

1 Joseph Arthur Roberts, State Bar No. 156180
2 LAW OFFICE OF J. ARTHUR ROBERTS
3 3345 Newport Blvd., Suite 213
4 Newport Beach, CA 92663
5 Telephone: (949) 675-9900
6 Facsimile: (888) 989-9309
7 Email: Joe@JarLegal.com
8 Attorney for Plaintiffs and all
9 others similarly situated

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ERNEST MICHAEL BAKENIE, an
13 individual; STEVEN MICHAEL
14 WHITCOMB, an individual;
15 FREDDY S. ESTRELLA, an individual;
16 JENNIFER E. CARILLO-THOMAS, an
17 individual; GEOFFREY MONCREIF, an
18 individual; on behalf of themselves and all
19 others similarly situated,

20 Plaintiffs,

21 vs.

22 JPMORGAN CHASE BANK, N.A.;
23 NDEX WEST, LLC, a Delaware limited
24 liability company; CALIFORNIA
25 RECONVEYANCE COMPANY, a
26 California corporation; CAL-WESTERN
27 RECONVEYANCE CORPORATION, a
28 California Corporation and DOES 1
through 10, inclusive,

Defendants.

CASE NO. SACV12-0060 JVS (MLGx)

Assigned to: Honorable James Selna

FIRST AMENDED COMPLAINT

1. Unlawful/Unfair Acts §17200
Improper Notarial Business Practices

DEMAND FOR JURY TRIAL
Complaint filed: January 13, 2012

1 Plaintiffs captioned above, by and through their attorney of record, bring this action against
2 defendants JPMORGAN CHASE BANK, N.A., (“CHASE”), NDEX WEST, LLC (“NDEX”),
3 CALIFORNIA RECONVEYANCE COMPANY (“CAL-RECON”) CAL-WESTERN
4 RECONVEYANCE CORPORATION (“CAL-WESTERN”) AND DOES 1 through 10, inclusive,
5 inclusive (collectively, “Defendants”) and alleges the following on information and belief, except as
6 to those allegations which pertain to the Plaintiffs:
7

8 **VENUE**

9
10 1. The Court has subject matter jurisdiction over this action under 28 USC § 1331
11 wherein the action arises under the Constitution, laws or treaties of the United States and/or under
12 28 USC § 1332 wherein this is a class action potentially over \$10,000,000.00 where at least one
13 plaintiff is diverse from one defendant.
14

15 2. The Court has personal jurisdiction over the defendants in this action by the fact that the
16 Defendants are conducting business in the state of California.

17 3. Nothing in the Consent Order entered into between CHASE and the United States
18 Department of Treasury’s Office of the Comptroller of Currency (the “OCC”) signed on April 13,
19 2011 restricts this Court’s jurisdiction, as the Plaintiffs’ rights here do not derive from the Consent
20 decree nor is adequate relief provided for under the Consent decree.
21

22 4. Plaintiffs seek equitable relief arising from defendants’ systemic violations of
23 California Notary laws and will not affect enforcement or otherwise restrict the scope of Consent
24 decree. Plaintiffs seek equitable relief to compel defendants to cure the effect of the widespread
25 dissemination of improperly acknowledged foreclosure documents in public land records and expect
26 that this action will be joined by several California County District Attorneys.
27
28

1 12. Plaintiff, FREDDY S. ESTRELLA, at all times mentioned herein relevant to the First
2 Amended Complaint is a resident of the State of California and the former owner of real
3 property secured by a defaulted a Note and Deed of Trust allegedly serviced by Defendants.

4
5 13. Plaintiff, JENNIFER E. CARILLO THOMAS, at all times mentioned herein relevant to the
6 First Amended Complaint is a resident of the State of California and the former owner of real
7 property secured by a defaulted Note and Deed of Trust allegedly serviced by Defendants.

8 14. Plaintiff, GEOFFREY MONCREIF, at all times mentioned herein relevant to the First
9 Amended Complaint is a resident of the State of California and the former owner of real
10 property secured by a defaulted Note and Deed of Trust allegedly serviced by Defendants.

11
12 15. Plaintiffs do not know the true names and capacities of the defendants DOES 1 through 10,
13 inclusive, and, as such, names said defendants by such fictitious names. Plaintiffs will amend
14 the complaint to state the true name and capacity of the DOE defendant(s) when such
15 information is ascertained.

16
17 16. Plaintiffs are informed and believe, and allege thereon, that each defendant is responsible in
18 some manner for the occurrences alleged in the complaint at all times mentioned and that
19 plaintiffs', and the general public's, actual injuries were proximately caused by the defendants
20 business practices.

21
22 17. Plaintiffs are further informed and believe, and allege thereon, that each defendant was the
23 agent, servant, representative, and/or employee of their co-defendants, and in doing the things
24 hereinafter alleged were acting in the scope of their authority as agents, servants,
25 representatives, family members and/or employees, and with the permission and consent of
26 their co-defendants.

27
28

1 18. Additionally, plaintiffs are informed and believe, and allege thereon, that each defendant
2 assisted, aided and abetted, adopted, ratified, approved, or condoned the actions of every
3 other defendant and that each corporate defendant, if any, was acting as the alter ego of the
4 other in the acts alleged herein.
5

6
7 **IMPROPER NOTARIAL BUSINESS PRACTICE ALLEGATIONS**
8

9 19. Plaintiff incorporates these allegations into the claim below as though fully set forth herein.

10 20. A notary public is an official entrusted by her state to serve as an objective witness to the
11 execution of specific legal documents. This function serves to inhibit the fraudulent
12 manipulation of identity and ensure a properly formatted signature. Normally commissioned
13 by the Secretary of State, and always subject to state laws and discipline, an individual
14 seeking commission as a notary must satisfy criteria regarding character and competence.
15

16 21. The acts of notaries are *official state acts* regulated by professional code and state statutes.
17 The statutory and professional duties of notaries include verification that a signer of a
18 document presented satisfactory evidence of identity, oath, appeared in the Notary's presence,
19 and actually signed the document. It is unlawful for a non-notary to act as a notary or to use
20 the stamp, signature of sequential journal of a notary. In California and in other states, a
21 notary is required to have, use and keep secure a notary seal and sequential journal. A notary
22 public is required to keep one active sequential journal at a time of all acts performed as a
23 notary public. The journal must be kept in a locked and secured area (such as a lock box or
24 locked desk drawer), under the direct and exclusive control of the notary public. The
25 sequential journal is the exclusive property of the notary public and shall not be surrendered
26 to an employer upon termination of employment.
27
28

1 22. The official acts of notaries, including proper acknowledgement; affect the evidentiary value
2 of documents. A duly notarized foreclosure document executed on behalf of an incorporated
3 or unincorporated entity by a duly authorized person is *prima facie evidence* that the
4 instrument is the duly authorized act of the entity named in the instrument. As such, Courts,
5 title companies and the public generally give great deference and assume the validity of
6 notarized documents.
7

8 23. Defendants' loan servicing business includes the processing and acknowledgment of tens of
9 thousands of documents created in contemplation of non-judicial foreclosure of real property.
10

11 24. In a proper and lawful notarization business practice, compliance with notary laws and
12 standards, proper due diligence and maintenance of sequential notary logs would represent a
13 substantial cost of doing business for defendants and its competitors.
14

15 25. So as to substantially reduce legitimate notary related costs, and so as to enhance the illusion
16 and evidentiary value of non-judicial foreclosure documents, most of which contain a range
17 of inaccurate, deceptive and fraudulent representations of fact, defendants have implemented
18 a business practice that relies upon the systemic violation of notary laws and standards.
19

20 26. That this practice has polluted our public land records of non-judicial foreclosure documents
21 which very often contain false, improper, inaccurate and fraudulent content as well as faulty
22 acknowledgements.
23

24 27. Notwithstanding their content, because these documents appear to be properly acknowledged,
25 the documents are presumed by the public, citizens, title companies, judges, trustees, buyers,
26 attorneys and borrowers to be *prima facie evidence* that the document is the duly authorized
27 act of the entity named in the instrument (see Civil Code Section 1190).
28

1 28. While the foreclosure documents themselves are published in contemplation of effectuating
2 non-judicial foreclosure, in an increasing number of cases, Defendants exploit the evidentiary
3 presumption of validity of improperly acknowledged documents in hundreds of bankruptcy
4 and foreclosure defenses cases, including those of each lead Plaintiff.

5
6 29. Each lead Plaintiff was the borrower of a residential mortgage loan (“MLN”) that is a non-
7 negotiable instrument and which MLN is now owned or serviced by Defendant or its agents.

8 30. In each case, Defendants initiated, and in some cases completed, a non-judicial foreclosure of
9 the subject properties under the California statutory scheme, Civil Code Section 2924.

10
11 31. In each, case Defendants caused various documents to be recorded in the public land records,
12 each of which were created by Defendants in contemplation of a non-judicial foreclosure.

13 32. Said documents were each executed by an agent of Defendants who lacked any personal
14 knowledge as to the facts asserted in each document and who lacked any agency relationship
15 to the true party entitled to enforce the terms of the subject MLN.

16
17 33. That each foreclosure document was improperly acknowledged and derived from a promoted
18 culture of speed obsessed “Robo-signing” central to which is an institutionalized business
19 practice which relies upon the soliciting, coercing and influencing of improper notarial acts,
20 known by defendants to be wrongful, deceptive and improper.

21
22 34. Said foreclosure documents were acknowledged by non-notaries, acknowledged outside the
23 presence of the signers, acknowledged without verification of the signer’s identification, and
24 acknowledged without proper recordation in a sequential journal.

25 35. Plaintiffs are informed, believe and herein allege that in connection with a California
26 residential mortgage default servicing portfolio, Defendants have implemented and engaged
27 in a deceptive, unlawful and unfair business practices each of which institutionalize the
28

1 soliciting, coercing and influencing the performance of improper notarial acts in violation of
2 CA Government Code Section 8225 and other state laws.

3
4 36. As required under California law, certain foreclosure documents are required to be properly
5 acknowledged by a notary prior to recording in the public land record.

6 37. Central to this *unlawful* practice is the creation, execution and publication of tens of
7 thousands of improperly acknowledged foreclosure related documents in the public land
8 records. While the practice has saved defendants millions in processing costs, the practice
9 has polluted our public land records system with improperly acknowledged foreclosure
10 documents.

11
12 38. The business practice allows non-notaries to act in a notary's capacity, eliminates the time,
13 need and effort to maintain notary standards, eliminates the time, need and effort to maintain
14 journals and further facilitates quick and inexpensive non-judicial foreclosure of California
15 real property with total disregard for the law and the rights of the affected Class members.

16
17 39. On March 12, 2012 the Office of the Inspector General of the U.S. Department of Housing
18 and Development reported its review of CHASE's foreclosure processes and found that:

19 "Notaries public routinely notarized documents without witnessing affiant signatures. They
20 also failed to maintain required records of the documents they notarized"

21
22 40. The Inspector General reported that individual employees of defendants are required to
23 "facilitate" the acknowledgment of over 700 foreclosure documents in a single week.

24 41. Faced with such a work load and in an effort to save due diligence costs and maximize profit
25 Defendants have elected to institutionalize systemic violation of notary laws and standards.
26 Rather than incur the legitimate cost of doing business in the Loan Servicing Market,
27
28

1 Defendants have chosen to rely upon systematic improper notarization as the center piece of
2 its foreclosure practice.

3
4 42. To this end, Defendants knowingly solicit, coerce and influence the performance of improper
5 notarial acts and has institutionalized the very practice of violating Notary laws and
6 professional standards. Defendants knowingly solicit, coerce and influence its notaries
7 through unrealistic productivity requirements and by intentionally mismanaging the
8 acknowledgment process.

9
10 43. Defendants knowingly solicit, coerce and influence its notaries and non-notary agents to
11 engage in improper notarial acts frequently and in wide variety, including but not limited to:
12 soliciting, coercing and influencing acknowledgement of documents not in the presence of the
13 signer, acknowledgement of documents without proper identification, execution and
14 acknowledgement of documents by a notary, acknowledgement of documents by non-
15 notaries, use the notary stamps by non-notaries, use of digital reproduction of notary stamps
16 and signatures, acknowledgement of documents where the notary has no personal knowledge
17 of a signer's corporate role, failure of the notary to record transactions in the notary
18 sequential journal, allowing access by non-notaries to the sequential journal, failure to obtain
19 the signature and thumbprint of the signer in the sequential journal at the time of
20 acknowledgement and the failure to secure the sequential journal in a safe and secure place.
21
22

23 **BAKENIE FACTS**

24 44. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

25
26 45. That the Bakenie facts are a typical example of the implementation of defendants' business
27 practice.
28

1 46. Bakenie's only significant asset is his residence at 1617 West Balboa Blvd., Newport Beach
2 CA 92663 (the "Bakenie Property"). On or about July 1, 2006, Plaintiff entered into a
3 residential refinance loan with CHASE for \$1,170,000.00 secured by a deed of trust.

4
5 47. That following his loss of employment as a licensed real estate broker and a devastating
6 motorcycle accident, Plaintiff defaulted on the loan, property taxes and a junior lien in early
7 2009. Facing an imminent foreclosure sale, the Plaintiff filed a Chapter 7 voluntary petition
8 on August 13, 2009 [Case number 8:09-bk-18443-TA].

9
10 48. That on December 15, 2009 CHASE filed a Notice of Motion and Motion for Relief of the
11 Automatic Stay regarding 1617 West Balboa Blvd. Newport Beach, CA.

12 49. That CHASE and its agents went to great length to create the illusion of standing in the
13 Motion for Relief offering a fabricated endorsement and a false declaration by Kimberly M.
14 Horne executed under penalty of perjury. The fabricated endorsement was purportedly
15 executed as payable in blank on August 25, 2006 and allegedly executed by ANGELA
16 NOLAN, Assistant Vice President of Chase Home Finance LLC. ANGELA NOLAN is not
17 an Assistant Vice President of Chase Home Finance LLC.

18
19 50. That at no time during the pendency of this bankruptcy matter did CHASE disclose to
20 Plaintiff, the Court or the Chapter 7 Trustee that U.S. Bank, as trustee for CHASE Mortgage
21 Finance Trust Series 2006-1 claimed to own the loan.

22
23 51. That on December 29, 2009, the designated Chapter 7 Trustee Richard Marshack, represented
24 by Plaintiff's current counsel, filed a Complaint against CHASE [Adversary case 8:09-ap-
25 01814] based on CHASE as the true party in interest. The matter was filed on behalf of the
26 bankruptcy estate based upon violations of the Truth in Lending Act unrelated to the instant
27 action and seeking rescission of the original transaction.
28

1 52. The Court entered an Order granting CHASE's motion for relief on January 19, 2009. The
2 bankruptcy court and the Chapter 7 Trustee each believed that CHASE's representations that
3 it was the party entitled to enforce the terms of the MLN. That CHASE added attorney fees
4 to Bakenie's loan balance for the motion for relief.

5
6 53. Thereafter, CHASE filed a Motion to Dismiss the Complaint and alleged that it was NOT the
7 true owner of the note. **EXHIBIT 1** purports to be an Assignment of Deed of Trust executed
8 by LUPE TABITA on behalf of CHASE and executed on April 21, 2009 and recorded on
9 July 28, 2009 with the Orange County Official Records. The Assignment states that CHASE
10 transferred the all beneficial interest in the Deed of Trust along with the Note to U.S. Bank,
11 N.A. as trustee for CHASE Mortgage Finance Trust Series 2006-1

12
13 54. That Bakenie Assignment includes an acknowledgement executed by "J. BARRAGAN",
14 California Notary commission #1635125.

