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Paul Johnson & Judith A. Johnson  
550 Edgewater Avenue  
Oceanside, CA 92057  
Plaintiffs *in propria persona*  
Telephone: (760) 738-6631

**SUPERIOR COURT STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

PAUL JOHNSON,	§ CASE NO. <u>37-2010-00096590</u>
JUDITH A. JOHNSON,	§
Plaintiffs,	§ Supplemental Complaint
	§ for Declaratory Judgment re:
v.	§ Constitutionality of Certain Statutes
	§
JP MORGAN CHASE BANK, N.A.,	§
CALIFORNIA RECONVEYANCE CO.,	§
QUALITY LOAN SERVICE CORP.	§ Dept: 61
Defendants.	§ Judge: Hon. John S. Meyer
	§

**PLAINTIFFS HEREBY SUPPLEMENT THEIR COMPLAINT:**

Come now the Plaintiffs with this supplemental complaint presenting three counts of constitutional declaratory judgment: (1) to declare California Civil Code 2924 unconstitutional both (1A) on its face (the statute impairs the obligations of contract without any compelling governmental purpose and facilitates a state assisted-and-state involved taking of private property without due process of law) and (1B) as applied, in light of a judicial policy of enforcement inconsistent with and in fact in defiance of the California Commercial Code, (2) to declare the discrimination against *pro se* litigants embodied in certain California Statutes (e.g.



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through JP Morgan Chase’s purchase agreement they are absolved of all liability for WASHINGTON MUTUAL’s manifold torts and transgressions. JP MORGAN in fact now alleges expressly that it simply cannot assessed liability for the errors and omissions of WASHINGTON MUTUAL BANK, N.A. made regarding the loans being transferred.

**FACTS & CIRCUMSTANCES REQUIRING AMENDMENT:**

Several important facts have arisen during the course of this litigation. First, that JP Morgan Chase contends that the Federal Deposit Insurance Corporation is or ought to be either jointly or solely liable for any injuries caused by the conduct of Washington Mutual. Plaintiffs accordingly seek leave of court to add the Federal Deposit Insurance Corporation as a Defendant in this case, and to order the FDIC to appear and answer prior to any further setting for dispositive motions or for trial. Second, no defendant contends that the foreclosure of Plaintiffs’ property complied with all of the requirements for non-judicial foreclosure found in California Civil Code, Sections 2924 et seq., 2934, and 2941. Rather, the Defendants contend that compliance with the law is, in effect not required and irrelevant.

Plaintiffs counter that where provisions of law within the same jurisdiction contradict one another, the laws and legal framework of that jurisdiction are unconstitutionally void for vagueness and are incapable of affording either due process of law or equal protection under the laws, and must therefore be declared unconstitutional. The entire California system of non-judicial foreclosure is riddled with such fatal contradictions, starting the vesting of power to conduct in an individual called “the trustee.” California Courts are utterly at a loss to make a coherent statement regarding the legal status of this special creature of non-judicial foreclosure law. For example:

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The trustee’s role in preparing for and conducting the sale is set forth in detail in Civil Code section 2924 et seq. “The trustee in nonjudicial foreclosure is not a true trustee with fiduciary duties, but rather a common agent for the trustor and beneficiary. (*Vournas [v. Fidelity Nat. Title Ins. Co.* (1999) ] 73 Cal.App.4th [668,] 677 [, 86 Cal.Rptr.2d 490].) The scope and nature of the trustee’s duties are exclusively defined by the deed of trust and the governing statutes. No other common law duties exist. (*I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 287-288[, 216 Cal.Rptr. 438, 702 P.2d 596]; *Residential Capital v. Cal-Western Reconveyance Corp.* (2003) 108 Cal.App.4th 807, 827[, 134 Cal.Rptr.2d 162].)” (*Kachlon v. Markowitz, supra*, at p. 335, 85 Cal.Rptr.3d 532.) In short, the trustee does not contract with the purchaser for the sale of the foreclosed property, but performs ministerial acts which, when properly executed, result in the transfer of title to the purchaser.

