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FILED
ALAMEDA COUNTY

NOV 19 2009

CLERK OF THE SUPERIOR COURT
By *Jackie Perry* Clerk

Attorneys for Plaintiff
IRENE JONES

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

IRENE JONES ,

Plaintiff,

vs.

ONE WEST BANK F.S.B. FKA INDYMAC
BANK F.S.B., all persons or entities unknown,
claiming any legal or equitable right, title,
estate, lien, or interest in the property
described in the complaint adverse to
Plaintiff's title, or any cloud on Plaintiff's title
thereto; and DOES 1 through 20, inclusive,

Defendants

Case No.: RC *RG09485122*

**COMPLAINT TO QUIET TITLE [Code of
Civil Procedure § 760.040]; FINANCIAL
ABUSE OF ELDERS [Welf. & Inst. Code §
15600 et seq.]; VIOLATION OF CIVIL
CODE §§ 2939, 2940, 2941, 2941.5, 2941.7,
FAILURE TO RECORD CERTIFICATE
OF DISCHARGE OF MORTGAGE,
FAILURE TO RELEASE LIEN;
EMOTIONAL DISTRESS AND MENTAL
SUFFERING; NEGLIGENCE; DAMAGES**

NOW COMES PLAINTIFF, IRENE JONES (hereinafter referred to as "Plaintiff") with her
complaint and alleges as follows:

1. At all relevant times mentioned herein, Plaintiff is, and was, the owner of the real property located at 2023 19th Avenue, Oakland, County of Alameda, State of California (hereinafter "the Property").
2. Plaintiff IRENE JONES, born July 8, 1920, is 89 years old.
3. At all relevant times alleged in this complaint, ONE WEST BANK F.S.B. FKA

1 INDYMAC BANK F.S.B (hereinafter "the BANK") was and is a California Corporation
2 licensed in the State of California, 155 N. Lake Avenue, Pasadena, California 91101 and/or 888
3 East Walnut Street, Pasadena, California 91101, County of Los Angeles.

4 4. At all relevant times alleged in this complaint, ONE WEST BANK F.S.B was and is
5 the owner of INDYMAC BANK, F.S.B. and as such, ONE WEST BANK F.S.B has sufficient
6 contacts with the State of California.

7 5. The defendants herein named as "all persons unknown, claiming any legal or
8 equitable right, title, estate, lien, or interest in the property described in the complaint adverse to
9 Plaintiff's title, or any cloud on plaintiff's title thereto" (hereinafter sometimes referred to as "the
10 unknown defendants") are unknown to Plaintiff. These unknown defendants, and each of them,
11 claim some right, title, estate, lien, or interest in the hereinafter-described property adverse to
12 Plaintiff's title and their claims, and each of them, constitute a cloud on Plaintiff's title to that
13 property.

14 6. The true names and capacities whether individual, corporate, associate or otherwise
15 of defendants named herein as DOES 1 through 20 are currently unknown to Plaintiff who
16 therefore sues said 'Doe' defendants by such fictitious names. Plaintiff will amend this
17 complaint to show their true names and capacities, as well as specific acts and/or omissions if
18 necessary, when ascertained. Plaintiff is informed and believes that each of the said fictitiously
19 named defendants is in some way responsible for the injuries, losses, and damages suffered by
20 plaintiffs that are being claimed in this complaint, and are jointly and separately liable for the
21 acts and/or omissions alleged in this complaint. Plaintiff is informed and believes, and based
22 thereon alleges, that defendants named herein as DOES 1 through 20 were the agent, servant,
23 employee, owner, and/or principal of each of the remaining defendants, and in doing the things
24 hereinafter alleged was/were acting within the course and scope of their agency and/or
25 employment and with the knowledge, notification, consent, and/or ratification of each of the

1 other defendants. Plaintiff reserves the right to amend this complaint to set forth more specific
2 charging allegations with respect to said 'Doe defendants' when same is/are ascertained,
3 including the identity of said defendants.

4 7. At all relevant times alleged herein, all of the defendants, each of them, were agents,
5 servants and employees of each other, and each were acting within the scope of such agency or
6 employment while engaging in the acts and/or omissions and other conduct alleged in this
7 complaint, or the alleged acts, omissions and other conduct of each defendant were subsequently
8 ratified or adopted by the other defendants.