15
16 55. That ANGELA NOLAN, MARY J. LUPE TABITA, DOE 1 and that U.S. Bank, as trustee
17 for CHASE Mortgage Finance Trust Series 2006-1 were at all times herein acting as agents
18 and at the direction of CHASE.

19
20 56. That the referenced Bakenie Assignment is a fabricated and "photo-shopped" document
21 created to support the illusion that the CHASE Mortgage Finance Trust Series 2006-1 is the
22 true party in interest and therefore standing to enforce the terms of the Bakenie MLN.

23
24 57. That "J. BARRAGAN" and DOE 1 have engaged in improper notarial acts: that DOE 1
25 purported to act as a notary when he signed the Bakenie Assignment, that J. BARRAGAN
26 was not duly commissioned, that this document was not actually signed by J. BARRAGAN,
27 that J. BARRAGAN did not properly acknowledge this document, that J. BARRAGAN did
28 willfully fail to keep his notary seal under his direct and exclusive control, that J.

1 BARRAGAN did not duly record this transaction in a sequential journal or keep said journal
2 in a safe and secure place, that this document is not duly acknowledged by J. BARRAGAN.

3
4 58. Those defendants solicited, coerced and influenced DOE 1 and J. BARRAGAN and to
5 engage in the aforementioned improper notarial acts when it knew these acts to be improper
6 notarial acts.

7 59. **EXHIBIT 2** purports to be a Substitution of Trustee executed by WHITNEY K. COOK on
8 behalf of CHASE HOME FINANCE LLC and executed on April 21, 2009 and recorded on
9 July 28, 2009 with the Orange County Official Records. The Assignment states that CHASE
10 HOME FINANCE LLC, acting as attorney in fact, appoints NORTHWEST TRUSTEE
11 SERVICES, INC. as Trustee of the Bakenie Deed of Trust.

12
13 60. That Bakenie Assignment includes an acknowledgement executed by "NICOLE KNISLEY,"
14 an Ohio Notary.

15
16 61. That the referenced Bakenie Substitution of Trustee ("SOT") is a fabricated and "photo-
17 shopped" document created to support the illusion that the CHASE Mortgage Finance Trust
18 Series 2006-1 is the true party in interest and therefore standing to name a new trustee to the
19 Bakenie Deed of Trust.

20
21 62. That NICOLE KNISLEY, WHITNEY K. COOK, NORTHWEST TRUSTEE SERVICES
22 INC., CHASE HOME FINANCE LLC, DOE 1 and U.S. Bank, as trustee for CHASE
23 Mortgage Finance Trust Series 2006-1 were at all times herein acting as agents and at the
24 direction of CHASE.

25
26 63. That "NICOLE KNISLEY" and DOE 1 have engaged in improper notarial acts: that DOE 1
27 purported to act as a notary when he signed the Bakenie Assignment, that NICOLE
28 KNISLEY was not duly commissioned, that this document was not actually signed by

1 NICOLE KNISLEY, that NICOLE KNISLEY did not properly acknowledge this document,
2 that NICOLE KNISLEY did willfully fail to keep his notary seal under her direct and
3 exclusive control, that NICOLE KNISLEY did not duly record this transaction in a sequential
4 journal or keep said journal in a safe and secure place, that this document is not duly
5 acknowledged by NICOLE KNISLEY in violation of Ohio and California Notary laws.

6
7 64. Those defendants solicited, coerced and influenced DOE 1 and NICOLE KNISLEY and to
8 engage in the aforementioned improper notarial acts when it knew these acts to be improper
9 notarial acts.

10
11 65. That the Adversary Proceeding Complaint was amended by the Chapter 7 Trustee to grant the
12 debtor standing and to add Bakenie as a Plaintiff to the matter. After the Bankruptcy Court
13 determined that even if the estate's TILA claim was valid, the estate was unlikely to be able
14 to "carve out" enough equity to justify liquidation of the property, the Chapter 7 trustee and
15 Bakenie stipulated to dismiss the Truth in Lending claims against both CHASE and for
16 CHASE Mortgage Finance Trust Series 2006-1 without prejudice. The Trustee abandoned all
17 claims to the Plaintiff and filed a no asset report on or about April 18, 2010.

18
19 66. That Bakenie filed a Complaint in Federal Court alleging the same Truth in Lending
20 violations, Debt collection claims and a Unlawful/Unfair Acts §17200 claim against CHASE
21 and U.S. BANK, N.A., as trustee for CHASE Mortgage Finance Trust Series 2006-1.

22
23 67. That following a Motion to Dismiss Bakenie's First Amended case, the Court dismissed all
24 claims except the Unlawful/Unfair Acts §17200 claim. Prior to trial Bakenie and Defendants
25 CHASE and for CHASE Mortgage Finance Trust Series 2006-1 stipulated to dismiss the
26 remaining Unlawful/Unfair Acts §17200 claim without prejudice and to pursue a resolution
27 outside of court. That the matter was never settled. That Bakenie filed a Complaint in
28

1 Superior Court alleging claims including fraud and wrongful foreclosure on August 8, 2011.
2 That the Superior Court case was dismissed without prejudice.

3
4 68. That Plaintiff intends to pursue individual claims outside of this Class Action and does not
5 seek a determination of his claims for Wrongful Foreclosure or the legal effect of improper
6 notarization of foreclosure documents affecting Plaintiff's property.

7
8 69. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
9 defendants' improper notarial practice, a determination of the validity of all acknowledgments
10 published by defendants affecting Plaintiff's property, a determination of malice, a
11 determination of restitution as appropriate and a determination of the remedial measures
12 necessary to correct the public land records public land records for all.

13
14 70. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others similarly
15 situated to prove these allegations individually, as the allegations complain of a systemic and
16 institutional practice.

17
18 **WHITCOMB FACTS**

19 71. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

20
21 72. That the Whitcomb facts are a typical example of the implementation of defendants' business
22 practice where a loan originator files for Chapter 11 bankruptcy.

23
24 73. Whitcomb's only significant asset is his residence at 5911 EDMONDS CIRCLE,
25 HUNTINGTON BEACH CA 92649 (the "Whitcomb Property"). On or about 7/27/2005,
26 Plaintiff entered into a residential refinance loan with RESMAE MORTGAGE
27 CORPORATION for \$637,500.00 secured by a deed of trust.
28

1 74. On 2/12/2007, RESMAE MORTGAGE CORPORATION filed for relief under Chapter 11 of
2 the U.S. Bankruptcy Code, Case number 07-10177-KJC (DELAWARE). A bankruptcy estate
3 was created, assets were liquidated and that case closed on 12/23/2010.

4 75. That following his loss of employment, Plaintiff defaulted on the loan. A Notice of Default
5 (“NOD”) was executed and recorded by VANGIE ORTEGA, on or about January 17, 2008, on
6 behalf of FIRST AMERICAN TITLE INSURANCE COMPANY, AS AGENT to CAL-
7 WESTERN. The NOD lists the HSBC BANK USA., N.A, as Trustee for FRIEDMAN,
8 BILLINGS RAMSEY GROUP, INC. (FRB) ONAME FBRSI 2005-4 (“ONAME TRUST”).

9 76. YVONNE J. WHEELER, Assistant Secretary of Mortgage Electronic Registration Systems,
10 Inc. (Hereinafter “MERS”) executes a Substitution of Trustee which purports to name CAL-
11 WESTERN as the TRUSTEE to the Deed of Trust on 1/10/2008. **EXHIBIT 3.** That the
12 Substitution of Trustee includes an acknowledgement executed by “J. RANKIN”, a California
13 Notary, Commission #1736533.
14

15 77. That WHEELER, J. RANKIN, CAL-WESTERN, MERS, ONAME TRUST, FRB TRUST
16 and DOE 2 were at all times herein acting as agents and at the direction of CHASE.

17 78. That the referenced Whitcomb Substitution of Trustee was a fabricated and “photo-shopped”
18 document created to support the illusion that the ONAME TRUST is the true party in interest
19 and therefore standing to name a new trustee to the Whitcomb Deed of Trust.
20

21 79. That J. RANKIN and DOE 2 have engaged in improper notarial acts: that DOE 2 purported
22 to act as a notary when he signed the Whitcomb Substitution of Trustee, that J. RANKIN was
23 not duly commissioned, that this document was not actually signed by J. RANKIN, that J.
24 RANKIN did not properly acknowledge this document, that J. RANKIN did willfully fail to
25 keep his notary seal under his direct and exclusive control, that J. RANKIN did not duly
26
27
28

1 record this transaction in a sequential journal or keep said journal in a safe and secure place,
2 that this document is not duly acknowledged by J. RANKIN.

3
4 80. Those defendants and its agents solicited, coerced and influenced DOE 2 and J. RANKIN and
5 to engage in the aforementioned improper notarial acts when it knew these acts to be
6 improper notarial acts.

7 81. **EXHIBIT 4** purports to be the FIRST Assignment of Deed of Trust executed by YVONNE J.
8 WHEELER on behalf of MERS and executed on January 10, 2008 and recorded on August
9 20, 2008 with the Orange County Official Records. The Assignment states that MERS, on
10 behalf of the bankrupt RESMAE MORTGAGE CORPORATION, purportedly transferred the
11 all beneficial interest in the Deed of Trust together with the Note to the ONAME TRUST.
12 The FIRST Whitcomb Assignment includes an acknowledgement executed by “MARY J.
13 STATHAM”, California Notary commission #1646046.

14
15
16 82. That WHEELER, MARY J. STATHAM, MERS, DOE 2, ONAME TRUST, FRB TRUST
17 and Cal-Western were at all times herein acting as agents and at the direction of CHASE.

18 83. That the referenced Whitcomb FIRST Assignment is a fabricated and “photo-shopped”
19 document created to support the illusion that the OMANE TRUST is the true party in interest
20 and therefore standing to enforce the terms of the Whitcomb MLN, notwithstanding the
21 bankruptcy filing of the loan’s originator prior to the alleged transfer date.

22
23 84. That MARY J. STATHAM and DOE 2 have engaged in improper notarial acts: that DOE 2
24 purported to act as a notary when he signed the Whitcomb FIRST Assignment, that MARY J.
25 STATHAM was not duly commissioned, that this document was not actually signed by
26 MARY J. STATHAM, that MARY J. STATHAM did not properly acknowledge this
27 document, that MARY J. STATHAM did willfully fail to keep his notary seal under his direct
28

1 and exclusive control, that MARY J. STATHAM did not duly record this transaction in a
2 sequential journal or keep said journal in a safe and secure place, that this document is not
3 duly acknowledged MARY J. STATHAM in violation of California Notary law..
4

5 85. That defendants and its agents solicited, coerced and influenced DOE 2 and MARY J.
6 STATHAM and to engage in the aforementioned improper notarial acts when it knew these
7 acts to be improper notarial acts.

8 86. Whitcomb filed a Voluntary Petition under Chapter 7, Case number 8:09-bk-21777-RK and
9 thereby enjoining the non-judicial foreclosure sale.
10

11 87. That on February 4, 2010 CHASE filed a Notice of Motion and Motion for Relief of the
12 Automatic Stay regarding the Whitcomb property in the name of HSBC, as trustee to the FBR
13 TRUST.

14 88. The motion claims that FBR TRUST has legal standing as the “current owner of the note and
15 is entitled to enforce the provisions of the Note and Deed of Trust”. In support, the motion
16 includes a copy of the note and deed of trust. In support, the motion includes a copy of
17 second assignment but not the first assignment. The Note produced by FBR TRUST contains
18 no endorsement of any kind.
19

20 89. Again, defendants went to great length to create the illusion of standing in the Motion for
21 Relief offering a SECOND Assignment of Deed of Trust (**EXHIBIT 5**) and a false
22 declaration by JAMIE DOWNEY executed under penalty of perjury.
23

24 90. **EXHIBIT 5** purports to be the SECOND Assignment of Deed of Trust executed by
25 WHITNEY K. COOK on behalf of the OMANE TRUST and executed on December 9, 2009
26 and recorded on January 7, 2010 with the Orange County Official Records. The SECOND
27 Assignment states that CHASE, on behalf of the ONAME TRUST, purportedly transferred
28

1 the all beneficial interest in the Deed of Trust together with the Note to the ONAME TRUST.
2 The SECOND Whitcomb Assignment includes an acknowledgement executed by
3 “WENONA CHURCH”, an OHIO Notary.
4

5 91. That WHEELER, COOK, MERS, DOE 2, ONAME TRUST, FRB TRUST and Cal-Western
6 were at all times herein acting as agents and at the direction of defendants.

7 92. That the referenced Whitcomb SECOND Assignment is a fabricated and “photo-shopped”
8 document created to support the illusion that the FBR TRUST is the true party in interest and
9 therefore standing to enforce the terms of the Whitcomb MLN, notwithstanding the
10 bankruptcy filing of the loan’s originator prior to a transfer to the ONAME TRUST.
11

12 93. That WENONA CHURCH and DOE 2 have engaged in improper notarial acts: that DOE 2
13 purported to act as a notary when he signed the Whitcomb SECOND Assignment, that
14 WENONA CHURCH was not duly commissioned, that this document was not actually
15 signed by WENONA CHURCH, that WENONA CHURCH did not properly acknowledge
16 this document in violation of Ohio and California notary laws, that WENONA CHURCH did
17 willfully fail to keep his notary seal under his direct and exclusive control, that WENONA
18 CHURCH did not duly record this transaction in a sequential journal or keep said journal in a
19 safe and secure place, that this document is not duly acknowledged WENONA CHURCH in
20 violation of Ohio and California Notary laws.
21

22 94. Those defendants and its agents solicited, coerced and influenced DOE 2 and WENONA
23 CHURCH and to engage in the aforementioned improper notarial acts when it knew these
24 acts to be improper notarial acts.
25

26 95. The Bankruptcy Court entered an Order granting the motion for relief on March 19, 2010.
27

28 The bankruptcy court and the Chapter 7 Trustee each believed that CHASE’s representations

1 that it was the party entitled to enforce the terms of the MLN. That CHASE added attorney
2 fees to Whitcomb's loan balance for the motion for relief.

3
4 96. That Whitcomb filed a Complaint in Superior Court alleging claims including fraud and
5 wrongful foreclosure. That the Superior Court case was dismissed without prejudice by
6 Whitcomb prior to discovery and a pending demurrer.

7
8 97. Whitcomb intends to pursue his individual claims. But it is impractical, repetitive and
9 unnecessarily expensive for Plaintiff and others similarly situated to prove these allegations
10 individually, as the allegations complain of a systemic and institutional practice.

11
12 98. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
13 defendants' improper notarial practice, a determination of the validity of all acknowledgments
14 published by defendants affecting Plaintiff's property, a determination of malice, a
15 determination of restitution as appropriate and a determination of the remedial measures
16 necessary to correct the public land records for all.

17
18
19 **ESTRELLA FACTS**

20 99. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

21 100. That the Estrella facts are a typical example of the implementation of defendants'
22 business practices after originating an MLN then selling the loan to a Government sponsored
23 Enterprise, in this case the Federal National Mortgage Association ("FANNIE MAE").

24
25 101. So as to save costs, CHASE perpetrates the illusion that the sale of MLNs to Fannie
26 Mae, never actually occurs. Defendants rely on the use of improperly notarized documents to
27 accomplish this cost savings objective.
28

1 102. Estrella’s only significant asset is his residence at 1614 W. 62ND ST., LOS
2 ANGELES, CA 90047 (the “Estrella Property”). On or about July 6, 2006, Plaintiff entered
3 into a residential refinance loan with CHASE for \$376,000.00 secured by a deed of trust.
4

5 103. That following his loss of employment, Plaintiff defaulted on the loan. A Notice of
6 Default (“NOD”) was recorded on June 25, 2008.

