 2nd Dist., Div. 3, 1985) as a
15 judicially articulated norm having the force and effect of law (emphasis added):

16
17 Section 2924 of the Civil Code creates a **conclusive presumption** in
18 favor of a bona fide purchaser at a trustee's sale that if the trustee's deed
19 recites that all requirements of law have been complied with regarding
20 the mailing, posting, publication, or personal delivery of the notice of
21 default and the notice of sale, the recital is conclusive. In other words,
failure to comply with the notice requirements is a ground to cancel the
sale only as against a party who is not a bona fide purchaser. A sale to a
bona fide purchaser is not voidable.

22 (211) Conclusive presumptions which render certain transactions UNILATERALLY
23 non-voidable deny equal access to the courts to sue and give evidence and further
24 deny the equal right to purchase, sell, or convey property in plain and express
25 violation of 42 U.S.C. §§1981, 1982.

26 (212) The entire California non-judicial foreclosure system implemented with
27 conclusive presumptions which cannot be rebutted either in forcible detainer or any
28 other judicial proceedings inevitable tends to the absolute destruction of private

property and the equal rights of all people to own and convey property, to make contracts, and to invoke the protection of the courts in so doing.

(213) In short, California Civil Code §2924, both on its face and as applied, is a constitutional nightmare and a statute transitional to corporate-governmental communism where citizens only hold property at the sufferance of corporate-governmental financial services and property-holding conglomerates such as the banking and mortgage servicing defendants in this case, backed up by attorney-pirate operating under color of law such as Defendant Steven David Silverstein.

(214) WHEREFORE, Plaintiffs all pray that this Court will strike down California Civil Code §2924 as constituting an unconstitutional abridgement and impairment of the right to contract, own, and convey property, all in violation of 42 U.S.C. §§1981, 1982, as well as the U.S. Const. Fifth and Fourteenth Amendments.

COUNT X: CALIFORNIA CODE OF CIVIL PROCEDURE
§425.16(c) IS UNCONSTITUTIONAL

(215) Plaintiffs reallege ¶¶(1)-(214) as if fully copied and restated herein.

(216) California's anti-SLAPP law provides a civil action whose effect is to enhance the freedom of speech and right to petition of defendants by limiting the right of Plaintiffs to free speech and to petition. In 1992, the Legislature enacted section 425.16 to provide a procedure for a court "to dismiss at an early stage nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue." *Sipple v. Foundation for Nat. Progress* (1999) 71 Cal. App. 4th 226, 235.

(217) Taken in conjugation with §2924 the Defendant Silverstein has used this statute to minimize the Plaintiff Lincoln's ability to petition this Court for relief, by requesting the dismissal of this action.

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3 (218) On 11/10/09 Defendant Steven Silverstein filed an anti-SLAPP motion against
4 Plaintiff Charles Edward Lincoln III, in state superior Court (Docket sheet attached
5 as Exhibit H) when Lincoln was represented by Counsel Dr. Orly Taitz.

6 (219) Lincoln has standing here to address the anti-SLAPP laws of California
7 because those laws were used against him in state Court to undermine his ability to
8 raise meritorious claims against Defendant Silverstein.

9 (220) Plaintiff Lincoln asserts that the anti-SLAPP law undermines valid
10 constitutional law in favor of ignoring the “little guy”, while sticking up for major
11 corporations simply because what it might mean if people like the Plaintiffs won.

12 (221) The constitutional issue of due process violations and the big banks that
13 undermine them under the anti-SLAPP law exist only to be ignored using the anti-
14 SLAPP law.

15 (222) Plaintiff Lincoln asserts that this statute directly inhibited his constitutional
16 rights to petition and free speech by favoring people in the establishment like
17 Silverstein (who is part of the bar association), all of the servicers (who are little
18 more than strong arms for big banks) and the Californian government.

19 (223) California Code of Civil Procedure §§425.16 et seq. is perhaps the most
20 irrational and counterproductive law in the United States of America today.

21 (224) Plaintiffs allege that the California anti-SLAPP law embodied in §425.16 et
22 seq. constitutes an unconstitutional infringement upon the First, Fifth, Ninth and
23 Fourteenth Amendments to the Constitution, as well as a plain violation of the right
24 to sue and give evidence secured by 42 U.S.C. §1981.

25 (225) WHEREFORE, Plaintiffs pray that the Court will declare §425.16 et seq. to be
26 unconstitutional, null and void.
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3 **COUNT XI: §§1161 & 1162 OF THE CALIFORNIA CODE OF CIVIL**
4 **PROCEDURE ARE UNCONSTITUTIONAL**

5 (226) Plaintiffs reallege and incorporate §§1-225 as if fully copied and restated here.

6 (227) As noted above, the combination of California statutes establishing and
7 relating to Unlawful Detainer, either abrogate or impair the rights and obligations of
8 contract or establish a new species of tenancy. Tenancy-at-sufferance, in Anglo-
9 American law, under the United States and California Constitutions, cannot be a
10 social or economic “status”, so it is most plausibly analyzed as a contractual
11 relationship, albeit one created only by law without any negotiations on the part of
12 the parties, unless it be analyzed as punishment for a crime or tort, in which case the
13 provisions of §§1161-1162 of the California Code of Procedure are even more
14 woefully inadequate.

15 (228) The constitutional analysis of state imposed contracts of adhesion requires a
16 determination whether such contracts infringe upon rights (e.g. the rights not to be
17 deprived of property without due process of law, or the rights to make and enforce
18 contracts under 42 U.S.C. §§1981-1982).

19 (229) Any contractual relationship or “status” (such as tenancy at sufferance, must
20 determine the effect of such contracts or statuses on those secured by the constitution
21 namely those to whom important contractual terms are not disclosed, i.e., to the party
22 bound by the “sticky” side of the adhesive tape.

23 (230) One party to a contract of adhesion dictates all the terms to the other, but the
24 legal phrase “contract of adhesion” normally refers to a contract which is willingly
25 and knowingly if not intelligently negotiated or specifically voluntary contract, with
26 regard to terms. Albeit non-negotiated, e.g. between a common carrier and
27 passengers or between an insurer and an insured, a contract of adhesion differs from
28 the post-non-judicial foreclosure tenancy “at sufferance” in that the latter is an

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entirely non-consensual contractual relationship, which nonetheless provides certain benefits and imposes certain duties on both parties.

(231) Among these duties are the duties of good faith and fair dealing. The reality of a tenant at sufferance is more like the status of a debtor in old-fashioned debtor's prison, or of a criminal in ordinary prison who "owes his debt to society" but if this entirely realistic analogy is used, the due process protections which MUST be afforded to the "tenant at sufferance" are even greater than those suggested here.

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PART III:
“LAW GOVERNING CONTRACTUAL AGREEMENTS”

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3 **COUNT XII: DECLARATORY JUDGMENT**
4 **RE: BREACH OF GOOD FAITH AND FAIR DEALING**

5 (232) Plaintiffs reallege ¶¶(1)-(231) as if fully copied and restated herein below.

6 (233) California statutes (Civil Code §§1946, Code of Civil Procedure §§1161-
7 1162) establishing unlawful detainer actions create a legal fiction: a non-consensual
8 property (landlord-tenant) or else purport to create a contractual relationship, which
9 might best be compared to a contract of adhesion¹ between newly foreclosed
10 homeowners.

11 (234) A statutorily mandated status of tenancy is a specific subspecies of contractual
12 relationship---a contract by legal mandate---but it is not a social class or economic
13 status because titles of nobility (or stigmata of “ignobility”) are prohibited under
14 Article I of the United States Constitution, as well as many other provisions of
15 statutory or constitutional law. Since there is no legal alternative into which a
16 tenancy at sufferance can be categorized, such a tenancy must be analyzed under the
17 law of obligations arising from contract, perhaps most closely analogous to a
18 constructive trust in which the laws of trust and fiduciary duty apply, even though
19 the terms were not specifically negotiated.
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22 ¹ Contracts of adhesion are those whose terms are not disclosed to the party bound by the
23 “sticky” side of the adhesive tape. One party to a contract of adhesion dictates all the terms to the
24 other, but the legal phrase “contract of adhesion” normally refers to a contract which is willingly
25 and knowingly if not intelligently negotiated or specifically voluntary contract, with regard to
26 terms. Albeit non-negotiated, e.g. between a common carrier and passengers or between an insurer
27 and an insured, a contract of adhesion differs from the post-non-judicial foreclosure tenancy “at
28 sufferance” in that the latter is an entirely non-consensual contractual relationship, which
nonetheless provides certain benefits and imposes certain duties on both parties. Among these
duties are the duties of good faith and fair dealing. The reality of a tenant at sufferance is more like
the status of a debtor in old-fashioned debtor’s prison, or of a criminal in ordinary prison who
“owes his debt to society” but if this entirely realistic analogy is used, the due process protections
which MUST be afforded to the “tenant at sufferance” are even greater than those suggested here.

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3 (235) In every contract, including contracts of adhesion and involuntarily imposed
4 contracts, there is under California Law an implied covenant of good faith and fair
5 dealing by each party not to do anything, which will deprive the other parties of the
6 benefits of the contract, and a breach of this covenant by failure to deal fairly or in
7 good faith gives rise to an action for damages at the interface of obligations arising
8 from contract and those arising from tort. *Sutherland v. Barclays American/
9 Mortgage Corp.*, 53 Cal. App. 4th 299, 314, 61 Cal. Rptr. 2d 614 (1997); *Harm v.
10 Frasher*, 181 Cal. App. 2d 405, 415, 5 Cal. Rptr. 367, 373 (1960); *Seaman's Direct
11 Buying Serv., Inc. v. Standard Oil Co.*, 36 Cal. 3d 752, 206 Cal. Rptr. 354
12 (1984), *overruled on other grounds*, *Freeman & Mills, Inc. v. Belcher Oil Co.*, 11
13 Cal. 4th 85, 102-03, 44 Cal. Rptr. 420 (1995); *see also* Witkin, Summary of
14 California Law, Contracts, §743.