9 8. IRENE JONES, Plaintiff is now the sole owner of that certain real property, namely
10 2023 19th Avenue, Oakland, California 94606, Assessor's Parcel Number ("APN") 021-0256-
11 011. Her husband, John Jones, Sr., died April 14, 2009 at the age of 84 years.

12 **I. JURISDICTION AND VENUE**

13 9. Jurisdiction in the Court is proper in that the Plaintiff have a good faith belief that
14 the amount in controversy exceeds the jurisdictional minimum of this Court. Plaintiff further
15 contends that jurisdiction is proper as plaintiff is informed and believes and thereupon alleges
16 that the defendants herein are either residents of the State of California or have sufficient
17 contacts with the State of California such that the assertion of jurisdiction by this Court over the
18 defendants is reasonable. Plaintiff alleges that venue is proper in this Court pursuant to Sections
19 392, 395 and 395.5 of the Code of Civil Procedure as this judicial district is (a) the situs where
20 Plaintiff's real property is located.

21 **II. FACTS**

22 10. Plaintiffs hereby incorporate re-allege and incorporate by reference each and every
23 allegation of all paragraphs both prior and subsequent as fully set forth herein.

24 11. On February 8, 2008, The Superior Court of California, County of Alameda, in case
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1 #RG07362292 issued an Order Granting Preliminary Injunction enjoining and restraining
2 Indymac Bank ("Indymac") from foreclosing on Plaintiff's above described real property. (See
3 Exhibit A attached hereto and incorporated herein by reference).

4 12. On March 27, 2009, The Superior Court of California, County of Alameda, in case
5 #RG07362292 issued an Order Granting Plaintiffs' Motion for Summary Adjudication
6 terminating and invalidating Indymac Bank's foreclosure of the Plaintiffs' Jones' above
7 described real property. (See Exhibit B attached hereto and incorporated herein by reference).

8 13. These court rulings notwithstanding, the BANK-Indymac, in violation of the Court's
9 orders, continues to mail delinquency notices to Plaintiff. Further, the BANK-Indymac has
10 notified Plaintiff that the BANK-Indymac will commence foreclosure of Plaintiff's home on or
11 about October 29, 2009. (See Exhibit D-1 attached hereto and incorporated herein by reference).

12 **III. FACTUAL BACKGROUND ALAMEDA COUNTY SUPERIOR COURT**
13 **CASE #RG07362292**

14 14. Plaintiffs hereby incorporate re-allege and incorporate by reference each and every
15 allegation of all paragraphs both prior and subsequent as fully set forth herein.

16 15. On December 20, 2007, Plaintiffs John Jones Sr. and Irene Jones filed their lawsuit
17 against Indymac Bank, Kay-Co Investments, Inc. dba Pro30 Funding, Pacific Capital Mortgage,
18 Kay Coleman, and William Coleman. (Superior Court of California Alameda County Case
19 #RG07362292). The following background facts pertain to case #RG07362292 and are relevant
20 to the instant matter. Plaintiff's husband, John Jones, Sr. died April 14, 2009 at the age of 84
21 years.

22 16. On or about January 19, 2007, Plaintiffs applied for a mortgage loan with mortgage
23 loan brokers Kay-Co Investments, Inc., dba Pro30 ("Kay-Co") Funding to refinance their
24 mortgage. The loan through Kay-Co was in the amount of \$334,750.00. A deed of trust to
25

1 secure this loan was recorded in Alameda County on February 20, 2007 (DOT#1). The lender of
2 record is Kay-Co Investments, Inc., dba Pro30 Funding. This loan was eventually assigned to
3 IndymacBank, loan #1009694280. However, John Jones, Sr. and Irene Jones were never aware
4 of said assignment. Further, said assignment was not recorded until January 8, 2008, eight
5 months after the Kay-Co/Indymac loan was repaid in full, April 26, 2007.

6 17. On or about April 1, 2007, the Plaintiffs applied to a mortgage loan with Prime
7 Mortgage Funding, Inc., in order to refinance the Kay-Co/IndymacBank loan. This new loan
8 closed on April 26, 2007, in the amount of \$358,000, the proceeds of which were intended to be
9 used to pay off the Kay-Co/Indymac loan (DOT#2). This loan was originated with American
10 Brokers Conduit and was eventually sold to American Home Mortgage Services Corporation,
11 loan #0001732538.