7 104. **EXHIBIT 6** purports to be an Assignment of Deed of Trust executed by CLAYTON
8 GOFF, Associate Counsel of NDEX WEST LLC as Attorney in fact for JPMORGAN
9 CHASE BANK, N.A. on July 21, 2008 and recorded on July 24, 2008 with the Orange
10 County Official Records. The Assignment states that NDEX, on behalf of JPMORGAN
11 CHASE BANK, N.A, transfers all beneficial interest in the Deed of Trust together with the
12 Note to CHASE HOME FINANCE LLC. The Estrella Assignment includes an
13 acknowledgement executed by “KAUSER RAHIM”, Texas Notary.
14

15 105. That CLAYTON GOFF is *not* an Associate Counsel of NDEX WEST LLC.

16 106. That NDEX WEST LLC, CHASE HOME FINANCE LLC, KAUSER RAHIM, DOE
17 3 and CLAYTON GOFF were each as agents and at the direction of CHASE.
18

19 107. That the referenced Estrella Assignment is a fabricated and “photo-shopped”
20 document created to support the illusion that the CHASE HOME FINANCE LLC is the true
21 party in interest and therefore standing to enforce the terms of the Estrella MLN,
22 notwithstanding the bankruptcy filing of the loan’s originator prior to the alleged transfer
23 date.
24

25 108. That KAUSER RAHIM and DOE 3 have engaged in improper notarial acts in
26 violation of Texas and California law: that DOE 3 purported to act as a notary when he
27 signed the Estrella Assignment, that KAUSER RAHIM was not duly commissioned as a
28

1 Texas notary, that this document was not actually signed by KAUSER RAHIM, that
2 KAUSER RAHIM did not properly acknowledge this document, that KAUSER RAHIM did
3 willfully fail to keep his notary seal under his direct and exclusive control, that KAUSER
4 RAHIM did not duly record this transaction in a sequential journal or keep said journal in a
5 safe and secure place, that this document is not duly acknowledged KAUSER RAHIM in
6 violation of Texas and California Notary law.
7

8 109. That CHASE and other defendants solicited, coerced and influenced DOE 3 and
9 KAUSER RAHIM and to engage in the aforementioned improper notarial acts when it knew
10 these acts to be improper notarial acts in violation of Texas and California Notary law.
11

12 110. On July 17, 2008, AARON BROWN, Associate Counsel for NDEX WEST LLC, as
13 Attorney in Fact for HOME FINANCE LLC executes a Substitution of Trustee which purports
14 to appoint NDEX WEST LLC as the TRUSTEE to the Estrella Deed of Trust, attached as
15 **EXHIBIT 7**. That the Substitution of Trustee includes an acknowledgement executed by
16 “PATRICK DE JESUS”, a Texas Notary. That the Substitution of Trustee includes an affidavit
17 of Section 2934 compliance signed by Brooke Ewing and an acknowledgement executed by
18 “SANDRA PITKA”, a Texas Notary.

19 111. That AARON BROWN is *not* Associate Counsel for NDEX WEST LLC, nor can an
20 attorney in fact, under the most basic tenets of agency law, substitutes itself as Trustee of a
21 Deed of Trust.

22 112. That BROWN, PITKA, DE JESUS, DOE 3, NDEX WEST LLC and CHASE HOME
23 FINANCE LLC were each as agents and at the direction of CHASE.

24 113. That the referenced Estrella Substitution of Trustee is a fabricated and “photo-
25 shopped” document created to support the illusion that the CHASE HOME FINANCE LLC is
26 the true party in interest and therefore standing to name a new trustee to the Estrella Deed of
27 Trust.
28

1 114. That DE JESUS, PITKA and DOES 3 have engaged in improper notarial acts in
2 violation of Texas and California Notary laws: that DOE 3 each purports to act as a notary
3 when they each signed the Estrella Substitution of Trustee, that neither DE JESUS or PITKA
4 were duly commissioned, that this document was not actually signed by DE JESUS or
5 PITKA, that neither DE JESUS or PITKA did properly acknowledge this document, that DE
6 JESUS and PITKA did willfully fail to keep their notary seal under his direct and exclusive
7 control, that neither DE JESUS nor PITKA did duly record this transaction in a sequential
8 journal or keep said journal in a safe and secure place, that this document is not duly
9 acknowledged by either DE JESUS or PITKA in violation of Texas and California Notary
10 law.
11

12
13 115. That CHASE and other defendants solicited, coerced and influenced DOE 3, PITKA
14 and DE JESUS and to engage in the aforementioned improper notarial acts when it knew
15 these acts to be improper notarial acts.
16

17 116. On September 9, 2010 Estrella filed a Voluntary Petition under Chapter 7, Case
18 number 2:10-bk-49820-AA thereby enjoining the non-judicial foreclosure sale.

19 117. That on November 17, 2010 CHASE filed a Notice of Motion and Motion for Relief
20 of the Automatic Stay regarding the Estrella property in the name of CHASE HOME
21 FINANCE LLC
22

23 118. The motion claims that CHASE HOME FINANCE LLC has legal standing as the
24 current owner of the note and is entitled to enforce the provisions of the Note and Deed of
25 Trust. In support, the motion includes a copy of the note and deed of trust. In support, the
26 motion includes a copy of the assignment.
27
28

1 119. Estrella presented evidence that the subject loan was actually owned by FANNIE
2 MAE. Relying on the fabricated and improperly acknowledged Assignment of Deed of Trust
3 and assuming it to be properly acknowledged, the bankruptcy court granted relief of stay.
4

5 120. Again, CHASE and other defendants went to great length to create the illusion of
6 standing in a Motion for Relief offering an improperly acknowledged foreclosure document
7 Assignment of Deed of Trust and a false declaration so as to create the illusion that CHASE
8 was the true party in interest.

9 121. The bankruptcy court and the Chapter 7 Trustee each believed that CHASE's
10 representations that it was the party entitled to enforce the terms of the MLN. That CHASE
11 added attorney fees to Estrella's loan balance for the motion for relief.
12

13 122. On April 1, 2011, CHASE caused the Estrella property to be sold at a non-judicial
14 foreclosure sale. To date, no DEED UPON TRUSTEE SALE has yet been recorded to
15 FANNIE MAE.
16

17 123. However, FANNIE MAE has delivered a post-foreclosure correspondence to Estrella
18 wherein FANNIE MAE claims that it is now the owner of the subject property and asserting
19 its authority to offer "cash for keys" to Estrella if he immediately surrenders the property to
20 FANNIE MAE.
21

22 124. That Plaintiff intends pursue individual claims outside of this Class Action and does
23 not seek a determination of his claims for Wrongful Foreclosure or the legal effect of
24 improper notarization of foreclosure documents affecting Plaintiff's property.

25 125. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
26 defendants' improper notarial practice, a determination of the validity of all acknowledgments
27 published by defendants affecting Plaintiff's property, a determination of malice, a
28

1 determination of restitution as appropriate and a determination of the remedial measures
2 necessary to correct the public land records public land records for all.

3
4 126. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others
5 similarly situated to prove these allegations individually, as the allegations complain of a
6 systemic and institutional practice.

7 **CARILLO-THOMAS FACTS**

8
9 127. Plaintiffs incorporate these allegations into the claim below as though fully set forth
10 herein.

11 128. That the Carillo-Thomas (Hereinafter “Carillo”) facts are a typical example of the
12 implementation of CHASE’s business practices where a loan originator files for Chapter 11
13 Bankruptcy before the alleged transfer of the MLN and where CHASE, as servicer, forecloses
14 on the subject property during the HAMP loan modification process.

15
16 129. So as to save costs, CHASE perpetrates the illusion that the sale of MLNs to a private
17 mortgaged backed security trust occurs after the loan originator enters bankruptcy but without
18 that court’s authorization. CHASE relies on the use of improperly notarized documents to
19 accomplish this cost savings objective.

20
21 130. Carillo’s only significant asset is her residence at 24120 ESERALDA COURT,
22 WILDOMAR, CALIFORNIA 92595 (the “Carillo Property”). On or about 10/27/2006,
23 Plaintiff entered into a residential refinance loan with BNC MORTGAGE INC. for
24 \$479,200.00 secured by a deed of trust.

25
26 131. September 15, 2008, Lehman Brothers Holdings Inc. (“LBHI”) filed a petition in the
27 United States Bankruptcy Court for the Southern District of New York seeking relief under
28 chapter 11 of the United States Bankruptcy Code.

1 132. Subsequently, 22 additional affiliates of LBHI, including loan originator BNC
2 MORTGAGE INC., filed petitions thereafter in the United States Bankruptcy Court for the
3 Southern District of New York seeking relief under chapter 11 of the United States Bankruptcy
4 Code. BNC MORTGAGE LLC, the parent of BNC MORTGAGE INC., filed such a petition in
5 the United States Bankruptcy Court for the Southern District of New York seeking relief under
6 chapter 11 of the United States Bankruptcy Code on January 9, 2009. On January 14, 2009,
7 Judge Peck signed an Order Consolidating the BNC and Lehman Brothers bankruptcy cases.
8

9 133. Consequently, the MERS agency relationship with BNC MORTGAGE INC. ended on
10 January 9, 2009.
11

12 134. Carillo defaulted on the obligation and CHASE and its agent NDEX caused a Notice of
13 Default to be filed in the Official Records of the County of RIVERSIDE on February 23, 2009.
14

15 135. On April 6, 2009, Defendants CHASE, through its agents NDEX and MERS caused an
16 ASSIGNMENT OF DEED OF TRUST to be filed in the Official Records of the County of
17 RIVERSIDE. Said document purports to transfer the Deed of Trust “together with the note or
18 notes therein described or referred to, the money due and to become due thereon with interest,
19 and all rights accrued or to accrue under the Deed of Trust” to Defendant U.S. BANK
20 NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET SECURITIES
21 CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES, 2006-BC6. At the time
22 of the transfer, said Note was property of the BNC bankruptcy estate.
23

24 136. **EXHIBIT 8** purports to be an Assignment of Deed of Trust executed by DAVID
25 SEYBOLD, Assistant Secretary of MERS executed on March 26, 2009. July 21, 2008 and
26 recorded on July 24, 2008 with the Orange County Official Records. The Carillo Assignment
27 includes an acknowledgement executed by “SUZANNE STANLEY”, Texas Notary.
28

1 137. That DAVID SEYBOLD was not a duly authorized agent of MERS, nor was MERS
2 of CHASE authorized to transfer property of the BNC bankruptcy estate to the
3 aforementioned U.S. BANK

4
5 138. That SEYBOLD, STANLEY, NORTHWEST AMERICAN TITLE COMPANY
6 INC., NDEX MERS, DOE 4 and US BANK were at all times herein, each as agents and at
7 the direction of CHASE.

8 139. That the referenced Carillo Assignment is a fabricated and “photo-shopped” document
9 created to support the illusion that the US BANK trust is the true party in interest and
10 therefore standing to enforce the terms of the Carillo MLN, notwithstanding the bankruptcy
11 filing of the loan’s originator prior to the alleged transfer date, notwithstanding the Trust’s
12 Pooling and Servicing Agreement of the trust which requires all loans be transferred to it in
13 2006, not after default.

14
15
16 140. That SUZANNE STANLEY and DOE 4 have engaged in improper notarial acts in
17 violation of Texas and California law: that DOE 4 purported to act as a notary when she
18 signed the Carillo Assignment, that SUZANNE STANLEY was not duly commissioned as a
19 Texas notary, that this document was not actually signed by SUZANNE STANLEY, that
20 SUZANNE STANLEY did not properly acknowledge this document, that SUZANNE
21 STANLEY did willfully fail to keep her notary seal under her direct and exclusive control,
22 that SUZANNE STANLEY did not duly record this transaction in a sequential journal or
23 keep said journal in a safe and secure place, that this document is not duly acknowledged
24 SUZANNE STANLEY in violation of Texas and California Notary law.
25
26
27
28

1 141. That CHASE and other defendants solicited, coerced and influenced DOE 4 and
2 SUZANNE STANLEY and to engage in the aforementioned improper notarial acts when it
3 knew these acts to be improper notarial acts in violation of Texas and California Notary law.
4

5 142. On March 31, 2009, CINDY A. SMITH, Assistant Secretary for CHASE HOME
6 FINANCE LLC, “as Attorney in Fact” for the US BANK Trust, executes a Substitution of
7 Trustee which purports to appoint NDEX WEST LLC as the TRUSTEE to the Carillo Deed of
8 Trust, attached as **EXHIBIT 9**. That the Substitution of Trustee includes an acknowledgement
9 executed by “JENNIFER JACOBY”, an Ohio Texas Notary and was recorded in the Riverside
10 county public land records on April 5, 2009. That the Substitution of Trustee includes an
11 affidavit of Section 2934 compliance signed by PATRICK DE JESUS and an acknowledgement
12 executed by BROOK L. EWING, a Texas Notary.

13 143. That CINDY A. SMITH was *not* Assistant Secretary for CHASE HOME FINANCE
14 LLC, nor was CHASE HOME FINANCE LLC the attorney in fact for the US BANK Trust.
15 Under the most basic tenets of bankruptcy law, CHASE and its agents had no standing to take
16 action against this MLN which was property of the BNC bankruptcy estate without proper
17 authorization. and other defendants lacked such authorization.

18 144. That SMITH, DE JESUS, EWING, JACOBY, RIC JUAREZ, KATHY LOCKERMAN,
19 US BANK trust, STANLEY, SEYBOLD AND CHASE, NDEX WEST LLC and CHASE
20 HOME FINANCE LLC were each as agents and at the direction of CHASE.

21 145. That the referenced Carillo Substitution of Trustee is a fabricated and “photo-
22 shopped” document created to support the illusion that the US BANK trust was the true party
23 in interest and therefore standing to name a new trustee to the Carillo Deed of Trust.