***Pro Value Properties, Inc. v. Quality Loan Service Corp.*, 170 Cal.App.4th 579, 88 Cal.Rptr.3d 381, 09 Cal. Daily Op. Serv. 929, 2009 Daily Journal D.A.R. 1070 (2009)(Internal Citations exactly as in WestlawNext)**

The statement “The trustee in non-judicial foreclosure is not a true trustee with fiduciary duties, but rather a common agent for the trustor and the beneficiary”, illustrates the hopelessly confused, if not completely degenerate, nature of California law on this subject. First, it is fraudulently misleading to call an officer with important legal powers a “trustee”, a term fraught with deep legal meaning in the Anglo-American tradition, if that officer has no fiduciary duties. Second, an “agent” owes just as high a level of fiduciary duty to his principal as does a trustee to his beneficiary. So in the passage quoted above, the juxtaposition between a trustee and an agent is a distinction without a difference---the law itself is internally contradictory and therefore void. The office of a trustee in the non-judicial foreclosure statutes of California is inherently flawed and the statutory interposition of such an officer between two individuals/parties (the “borrower” or “purchaser” and the “seller” or “lender”) amounts to an unconstitutional impairment of the

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obligations of contracts and a state-sponsored mechanism which operates to deprive private people of property without due process of law. The law itself in this case sets up an illegal and improper conflict of interest, and places a privately paid “trustee” without fiduciary duties in the effective structural and functional role of a special judge or judicial officer designated to adjudicate between two opposing parties. This system is intolerable under the Anglo-American system of obligations arising from contract and assumption or pretended assumption of special fiduciary or agent’s status. Another common law and statutory phrase encompassing and implying all the powers of a “true” trustee is “attorney-or-agent-in-fact-with-power-of-attorney”.

Also during this litigation, it has further become apparent that many violations of and derogations from the letter of California law have been committed in the process of this foreclosure:

For example, Defendants submitted documents purporting to show that a valid substitution of trustees had taken place. If such a private judicial officer as “trustee” is lawful or constitutional, it would only be lawful or constitutional as a “creature of statute” (and that statute itself should itself be but in fact is not constitutional), and yet California law lays down requirements which foreclosing servicers routinely ignore, and the courts almost religiously disregard because of the language of the Civil Code in contradistinction to the Commercial Code. For example, Plaintiffs have double checked the documents offered and made part of the record in this case by the defendants themselves, and it is apparent that the Substitution of Trustees was FOR THIS CASE was filed in DUVAL COUNTY (that is, the City of Jacksonville), FLORIDA. Such an out-of-state recordation is clearly in violation of **Section 2934a** of the California Civil Code which plainly states:

(a)(1) The trustee under a trust deed upon real property or an estate for

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years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the **recording in the county in which the property is located** of a substitution executed and acknowledged by: (A) all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968; or (B) the holders of more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or of any affiliate of that licensed real estate broker.

The direct plainness of this language belies a major constitutional defect: the statute does not articulate any remedy for its violation. Plaintiffs submit in this Supplemental Complaint, and ask the Court to declare and adjudge, that violation of the provisions of this statute require a nullification of any sale of property executed without compliance thereto. Similarly, Section 2941 states, in complete accord with the requirements of the California Commercial Code (as well as with modern note pooling and securitization practice) that a foreclosing servicer or other party/agent must either be or lawfully represent the true legal and equitable “holder-in-due course” of any note or other debt obligation:

§ 2941.9. Trust deed beneficiaries; agreements to be governed by beneficiaries holding more than 50 percent of the record beneficial interest

**(a) The purpose of this section is to establish a process through which all of the beneficiaries under a trust deed may agree to be governed by beneficiaries holding more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or any affiliate of that licensed real estate**

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**broker.**

(b) All holders of notes secured by the same real property or a series of undivided interests in notes secured by real property equivalent to a series transaction may agree in writing to be governed by the desires of the holders of more than 50 percent of the record beneficial interest of those notes or interests, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests of any affiliate of the licensed real estate broker, with respect to actions to be taken on behalf of all holders in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure.

(c) A description of the agreement authorized in subdivision (b) of this section shall be disclosed pursuant to Section 10232.5 of the Business and Professions Code and shall be included in a recorded document such as the deed of trust or the assignment of interests.

(d) Any action taken pursuant to the authority granted in this section is not effective unless all the parties agreeing to the action sign, under penalty of perjury, a separate written document entitled “**Majority Action Affidavit**” stating the following:

**(1) The action has been authorized pursuant to this section.**

(2) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust.

**(3) The undersigned together hold more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction.**

(4) Notice of the action was sent by certified mail, postage prepaid, with return receipt requested, to each holder of an interest in the obligation secured by the deed of trust who has not joined in the execution of the substitution or this document.