15 (236) Plaintiffs allege that the servicer Defendants MERS, Cal-Western
16 Reconveyance, North American Title Insurance Co, as well as the foreclosure-sale
17 purchasers, DNE Associates, GRE Development, Lighthouse Trust #11, Catherine
18 H. Meyer LLC, Ron Elter and Steven Silverstein became landlords pursuant to
19 California Unlawful Detainer Law (Cal Civil Code §1946, Code of Civil Procedure
20 §§1161-1162) in breach of the implicit covenant of good faith and fair dealing with
21 each Plaintiffs as both the buyer and the alleged owner of the Plaintiff's property.

22 (237) This covenant imposes on each party to the contract the duty to refrain from
23 doing anything which would render performance of the contract impossible by any
24 act of his own, and also the duty to do everything that the contract presupposes that
25 each party will do to accomplish its purpose. *April Enters., Inc. v. KTTV*, 147
26 Cal. App. 3d 805, 816, 195 Cal. Rptr. 421, 425 (1983); *Harm v. Frasher*,
27 181 Cal. App. 2d 405, 417, 5 Cal. Rptr. 367, 374 (1960).
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3 (238) The Defendants that acted as servicers for the banks (i.e. MERS, Cal-Western,
4 etc.) did not act in good faith by selling homes that were stayed with Bankruptcy
5 (Plaintiff Macke), or that were marred in previous litigation (as in Plaintiff Lincoln's
6 case) or by selling the Plaintiff's homes to non registered business entities, as in the
7 case for both Plaintiff Mack and The Cohens.

8 (239) Furthermore, supposing that the sales went through without any of the above
9 and foregoing claims, the Defendants, by and through their buying of the properties
10 of the Plaintiffs, made themselves accountable as de facto landlords.

11 (240) A party to a contract breaches the implied covenant of good faith and fair
12 dealing by interfering with or failing to cooperate with the plaintiff in the
13 performance of the contract. Witkin, Summary of California Law, Contracts, §744
14 (8th ed.); *see also Sutherland v. Barclays American/Mortgage Corp.*, 53 Cal. App.
15 4th 299, 314, 61 Cal. Rptr. 2d 614 (1997); *Harm v. Frasher*, 181 Cal. App. 2d 405,
16 415, 5 Cal. Rptr. 367, 373 (1960).

17 (241) The sales made the Plaintiffs tenants of their own homes. Thus implicitly
18 putting them in covenant with Defendants GRE Development, DNE Associates, #11
19 Lighthouse Trust, Ron Elter (as "president" of GRE) and Steven Silverstein (as the
20 alleged owner's counsel) all of which who acted as the end result of a fraudulent
21 transfer of Defendant MERS, Cal-Western Reconveyance and North American Title
22 co.

23 (242) Plaintiffs alleged that the above and foregoing Defendants did not try to
24 renegotiate a leasing agreement with the Plaintiffs/tenants, or even try to prove
25 standing. Defendant Silverstein has already tried to use the anti-SLAPP statutes to
26 circumvent any liability in state Court in Plaintiff Lincoln's Superior Court case.

27 (243) Plaintiff Renada N. March alleges that she was engaged in negotiations to
28 modify their mortgages at the time that their homes were sold and eviction

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3 proceedings initiated, and that IndyMac and their servicer North American Title co.
4 had agreed to extend these modifications as a full tender of payment on the loans.

5 (244) Plaintiff March further alleges that they were engaged in bankruptcy
6 proceedings, and that their alleged lender IndyMac had specifically agreed to accept
7 the results of bankruptcy discharge as a basis for restructuring and modification of
8 their loans, in tender of full discharge of the previous mortgage notes.

9 (245) Plaintiff March further alleges that IndyMac conducted secret sales of her
10 property while bankruptcy and/or negotiations were in full swing and pending,
11 without any notice or disclosure to March.

12 (246) Plaintiff Lincoln alleges that he tendered payment in full to Wells Fargo prior
13 to sale, conditioned only on proof by Wells Fargo of Status as holder in due course
14 of Hal Kuder's note, which had been assigned to Lincoln, and that Wells Fargo
15 either affirmatively rejected his tender or implicitly rejected it by silence, and then
16 proceeded to conduct a secret sale of the property even when litigation was pending
17 without any notice to him.

18 (247) Plaintiffs Lincoln, March, Mack & the Coens allege that the conduct of
19 Defendants IndyMac, Chase Bank, Aegis and Wells Fargo was outrageous and
20 unconscionable, and constituted such complete derogation from and violation of the
21 implied covenant of good faith and fair dealing under California Common and
22 Statutory Law that the sales effected for their respective properties are and ought to
23 be declared nullities without any legal force or effect, so that any evictions resulting
24 from these foreclosures was illegal and therefore subject to claims for all actual,
25 consequential, direct, derivative, and special damages.

26 (248) WHEREFORE, Plaintiffs Lincoln, March, Mack and Cohens pray for
27 declaratory judgment in their favor and against Defendants Cal Western
28

Reconveyance, Wells Fargo, One West, and Chase Bank, to nullify the sales of the property concerned and

(249) Plaintiffs further pray that the banks, servicers, and attorneys who conducted these sales be assessed all of the Plaintiffs' actual damages, and that judgment be entered rescinding, reversing, and/or voiding all three sales to GRE Development, Megladon Financial, and Newport Properties or any party taking thereunder.

(250) In addition, because of his actual and superior professional knowledge, Plaintiffs pray that Defendant Steven David Silverstein be assessed treble their actual damages and costs of suit as punitive and exemplary damages, to punish his outrageous conduct and serve as an example to deter others similarly situated from engaging in similar conduct.

COUNT XIII: SLANDER OF TITLE & TORTIOUS INTERFERENCE

(251) Plaintiffs reallege ¶¶(1)-(250) as if fully copied and restated herein.

(252) The following counts are alleged and stated conditionally dependent upon the favorable resolution to the Plaintiffs of their prayers for declaratory judgment that California Civil Code §§1714.10 and 2924 be declared either facially unconstitutional or unconstitutional as applied in this case.

(253) Immediately after the April 24, 2009, sale, which Plaintiff Charles Edward Lincoln, III, was utterly unaware, Lincoln was contacted by a woman named Deanna Dagnolo by and through her agent, John Murk.

(254) Dagnolo was interested in leasing the property, the agreement was arranged by 4 via Corbina's property manager, Peyton Freiman.

(255) Plaintiff Lincoln had a valid contract for lease of the property located at 4 Via Corbina with Defendant Deanna D'Agnolo (attached as Exhibit I).

(256) Defendant GRE Development, by and through their attorney Defendant Steven Silverstein interfered with Lincoln's leasing contract with Deanna Dagnolo by

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3 intimidating her, wrongfully claiming ownership without any valid evidence of said
4 ownership.

5 (257) Defendant Ron Elter is the president of Defendant GRE development. He
6 shares an office with Defendant Steven Silverstein in Orange County at 14351 Red
7 Hill Avenue # G, Tustin, CA.

8 (258) All Plaintiffs in this action assert that Silverstein is not so much a lawyer, as a
9 businessman, creating and owning (in part) the very same corporations he represents.
10 Whether it is GRE Development, DNE associates or Catherine H. Meyer Lighthouse
11 Trust, it is clear to all of the Plaintiffs in this case that Defendant Steven Silverstein
12 is at the heart of all of these supposed “corporations” in an effort to oversee a
13 massive land grab in Southern California using the “steam roller” tactics loved so
14 much by state Superior Courts.

15 (259) They (Defendants GRE, Ron Elter and Silverstein) went so far as to repeatedly
16 call the Orange County Sheriff’s department and having the police department
17 investigate the house in a further attempt of 1) intimidating tenant Dagnolo and 2)
18 extorting a “cash for keys” agreement from her through that intimidation.

19 (260) Plaintiff Lincoln alleges that defendants Silverstein and GRE Development
20 conspired to wrest control of the property from Lincoln after the illegal foreclosure
21 sale and transfer from Wells-Fargo and Cal-Western Reconveyance to GRE
22 Development/4 Via Corbina Trust.

23 (261) Plaintiff Lincoln asserts that the recordation of the deed of trust at the Orange
24 County Recorder’s Office constitutes a public recordation of a fraudulent document.
25 Because of the recordation Plaintiff Lincolns argues that Defendants GRE
26 Development, Ron Elter and Steven Silverstein together have published a fraudulent
27 document and slandered the title of 4 Via Corbina in the process.
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3 (262) Plaintiffs Mack, March and the Cohens all allege that their titles have been
4 slandered too via public recordation and thus published defamation of title by
5 Defendant Silverstein.

6 (263) Plaintiff accordingly sues Defendants Silverstein, GRE Development and Ron
7 Elter for Illegal Transfer under RICO, Slander of Title and Interference of Contract
8 and Advantageous Business Action and Breach of Contract.

9 (264) Plaintiff Lincoln alleges and asserts that Defendants GRE Development Inc,
10 by and through their, then attorney Defendant Steven D. Silverstein bought a
11 property located at 4 Via Corbina, Rancho Santa Margarita illegally from Cal-
12 Western Reconveyance at a sale that should not have been allowed to transpire
13 during a pending lawsuit regarding a Clouded Title.