24 146. That JENNIFER JACOBY, BROOK L. EWING and DOES 4 have engaged in
25 improper notarial acts in violation of Texas, Ohio and California Notary laws: that DOE 4
26 each purported to act as a notaries when they each signed the Carillo Substitution of Trustee,
27 that neither JACOBY or EWING were duly commissioned, that this document was not
28

1 actually signed by JACOBY or EWING, that neither JACOBY or EWING did properly
2 acknowledge this document, that JACOBY or EWING did willfully fail to keep their notary
3 seal under their direct and exclusive control, that neither JACOBY or EWING did duly record
4 this transaction in a sequential journal or keep said journal in a safe and secure place, that this
5 document is not duly acknowledged by either JACOBY or EWING in violation of Texas,
6 Ohio and California Notary law.
7

8 147. That CHASE and other defendants solicited, coerced and influenced DOE 4,
9 JACOBY or EWING and to engage in the aforementioned improper notarial acts when it
10 knew these acts to be improper notarial acts.
11

12 148. Carillo never sought bankruptcy relief. Instead, Carillo relied on the existence of a
13 loan modification agreement, written correspondence and oral representations made by
14 CHASE in believing she was protected her from a non-judicial foreclosure.
15

16 149. Notwithstanding having made 15 loan modification payments and all requested
17 financial documentation, CHASE caused a non-judicial foreclosure sale of the subject
18 property on March 7, 2011.
19

20 150. **EXHIBIT 10** purports to be a DEED UPON TRUSTEE SALE which grants to the
21 Carillo property to the US BANK trust by NDEX employee RIC JUAREZ. That the DEED
22 UPON TRUSTEE SALE an acknowledgement executed by KATHY LOCKERMAN, a Texas
23 Notary.
24

25 151. That the referenced Carillo DEED UPON TRUSTEE SALE is a fabricated and
26 “photo-shopped” document created to support the illusion that the non-judicial foreclosure
27 sale was duly perfected and that the US BANK trust is the true party in interest and therefore
28 standing to enforce the terms of the Carillo MLN, notwithstanding the bankruptcy filing of
the loan’s originator prior to the alleged transfer date, notwithstanding the Trust’s Pooling and

1 Servicing Agreement of the trust which requires all loans be transferred to it in 2006, not after
2 default. That NDEX and employee RIC JUAREZ lacked proper authorization to act on
3 behalf of the BNC Bankruptcy estate.
4

5 152. That KATHY LOCKERMAN and DOE 4 have engaged in improper notarial acts in
6 violation of Texas and California law: that DOE 4 purported to act as a notary when he
7 signed the Carillo DEED UPON TRUSTEE SALE, that LOCKERMAN was not duly
8 commissioned as a Texas notary, that this document was not actually signed by
9 LOCKERMAN, that LOCKERMAN did not properly acknowledge this document, that
10 LOCKERMAN did willfully fail to keep her notary seal under her direct and exclusive
11 control, that LOCKERMAN did not duly record this transaction in a sequential journal or
12 keep said journal in a safe and secure place, that this document is not duly acknowledged
13 LOCKERMAN in violation of Texas and California Notary law.
14

15 153. That and other defendants solicited, coerced and influenced DOE 4 and
16 LOCKERMAN and to engage in the aforementioned improper notarial acts when it knew
17 these acts to be improper notarial acts in violation of Texas and California Notary law.
18

19 154. Thereafter, CHASE on behalf of US BANK initiated an Unlawful Detainer case
20 seeking damages and passion of the subject property.
21

22 155. That Carillo filed a Complaint in Superior Court alleging claims including fraud and
23 wrongful foreclosure. That Carillo responded to the Unlawful Detainer Complaint and
24 successfully had the two matters consolidated by the Superior Court.
25
26
27
28

1 156. That the Superior Court case is still pending but most of Carillo's claims have been
2 dismissed by demurrer based on a Request for Judicial Notice of the Assignment of Deed of
3 Trust and the Substitution of Attorney.

4
5 157. That Plaintiff intends pursue individual claims outside of this Class Action and does
6 not seek a determination of his claims for Wrongful Foreclosure or the legal effect of
7 improper notarization of foreclosure documents affecting Plaintiff's property.

8 158. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
9 defendants' improper notarial practice, a determination of the validity of all acknowledgments
10 published by defendants affecting Plaintiff's property, a determination of malice, a
11 determination of restitution as appropriate and a determination of the remedial measures
12 necessary to correct the public land records public land records for all.

13
14 159. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others
15 similarly situated to prove these allegations individually, as the allegations complain of a
16 systemic and institutional practice.

17
18
19 **MONCRIEF FACTS**

20
21 160. Plaintiffs incorporate these allegations into the claim below as though fully set forth
22 herein.

23 161. That the Moncrief facts are a typical example of the implementation of CHASE and
24 other defendants' business practices where the loan originator is WASHINGTON MUTUAL
25 BANK, F.A. ("WAMU"), a federal bank closed by the FDIC on September 25, 2008, and
26 CHASE'S use of the so-called "*magically appearing endorsement*".
27
28

1 162. So as to save costs, CHASE perpetrates the illusion that it purchased WAMU
2 originated MLNs from the FDIC, when in the vast majority of cases, is merely the loan
3 servicer for MLNs that were sold and securitized by *prior to* WAMU's demise.
4

5 163. Here, CHASE relies on the use of two sets of improperly notarized documents to
6 allegedly create the illusion that it is the beneficiary entitled to appoint a new Trustee for the
7 Moncrief Deed of Trust.

8 164. Moncrief's only significant asset is his residence at 417 Sea Ridge Drive, La Jolla, CA
9 92307 (the "Moncrief Property"). On or about 7/20/2007, Plaintiff entered into a residential
10 refinance loan with WASHINGTON MUTUAL BANK, F.A. for \$4,900,000.00 secured by a
11 deed of trust.
12

13 165. Moncrief defaulted on the obligation and CHASE and other defendants caused a Notice
14 of Default to be filed in the Official Records of the County of San Diego on October 29, 2009.
15

16 166. On October 27, 2009, DEBRA BRIGNAC, purportedly as Vice President of CHASE
17 executes a Substitution of Trustee which purports to appoint CALIFORNIA
18 RECONVEYANCE COMPANY as the Trustee to the Moncrief Deed of Trust, attached as
19 **EXHIBIT 11**. That the Substitution of Trustee includes an acknowledgement executed by
20 JESSICA ERIN SNEDDEN, a California Notary Commission #1858851 and was recorded in
21 the San Diego county public land records on October 29, 2009. That DEBRA BRIGNAC was
22 *not* Assistant President of CHASE. That BRIGNAC, SNEDDEN, DOE 5 and CALIFORNIA
23 RECONVEYANCE COMPANY were each as agents and at the direction of CHASE.
24

25 167. That the referenced Moncrief Substitution of Trustee is a fabricated and "photo-
26 shopped" document created to support the illusion that BRIGNAC was a CHASE Vice
27 President authorized as the true party in interest and therefore had standing to name a new
28 trustee to the Moncrief Deed of Trust.

1 168. That SNEDDEN and DOE 5 have engaged in improper notarial acts in violation of
2 California Notary laws: that DOE 5 purported to act as a notary when he signed the Moncrief
3 Substitution of Trustee, that SNEDDEN was not duly commissioned, that this document was
4 not actually signed by SNEDDEN, that SNEDDEN did not properly acknowledge this
5 document, that SNEDDEN did willfully fail to keep his notary seal under his direct and
6 exclusive control, that SNEDDEN did not duly record this transaction in a sequential journal
7 or keep said journal in a safe and secure place, that this document is not duly acknowledged
8 by SNEDDEN.
9

10
11 169. That CHASE and other defendants solicited, coerced and influenced DOE 5 and
12 SNEDDEN and to engage in the aforementioned improper notarial acts when it knew these
13 acts to be improper notarial acts.
14

15 170. On August 6, 2010, Moncrief filed a Voluntary Petition under Chapter 11, Case
16 number 10-14057-LT11 thereby enjoining the non-judicial foreclosure sale. On January 20,
17 2011, Moncrief filed an Adversary Complaint against CHASE, # 3:11-ap-90025 and has
18 objected to CHASE's claim as an alleged secured creditor.
19

20 171. Again, CHASE and other defendants went to great length to create the illusion of
21 standing.
22

23 172. CHASE claims it has legal standing as the current owner of the note and is entitled to
24 enforce the provisions of the MLN based on a copy of the Note that now includes an undated
25 endorsement in blank allegedly executed by current CHASE employee Cynthia Riley on
26 behalf of WAMU. CHASE incorrectly assumes the Moncrief Note to be non-negotiable.
27 Oddly, when originally presented by CHASE in its proof of claim, said note contained *no*
28

1 *endorsement*. It is still unknown if current CHASE employee RILEY ever worked for
2 WAMU or executed the endorsement before or after WAMU's demise.

3
4 173. That Plaintiff intends pursue individual claims outside of this Class Action and does
5 not seek a determination of his claims for Wrongful Foreclosure or the legal effect of
6 improper notarization of foreclosure documents affecting Plaintiff's property.

7
8 174. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
9 defendants' improper notarial practice, a determination of the validity of all acknowledgments
10 published by defendants affecting Plaintiff's property, a determination of malice, a
11 determination of restitution as appropriate and a determination of the remedial measures
12 necessary to correct the public land records public land records for all.

13
14 175. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others
15 similarly situated to prove these allegations individually, as the allegations complain of a
16 systemic and institutional practice.

17
18 **CLASS ACTION ALLEGATIONS**

19
20 176. Plaintiffs incorporate the allegations above in this claim as though fully set forth
21 herein.

22
23 177. Plaintiffs seeks a determination of the scope of the systemic nature of the defendants'
24 improper notarial practice, a determination of the validity of all acknowledgments published
25 by defendants affecting Plaintiff's property, a determination of malice, a determination of
26 restitution as appropriate and a determination of the remedial measures necessary to correct
27 the public land records public land records for all.

1 178. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others
2 similarly situated to prove these allegations individually, as the allegations complain of a
3 systemic and institutional practice.

4
5 179. As CHASE and other defendants are engaged in the malicious practice of systemically
6 violating California and other state laws which forbid improper notarial acts, Class Plaintiffs
7 file this First Amended Complaint as private attorney generals seeking declaratory relief,
8 injunctive relief, restitution and damages.

9
10 180. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure, on
11 behalf of the themselves and on the following Classes:

12 (1) All California real property owners whose property is allegedly encumbered
13 by a Deed of Trust securing a Note in default owned or serviced by CHASE or
14 its agents AND where CHASE or its agents has caused any document to be
15 recorded in the public land records after January 1, 2008 which required an
16 acknowledgment under California law.

17 (2) Excluded from the Class are defendants, and their affiliates, subsidiaries,
18 current or former employees, officers, directors, agents, representatives, and their
19 family members.

20 181. Plaintiffs do not know the exact size or identities of the members of the proposed
21 class, since such information is in the exclusive control of the Defendants.

22 182. Industry statistics suggest that the national loan servicing market is currently
23 estimated to be \$7.846 trillion, of which California represents over 50%. The top 10 loan
24 servicers control over 78% of the Loan Servicing Market.

25 183. CHASE is third among the largest servicers of residential mortgages in the United
26 States, services a current portfolio of 8,300,000 residential mortgage loans worth
27 \$1.168Trillion and holds a Market Share of approximately 14.9% nationally.
28

1 184. Based on industry data, 11.6% of the loans serviced by CHASE are currently past due
2 and half of those are in some stage of foreclosure (7.5% were past due in 2008, to 12.5% in
3 2009, and 11.6% in 2010). 1 in 283 homes in California are currently in some stage of non-
4 judicial foreclosure. NDEX, CAL-WESTERN and CAL-RECON each play a crucial role in
5 creating, executing, publishing recording and improperly notarizing thousands of foreclosure
6 related documents. A conservative estimate suggests that the Class size could approach
7 40,000 to 50,000 borrowers.
8

9 185. Therefore, the proposed Class is so numerous that joinder of all members is
10 impracticable. Furthermore, it is impractical for individual Plaintiffs to individually attempt
11 to discover the scope of CHASE and other defendants' violations of state notarial laws and
12 would require repetitive efforts.
13

14 186. The Class Plaintiffs do not intend to litigate their individual wrongful foreclosure
15 cases here. Instead the Plaintiffs seek appropriate restitution, judicial determinations
16 injunctive and equitable remedies given CHASE and other defendants' institutionalization of
17 a business practice that is based on the intentional solicitation, coercing and influence on
18 individuals to commit improper notarial acts.
19

20 187. Under these circumstances, a class action is superior to other methods for the fast and
21 efficient adjudication of this controversy and to avoid the risk of disparate and inconsistent
22 rulings in different courts. A class action regarding the issues in this case does not create any
23 problems of manageability.
24

25 188. A pattern and practice of conduct by defendants exist in this case wherein common
26 questions of fact and law predominate over any questions affecting only individual members
27 including, but not limited to the following:
28

- 1 a. Whether CHASE and other defendants have engaged in the *unlawful and systemic*
2 *practice* of soliciting, coercing or influencing the performance of improper notarial
3 acts, including the creation, execution and publication of improper acknowledgments,
4 in violation of CA Government Code Section 8225 and other state laws;
5
6 b. Whether an out of state notarial acknowledgment executed in violation of other state's
7 notary laws, is sufficient for purposes of recording in California under Civil Code
8 Section 1189;
9
10 c. Whether the alleged creation, institution management and maintenance of the practice
11 of systemically violating state notarial laws for profit rises to the level of malice or a
12 reckless disregard of the rights of the Class members;
13
14 d. Whether the systemic practice of soliciting, coercing or influencing the performance
15 of improper notarial acts so as to reduce the true cost of servicing defaulted loans
16 constitutes *unfair competition*;
17
18 e. Whether members of the public are likely deceived by the systemic practice of
19 soliciting, coercing or influencing the performance of improper notarial acts including
20 the recording of improper acknowledgments in the public land records;
21
22 f. The determination that any improperly acknowledged documents shall not constitute
23 *prima facie evidence* that said documents are the duly authorized act of the entity
24 named in the instrument.
25
26 g. The determination of the appropriate restitution, judicial determinations, injunctive
27 and equitable remedies;
28
h. The determination of a method for correcting and/or removing and/or purging
improperly acknowledged documents from the public land records; and providing

1 proper notice to Class members, the affected public, bankruptcy courts, unlawful
2 detainer courts, Superior Courts, Federal District Courts and title companies of the
3 judicial determination as to each document;

- 4
- 5 i. The determination of the amount of restitution, costs and disgorgement appropriate for
6 defendants' violation of Cal B&P §17200;
- 7 j. The determination of the amount of cost savings benefiting defendants from the anti-
8 trust practices violating Cal B&P §17200;
- 9 k. Common questions of fact and law *do not include* the determination of the validly,
10 accuracy or veracity of the content of foreclosure documents recorded in the public
11 land records and determined to be improperly acknowledged.

12

13 189. This is a matter of the important public policy because the fair treatment of distressed
14 borrowers and respect for the integrity of public land records is a county, state and national
15 policy priority.

16

17 190. The improper notarial claims of the individual named Plaintiffs are typical of the
18 claims of the Class and do not conflict with the interests of any other members of the Class.

19 191. The individually named Plaintiffs will fairly and adequately protect the interests of the
20 Class. They are committed to the vigorous prosecution of the Class' claims and have retained
21 attorneys who are qualified to pursue this litigation.

22

23 192. The putative class action meets the requirements of Federal Rules of Civil Procedure
24 23(a), 23(b) and/or 23(c).

25 193. The nature of notice to the proposed class required and/or contemplated is the best
26 practicable method possible and contemplated the defendant's list when disclosed would most
27

28

1 likely be media outlets, mailing to the property addresses affected by the filed foreclosures
2 and internet and other general notices are contemplated to ensure notice.