12 18. On April 18, 2007, Rachel Ward of Kay-Co submitted a Payoff Demand to Alliance
13 in the amount of \$344,991.40. This pay off demand states that the Principal Balance of the Kay-
14 Co loan through 4/30/2007 is \$334,447.38. In addition, this Payoff Demand states that after
15 4/30/2007, IndymacBank is the new loan servicer.

16 19. Proceeds in the amount of \$344,991.40 from the April 26, 2007 loan were to pay off
17 the remaining principal balance of the Kay-Co/Indymac loan in the amount of \$334,447.38.

18 20. On May 2, 2007, Alliance wrote a check in the amount of \$344,991.40 payable to
19 Kay-Co-Pro30 Funding, which was to pay off Plaintiffs' February 20, 2007 loan of \$334,750.
20 This check was deposited to Kay-Co's bank account at the Greater Bay Bank, San Rafael,
21 California. In fact, these funds were never used to pay off the Kay-Co loan.

22 21. Plaintiffs are informed and believe and thereon allege that Kay M. Coleman and
23
24
25

1 William Coleman of Kay-Co Investments, Inc. dba Pro30 Funding and Pacific Capital Mortgage,
2 were at all relevant times herein, a married couple and officers and directors of Kay-Co
3 Investments, Inc. dba pro30 Funding and dba Pacific Capital Mortgage.

4 22. The Plaintiffs have paid and continue to pay their monthly loan payments to
5 American Home Mortgage Services. On November 6, 2007, American Home Services sold the
6 servicing rights to this loan to EMC Mortgage Corporation, where the Plaintiffs/borrowers
7 continue to pay their loan payments.

8 23. On September 10, 2007, Indymac filed and recorded a Notice of Default and Election to
9 Sell Under Deed of Trust against the Plaintiffs' IndymacBank loan #1009694280, the very loan
10 that was repaid from the proceeds of the April 26, 2007 loan (DOT#2). The Debt Validation
11 Notice attached to the Notice of Default states that the unpaid principal balance of \$334,447.38,
12 plus interest, late charges, attorney fees, etc., are due.

13 24. Kay Coleman and William Coleman admitted in answers to written discovery in Case
14 #RG07362292, that the funds Alliance paid to Pro30 on 5/2/2007, were never used to repay the
15 Kay-Co/IndymacBank loan. Plaintiffs are informed and believe and thereon allege that Kay-Co
16 dba Pro30 and Pacific Capital Mortgage and Kay M. Coleman and William Coleman, a married
17 couple, converted the sum of \$344,991.40 for their own use.

18 25. Neither Kay-Co nor Alliance Title Company has ever recorded or received a Deed of
19 Full Reconveyance or a Release of Lien in connection with the February 20, 2007 loan (DOT#2).
20 Kay Coleman and William Coleman admitted in answers to written discovery in Case #
21 RG07362292, that Kay-Co dba Pro30 never paid off the Kay-Co/IndymacBank loan with the
22 funds received from Alliance on 5/2/2007, the very same loan which the BANK is now
23 foreclosing.
24
25

1 26. Indymac asserted that Kay-Co assigned the Kay-Co note and deed of trust (DOT#1)
 2 to Indymac sometime between February 20, 2007 and April 26, 2007. However, the Plaintiffs
 3 neither received such notice nor were the Plaintiffs aware that Indymac was the assignee of the
 4 Kay-Co loan since the Plaintiffs were paying American Home Mortgage under DOT#2. As of
 5 the close of escrow of DOT#2 on April 26, 2007, Kay-Co was the lender of record for DOT#1,
 6 the lender Alliance Title Company issued the pay off check to in the amount of \$344,991.40, and
 7 which was intended to repay in full Plaintiffs' loan from Kay-Co.

8 27. On February 8, 2008, the Court in Case #RG07362292, granted Plaintiffs' application for
 9 Preliminary Injunction which enjoined and restrained Indymac from foreclosing on Plaintiffs'
 10 home at 2023 19th Ave. Oakland, CA 94606.