This document shall be recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located. Once the document in this subdivision is recorded, it shall constitute conclusive evidence of compliance with the requirements of this subdivision in favor of trustees acting pursuant to this section, substituted trustees acting pursuant to Section 2934a, subsequent

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assignees of the obligation secured by the deed of trust, and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.

(e) For purposes of this section, “affiliate of the licensed real estate broker” includes any person as defined in Section 25013 of the Corporations Code who is controlled by, or is under common control with, or who controls, a licensed real estate broker. “Control” means the possession, direct or indirect, of the power to direct or cause the direction of management and policies.

**Credits** (Added by Stats.1996, c. 839 (S.B.1638), § 3.) Current with all 2010 Reg.Sess. laws; all 2009-2010 1<sup>st</sup>-8<sup>th</sup> Ex.Sess. laws; and all Props. on 2010 ballots.

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Defendants in this case never filed nor recorded, nor have ever alleged that they filed, any such affidavit or “separate written document entitled **Majority Action Affidavit**” as required above. Because the statute is not self-executing in any sense, Plaintiffs ask that this court construe the statute to require that any failure to comply with the provisions of 2941 “constitute(s) conclusive evidence” that any action taken against a property WITHOUT such a “separate written document” showing at least 50% standing as “holder-in-due-course” of any securitized obligation is NULL AND VOID and, if completed, like the transactions of the Defendants (including the FDIC as well as JP Morgan Chase as successor of WAMU), such conclusively NON-COMPLIANT actions (including but not limited to foreclosure sales) must be set aside and reversed by the Court.

Furthermore, Plaintiffs having seen during this litigation the Defendants’ reliance on the confused and contradictory state of California law, and indeed of the customary practices and policies of the mortgage industry, Plaintiffs now and accordingly file this their Four Counts in Supplemental Demand for Constitutional Declaratory Judgment regarding California statutes to their complaint.



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portions of common law doctrines through statute, in favor of new language replacing conceivably “old-fashioned” or outdated ideals, but only where such abolition, abrogation, or appeal is consistent with constitutional rights to equal protection and due process, and/or 4) codify and enforce common law and constitutional law through local language. Plaintiffs assert that California laws, including but not limited to California Civil Code Section 2924i et seq., pertaining to foreclosures and especially subsequent evictions do none of the above, preferring instead to create radically contradictory doctrines which do not openly repeal but 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. Plaintiffs submit and content that the California Civil Code so completely contradicts that California Commercial Code as utterly to deny both equal protection and due process of law, creating unconstitutionally vague laws and systems of legal obligations.

The constitution will not tolerate the construction of crisscrossing and inconsistent paths through the maze of law, which paths create the illusion that the courts are apparently open to all, but from which courts there is either 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.

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 protect institutional liars and



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oppressive and predatory lending practices and therefore released to private individuals, such as Plaintiffs herein, who can make and obtain the maximum value from the use of the subject property, instead of evicting them from their home and leaving their property to rot or otherwise decay on the property rolls of quasi-governmental ownership agencies and vehicles such as FMNA. The California Superior Courts of Limited Jurisdiction act to insulate and immunize all the frauds and failures of the non-judicial foreclosure system from effective judicial scrutiny by the conclusive presumptions of §2924i and judicial constructions such as rendering a trustee’s word an “irrebuttable presumption” of validity, and precluding inquiry even into such matters as whether bona fide purchasers for value are in fact acting in good faith and without knowledge or notice of competing claims or disputes.

**JOHNSON PLAINTIFFS’ SUPPLEMENTAL COUNT I:  
CONSTITUTIONAL DECLARATORY JUDGMENT RE: CIVIL CODE 2924**

Plaintiffs ask this Court to declare and adjudge that California Civil Code Sections 2924 et seq. are unconstitutional on their face and as applied, being a facial affront to and violation of the prohibition against state impairment of obligations of contract found in U.S. Constitution, Article I, a de facto and de jure delegation of judicial functions to private individuals in a manner structurally and functionally designed to have conflicts of interest which are contrary to all principles of right, justice, and public policy against fraudulent transfers and state-sanctioned seizures of property. As a remedy, the Plaintiffs ask this Court to declare and adjudge that the transfer and seizure of their property, subject of this lawsuit, was unlawful owing to violation of U.S. Constitution Article I, Amendments 1, 5, 7, 9, and 14. The non-judicial foreclosure statues constitute a violation of and infringement of the First Amendment Right to Petition for Redress of Grievances by first removing