3 194. Defendants have acted or refused to act on grounds that apply generally to the Class
4 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the
5 Class as a whole.
6

7
8 **CLAIMS**

9 **FIRST COUNT**

10 **Unlawful, Unfair and Deceptive Business Practices**
11 **(Against All defendants and Does 1 through 10)**

12 195. Plaintiffs incorporate in this claim all of the allegations above as though set forth in
13 full herein.
14

15 196. Plaintiffs bring this claim on their own behalf and on behalf of each member of the
16 Class described above.
17

18 197. That California's Unfair Competition Law (UCL) defines unfair competition to
19 include any "unlawful, unfair, or fraudulent" business act or practice. Cal Bus & Prof Code
20 §17200 et seq.
21

22 198. That Defendants' standard operating procedure to solicit, coerce and influence
23 improper notarial acts, knowing those acts to be improper, in furtherance of a broader scheme
24 to process tens of thousands of California foreclosures at the lowest possible cost by
25 systemically misrepresenting standing and the chain of title of securitized MLNs.
26

27 199. That said broader scheme includes the crucial practice of improperly acknowledging
28 and recording *after-the-fact, as-needed* Assignments, Substitutions of Trustee and Deeds

1 upon Trustee Sale. Defendants file other foreclosure documents such as endorsements,
2 allonges, Notices of Defaults and affidavits so as to create the *illusion* of valid mortgage
3 transfers and standing in tens of thousands of foreclosure matters, bankruptcy cases and civil
4 matters. To the extent those documents are not improperly acknowledged, they are beyond
5 the scope of this case.
6

7 200. Plaintiffs' claims are by no means speculative but are supported by the findings of the
8 Office of the Inspector General of HUD, the San Francisco assessor-recorder's office, other
9 independent governmental agencies, media reports, whistleblowers and courts.
10

11 201. As stated in the Consent Order entered into between CHASE and the United States
12 Department of Treasury's Office of the Comptroller of Currency (the "OCC") on April 13,
13 2011, the Comptroller found that CHASE

14 "(b) filed or caused to be filed in state and federal courts, or in local land records
15 offices, numerous affidavits or other mortgage-related documents that were not
16 properly notarized, including those not signed or affirmed in the presence of a notary"
17

18 202. That while the Consent Order provides for an agreement wherein CHASE agrees to
19 take remedial measures to ensure that it implement procedures to remediate its unsafe and
20 unsound banking practices, the Order does not limit Plaintiffs' right to a private cause of
21 action for equitable relief including a purging of the public land records.
22

23 203. That the "independent foreclosure review" included in the Consent Order and ending
24 in July 2012 is also a wholly inadequate device. It requires that unsophisticated homeowners
25 make a showing of "financial injury" but subject to no defined standard of review. The
26 allegedly "independent" auditors are chosen, controlled and influence by defendants
27 notwithstanding assertions to the contrary.
28

1 204. That the Consent Order does not constitute the Plaintiffs' sole remedy, especially for
2 borrowers who have already lost their homes. That the Consent Order does not address the
3 defendants' criminal activity nor does it provide any equitable remedy to correct the public
4 record.
5

6 205. Whether Plaintiffs have suffered financial injury will vary greatly depending on
7 individual circumstances and what type of document has been improperly acknowledged.
8 Whether a Trustee Deed upon Sale versus a Substitution of Trustee or an Assignment of Deed
9 of Trust is improperly acknowledged, the damage to Class Members may range for minimal
10 to extreme.
11

12 206. Here, Plaintiffs do not seek damages for individual financial injury but equitable relief
13 restitution for defendants' widespread pollution of public land records with improperly
14 acknowledged foreclosure documents.
15

16 207. The Office of the Comptroller of Currency has no jurisdiction to amend California
17 criminal, California Notary Laws or in any way inhibit Plaintiffs' right to pursue this private
18 cause of action. Plaintiffs reserve the right to pursue claims based on the effect of improperly
19 notarized documents but those issues need not be decided in this case.
20

21 **THE INSTITUTIONALIZATION OF THE IMPROPER NOTARY PRACTICE**
22 **DEMONSTRATES MALICE AND A RECKLESS DISREGARD FOR THE RIGHTS OF**
23 **PLAINTIFFS AND THE INTEGRITY OF THE PUBLIC LAND RECORDS**

24 208. That by institutionalizing an improper notarial practice in the quest for profit,
25 Defendants has demonstrated its actual malice towards Plaintiffs and those similarly situated.
26
27
28

1 209. Those defendants are motivated by hatred and ill will toward this class of Plaintiffs and
2 have demonstrated herein that it lacks any reasonable belief in the truth of matters asserted in
3 tens of thousands of acknowledgements attached to tens of thousands of false and misleading
4 foreclosure documents.
5

6 210. Defendants have acted in reckless disregard of the rights of Plaintiffs, similarly situated
7 homeowners, taxpayers and private investors in mortgage backed securities.
8

9 211. The improper notarial practice is designed to *enhance the illusion* created by fabricated
10 foreclosure documents, many which purport to transfer the rights to enforce the terms of tens of
11 thousands of non-negotiable promissory notes (the “MLNs”).
12

13 212. The improper notarial practice is designed to *enhance* defendants’ ability to play “hide-
14 and-seek” with class Plaintiffs, debtors, judges, bankruptcy trustees, investors and other affected
15 parties. That the Pooling and Servicing Agreements of every private Mortgage Backed Security
16 Trust (“MBST”) serviced by Defendants contemplates no less than THREE true sales of each
17 MLN from originator, to sponsor, to depositor and finally to the designated Trustee of the
18 MBST (the “Chain of Title”).
19
20

21 213. That the cost of properly transferring a single MLN to a MBST through the
22 contemplated “Chain of Title” is approximately \$1,500.00. That a typical MBST contemplates
23 a pool of 5,000 MLNs. To save money, Defendants refuse to produce or lack access to the
24 evidence of the actual transfers to MBSTs. The “technology” cost, processing and legal fees
25 associated with proving standing of the true “chain of title” is cost prohibitive given defendants’
26 volume of bankruptcy and litigation matters. Defendants misrepresent the “chain of title”
27
28

1 through the use of Assignments and other foreclosure documents by creating, executing and
2 improperly acknowledging fabricated “photo-shopped” foreclosure documents.

3
4 214. That defendants’ network of attorneys is financially rewarded based on the speed in
5 which the attorneys complete non-judicial foreclosures, bankruptcy and litigation matters. Said
6 network attorneys incur a performance penalty based on the amount of correspondence with
7 defendants and the amount of evidence the attorney’s require to “prove-up” a matter.
8 Defendants impose “technology fees” through a complex web based interface platform for
9 correspondence, access and copies of the documentary evidence required in a matter. Such a
10 practice relies on the speed and deception, the implementation of which demonstrates malice
11 and a reckless disregard of Plaintiffs’ rights.

12
13
14 215. Most egregiously, the network attorneys utilize the business practice to obtain attorney
15 fees awards from by the bankruptcy judges ranging from \$600-\$1000 for each successful
16 motion for relief of stay and allowed proofs of claim. Said awards allow CHASE to pad its
17 claims and add fees to the loan balances arrearage claims of class members.

18
19 216. Those defendants’ manufactured and improperly acknowledged evidence is so
20 persuasive that 95% of motions for relief of stay are granted without opposition and over 95%
21 of CHASE’s Proofs of Claims are allowed.

22
23 217. That the systemic use of the fabricated evidence has a chilling effect on class debtors
24 and their attorneys. Said business practice discourages bankruptcy players from offering
25 objections or from questioning the validity of CHASE’s false claims based on standing.

26
27 218. That the improper acknowledgement of these manufactured documents is *the* crucial
28 element in creating the illusion of the legitimacy of the foreclosure documents.

1 219. Those defendants employ the improper notary practice to *support* the broader business
2 model of manufacturing and publishing foreclosure documents *as needed* and without regard
3 to the truth.
4

5
6 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS UNLAWFUL**

7 220. Those defendants have knowingly engaged in the systemic solicitation, coercion and
8 influence of individuals to commit improper notarial acts related to the execution of
9 acknowledgments of documents created in contemplation in non-judicial foreclosure in
10 violation of CA Government Code Section 8225 and other state laws.
11

12 221. Those defendants know that said notarial acts are improper, deceptive and fraudulent
13 but solicit, coerce and influence such improper acts as part of a broader business model that
14 also incorporates the creation and publication of fabricated, misleading inaccurate and
15 fraudulent foreclosure documents in various incarnations described herein.
16

17 222. Defendants manufacture and publish chain of title transfer evidence and other
18 foreclosure documents on demand so as to falsely prove standing in thousands of matters.
19

20 223. That the utilization of this broader business model is driven by defendants' relentless
21 pursuit of cost savings. The broader business model results in widespread deception of
22 Plaintiffs, borrowers, other creditors, bankruptcy courts, bankruptcy trustees, title companies,
23 Federal courts, Superior courts, Unlawful Detainer courts and mortgage trust investors.
24

25 224. That the effective utilization of the broader model begins with the offensive practice
26 of institutionalizing a culture and practice of improper acknowledgment of those foreclosure
27 documents with are then published in land records in contemplation of non-judicial
28 foreclosure.

1 225. Beyond their contemplated use within the non-judicial foreclosure process, the
2 improper acknowledgements attached to foreclosure documents constitute *prima facie*
3 *evidence* that the document is the duly authorized act of the entity named in the instrument.

4
5 226. That where a Plaintiff files bankruptcy or attempt to litigate issues related to debt,
6 foreclosure or title, defendants assert the improperly acknowledged documents as *prima facie*
7 evidence that the subject document is duly authorized.

8 227. That in reality, no such presumption should exist. While the improperly notarized
9 documents are published in contemplation of non-judicial foreclosure, but they have a direct,
10 negative and burdensome effect Plaintiff's success in bankruptcy and litigation when they are
11 subsequently used in a deceptive manner.

12
13 228. That the practice of soliciting, coercing and influencing improper notarial acts is the
14 equally offensive as defendants' broader business model of creating Assignments and other
15 foreclosure documents that are inaccurate, fraudulent, not based on personal knowledge and
16 not what the purport to be. But the improper notarial practice is much more egregious as it is
17 based on the corruption of the Notary office.

18
19
20 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS UNFAIR**

21
22 229. That the improper notarization practice is implemented for the ultimate purpose of
23 maximizing Defendants' profit through the reduction of due diligence and foreclosure
24 processing costs.

25 230. Central to this *unfair* practice is the creation, execution and publication of tens of
26 thousands of improperly acknowledged foreclosure related documents in the public land
27 records since 2008. These illegal short cuts result in substantial cost savings.
28

1 231. The Relevant Market is defined as residential loan servicing. The national loan
2 servicing market is currently estimated to be \$7.846Trillion, with the top 10 loan servicers
3 control over 78% of the Market. Defendant CHASE is third among the largest servicers of
4 residential mortgages in the United States, services a current portfolio of 8,300,000 residential
5 and holds a Market Share of approximately 14.9% nationally.

6
7 232. That Defendants realize a tangible, measurable cost benefit from this improper notary
8 practice which results in a competitive advantage over loan servicing companies in the
9 Relevant Market who do not engage in soliciting, coercing and influencing improper notarial
10 acts.

11
12 233. That the improper notary practice facilitates quick and inexpensive non-judicial
13 foreclosures of California real property without any regard for the law or the rights of the
14 affected Class members. The Defendants' improper notary practices cause increased
15 productivity, lower processing costs, lower litigation expenses, lower attorney fees and
16 increased foreclosure related revenue. The presumptive evidentiary value of these improperly
17 acknowledged documents has a chilling effect on borrowers' objections, litigation and
18 opposition which results in greater cost savings for defendants.

19
20 234. One court has said that an unfair business practice is one that "offends an established
21 public policy or when the practice is immoral, unethical, oppressive, unscrupulous or
22 substantially injurious to consumers" (*People v. Casa Blanca Convalescent Homes, Inc.*
23 *(1984) 159 Cal. App. 3d 509, 530 [206 Cal. Rptr. 164, 53 A.L.R.4th 661]*). While no clear test
24 to determine what constitutes *unfair* business practice has been established in California, the
25 improper notary practice is unfair by this definition.
26
27
28

1 235. That another court has stated that to determine whether a business practice is unfair,
2 courts must “weigh the utility of the defendant's conduct against the gravity of the harm to
3 the alleged victim” (State Farm Fire & Casualty Co. v. Superior Court (1996) 45 Cal.
4 App. 4th 1093, 1104 [53 Cal. Rptr. 2d 229].) The improper notary practice is unfair by this
5 definition.
6

7 236. The only utility for Defendants is its own cost savings advantage over competitors.
8 Rather than treat the residential foreclosure process with the utmost care and strict liability,
9 Defendants maliciously utilizes the improper notary practice in combination with the
10 widespread use of false statements, misrepresentations and deception just to save money.
11

12 237. That since the foreclosure crisis began in 2008, this institutional business practice of
13 violating the Notary laws and professional standards has lead to increased profits through the
14 elimination of the otherwise time consuming and expensive process of ensuring proper
15 acknowledgement of foreclosure documents.
16

17 238. That in the context of this national mortgage crisis, a massive taxpayer bailout of
18 Defendant CHASE and the general devastation caused by home foreclosures, the alleged
19 business practice is immoral, unethical, oppressive, unscrupulous *and* substantially injurious
20 to *all* consumers. That whether a consumer is a homeowner in financial distress or not, there
21 is a common interest in preserving the integrity of our public land records and court system.
22

23
24 **DEFENDANTS’ IMPROPER NOTARZATION PRACTICE IS DECEPTIVE**

25 239. Central to this *deceptive* business practice is the creation, execution and publication of
26 tens of thousands of improperly acknowledged foreclosure related documents in the public
27 land records since 2008.
28

1 240. That the improper notary practice of soliciting, coercing and influencing improper
2 notarial acts is *deceptive* by definition but not conducted in isolation. While no longer the
3 subject of this lawsuit, the false and misleading *content* contained in the foreclosure
4 documents is equally oppressive and demonstrative of Defendants' blatant disregard for the
5 rights of homeowners in financial distress.

6
7 241. Notwithstanding that these and other foreclosure documents contain false assertions as
8 to ownership of notes, transfers of notes, transfers of deeds of trusts and transfers of the
9 power to enforce the terms of California MLNs, only the improper notary practice is the
10 subject of this lawsuit.

11
12 242. The practice of creating improper acknowledgments restricts borrowers from
13 challenging the veracity of a document's assertions and the validity of any non-judicial
14 foreclosure sale.

15
16 243. The *illusory* certificates of acknowledgement attached to an executed instrument,
17 such as a Substitution of Trustee or an Assignment, is *prima facie evidence* that the document
18 is the duly authorized act of the entity named in the instrument. The deceptive effect of
19 improper acknowledgement cascades throughout bankruptcy and civil cases, in addition to
20 non-judicial foreclosures.

21
22 244. Therefore, even where the party who executes a document lacks personal knowledge
23 or any agency relationship with the party entitled to enforce the terms of an MLN, an
24 *illusory* acknowledgement wrongfully obstructs borrowers from making legitimate
25 challenges to the validity of the foreclosure document.

26
27 245. That defendants have processed tens of thousands of non-judicial foreclosure
28 proceedings based on the purported validity of improperly notarized documents in addition to

1 failing to ensure that either the promissory note of deed of trust were properly endorsed or
2 assigned or in possession of the appropriate party at the appropriate time.

3 246. That while the content and attestations contained in the foreclosure documents are
4 themselves false, misleading and deceptive, it is the systemic use of these documents and
5 defendants' solicitation, coercion and influence of individuals to commit improper notarial
6 acts that is the subject of this action.
7

8 247. That the public, including Plaintiffs, Courts, bankruptcy trustees, new creditors, credit
9 reporting agencies, potential buyers and title insurance companies are likely to be *deceived* by
10 the improperly acknowledged foreclosure documents filed in the public land records,
11 notwithstanding the truth of the matters asserted in those documents.
12

13 248. That defendants have generated tens of millions of dollars in revenue through
14 premature or unjustified foreclosure fees, attorney fees, notary fees, insurance fees, Chapter
15 13 trustee distributions, broker service fees, late fees and servicing fees charged to borrowers.
16

17 249. Those defendants have wrongfully foreclosed and prevailed in bankruptcy motions,
18 Unlawful Detainer cases, Superior Court cases and Federal cases by offering improperly
19 notarized foreclosure documents as self-authenticating and presumptively valid evidence.
20

21 250. That until the public record is corrected, there is no reason to expect that these unjust
22 results accruing from defendants' improper notarization practice will ever cease.