14 (265) Plaintiff filed a Lis Pendens with his Complaint for Quiet Title with the US
15 District Clerk and with the Orange County Recorder's office.

16 (266) Cal-Western has acted fraudulently by selling this property without any notice
17 that the title was clouded, keeping their mouth shut while selling lawsuits alongside
18 the property located at 4 Via Corbina; as noted above, Plaintiffs dispute the validity
19 of Cal. Civil Code §2924 to insulate any of the parties to this transaction.

20 (267) The act of selling or transferring this property under such terms constitutes a
21 count of Racketeering, in violation of Title 18 of the US Code under RICO.

22 (268) GRE Development/4 Via Corbina Trust in collusion with Cal-Western and
23 Silverstein formed a corrupt enterprise in transferring, selling and buying the
24 property at 4 Via Corbina under RICO, 18 U.S.C. §1961 et seq..

25 (269) As of the date of his filing of forcible detainer and eviction proceedings
26 against Lincoln, Silverstein had not provided ANY purported deed of sale or
27 documents stating that his clients GRE actually obtained the property at a legal sale.
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3 In fact his clients at GRE Inc, sent out their agents along with a local Constable and
4 tried to intimidate Tenant Dagnolo with threats of forcible eviction.

5 (270) They then called Lincoln's trustee, Peyton Yates Freiman, and told him that
6 they were in fact the new owners of 4 Via Corbina. When Lincoln's trustee Freiman
7 asked their lawyer Steven D. Silverstein if he could see the deed Silverstein refused
8 saying that he needed to see paperwork from Freiman;

9 (271) throughout this litigation and its antecedents, Silverstein relies upon
10 procedural immunity as an attorney, and Plaintiffs pray that this court will strip him
11 of all such immunity.

12 (272) Plaintiff contends that even if they COULD provide a recorded deed that it
13 should be rendered void because of the dispute of clouded title, and at the very least,
14 give good cause to sue for Slander of Title. The recordation of an instrument facially
15 valid but without underlying merit will, of course, give rise to an action for slander
16 of title (*Forte v. Nolfi* (1972) 25 Cal.App.3d 656, 685-686 [102 Cal.Rptr. 455]).

17 (273) GRE DEVELOPMENT/4 Via Corbina Trust, by and through their attorney
18 Silverstein questioned whether Plaintiff Lincoln ever owned the property in the first
19 place to Defendant Murk, who eventually agreed to move based on the allegations
20 and threats of criminal trespass of Defendant Silverstein.

21 (274) Lincoln submits that he has at all relevant times held the sole legal title in
22 hand in the form of an original deed from the previous owner, Hal Kuder, Jr., to him
23 and can provide the Court with a certified copy after he files the deed with the
24 Recorder. He simply thought filing a copy of the deed in multiple Courts in
25 Complaints for Quiet Title would be sufficient to assuage any doubts as to his right
26 to Title. Besides with possession, title is presumed.

27 (275) "Possession is not **title**, but only evidence from which **title** may be presumed."
28 *President & Trustees of San Diego v. Allison*, 46 Cal. 162 (Cal. 1873); 1873 Cal.

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3 **LEXIS 152.** Plaintiff alleges that he had possession through an agreement with
4 Defendants John Murk and Deanna D'Agnolo in the form of a Lease (see Exhibit I).
5 The threats made by GRE Development by and through their lawyer Steve
6 Silverstein constituted a slander of title, a threat of malicious prosecution, and a
7 tortious interference with Plaintiff's right to possession and title.

8 **(276)** Assuming the invalidity of California Civil Code §§1714.10 and 2924, as
9 alleged above, Defendant Steven David Silverstein acted without privilege to do so
10 when he published to John Murk and Dianne D'Agnolo false statements that
11 disparaged Plaintiff Lincoln's title to property constituted a Slander of Title by
12 Disparagement under Cal. Civil Code § 40.81:

13 A statement is disparaging if it casts doubt as to the ownership
14 of property. Section 629 of the first Restatement, defining
15 disparagement, states that "[m]atter which is intended by its publisher to
16 be understood or which is reasonably understood to cast doubt upon the
17 existence or extent of another's property in land, chattels or intangible
18 things, or upon their quality, is disparaging thereto, if the matter is so
19 understood by its recipient." Many California cases have cited this
20 definition. Clearly, a direct denial of the plaintiff's title or claim of a
21 leasehold interest in the property is actionable as slander of title. Thus,
22 the defendant slandered the plaintiff's title to timber when he wrote a
23 letter to a prospective buyer of the timber from the plaintiff which
24 falsely said that the defendant was the owner of the timber. Defendant
25 may cast "doubt" on the plaintiff's title without directly contesting it.
26 Examples of indirect disparagement are (1) the filing by a developer of
27 a master plan which falsely implied the right to use the plaintiff
28 neighbor's property, (2) the recordation by the defendant of a document
entitled "Rescission of Contract," falsely charging the seller-plaintiff
with fraud, (3) the recordation of a fraudulently obtained deed of trust to
the plaintiff's property, (4) the recording of a fraudulent grant deed to
plaintiff's property, and (5) the wrongful recordation of a mining claim
to property leased by the plaintiff.

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3 (277) The Defendants Silverstein and GRE successfully intimidated Plaintiff Charles
4 Edward Lincoln's tenant, threatening criminal prosecution if she does not leave the
5 premises. They even went so far as to appear with a Police Officer to get this point
6 across to the Tenant.

7 (278) These threats were made to influence and turn the Tenant against the owner
8 Charles Lincoln, making it a "he said, she said" situation creating undue suspicion in
9 the Tenant's mind towards the property owner, destroying Lincoln's relationship
10 with his tenant.

11 (279) Another statement of definition of the tort, perhaps more pertinent to the facts
12 of this case, is to be found in *Fearon v. Fodera* (1915) 169 Cal. 370, at pages 379
13 and 380 [148 P. 200], as follows: "Slander of title," as recognized by the law, may
14 be defined to be defamation of **title** to property, real or personal, by one who falsely
15 and maliciously disparages the **title** thereto, and thereby causes the owner thereof
16 some special pecuniary loss or damage. "Admittedly under this definition **slander of**
17 **title** may be committed by maliciously clouding the **title** to real property and causing
18 damage to the owner thereof by the execution, willful acceptance, and malicious
19 recordation of a deed, which falsely declares the **title** of the property involved to be
20 in a person other than the true owner.

21 (280) In destroying this relationship GRE, by and through their attorney Silverstein
22 have irreparably hurt Lincoln's relationship with his tenant through threats and
23 subsequently deprived him from the rent that he would have otherwise received
24 from Defendant Diane Dagnolo.

25 (281) California has adopted the definition of the tort of slander of title set forth in
26 section 624 of the Restatement of Torts, which provides: "One who, without a
27 privilege to do so, publishes matter which is untrue and disparaging to another's
28 property in land . . . under such circumstances as would lead a reasonable man to

foresee that the conduct of a third person as purchaser or lessee thereof might be determined thereby is liable for pecuniary loss resulting to the other from the impairment of vendibility thus caused." (*Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 263-264 [169 Cal.Rptr. 678]; see *Gudger v. Manton* (1943) 21 Cal.2d 537, 541 [134 P.2d 217].

(282) Nowhere does a California decision require that the published matter create a legal "cloud" upon plaintiff's title to constitute a disparagement. Indeed, the tort may be committed through the use of oral statements (*Burkett v. Griffith* (1891) 90 Cal. 532, 537-538 [27 P. 527]) or signs (*Phillips v. Glazer* (1949) 94 Cal.App.2d [***19] 673, 674 [211 P.2d 37]), neither of which involve any recordation whatsoever.

(283) Plaintiff asserts that in emailing Defendants John Murk and Diane Dagnolo repeatedly, Defendants GRE Development, by and through their attorney, Defendant Steven D. Silverstein have in fact published untrue and disparaging comments regarding the ownership of the land located at 4 Via Corbina through written word AND Orally as John Murk has purportedly talk to agents of GRE Development face to face. He accordingly sues Defendants GRE and Steven D. Silverstein for Tortious Interference under Restatement Second of Torts, § 629 and disparagement:

§ 629 Disparagement Defined

A statement is disparaging if it is understood to cast doubt upon the quality of another's land, chattels or intangible things, or upon the existence or extent of his property in them, and

- (a) the publisher intends the statement to cast the doubt, or
- (b) the recipient's understanding of it as casting the doubt was reasonable.

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3 **COUNT XIV: BREACH OF CONTRACT & CONSPIRACY TO DEFRAUD &**
4 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**
5 **DEALING**

6 (284) Plaintiffs reallege ¶¶(1)-(283) as if fully copied and reinstated herein below.

7 (285) Lincoln further charges John Murk made it impossible for tenant Diane
8 D'Agnolo to do anything other than commit a breach of contract after she signed a
9 lease agreement stating that she and her family would be at the property for another 6
10 months, renewable (Exhibit I).

11 (286) Defendants Murk and Dagnolo's have acted in bad faith and in conspiracy to
12 defraud in collusion with Defendants GRE and Silverstein by moving out and
13 destroying (at least temporarily) the Plaintiff's beneficial possession of the property.

14 (287) Murk has repeatedly offered up emails showing his agreement and action in
15 concert and other involvement with Silverstein in accordance with Silverstein's
16 demands, instead of aiding Lincoln in his obvious ownership.

17 (288) Lincoln has provided Murk with a file marked copy of his Complaint for Quiet
18 Title in which he shows a copy of the deed and an obvious dispute in title. Murk, for
19 his part, simply remained reticent, and failed to show the complaint to Silverstein,
20 instead appearing to take GRE's side (Plaintiff alleges and submits that both
21 Silverstein and Murk agreed and conspired regarding both the sham play act
22 involving D'Agnolo and Murk's pretense not to know of the April 24, 2009 sale, for
23 the purpose of dislodging Lincoln from possession).