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foreclosure from the primary jurisdiction of the constitutional courts and then by creating a series of unreasonable “conclusive” presumptions which protect fraud and shysters, i.e., fraudulent tortfeasors. The due process provisions of the Fifth and Fourteenth Amendments are likewise offended, and the state sanction of enforcement afforded to non-judicial foreclosure means that the officers of the state are liable for all violations of private rights. The Court should finally declare that almost all California property covered by or potentially involved in non-judicial foreclosure is of such value that a trial-by-jury is warranted under the Seventh Amendment, and that the abolition or abrogation of defenses to foreclosure is a violation of the Ninth Amendment.

**JOHNSON PLAINTIFFS’ SUPPLEMENTAL COUNT 2:  
CONSTITUTIONAL DECLARATORY JUDGMENT THAT VIOLATIONS OF  
CIVIL CODE SECTIONS 2934 & 2941 CARRY IMPLIED REMEDIES**

Plaintiffs ask this Court to declare that Sections 2934 and 2941 of the California Civil Code imply the remedy of transactional voidness or nullification for non-compliance with their terms. All non-judicial foreclosure sales and related or subsequent transactions executed without contemporaneous compliance with these formalities must be reversed and the property in question restored to the last non-violating owner, in this case Paul and Judith Johnson.

**JOHNSON PLAINTIFFS’ SUPPLEMENTAL COUNT 3:**

This Court should declare and adjudge that California Code of Civil Procedure Section 405.21 and California Civil Code Section 1714.10, and all similarly discriminatory statutes which deprive private (non-attorney) parties of certain rights or impose upon them certain additional burdens if they are not represented by counsel in the form of an attorney “licensed” by the Supreme Court and/or in



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statutes, and their Article I rights to be free from any state impairment of the obligations (and rights) of contract for any but compelling governmental purposes. Plaintiffs have supplemented their complaint by providing a number of short, concise statements showing the grounds upon which relief can be granted. Plaintiffs’ supplemental allegations meet the minimum pleading requirements in that they are plausible in light of the customs, practices and policies of the modern mortgage industry, the facts presented and the cases cited.

JP Morgan Chase and of the Federal Deposit Insurance Corporation is successor to WASHINGTON MUTUAL BANK, N.A., providing a continuity of service making them liable for any subsequent foreclosure. Tender is not and ought not be required as a precondition of voiding sales or transactions on grounds of fraud, unconstitutional underlying statutes, and where as here apparent or claimed assignments of interest are either illusory, fraudulent, or not documented and recording according to California’s own statutory law. Plaintiffs ask this court to hear arguments, the declare and adjudge as a matter of final summary declaratory judgment (or final judgment upon trial) that all these circumstances together render the entity requesting tender in violation of the unclean hands doctrine.

**WHEREFORE IT IS PRAYED** that the Plaintiffs’ Supplemental Complaint be accepted by the Court and filed by the Superior Court Clerk along with the other papers of this Court, that the Federal Deposit Insurance Corporation be added as a party, and that the Plaintiffs upon summary adjudication or final trial-by-jury have judgment in their favor and against the Plaintiffs on all counts of their Supplemental Complaint for Declaratory Constitutional Relief.

Plaintiffs finally pray for all such other and further relief at law or in equity to which they may be otherwise required, and for general and specific relief from

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unconstitutional statutes and the unconstitutional application of laws as herein-above  
alleged.

Respectfully submitted,

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Paul Johnson, *pro se*

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Judith Johnson, *pro se*

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**PLAINTIFFS' PROOF OF SERVICE**

**Plaintiffs declare under penalty of perjury that a true and correct copy of this their Supplemental Complaint for Constitutional Declaratory Judgment was hand delivered in person in Court at the California Superior Court to the following opposing counsel on Friday, March 25, 2011, and by and through the email addresses and fax numbers they provided here:**

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Paul Johnson, *pro se*

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Judith Johnson, *pro se*

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**EXHIBIT A:**  
***DUVAL COUNTY FLORIDA SUBSTITUTION OF***  
***TRUSTEE CONSTITUTING CONCLUSIVE***  
***EVIDENCE OF VIOLATION OF***  
***CALIFORNIA 2934(a)***