23 251. As a proximate result of defendants' conduct, Plaintiffs have each suffered injury in
24 fact and will continue to suffer until this matter is resolved.

25 252. The improperly acknowledged documents are used against Plaintiffs' interest to
26 support the illusion of valid transfers of rights in MLNs including the right to foreclose, to
27 name trustees of deeds of trusts and to grant title in real property to buyers at non-judicial
28

1 foreclosure sales. The use of said documents has caused Plaintiffs collectively to suffer
2 actual injury, incur improper loan servicing fees, increased loan charges, a loss of personal
3 rights, and loss of property rights, decreased property values, lost costs, lost time, and
4 increased attorney fees combating the effect and cure the widespread publication of
5 improperly acknowledged documents.
6

7 253. The improperly acknowledged documents, while published in contemplation of non-
8 judicial foreclosure, are used against Plaintiffs' interests in bankruptcy cases, federal court
9 cases, civil court cases and unlawful detainer cases to support the illusion of valid transfers of
10 rights and the *prima facie* evidence of the validity of said documents.
11

12 254. The improperly acknowledged documents are used with such frequency and
13 abundance so as to degrade the integrity of the public land records system, the office of
14 notaries and our court system. As such, said practice is causing irreparable injury to members
15 of the general public.
16

17 **DEMAND FOR JURY TRIAL**

18 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial
19 as to all issues triable by jury.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of them, as follows:
23

- 24 a. That the Court determine that this action may be maintained as a class action under Rule
25 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiffs be certified as
26 class representative and Plaintiffs' counsel be appointed as counsel for the Class.
27
28

- 1 b. A determination whether defendant’s improper notarial business practices, related actions,
2 failures to act, representations and assertions constitute violations of California Business
3 & Professions Code §17200;
4
5 c. An order compelling defendants, their successors, agents, representatives, employees, and
6 all persons who act in concert with them be permanently enjoined from committing any
7 acts of unfair competition, related to the filing of improperly acknowledged documents in
8 the public land records in violations of § 17200, including, but not limited to, the
9 violations alleged herein.
10
11 d. An determination of the scope of the nature and seriousness of the alleged misconduct, the
12 number of violations, the persistence of the misconduct, the length of time over which the
13 misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's
14 assets, liabilities and net worth.
15
16 e. A determination of as to which the scope of the nature and seriousness of the alleged
17 misconduct, the number of violations, the specific identification of each violation, the
18 persistence of the misconduct, the length of time over which the misconduct occurred, the
19 willfulness of the defendant's misconduct, and the defendant's assets, liabilities and net
20 worth.
21
22 f. A determination of the amount of cost savings benefiting defendants from the deceptive
23 practices violating Cal B&P §17200 in this context;
24
25 g. A determination of the amount of restitution and disgorgement of profits appropriate for
26 violations of Cal B&P §17200 in this context;
27
28 h. For an order requiring defendants to record in the public land records a “Notice of
Improperly Acknowledged Document”, or such similar Notice as the Court deems

1 appropriate, each of which shall correspond and identify each specific improperly
2 acknowledged document previously recorded in public land records.

- 3
4 i. For an order requiring defendants to record in the docket or claims register of each court's
5 official record. A "Notice of Improperly Acknowledged Document", or such similar
6 Notice as the Court deems appropriate, each of which shall correspond and identify each
7 specific improperly acknowledged document previously filed as an exhibit or referenced
8 within any pleading by defendants' in any court's docket or claims register;
- 9
10 j. Only where this matter is joined by the California Attorney General, any California
11 County District Attorney or City Attorney, a civil penalty not to exceed two thousand five
12 hundred dollars (\$2,500) for each act of recording of an improperly acknowledged
13 document or soliciting, coercing or influencing an improper notarial act;
- 14
15 k. That Plaintiff and the Class recover their costs of suit, including attorney's fees as provided
16 by law; and
- 17
18 l. For such other and further relief, equitable or otherwise, as is just under the
19 circumstances.

20
21
22
23 Dated: April 5, 2012

LAW OFFICES OF J. ARTHUR ROBERTS

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28

JOSEPH ARTHUR ROBERTS, ESQ.
Attorney for Plaintiffs
and all others similarly situated

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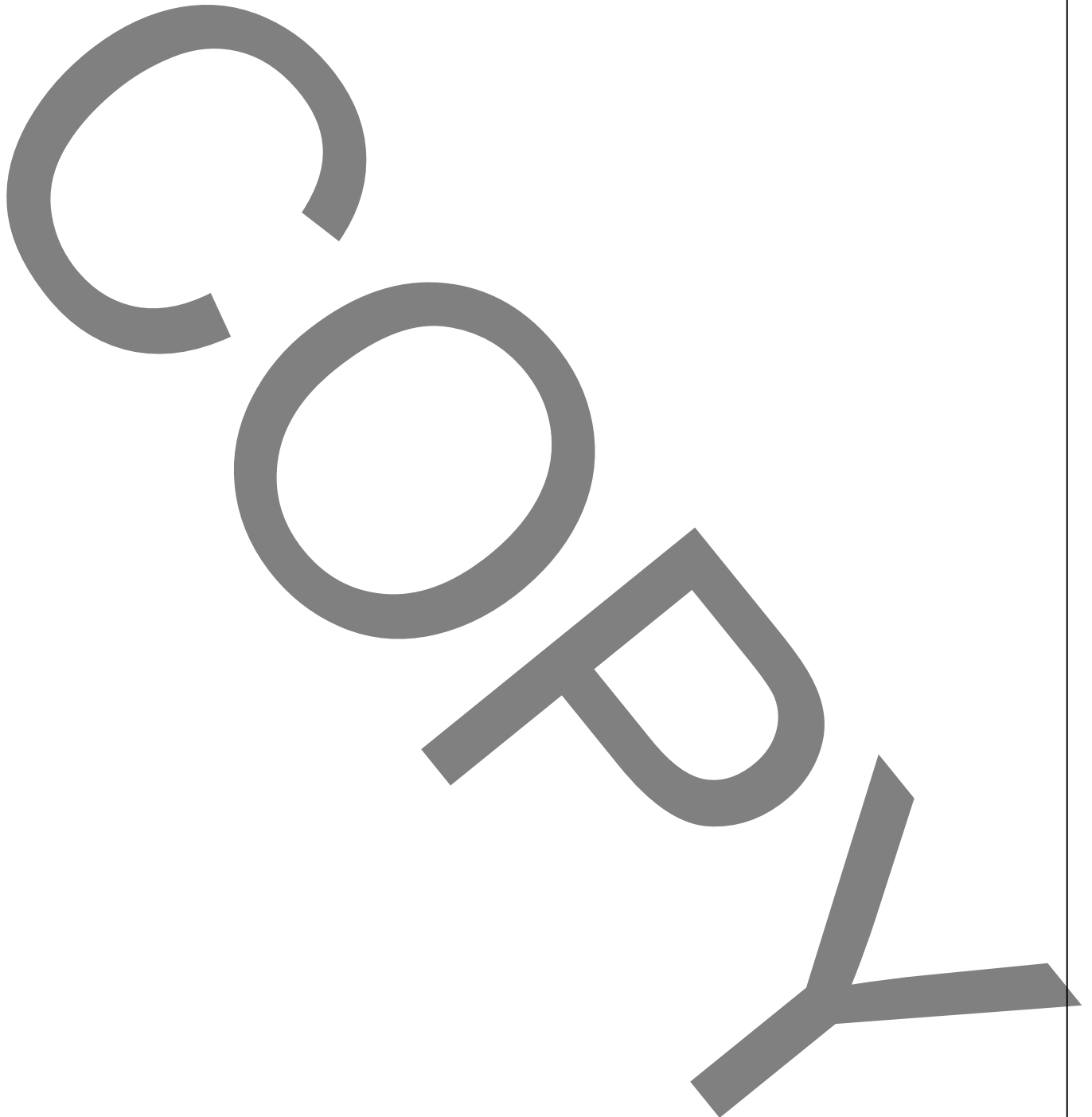


EXHIBIT 1

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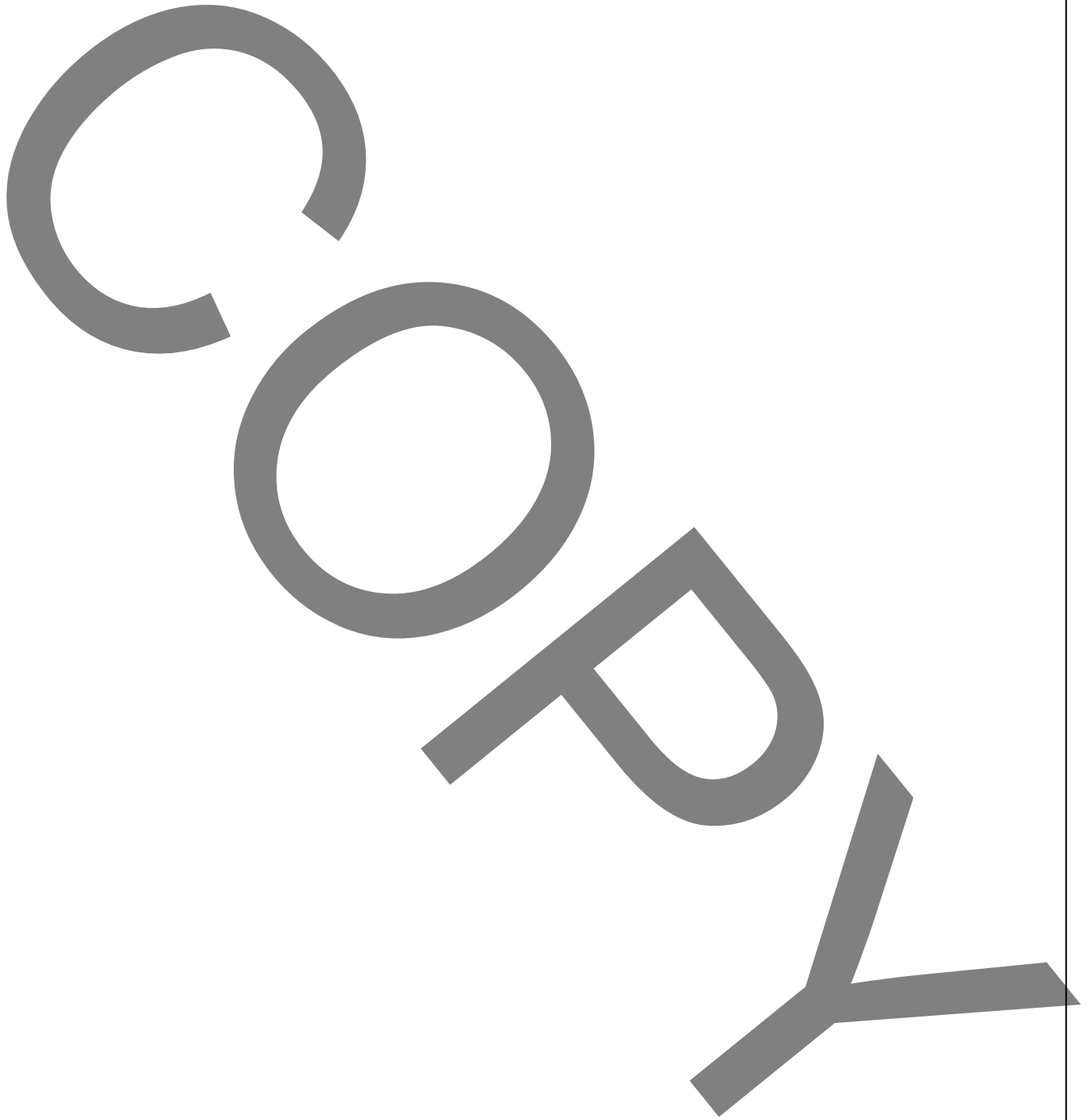


EXHIBIT 2

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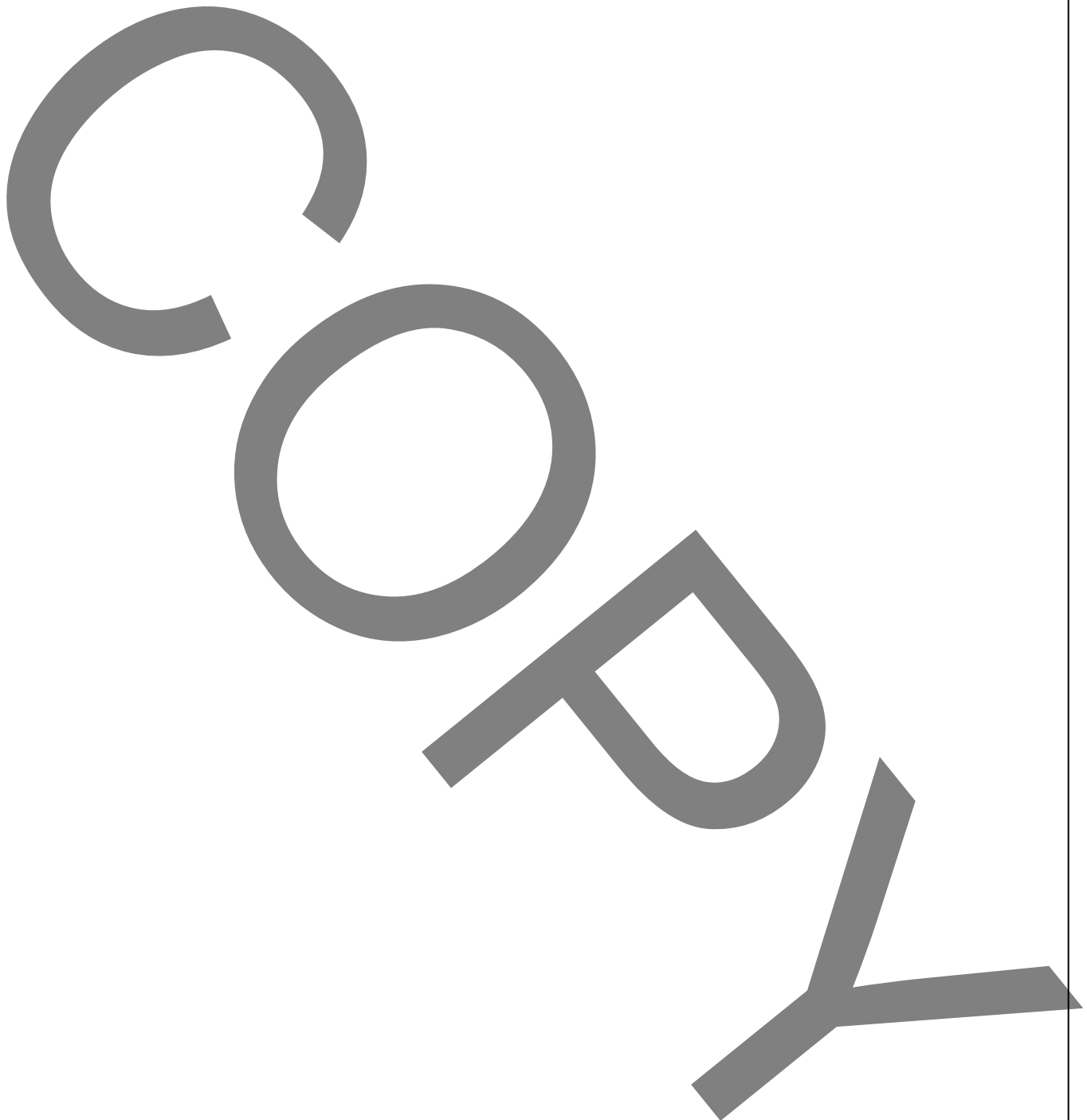