24 (289) When asked for a deed from GRE Murk provided only a list of properties
25 GRE Development had supposedly bought.

26 (290) Murk stated to Lincoln and Freiman that he took this information as legally
27 sufficient to advise or convince Tenant Diane D'Agnolo that she should leave 4 Via
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3 Corbina, thus transferring possession of an already clouded title to co-defendants
4 who have yet to prove they actually own the property.

5 (291) This collusion has simply augmented a criminal enterprise adding both
6 D'Agnolo and Murk to the 4 Via Corbina Trust.

7 (292) Subject to the favorable resolution of the Plaintiffs Counts for Civil Rights and
8 Constitutional Declaratory Judgment of this Complaint alleged above regarding the
9 constitutionality of Cal. Civil Code §§1714.10 and 2924, Plaintiff Charles Edward
10 Lincoln, III charges each of Defendants Silverstein, Elter, Rampello, Murk and
11 Dagnolo with liability for breach of contract as well as breach of the covenant of
12 good faith and fair dealing in favor of aiding and abetting Silverstein's conspir to
13 take possession 4 Via Corbina

14 (293) The predicate acts of Racketeering are the several violations of 18 U.S.C.
15 §§1341 and 1343 (mail and wire fraud) committed between May and August, 2009,
16 by John Murk and Steven David Silverstein, by regular and electronic mail in
17 furtherance of a scheme to defraud Plaintiff Charles Edward Lincoln, injuring him in
18 his business and property interests by depriving him first of income from the tenancy
19 of Diane D'Agnolo and the later from his personal beneficial use and enjoyment of 4
20 Via Corbina, Rancho Santa Margarita, California 92688.

21 (294) Because of the Defendants' several violations of R.I.C.O., Plaintiff Charles
22 Edward Lincoln has been injured in his business or property, and requests all his
23 actual and punitive damages in the amount of \$1.5 million U.S. dollars, as allowed
24 by 18 U.S.C. §1964(c).

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3 **COUNT XV: FORCIBLE DETAINER**

4 (295) Plaintiffs reallege §§(1)-(291) as if fully copied and restated herein below.

5 (296) Defendants GRE Development Inc and 4 Via Corbina Trust are guilty of a
6 Forcible Detainer given that they have repeatedly, after having been informed of the
7 clouded title by Plaintiff Lincoln, changed the locks of the property in question in an
8 effort to take unlawful possession.

9 (297) Plaintiff Lincoln was in possession of the property before the locks were
10 changed and has subsequently been forced to change the locks several times. The
11 Defendants are guilty of a Forcible Detainer pursuant to Cal. Code of Civ Proc
12 §1160:

13 **Every person is guilty of a forcible detainer who either:1. By force,**
14 **or by menaces and threats of violence, unlawfully holds and keeps**
15 **the possession of any real property, whether the same was acquired**
16 **peaceably or otherwise; or2. Who, in the night-time, or during the**
17 **absence of the occupant of any lands, unlawfully enters upon real**
18 **property, and who, after demand made for the surrender thereof,**
19 **for the period of five days, refuses to surrender the same to such**
20 **former occupant. The occupant of real property, within the**
21 **meaning of this subdivision, is one who, within five days preceding**
22 **such unlawful entry, was in the peaceable and undisturbed**
23 **possession of such lands.**

24 (298) When told that he would be prosecuted for interfering in the possession of the
25 property Defendant Silverstein, as representative for GRE Development and 4 Via
26 Corbina, remained defiant and curt, saying that he represented the new owner,
27 without ANY PROOF OF ANY KIND as to GRE Development's ownership.
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PART IV:
“PRIVITY OF CONTRACT, BANKS & THEIR SERVICERS”

IV. INTRODUCTION

(299) Courts in California seem particularly anxious to gloss over the “holder in due course” and “privity of contract” doctrines in non-judicial foreclosures, accepting (as U.S. District Judge Lawrence J. O’Neil did as recently as December 1, 2008) defendant servicer contentions (without any supporting law, precedent, or other authority whatsoever) such as “Defendants fault the complaint's allegation that an unnamed note-holder does not possess the note in that there is no "obligation to produce originals of either the promissory note or deed of trust." *Vargas v. Recontrust Co.*, 2008 U.S. Dist. LEXIS 100115 (E.D.CA. 2008).

(300) In fact, the obligation to produce the original note and contract has always been a key requirement of the common law of contracts, and in the State of Florida (where most foreclosures are judicial rather than non-judicial in nature) this requirement is enshrined by statute in §673.3021, although the excuses by which lost notes are re-established under §673.3091 are often no more than ridiculous “the dog ate my homework”-type explanations.

(301) The effective abandonment of the common law by the executive and judicial branches did not come about as the result of overt democratically enacted legislative modification of the law, nor pursuant to any official governmental policy of or for the public benefit, but to enable and enrich a favored group which has profited from a non-governmental financial innovation of the late 1970s-80s known as “securitization of debt”, with securitized and bundled “debt” sold on the open market in complete disregard and, in fact, in flagrant violation of all common law (and Uniform Commercial Code) principles of “holder in due course” or “privity of contract”.

(302) “Holder in due course” and “privity of contract” were key elements of common law jurisprudence (and are enshrined and restated in the California

Commercial Code) but these doctrines are preserved, where not expressly overturned, and specifically protected from interference by the state governments under Article I, §10, Cl. 1 of the United States Constitution, as well as under the Ninth Amendment, where all common law and prerogative rights are preserved to the people, except where necessary to protect or advance a compelling governmental interest in the state's interest of self-protection or emergency exercise of the police power. Cf., e.g., *Allied Structural Steel Co. V. Spannaus, Attorney General Of Minnesota, et al.*, 438 U.S. 234; 98 S. Ct. 2716; 57 L. Ed. 2d 727 (1978).

COUNT XVI: DECLARATORY JUDGMENT:

NO VALID CONTRACT EXISTS

(303) Plaintiffs reallege the above and foregoing ¶¶ 1-302 of this their Third Amended Complaint and incorporate the same by reference as if fully copied and restated herein below.

(304) Under California Civil Code §§1549-1550 *et seq.*, a contract is an “agreement to do or not to do a certain thing” which requires mutual promises of detrimental undertaking between at least two parties; the detrimental undertakings are the bargained for exchange known as “consideration.”

(305) In June of 2003, Plaintiff's assignor (predecessor in interest) Hal Kuder pledged his real estate “lawfully seized” to Wells Fargo Bank, but it is difficult to determine from the record what, if anything, Wells Fargo promised to do in exchange, aside from insuring its own power to collect money from Hal Kuder; in particular, Wells Fargo never promised to transfer any money from itself to Hal Kuder, although it required Hal Kuder to sign a note acknowledging debt.

(306) Plaintiff alleges that Hal Kuder's obligation to Wells Fargo constituted and was treated as an asset to Wells Fargo, providing only detriment from Hal Kuder but incurring no detriment on Wells Fargo's part, with no benefit flowing from Wells

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3 Fargo itself to Hal Kuder, and therefore not constituting valid consideration within
4 the meaning of California Civil Code §1605.

5 (307) Plaintiff Renada March pledged her real estate just like Hal Kuder on
6 December 28th, 2006 to Defendant IndyMac Bank but received nothing from
7 IndyMac in return. Plaintiff March also alleges that IndyMac did not provide any
8 detriment to her while she pledged detriment on her behalf via her credit score and
9 money. Plaintiff March alleges that this does not constitute a valid consideration
10 within the meaning of California Civil Code §1605 regarding the property located at
11 7 Bluebird Lane Aliso Viejo, California 92656.

12 (308) Plaintiff Joseph Cohen received his original loan through Accredited Home
13 Lenders on or about June the 1st, 2002. Defendant Chase Bank subsequently bought
14 the property in the securities market. Plaintiff Cohen alleges also that Chase Bank
15 cannot accordingly prove detrimental undertakings of any kind pursuant to
16 California Civil Code § 1605 regarding the property located on 11 Lighthouse Pt.
17 Aliso Viejo, CA 92656. Plaintiff Joseph and Carol Cohen requests this Court order
18 Chase Bank to produce the receipt of their purchase and show that the funds were
19 made available in full for their note.

20 (309) A contract concerning real property is not binding on either party unless its
21 obligations are mutual and reciprocal. *Prather v. Vasquez*, 162 Cal. App. 2d 198,
22 327 P.2d 963 (1958).

23 (310) Plaintiff Dan Mack signed his agreement with AEGIS Wholesale Corporation
24 on or about January 19th, 2007. Commonwealth land title as servicer/trustee. MERS
25 was the beneficiary.

26 (311) An unenforceable contract as between the two original parties transfers no
27 right title or interest in said property; Hal Kuder's contract with Wells Fargo lacked
28 bilateral detriment and mutuality and is therefore unenforceable by Wells Fargo.

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3 (312) Plaintiff March's contract with IndyMac lacked bilateral detriment and
4 mutuality and is unenforceable by IndyMac.

5 (313) Plaintiff Cohen's contract with the originator, Accredited Home Lenders,
6 lacked bilateral detriment and mutuality and is unenforceable by the new owners
7 Defendants Chase Bank.

8 (314) Where one party elicits promises from another but neither promises nor
9 undertakes any action detrimental to itself, that party has not "contracted" with the
10 other.

11 (315) Defendants Wells Fargo, IndyMac, Aegis and Chase Bank total neither
12 promised nor did transfer its own money to Hal Kuder, Plaintiff March, Mack or
13 Joseph and Carol Cohen, but the money of an unidentified third party ("Fannie Mae"
14 or "Freddie Mac").