11 28. On March 27, 2009, the Court in Case # RG07362292 granted Irene Jones and John
 12 Jones, Sr. (deceased April 14, 2009) their Motion for Summary Adjudication. The Court ruled
 13 "The foreclosure proceedings instituted by Defendant IndyMac Bank ("IndyMac") are hereby
 14 terminated and declared invalid. Plaintiffs (Irene Jones and John Jones, Sr.) have repaid the
 15 February 20, 2007 loan from Defendant Kay-Co Investments, Inc., dba Pro30 Funding ("Kay-
 16 Co"), on which Indymac bases its foreclosure action. Plaintiffs have no further obligation to
 17 IndyMac under the February 20, 2007 note." (Underlining added). (See Exhibit B attached
 18 hereto, Order Granting Motion for Summary Adjudication, Case #RG07362292).
 19

20 **FIRST CAUSE OF ACTION**
 21 **[Quiet Title CCP § 760.040]**
 22 (Against BANK and Does 1 through 20)

23 29. Plaintiffs hereby incorporate re-allege and incorporate by reference each and every
 24 allegation of all paragraphs both prior and subsequent to this cause of action as fully set forth
 25 herein.

1 30. Plaintiff is informed and believes and on such information alleges that Defendant
2 ONE WEST BANK, F.S.B. FKA INDYMAC BANK F.S.B. ("BANK") claims an interest
3 adverse to Plaintiff's in the above-described real property as the holder of a lien that in fact, was
4 repaid in full on or about April 26, 2007, from the proceeds of a mortgage loan issued to Plaintiff
5 by American Home Mortgage in the amount of \$358,000 (DOT#2).

6 31. Plaintiff is seeking to quiet title against the claims of Defendant ONE WEST BANK,
7 F.S.B. FKA INDYMAC BANK F.S.B. as follows: enforcement of the Superior Court,
8 County of Alameda, Case #RG07362292, 1) the preliminary injunction issued February 8, 2008,
9 (Exhibit A attached hereto) and 2) the termination and invalidation of Defendant ONE WEST
10 BANK, F.S.B. FKA INDYMAC BANK F.S.B. foreclosure proceedings pursuant to the Court's
11 ruling on Plaintiff's Motion for Summary Adjudication against INDYMAC BANK, F.S.B.
12 March 27, 2009 (Exhibit B attached hereto); 3) the claims of all unknown defendants described
13 in paragraph 5, whether or not the claim or cloud is known to Plaintiff. The claims of defendant
14 ONE WEST BANK, F.S.B. FKA INDYMAC BANK F.S.B. are without any right whatsoever
15 and such defendant has no right, title, estate, lien, or interest whatsoever in the above described
16 real property or any part thereof.

17 32. Plaintiff seeks to quiet title as of October 29, 2009, or as of the date Defendant
18 ONE WEST BANK, F.S.B. FKA INDYMAC BANK F.S.B. commences foreclosure
19 proceedings against Plaintiffs real property, whichever occurs first.

20
21 **SECOND CAUSE OF ACTION**
22 **Violation of CC§§2939, 2940, 2941, 2941.5, 2941.7**
23 **Failure to Record Satisfaction of Mortgage; Failure to Discharge Lien; Failure to return**
24 **canceled original note and deed of trust to Plaintiff**
25 **(Against BANK and Does 1 through 20)**

33. Plaintiffs hereby incorporate re-allege and incorporate by reference each and every

1 allegation of all paragraphs both prior and subsequent to this cause of action as fully set forth
2 herein.

3 34. Defendant BANK is a mortgagee within the meaning of California Civil Code §§2939,
4 2940, 2941, 2941.5 and 2941.7.

5 35. Plaintiffs are informed and believe and thereon allege that the BANK, as assignee of the
6 Kay-Co loan is the only party that has the authority to record a release of lien and deed of full
7 reconveyance of the Kay-Co note and deed of trust. Alliance Title – Mercury Companies filed
8 for bankruptcy and Kay-Co Investments, Inc. dba Pro30 Funding is a suspended corporation no
9 longer in business.