EXHIBIT 3

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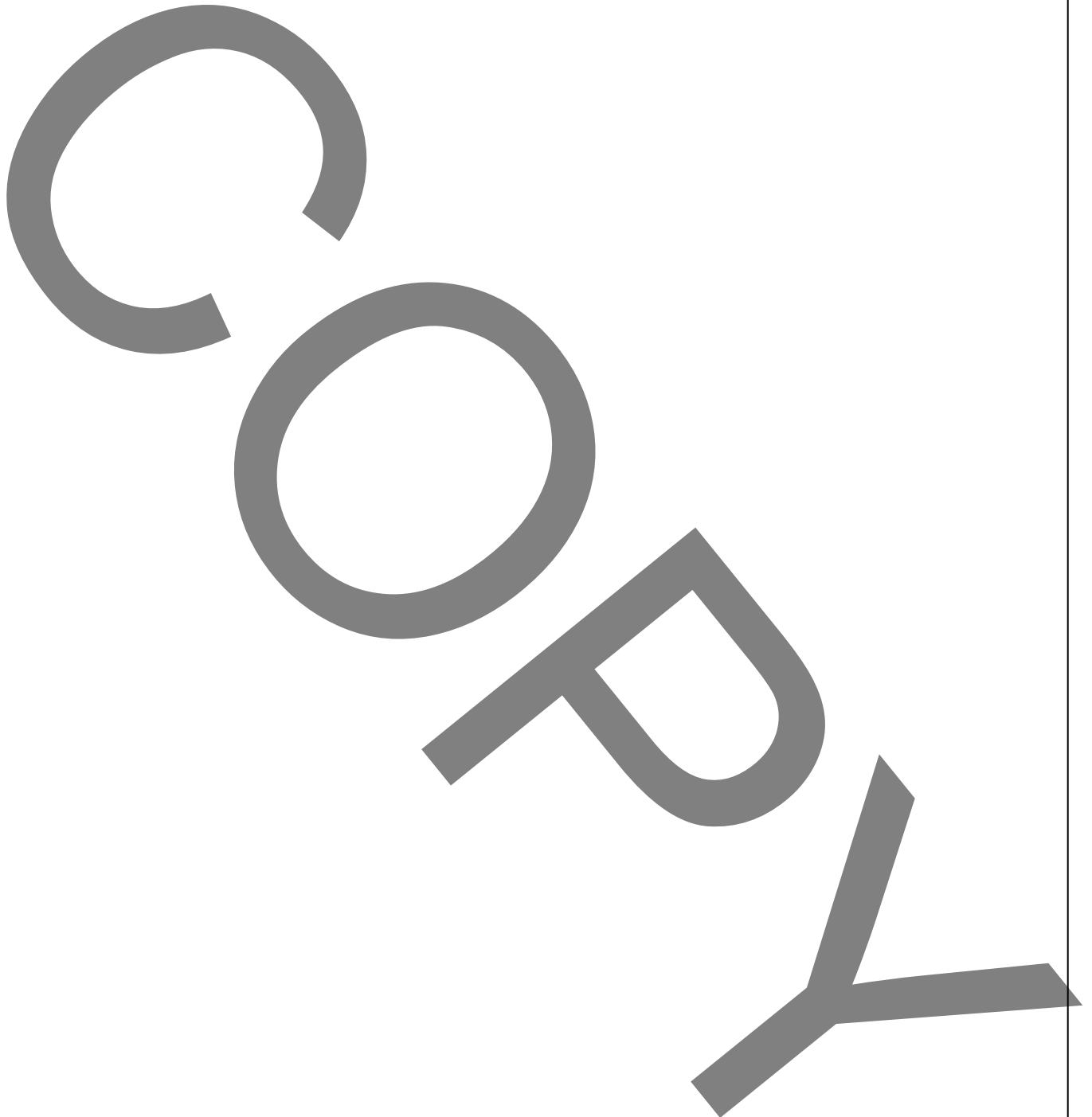


EXHIBIT 4

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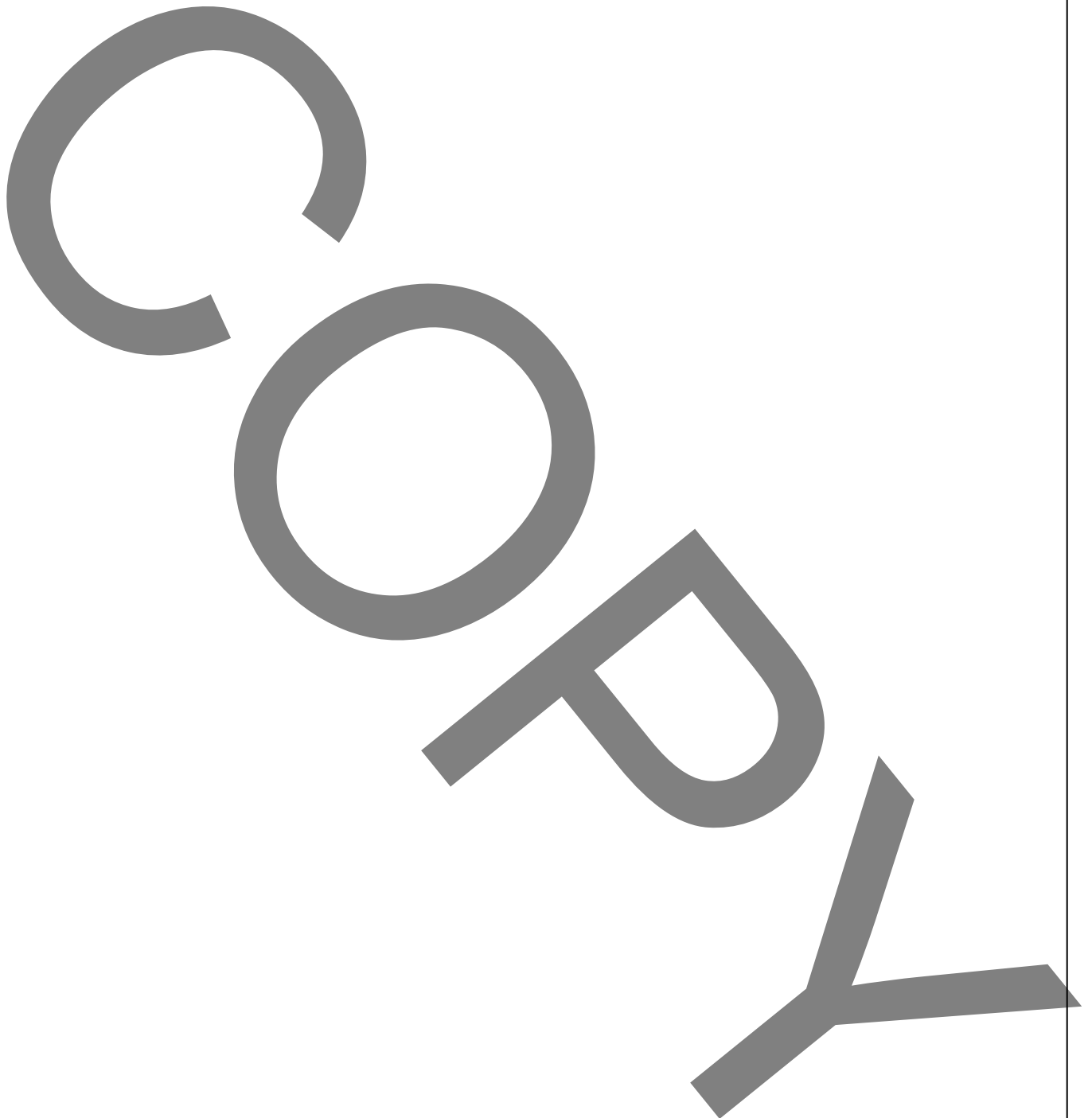


EXHIBIT 5

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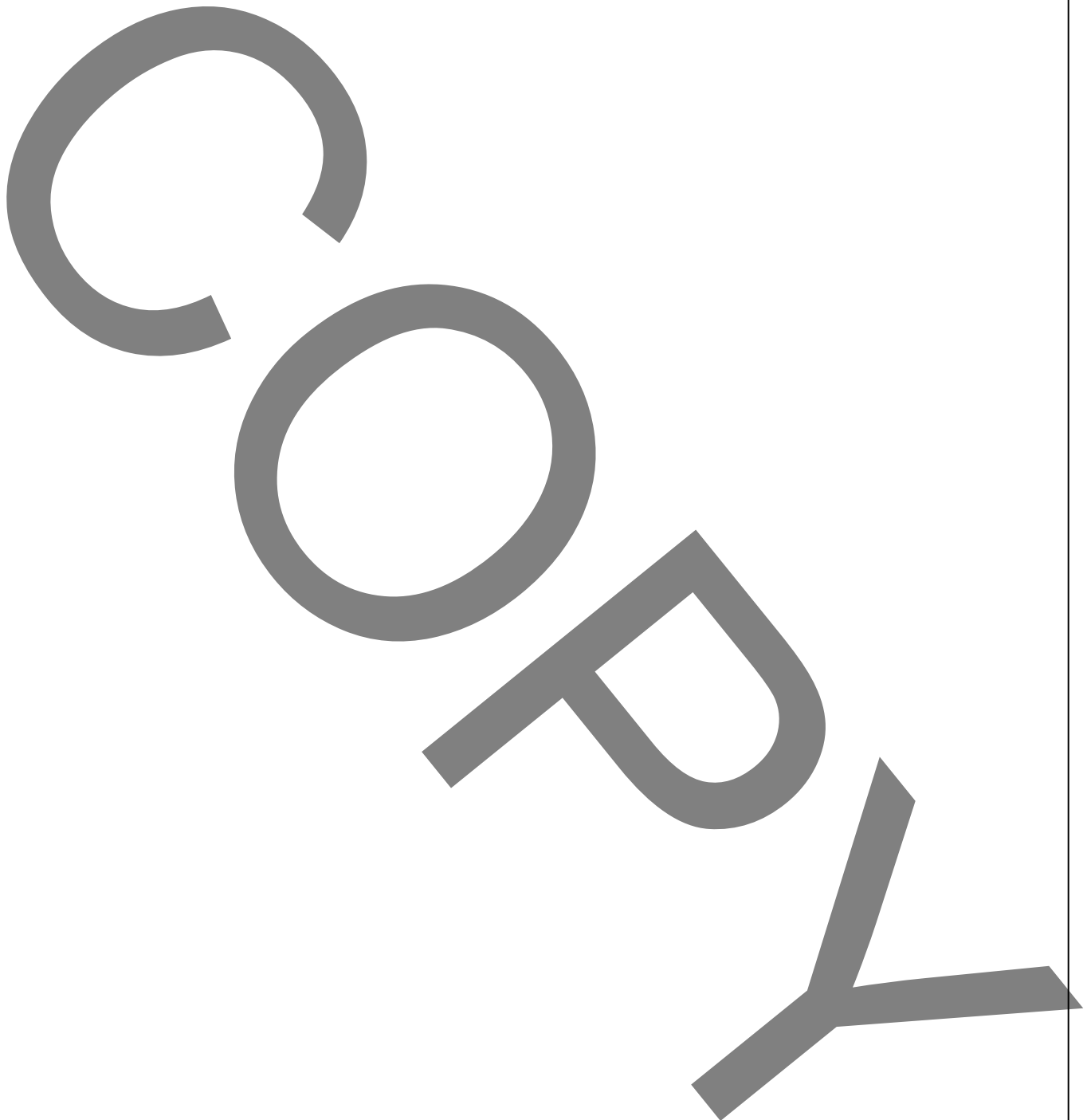


EXHIBIT 6

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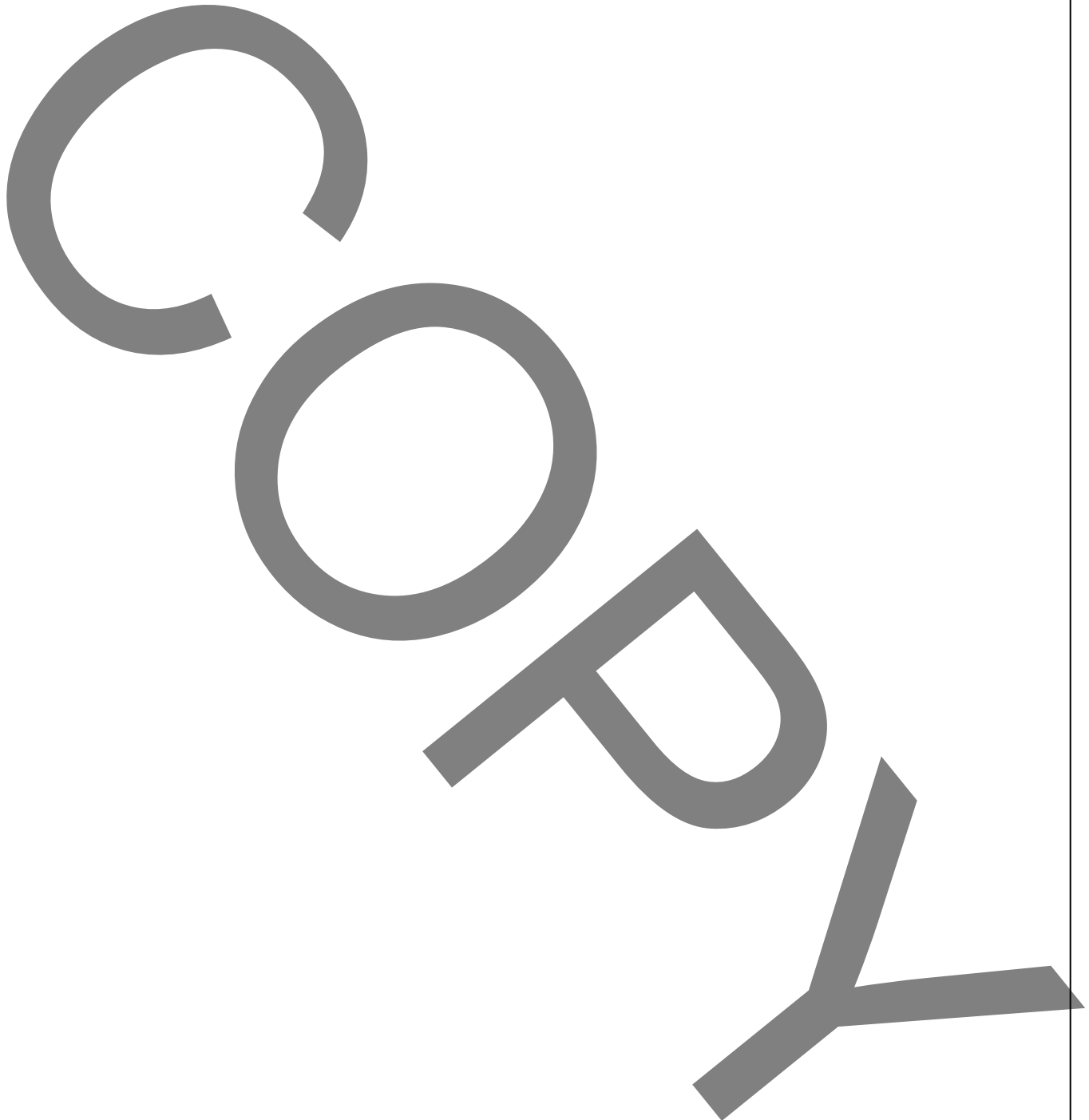