15 (316) Whereas on page 3 of the Deed of Trust, tendered by Wells Fargo Bank it is
16 recited that "Borrower Covenants that Borrower is lawfully seized of the estate
17 hereby conveyed and has the right to grant and convey the property and that the
18 property is unencumbered, except for encumbrances of record..." And on page 2 of
19 the same Deed of Trust the term "loan" is defined as "the debt evidence by the note,
20 plus interest, any prepayment charge and late charges due under the note, and all the
21 sums due under this Security instrument, plus interest", nowhere is it affirmed or
22 explained that the loan proceeds come from the "Lender" Wells Fargo; indeed it is
23 specifically stated (again on page 2) that "the Note states that Borrower owes Lender
24 Three Hundred Twenty Two Thousand Six Hundred Ninety Nine and 00/100 dollars,
25 plus interest"

26 (317) NOWHERE DOES IT STATE THAT WELLS FARGO WAS THE
27 LAWFUL OWNER OF THE MONEY IT WAS DELIVERING TO HAL KUDER,
28 NOR EVEN THAT THE MONEY WAS ADVANCED AGAINST THE CREDIT

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3 OF WELLS FARGO, NOR ANY OTHER INDICATION OF DETRIMENTAL
4 ACTION PROMISED OR UNDERTAKEN BY WELLS FARGO BANK.

5 (318) Plaintiffs allege and will show, pursuant to §§1614-1615 of the California
6 Civil Code, that Defendants Wells Fargo, Aegis, IndyMac and Chase Bank provided
7 nothing of any value to Hal Kuder, Plaintiff March or Plaintiff Cohen in that Wells
8 Fargo, IndyMac and Chase Bank cannot show that they promised to transfer or did in
9 fact transfer anything actually belonging to or possessed by Wells Fargo to Hal
10 Kuder and the Plaintiffs;

11 (319) wherefore, no valid encumbrance was created by the Deed of Trust or
12 Mortgage Contract between Hal Kuder, the Plaintiffs and the Defendant Banks,
13 despite the existence of a written instrument which creates a rebuttable presumption
14 of consideration under California law.

15 (320) This is standard mortgage finance industry practice, but that fact that it is
16 common practice, does not mean that common practice satisfies the California
17 common or statutory law of contractual viability because the consideration for a
18 promise must be an act or a return promise, bargained for and given in exchange for
19 the promise. *Prather v. Vasquez, supra.*

20 (321) A mortgage is originated after a broker or “originating institution” receives a
21 series of promises from a “borrower”; these promises take the form of a mortgage
22 contract and a negotiable instrument known as a “promissory note.”

23 (322) The originator typically neither promises nor undertakes any action
24 detrimental to itself, while soliciting and receiving a large number of promises and
25 actions detrimental to the note grantor or borrower.

26 (323) A promissory note is securitized by a transfer of the “borrower’s” or grantor’s
27 note into a bundle of similar notes, group ranked and rated by FICO scores, date,
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3 location, and value of property, into a Mortgage-Backed Equity or Collateral Backed
4 Obligation (MBE or CBO).

5 (324) Once a promissory note is transferred into a securitized bundle, the originator
6 or initial lender is no longer “holder in due course” of said note as a matter of law,
7 and is no longer in privity with the “borrower” or original grantor.

8 (325) Wells Fargo Bank securitized Hal Kuder’s mortgage and note and in fact
9 transferred legal and beneficial interest in that note to an unknown party.

10 (326) Wherefore and accordingly, Plaintiff prays first that this Court will declare
11 that the contract between Hal Kuder and Wells Fargo Bank was unsupported by any
12 detrimental promises or performance on behalf of Wells Fargo Bank, pursuant to
13 mortgage finance industry and custom, and in additionally or in the alternative that
14 this Court will declare and adjudge that Wells Fargo, having securitized the
15 mortgage, was no longer the holder in due course of Hal Kuder’s note and had no
16 right title or interest in the enforcement or collection of that note.

17 (327) Wherefore and accordingly, Plaintiff prays that this Court will declare and
18 adjudge that no valid contract exists or ever existed between Hal Kuder and Wells
19 Fargo Bank, and that Hal Kuder was entitled to transfer all his right, title, and
20 interest in the property at 4 Via Corbina to Plaintiff Charles Edward Lincoln, to
21 whom quiet title should now be awarded.

22 **COUNT XVII: DEFENDANT BANKS ARE NO LONGER IN PRIVTY OF**
23 **CONTRACT WITH THE PLAINTIFFS**

24 (328) Plaintiffs reallege ¶¶ 1-327 of this their Third Amended Complaint and
25 incorporate the same by reference as if fully copied and restated herein below.

26 (329) Though California state statutes ignore common laws governing contracts,
27 states all across the East Coast have codified it completely. Seemingly the only
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3 relevant codes in California pertaining to Holder in Due Course Doctrine are located
4 in the California Commercial Code §§ 3301-3312.

5 **(330)** The CCC § 3302(a)(c) is EXPLICIT, you cannot be a holder in due course (or
6 have privity of contract) by buying a mortgage note through a “bulk transaction”:

7 “(c) Except to the extent a transferor or predecessor in interest has rights
8 as a holder in due course, a person does not acquire rights of a holder in
9 due course of an instrument taken (1) by legal process or by purchase in
10 an execution, bankruptcy, or creditor's sale or similar proceeding, (2) by
11 purchase as part of a bulk transaction not in ordinary course of business
of the transferor”

12 **(331)** Plaintiffs submit and ask this court to find, hold, rule, and adjudge that the
13 modern day securitization, bundling and selling of notes in the international
14 securities market constitutes a “bulk transaction” and subsequently destroys privity
15 of contract pursuant to the California Commercial Code §3306(c).

16 **(332)** Further Plaintiffs argue that Defendant Banks and Defendant Servicers lack
17 the ability to sell because, assuming that the obtained the notes outside of bulk
18 transfers, they did not buy it 1) for value and 2) in good faith pursuant to the CCC §
19 3302(a)(2):

20 "holder in due course" means the holder of an instrument if both of the
21 following apply: (1) The instrument when issued or negotiated to the
22 holder does not bear such apparent evidence of forgery or alteration or
23 is not otherwise so irregular or incomplete as to call into question its
24 authenticity. (2) The holder took the instrument (A) for value, (B) in
25 good faith, (C) without notice that the instrument is overdue or has been
26 dishonored or that there is an uncured default with respect to payment of
27 another instrument issued as part of the same series, (D) without notice
28 that the instrument contains an unauthorized signature or has been
altered, (E) without notice of any claim to the instrument described in
Section 3306, and (F) without notice that any party has a defense or
claim in recoupment described in subdivision (a) of Section 3305.

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3 (333) Plaintiffs have alleged before and now allege again that the banks have not
4 given anything of detrimental value as consideration, or if they did, they bought in
5 bulk, and therefore did not buy the mortgages for value pursuant to the California
6 Commercial Code (CCC).

7 (334) Plaintiffs further add that, due to the myriad laws the banks and their servicers
8 have violated this transaction could not POSSIBLY be in good faith.

9 (335) Because of Defendants failure to obtain the Plaintiff's notes outside of 1) mass
10 transactions for 2) value and 3) with good faith, Defendants cannot possibly be
11 holder in due Course pursuant to the CCC.

12 (336) Plaintiffs go on to submit and contend that the common law principle "holder
13 in due course" requires that the Defendant Banks actually (1) possess the original
14 note each Plaintiff signed with the originating lender which each of them almost
15 certainly DO NOT possess, and (2) be able to prove by open-books accounting that
16 they both acquired the note for value and never transferred it to any other party or
17 received value for doing so.

18 (337) Plaintiffs argue that the codified language born out of common law and used
19 in states like Florida, New Jersey and New York is the SAME common law that
20 California has (and the other 48 states for that matter) used to govern contracts.

21 (338) Plaintiffs allege that Defendants Wells Fargo, IndyMac, AEGIS wholesale
22 mortgage co. and Chase Bank (along with their servicers) cannot enforce their
23 contracts because they lack privity of contract.

24 (339) WHEREFORE Plaintiffs pray that this Court find the Defendant Banks and
25 Defendant Servicers guilty of lacking privity with each Plaintiff. Plaintiffs further
26 request that this Court render Plaintiff's contractual agreements null and void,
27 stripping the Defendant Banks and Defendant Servicers of their rights to collect or
28 enforce the mortgage agreements that they lack privity with.

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4 **COUNT XVIII: DEFENDANT BANKS ARE FIDUCIARIES TO PLAINTIFFS**

5 (340) Plaintiffs reallege ¶¶ 1-333 of this their Third Amended Complaint and
6 incorporates the same by reference as if the same were fully copied and restated
7 herein below.

8 (341) Plaintiffs argue that if their contracts are indeed valid and if their Notes are
9 still in the hands of the Defendant banks, then the Defendant banks have a lot of
10 explaining to do. In fact, the Defendants owe the Plaintiffs an accounting of all
11 transactions they made after a “deposit” or receipt of money, was made.

12 (342) Pursuant to 12 USC § 1813(i)¹ a “deposit” is receipt of money, which has not
13 been paid.