10 36. Pursuant to California Civil Code § 2939 et seq. defendant BANK as the sole remaining
11 reputed mortgagee and/or the beneficiary under the Deed of Trust must execute and record a
12 Deed of Full Reconveyance, satisfaction of mortgage and/or release of lien and execute and
13 record a discharge of the mortgage or deed of trust, and return to Plaintiff the original note and
14 deed of trust marked “cancelled” or “repaid in full” all in connection with Plaintiffs’ February
15 20, 2007, loan and which defendant BANK refuses to do.

17 37. The Court in its Order in Case # RG07362292 granting Irene Jones and John Jones, Sr.
18 (deceased April 15, 2009) their Motion for Summary Adjudication ruled “The foreclosure
19 proceedings instituted by Defendant IndyMac Bank (“IndyMac”) are hereby terminated and
20 declared invalid. Plaintiffs (Irene Jones and John Jones, Sr.) have repaid the February 20, 2007
21 loan from Defendant Kay-Co Investments, Inc., dba Pro30 Funding (“Kay-Co”), on which
22 Indymac bases its foreclosure action. Plaintiffs have no further obligation to IndyMac under the
23 February 20, 2007 note.” (Underlining added); (See Exhibit B attached hereto, Order Granting
24 Motion for Summary Adjudication, Case #RG073652292).

1 38. As a result of Defendant BANK'S refusal and failure to execute and record a Deed of
2 Full Reconveyance, release of lien, satisfaction of mortgage or discharge of mortgage and return
3 Plaintiff's original note and deed of trust to Plaintiff marked "cancelled" or "paid in full", all in
4 connection with Plaintiffs' February 20, 2007 loan, Plaintiff has been damaged in an amount to
5 be determined according to proof at time of trial.

6 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

7 **THIRD CAUSE OF ACTION**
8 **Financial Abuse of Elders**
9 **[Welfare & Institutions Code § 15610.30]**
10 **(Against BANK and Does 1 through 20)**

11 39. Plaintiffs incorporate re-allege and incorporate by reference each and every allegation
12 of all paragraphs both prior and subsequent to this cause of action, as fully set forth herein.

13 40. This cause of action is brought pursuant to California Welfare & Institutions
14 Code §15600 et seq.

15 41. At all times mentioned herein, Plaintiff Irene Jones resided in the State of California, and
16 both Irene Jones and John Jones, Sr. were elder(s) within the meaning of the California Welfare
17 & Institutions Code.

18 42. Defendant BANK stood in a position of trust to Plaintiff at all relevant times mentioned
19 herein and had at all relevant times mentioned herein a fiduciary duty to Plaintiff(s). Standing in
20 this position of trust and having a fiduciary duty to Plaintiff(s), Defendant BANK took advantage
21 of Plaintiff by deliberately ignoring the Court's orders restraining, terminating and invalidating
22 the BANK from foreclosing on Plaintiff's home.

23 43. Defendant BANK was aware at all time mentioned herein that Plaintiff(s) is or are elder
24 within the meaning of California Welfare & Institutions Code §15600 et seq. since Defendant
25 BANK, or its agents, servants, or employees, had in its possession copies of Plaintiffs' Loan

1 Application forms, which clearly state the Plaintiffs' age. (Exhibit C, Customer Identification
2 Form, provided by Indymac Bank).

3 44. Plaintiff is informed and believe and thereon alleges that defendant BANK assisted in
4 the taking, secreting, appropriating, or retaining the Plaintiff's property by refusing and failing to
5 record a deed of reconveyance and discharge of mortgage when the BANK knew that the Court
6 terminated and invalidated its foreclosure of Plaintiff's home. Defendant BANK has informed
7 Plaintiff that BANK will commence foreclosure of Plaintiff's home on or about October 29,
8 2009, all in spite of the aforementioned Court's rulings terminating and invalidating BANK'S
9 foreclosure action of the Plaintiff's home.

10 45. Plaintiff is informed and believes and thereupon alleges that Defendant BANK,
11 by refusing and failing to return Plaintiff's original note and deed of trust to Plaintiff marked
12 "cancelled" or "paid in full" is depriving Plaintiff of her property, which releases and cancels
13 BANK'S security interest in Plaintiff's home. Pursuant to the Court Orders referenced above,
14 Plaintiff has repaid the February 20, 2007 note from Kay-Co (and assignee BANK) on which
15 BANK bases its foreclosure action, and Plaintiff has no further obligation to BANK under the
16 February 20, 2007 note.
17

18 46. Defendant's actions toward Plaintiff constitutes Financial Abuse as defined by
19 §15610.30 of the California Welfare & Institutions Code.