EXHIBIT 7

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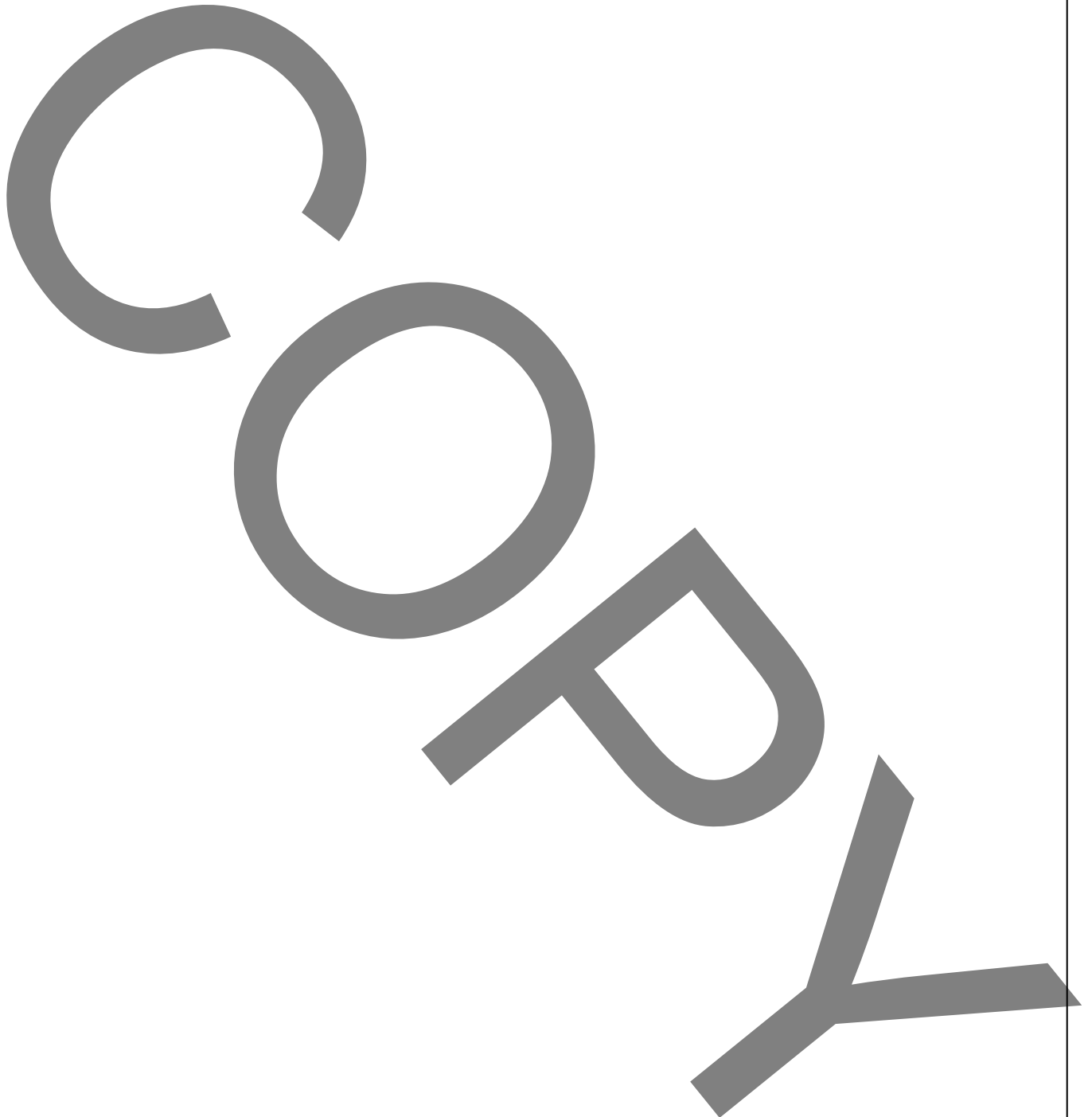


EXHIBIT 8

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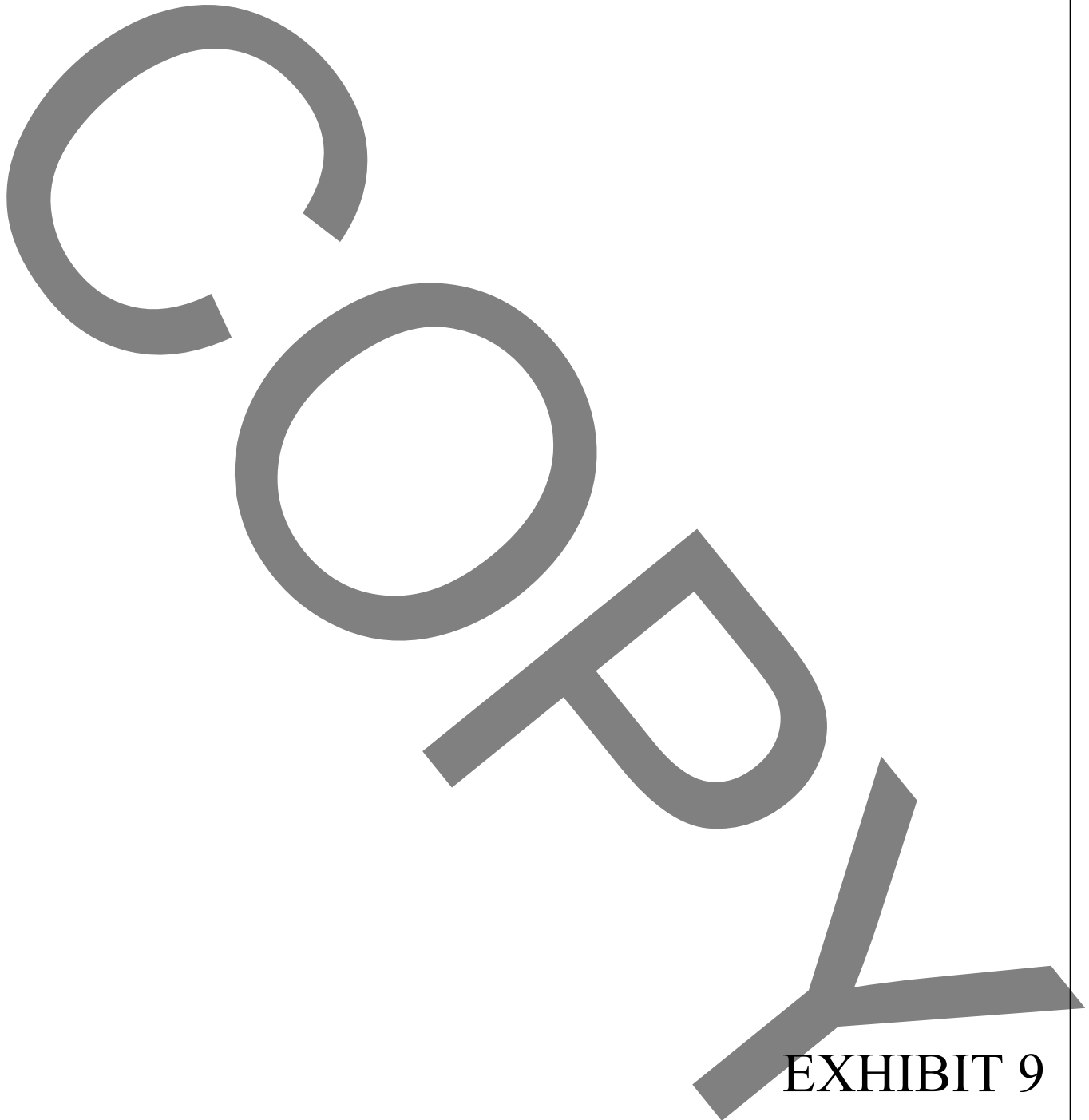
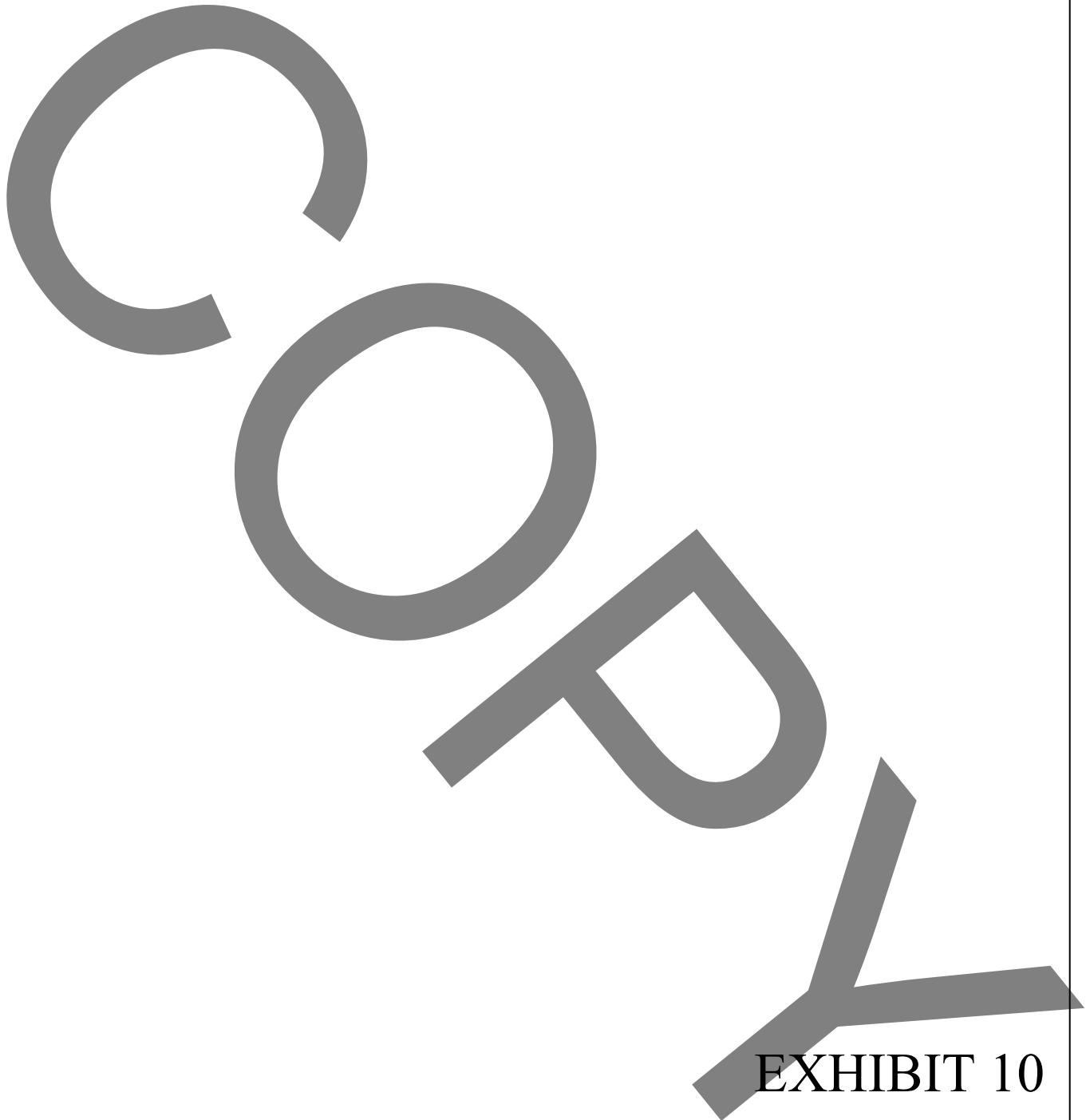


EXHIBIT 9

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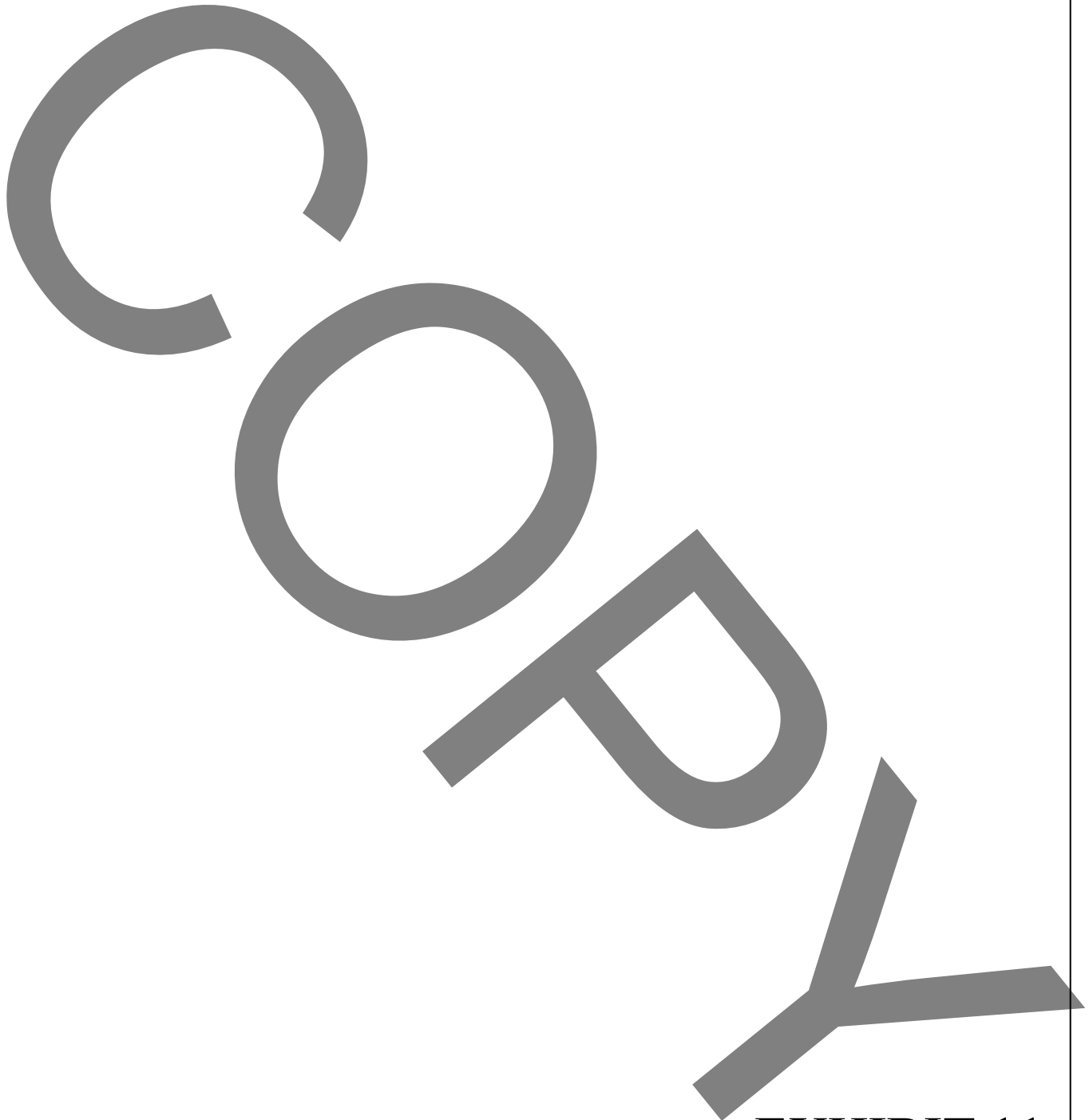


EXHIBIT 11

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