14 (343) Using the language defining the word “deposit” located in title 12 § 1813 of
15 the United States Code, the Defendant Banks accepted Hal Kuder (the rights of
16 which have been assigned to Plaintiff Lincoln), Plaintiff March, Plaintiff Daniel
17 Mack and Plaintiff Cohen’s signed Promissory notes and gave the borrower
18 Plaintiffs the cash necessary to purchase the property in question. Plaintiffs argue
19 that this is not true:

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22 ¹ (I) Deposit

The term “deposit” means—

23 (1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual
24 course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a
25 commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift
26 certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a
27 deposit account and certified by the bank or savings association, or a letter of credit or a traveler’s check on which the
28 bank or savings association is primarily liable: **Provided, That, without limiting the generality of the term “money
or its equivalent”, any such account or instrument must be regarded as evidencing the receipt of the equivalent
of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the
person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a
deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings
association for collection.**

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3 (344) The promissory note signed by Hal Kuder was received as a deposit and none
4 of the paperwork produced by the Defendants in this case suggest that all or any part
5 of this “deposit” was ever paid.

6 (345) The promissory note signed by Plaintiffs Cohen, March and Mack were also
7 received as a deposit and none of the paperwork produced by the Defendant Banks in
8 this case suggest that all or any part of this “deposit” was paid.

9 (346) Plaintiffs argue that the note itself is a trust document constituting in turn a
10 Trust Corpus, handed over from the Grantors (Hal Kuder and his assignees and the
11 remaining Plaintiffs) to the Grantee (Wells Fargo et al).

12 (347) The promissory note itself is therefore received as a deposit (held in trust)
13 regarding whose handling the bank is liable for to Hal Kuder, his successors and
14 assignees, (in this case the Plaintiff) and the remaining Plaintiffs as a fiduciary that is
15 1) holding the note in trust as defined in 12 §1813(p) and therefore 2) subject to
16 accountability pursuant to 29 USC § 1104.

17 (348) WHEREFORE Plaintiffs pray and request that this Court order Defendant
18 Banks and Defendant Servicers to give an accounting of the monies taken from each
19 and every Plaintiff in this case and show where those funds went. Further, in
20 congruence with Count XVII, Plaintiffs pray that this Court will owe a complete
21 refund of all monies given to Defendant Banks by and through their Servicers after
22 the accounting has been completed.
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3 **COUNT XIX: DEFENDANT SERVICERS KNEW**
4 **OR SHOULD HAVE KNOWN**

5 (349) Plaintiff realleges ¶¶ 1-347 of their Third Amended Complaint and
6 incorporates the same by reference as if the same were fully copied and restated
7 herein below.

8 (350) Plaintiff alleges that CAL-WESTERN RECONVEYANCE CORPORATION,
9 MTC Financial, MERS and California Reconveyance knew or should have known
10 the true nature of the contracts between Defendant Banks and the Plaintiffs because
11 that agreement conformed to common mortgage-finance industry practices, customs,
12 and procedures, all of which rendered the contracts either void or voidable according
13 to California law.

14 (351) It is inconceivable that these industry specialists did not realize and recognize
15 the disconformity between common law and statutory contractual rights and the
16 wide-spread industrial practice of securitized mortgages based on mortgage contracts
17 which cost nothing to the “lender” to lend beyond very minor origination costs.

18 (352) Plaintiffs alleges that, in fact, Defendant Servicers could not possibly have
19 acted in good faith within the meaning of California Civil Code §2924(b) or the
20 California Commercial Code §§3301-3312, because the contractual terms recited in
21 each deed of trust, are so one-sided and devoid of any obligation to perform any act
22 on the part of Defendant Banks that real estate professionals knew or should have
23 known that they were in fact participating in and facilitating a fraud.

24 (353) The nature of the fraud was precisely that Defendant Banks claimed to have a
25 contract based on a written instrument, which clearly delineates that all consideration
26 flows one way, and which does not impose a single affirmative duty on Defendant
27 Banks to provide ANYTHING of value to Plaintiffs Mack, Mendez, March,
28 Lincoln, Joseph and Carol Cohen.

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3 (354) Nor can Defendant Banks show that, as a matter of fact, it DID provide
4 anything of value (nor anything which it owned or possessed, nor any "service" other
5 than debt collection on its own behalf) to the Plaintiffs.

6 (355) To the degree that California Civil Code §§1614 and 2924 afford any legal
7 immunity or protection to fraudulent devices in mortgage finance, those provisions
8 of the California Civil Code should be declared unconstitutional impairments on the
9 obligations of contract forbidden to the States and the Federal Government under the
10 Constitution of the United States of America.

11 **COUNT XX: "SERVICERS HAVE NOT BEEN PROPERLY ASSIGNED"**

12 (356) Defendant Servicers have never and cannot prove they have received the Note
13 or Deed of Trust by lawful written assignment. The Note was likewise never
14 endorsed to them, nor ever physically delivered to them.

15 (357) In no uncertain terms, defendants had no relationship whatsoever with any of
16 the Plaintiffs of this case.

17 (358) Indeed, defendants servicers had no relationship with the Plaintiffs beyond any
18 other random third party, had this been a Judicial Foreclosure, Plaintiffs' would have
19 immediately brought a Demurrer. *California Code of Civil procedure § 367*
20 provides that:

21 "Every action must be prosecuted in the name of the real party in
22 interest, except as otherwise provided in statute."

23 (359) Defendants Cal-Western, MTC Financial, California Reconveyance and
24 MERS have not proved that the claim it was assigned in their Note and Deed of
25 Trust (*see* "Deed of Trust" for March, Mack, Mendez & The Cohens attached as
26 Exhibits J, K, L, M):
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28 "The burden of proving an assignment falls upon the party asserting

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3 rights thereunder. In an action by an assignee to enforce an assigned
4 right, the evidence must not only be sufficient to establish the fact of
5 assignment when that fact is in issue, but the measure of sufficiency
6 requires that the evidence of assignment be clear and positive to protect
7 an obligor from any further claim by the primary obligee."

8 *Cockerell v. Title Insurance & Trust Co. (1954) 42 Cal. 2d 284, '292*

9 (360) Plaintiffs assert that because these assignment are contested in this case, in a
10 judicial foreclosure defendants would need to meet the requirements of CACI Jury
11 Instruction No. 326, Assignment Contested. It states:

12 Plaintiffs was not a party to the original contract. However, Plaintiffs
13 may bring a claim for breach of contract if it proves that (name of
14 assignor) transferred its rights under the contract to Plaintiffs. This
15 transfer is referred to as an assignment.

16 Plaintiffs must prove that (name of assignor) intended to transfer its
17 contract rights to Plaintiffs. In deciding (name of assignor)'s intent, you
18 should consider the entire transaction and the conduct of the parties to
19 the assignment.

20 Accordingly, defendants had no standing whatsoever to bring a non-judicial
21 foreclosure.

22 (361) WHEREFORE Plaintiffs ask this Court to declare the Defendant/servicers
23 Cal-Western, North American Title Co & MERS ineligible to perform their roles as
24 servicers for the Bank Defendants in the State of California unless proper
25 assignments can be provided.

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PART V:
“REQUESTED REMEDIES “

COUNT XXI: TO VOID SALE OF 4 VIA CORBINA,
RANCHO SANTA MARGARITA, CA

(362) Plaintiffs reallege ¶¶(1)-(361) as if fully copied and restated herein below.

(363) In July and August, 2008, Plaintiff Charles Edward Lincoln repeatedly and formally tendered full payment of the obligations to Wells Fargo Bank, N.A., which he assumed from Hal Kuder, Jr., in June 2008, conditioned only upon the provision by Wells Fargo Bank of proof of status as holder in due course of Hal Kuder's note.

(364) To Plaintiff Charles Edward Lincoln's tender of payment, offers made by telephone and in writing, Wells Fargo Bank, N.A., did not respond at all.

(365) Plaintiffs allege that in this era of securitized mortgages, it is customary for Banks to refuse to prove their status as holder in due course of mortgage notes, because in fact, banks and finance companies all immediately sell their notes into pools or bundles either before or after receiving the note, which must be recorded as a deposit in cash under 12 U.S.C. §1813(l).

(366) After August 23, 2008, Lincoln made no further tender offers to Wells Fargo, but the foreclosure sale, whether legal or illegal, is not alleged to have taken place until 8 months later, on April 24, 2009.

(367) Rather than waiting for the foreclosure sale, however, Lincoln filed a Complaint in this Court (SA08-cv-01334 DOC(Ex)) against Wells Fargo and California Reconveyance on or about November 21, 2008, to which Defendants appeared subject to motions under Rule 12(b) in or about January or February 2009.

(368) Cal-Western Reconveyance had received Lincoln's First Amended Complaint in this case filed on or about April 17, 2009, one week before the April 24, 2009, sale, of which Lincoln had absolutely and positively NO NOTICE despite the fact that he was in regular and more-or-less continuous contact with Cal-Western Reconveyance's attorneys.

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3 (369) There is absolutely no possibility, under these circumstances, that Defendants
4 GRE Development, 4 Via Corbina Trust, Ron Elter, John Rampello, or Steven David
5 Silverstein acted in good faith in purchasing the property, and in fact these
6 defendants took whatever interest in 4 Via Corbina they acquired by paying Wells
7 Fargo (which had already sold the note) through Cal-Western Reconveyance (which
8 had no legal chain of title at all) on the foreclosure of a note which had been sold to
9 third parties in the securitization and pooling process, and so there was no way that
10 such a thing as a bona fide purchase was remotely possible.

11 (370) Defendant Steven David Silverstein relies upon the tender rule as a
12 precondition to alleging wrongful foreclosure, fraud, and negligence relating to
13 defective notice of foreclosure sale, together with his reliance on California Civil
14 Code §§1714.10 and 2924.

15 (371) Plaintiffs allege and submit that the “full tender offer” as a prerequisite to
16 asserting claims for wrongful foreclosure, fraud, and negligence relating to defective
17 foreclosure is but another unconstitutional impairment of the obligations and rights
18 of contractual relations, especially as relating to state-assisted foreclosure as a means
19 of enforcing debt, because the “full tender offer” pre-requisite denies equal
20 protection of the laws and due process of the laws to victims of fraudulent
21 foreclosure.

22 (372) The “full tender offer” rule as outlined in California judge-made case law acts
23 and operates as a plain violation of 42 U.S.C. §§1981, 1982 (read color-blind) as
24 well as the Fifth and Fourteenth Amendments and Plaintiffs pray that this court will
25 so declare and adjudge upon final trial of this cause.

26 (373) It is particularly outrageous under 42 U.S.C. §§1981 and 1982 that claims for
27 fraud leading to wrongful foreclosure could or would be either cut off *ab initio* or
28 conclusively defeated by a “full tender offer rule” because (for example) a stranger

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3 to an original loan transaction could, merely by false recitals in compliance with
4 §2924 and representation by counsel insulated by §1714.10, could purchase a
5 property at a sham foreclosure sale (as Silverstein and Ron Elter apparently did as
6 officers and representatives of the 4 Via Corbina Trust on or about April 24, 2009)
7 and then proceed through further false recitations to file and process a fraudulent
8 forcible detainer (eviction) case through the cookie-cutter/mass production eviction
9 line in the Superior Courts of Orange County, State of California.

10 **(374)** Steven David Silverstein's utilization of unconstitutional (and in fact,
11 unconscionable) California Statutes and judicial norms of interpretation and
12 application having the force and effect of customary, practical, and political law
13 create a genuinely lawless world in which certain formulaic lies control the outcome
14 of non-judicial foreclosures and quasi-judicial (but effectively ministerial, merely
15 administrative) eviction proceedings.

16 **(375)** In the culture of lawlessness fostered by Silverstein and his allies, in collusion
17 with the Mortgage Finance Banks and Servicers, it was completely normal for
18 Silverstein utterly to refuse to communicate with Lincoln's former, famous but
19 inexperienced attorney Dr. Orly Taitz, and to expect that he owed his fellow
20 professional neither candor nor any sort of disclosures about his activities or plans,
21 but that he simply utilize the cover provided by a nominal attorney (like loan
22 modification negotiations) as camouflage for his trickery and abuse of legal process.

23 **(376)** WHEREFORE, Plaintiffs pray that this Court will void and nullify the April
24 24, 2009, sale of 4 Via Corbina to GRE Development, Ron Elter, John Rampello,
25 and Steven David Silverstein, thereby restoring title to Charles Edward Lincoln, III,
26 requiring Defendants to disgorge all benefits gained in the past year for their
27 wrongful exercise of use and beneficial possession.
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COUNT XXII: TO VOID THE SALE OF
7 BLUEBIRD LANE, ALISO VIEJO, CA

(377) Plaintiffs reallege ¶¶(1)-(376) as if fully copied and restated herein below.

(378) Plaintiff Renada Nadine March was involved in a serious forbearance and loan modification negotiations with her alleged “lender” IndyMac/OneWest Bank, N.A., by and through NACA (Neighborhood Assistance Corporation of America), and accordingly alleges that the October 9, 2009, sale was a breach of contract, a tortious breach of the implied duty of good faith and fair dealing, and happened without notice during a fraudulently induced period of sham negotiations.

(379) It was in fact on October 10, 2009, that Defendant learned (at the NACA “Save the Dream Tour” Home Save Program in Las Vegas) that Indymac had sold MARCH’s property on October 9, 2009). She then returned home to find Silverstein’s Three-Day Notice to Quit attached to her door. Silverstein appears to specialize in blitzkrieg evictions following illegal and secret non-judicial foreclosure sales immunized by §2924.

(380) Thus the foreclosure sale was conducted in secrecy and in stealth behind RENADA NADINE MARCH’s back in such a manner that RENADA NADINE MARCH defrauded of the implied covenant of good faith and fair dealing, which was so extreme and outrageous as to constitute actual or constructive fraud on the part of INDYMAC/ONE WEST, and this actual or constructive fraud right up until the moment of sale, in that the allegedly foreclosing party had no advance notice of when the final foreclosure was due to take place.

(381) Pursuant to the customs, practices, and policies of the State of California, Plaintiffs allege defendants in Unlawful Detainer actions have no effective defense or counterclaims whatsoever, especially regarding the legality of underlying non-judicial foreclosures.

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3 (382) Plaintiffs allege that California law or customary and political practice,
4 especially but not limited to Civil Code §§1714.10 and 2924 and Code of Civ. Pro.
5 §425.16 fix judicial process so that all evictions will be completed, regardless of the
6 existence or availability of valid legal objections, by preventing Plaintiff victims
7 from raising or immunizing Defendant perpetrators from liability, even for fraud.

8 (383) The combination of circumstances put Renada Nadine March on notice that
9 she was and would always “be denied [and] cannot enforce in the courts of [the
10 Superior Court of Orange County in the] State [of California any of his] right[s]
11 under any [and all] law[s] providing for the equal civil rights of citizens of the
12 United States, or of all persons within the jurisdiction thereof.” 28 U.S.C. §1443(1);
13 42 U.S.C. §§1981, 1982, 1983, 1988(a).

14 (384) Furthermore, Plaintiffs allege and will show that they are all single, divorced,
15 or separated persons living alone, and as such are subjects of targeted discrimination.

16 (385) In particular single women (Plaintiff MARCH) are subject to targeted
17 discrimination by the attorneys (“officers of the court”) and Judges of the Superior
18 Courts of California, while LINCOLN and MARCH are both persons over the age of
19 40, also belonging to age-disadvantaged groups.

20 (386) WHEREFORE, Plaintiffs pray that this court will void and nullify the sale of 7
21 Bluebird Lane in Aliso Viejo, Orange County, California by the Trustee Corps to
22 Meglodon Financial, L.L.C., and restore title free to and clear of encumbrances
23 against Renada Nadine March.
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3 **COUNT XXIII: VOID SALE OF REMAINING PLAINTIFF'S HOMES**

4 (387) Plaintiffs reallege ¶¶(1)-(386) as if fully copied and restated herein below.

5 (388) Plaintiffs Mendez, Mack, Singh, Joseph Cohen and Carol Cohen, the last two
6 of which list are equal fifty/fifty owners in the property located at 11 Lighthouse
7 Point, Aliso Viejo, CA 92656 request that this Court void the sale of their property to
8 Defendant Lighthouse Trust #11 because it is a non entity in violation of the
9 California Business and Professional Code.

10 (389) Plaintiffs Mendez, Mack, Singh, Joseph and Carol Cohen go further to submit
11 that Bank Defendants lacked privity of contract pursuant to the California
12 Commercial Code §§ 3301-3312 and breached their good faith and fair dealing duties
13 and fiduciaries.

14 Plaintiffs also allege that Defendant Silverstein is guilty of fraud and a breach of the
15 good faith and fair dealing doctrine for representing a host of empty corporations and
16 entities that all lack legal significance of any kind.

17 (390) WHEREFORE Plaintiffs Mack, Mendez, Singh, Joseph Cohen and Carol
18 Cohen pray that this Court would void the sale of their property for the above and
19 foregoing reasons.
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**COUNT XXIV: TENDER, RESCISSION
& THE DOCTRINE OF CLEAN HANDS**

(391) Plaintiffs reallege ¶¶1-390 and incorporate the same by reference.

(392) Plaintiffs seek a declaratory judgment that, as a matter of equity, only the holder-in-due-course in due course who is ALSO a person/entity in privity of contract with a mortgagor, his successor, or assigns, can demand TENDER as a necessary precondition of rescission or voiding of mortgage or mortgage foreclosure sale.

(393) Plaintiffs further ask the Court to declare and adjudge that a mortgagor is always entitled to demand “further assurances”, or even a formal accounting, of a party claiming status as holder-in-due-course, as a precondition to making a tender offer, as Plaintiff Charles Edward Lincoln demanded of Wells Fargo Bank in July-August of 2008.

(394) Without proof of holder-in-due-course status as a matter of equity and privity of contract as a matter of law, the claim to payment under any promissory note or pursuant to any mortgage contract must be denied as false and fraudulent.

(395) Accounting is a suitable remedy for the mortgagor, and a reasonable precondition for a mortgagee-claimant’s demand for tender of payment in full, since, as argued earlier, the mortgagor/mortgage grantor’s “promissory note” MUST be accepted by any national banking association as a “deposit in cash” (i.e., as a deposit of money or its equivalent), and it is AXIOMATIC that any bank is a fiduciary owing a trustee’s accounting to all depositors for all deposits received and held under 12 U.S.C. §1813l.

(396) Any time a non-cash substitute is treated as a depository equivalent of money, the depositor (in this case, the mortgagor/grantor of mortgage) is entitled to demand what has become of his deposit (i.e. whether the non-cash collateral, commercial paper, has been negotiated or “cashed” outside of the bank to other persons or

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3 entities, so that the depositor's true status can be revealed). Any time a fiduciary
4 makes a significant profit on the use of a beneficiary/depositor's collateral, the
5 fiduciary must account for the profit to his beneficiary (the depositor). Any time a
6 fiduciary fails so to account for the profits made on deposits received, he has in
7 effect embezzled the funds and owes full disgorgement, including ill-gotten gains
8 obtained by and through breach of fiduciary duty, to the depositor/mortgage
9 grantor/trust beneficiary under the banking code.

10 **(397)** Tender as a precondition for rescission:

11 **(398)** Defendants Silverstein et al. (by and through Larry Rothman, their attorney)
12 repeatedly have alleged and contended (like Defendants in many cases) that
13 mortgage rescission is unavailable absent tender of the full amount of the principal
14 mortgage "credit" balance.

15 **(399)** Obviously, California Civil Code §§1695.13-1695.14 allows and provides
16 statutory grounds for a form of unilateral rescission of a mortgage foreclosure sale by
17 the injured original homeowner/mortgagor. Albeit it is equally obvious that these
18 sections define no traditional equitable remedy of rescission, but some statutory
19 hybrid whose legislative language cries out for more precise definition in this case by
20 this Court, as Plaintiffs have requested in seeking declaratory judgment to construe
21 and apply these sections.

22 **(400)** With regard to traditional notions of rescission and tender, Plaintiffs plainly
23 contend and submit that ONLY a holder-in-due-course can demand full tender as a
24 condition for rescission, because ONLY a true holder-in-due-course (as a matter of
25 equity) can approach a court with "clean hands" in regard to its demand for a
26 **LAWFUL TENDER OF LEGAL MONEY** as a condition for the **EQUITABLE**
27 **REMEDY OF RESCISSION.**
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3 (401) Plaintiffs submit that Silverstein and his clients, and their privities of purchase
4 at the non-judicial foreclosure sales, can never truly approach the Court with “clean
5 hands” in this sense, in that they know all the conditions and circumstances of the
6 credit application/extension/collection process. With regard to the specific Plaintiffs,
7 Charles Edward Lincoln, III, alleges that he made a full tender in July-August of
8 2008, albeit he conditioned his tender-offer on proof of holder-in-due-course
9 status. Plaintiff Charles Edward Lincoln, III, further contends that he would be able
10 to obtain financing within 30 days at any time after the proof (by fiduciary
11 accounting) of the identity of the true holder in due course of the note granted by Hal
12 Kuder, Jr., who assigned and deeded all his right, title, and interest in his mortgage
13 note with Wells Fargo Bank to Lincoln in June of 2006, along with his deeds to the
14 house at 4 Via Corbina and other properties.

15 (402) Plaintiff Renada Nadine March submits that her good faith participation in the
16 mortgage modification process initiated by OneWestBank amounts to an equivalent
17 tender offer of payment in full which must be respected in evaluating her demand for
18 rescission pursuant to §§1695.13-14 of the California Civil Code, and that no further
19 tender can be required of her.

20 (403) Several of the other plaintiffs were in modification at the time of their
21 foreclosure sales, and of course, Daniel Christian Mack was in Bankruptcy at the
22 time of his eviction.

23 (404) Given the inequitable conduct of all Defendants, they are in no position to

24 (405) Wherefore, Plaintiffs submit that this Court appropriately find, hold, decree,
25 declare, and adjudge that only a proven holder-in-due-course of a note may demand
26 legal tender as a precondition to rescission, and that mortgagors as depositors have a
27 trust beneficiary’s right to demand an accounting of the management and handling of
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3 his promissory note---his (or her) “deposit” which must be treated the equivalent of
4 money under 12 U.S.C. §1813l.

5 **CONCLUSIONS AND PRAYER FOR RELIEF**

6 Defendant Steven David Silverstein alleges and contends that he acted
7 competently, ethically, and legally in representing GRE Development, Inc., Ron
8 Elter, and the 4 Via Corbina Trust in the eviction proceedings of which neither
9 Lincoln nor his former attorney Dr. Orly Taitz had any lawful notice or actual
10 knowledge prior to the appearance of Orange County Sheriff’s Constables at the
11 door of 4 Via Corbina in mid-September 2009. It is apparently the most trivial of
12 coincidences that there are repetitive patterns of similarity between Silverstein’s
13 evictions: all involve filing forcible detainers filed after sales which either (Lincoln,
14 Mack, Cohen) which took place during hotly contested Federal civil litigation or
15 (March) during intense and actively supported and acknowledged negotiations
16 ostensibly leading towards loan modifications. Silverstein depends entirely upon the
17 privileges and immunities granted to foreclosing parties and their attorneys by
18 California Civil Code §§1714.10 and 2924, augmented by Code of Civil Procedure
19 425.16 and other miscellaneous privileges and immunities from suit, which
20 unconstitutionally tend to create foreclosing parties as a special elite inside
21 California Economic Society. Plaintiffs reiterate their prayers stated in each count
22 above and pray for judgment accordingly after a trial-by-jury. Plaintiffs pray that the
23 Court will reform the non-judicial foreclosure process in the State of California.

24 **CERTIFICATE OF SERVICE:**

25 Plaintiffs Charles Edward Lincoln, III, Renada Nadine March, Daniel Mack,
26 Joseph Cohen and Carol Cohen certify that they have served a true and correct copy
27 of this First Amended Complaint upon the Defendants’ counsel by facsimile
28 transmission to (714) 363-0229 as well as by electronic (e-mail) attachment to Larry

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3 Rothman's e-mail address shown as tocollect@aol.com on the cover sheet of
4 Rothman's original filing for Defendant Silverstein, and by regular mail or courier
5 deliver to the attorney for Steven David Silverstein:

6 Larry Rothman & Associates
7 Larry Rothman, State Bar No. 72451
8 City Plaza, 1 City Boulevard West, Suite 850
9 Orange, California 92868

10 Signed & Respectfully submitted,

11
12 Wednesday, September 22nd, 2010
13

14
15 CHARLES E. LINCOLN III, *pro se*
16 c/o Peyton Yates Freiman
17 603 Elmwood Place, Suite #6
18 Austin, Texas 78705
19 Telephone: 512-968-2500
20 Facsimile: 561-691-1423
21 E-Mail: charles.lincoln@rocketmail.com

22
23 Respectfully signed & submitted,

24
25 Wednesday, September 22nd, 2010
26

27 By: _____
28 RENADA NADINE MARCH, *pro se*
7 Bluebird Lane
Aliso Viejo, California 92656
Telephone: 949-742-0436
E-mail: renadajewel@gmail.com

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Respectfully signed & submitted,
Wednesday, September 22nd, 2010

By: _____
JOSEPH COHEN, *pro se*
11 Lighthouse Pt.
Aliso Viejo, California 92656
Tel: 949-300-1870

Respectfully signed & submitted,
Wednesday, September 22nd, 2010

By: _____
CAROL COHEN, *pro se*
11 Lighthouse Pt.
Aliso Viejo, California 92656
Tel: 949-300-1870
Plaintiff *in propria persona*

Respectfully signed & submitted,
Wednesday, September 22nd, 2010

By: _____
DANIEL MACK, *pro se*
31321 Don Juan Avenue,
San Juan Capistrano, California, 92657

Tel: 949-278-2711

Respectfully signed & submitted,

Wednesday, September 22nd, 2010

Alicia Singh
1394 Arrowhead Drive
Placentia, CA92870
Plaintiff *in propia persona*

Richard Mendez
1394 Arrowhead Drive
Placentia, CA92870
Tel: 714-269-3341
Plaintiff *in propia persona*

Note on Exhibits:

Plaintiff Charles Edward Lincoln incorporates by reference all exhibits previously submitted as attachments to the Original Complaint in this cause and in SA08cv01334-Doc(Ex), but for purposes of convenience attaches some of these documents in Exhibit M, including the assignments and deeds from Hal Kuder, Jr., the Mortgage, Deed of Trust, and Notices of Sale.

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Exhibit A:
“March Proposed Notice of Rescission”

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Exhibit B:
“Mack Proposed Notice of Rescission”

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Exhibit C:
“Cohen Proposed Notice of Rescission”

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Exhibit D:
“Daniel Mack’s Bankruptcy Petition”

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Exhibit E:
“Daniel Mack’s Bankruptcy Docket”

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Exhibit F:
“Silverstein’s Handwritten Opposition”

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Exhibit G
“Cohen Returned Letter from
Secretary of State”

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Exhibit H: “Lincoln Superior Court Docket”

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**Exhibit I:
“Lease with D’Agnollo”**

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Exhibit J: “March Deed of Trust”

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Exhibit K: “Mack Deed of Trust”

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Exhibit L: “Cohen Deed of Trust”

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**Exhibit M:
Lincoln's Exhibits from
08-cv-01334-DO**

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3 **PROOF of SERVICE**

4 We the undersigned Plaintiffs Charles Edward Lincoln & Richard Mendez do
5 hereby certify that we have filed and served a true and correct original signed copy
6 of the above-and-foregoing:

7 **THIRD AMENDED COMPLAINT**

8 Simultaneously, by e-mail and facsimile transmission to each of the following
9 attorneys of Record for Steven David Silverstein, Cal-Western Reconveyance, and
10 Wells-Fargo Bank, N.A.:

11 LARRY ROTHMAN & Associates
12 LARRY ROTHMAN, State Bar No. 72451
13 City Plaza, 1 City Boulevard West, Suite 850
14 Orange, California 92868
15 By e-mail: tocollect@aol.com
16 Via Facsimile: (714) 363-0229

17 THOMAS N. ABBOTT
18 PITE DUNCAN, L.L.P.
19 4375 JUTLAND DRIVE, SUITE 200
20 P.O. BOX 17395
21 SAN DIEGO, CALIFORNIA 92177-0935
22 VIA FACSIMILE: 619-590-1385
23 tabbott@piteduncan.com

24
25 **CHARLES E. LINCOLN III, *pro se***
26 c/o Peyton Yates Freiman
27 603 Elmwood Place, Suite #6
28 Austin, Texas 78705
Telephone: 512-968-2500
E-Mail: lincoln_for_california@rocketmail.com

RICHARD MENDEZ, plaintiff, *pro se*
E-Mail: mendez_richard@hotmail.com
Telephone: 714-269-3341