20 47. As a proximate result of the Defendant's conduct herein alleged, Plaintiff was and
21 is damaged without limitation, suffering economic injury related to the pending loss of Plaintiff's
22 home due to the Defendant BANK'S pending foreclosure of Plaintiff's home, all in violation of
23 the Court's orders and suffering the potential and/or imminent foreclosure of Plaintiffs' primary
24 residence at the aforementioned Property located at 2023 19th Avenue, Oakland, CA; suffering
25

1 the loss of the equity in their home, lost interest, and other general and special damages, all in an
2 amount according to proof at time of trial.

3 48. The actions taken by Defendant BANK set forth above were in all respects malicious,
4 willful, and oppressive, and manifested either disregard or contempt for the rights of Plaintiff.
5 Defendant BANK was fully cognizant of the position of trust in which Defendant stood.
6 Plaintiff is thereby entitled to an award of punitive and exemplary damages as well as attorney's
7 fees pursuant to Welfare & Institutions Code §15657.5, in an amount according to proof at time
8 of trial.

9 49. Based on the conduct of defendant BANK with Plaintiff, who is a senior citizen,
10 Plaintiff is entitled to up to treble damages and penalties pursuant to Civil Code §3345(b)
11 because: (1) Defendant knew or should have known that its conduct was directed to senior
12 citizens; or (2) Defendant's conduct caused or will cause Plaintiff to suffer financial loss and loss
13 of Plaintiff's home.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below.

15
16 **FOURTH CAUSE OF ACTION**
17 **Emotional Distress-Mental Suffering**
(Against Defendant BANK and Does 1 through 20)

18 50. Plaintiffs incorporate re-allege and incorporate by reference each and every allegation
19 of all paragraphs both prior and subsequent to this cause of action, as fully set forth herein.

20 51. The Court in its Order in Case # RG07362292 granting Irene Jones and John Jones,
21 Sr. (deceased April 14, 2009) their Motion for Summary Adjudication ruled "The foreclosure
22 proceedings instituted by Defendant IndyMac Bank ("IndyMac") are hereby terminated and
23 declared invalid. Plaintiffs (Irene Jones and John Jones, Sr.) have repaid the February 20, 2007
24 loan from Defendant Kay-Co Investments, Inc., dba Pro30 Funding ("Kay-Co"), on which
25

1 Indymac bases its foreclosure action. Plaintiffs have no further obligation to IndyMac under the
2 February 20, 2007 note." (Underlining added). (See Exhibit B attached hereto, Order Granting
3 Motion for Summary Adjudication, Case #RG073652292).

4 52. Plaintiff is informed and believe and thereupon allege that Defendant BANK
5 violated its statutory duty pursuant to Civil Code §2941 when Defendant BANK refused and
6 failed to prepare a release of lien, a deed of full reconveyance, and return to the Plaintiff's their
7 original Note and Deed of Trust indicating, as the Court ruled in the above referenced Order
8 Granting Plaintiffs' Motion for Summary Adjudication, that the Plaintiffs repaid the February 20,
9 2007 note and have no further obligation to Indymac.

10 53. As a result of Defendant BANK'S refusal and failure to release its lien and record
11 a deed of reconveyance discharging said lien, BANK-Indymac continues to send Plaintiff Irene
12 Jones default notices and letters stating that BANK intends to and will initiate foreclosure
13 proceedings against Plaintiff's home on or about October 29, 2009. (See Exhibit D-1 attached
14 hereto).

15
16 54. On April 14, 2009, John Jones, Sr. died at the age of 84 years. Plaintiff is
17 informed and believes and thereupon alleges that John Jones, Sr. expressed extreme anxiety and
18 depression regarding the continuing default notices and demand letters from Indymac Bank
19 demanding payment on a loan that John Jones, Sr. believed and in fact knew was not a loan for
20 which he owed money, all of which caused Mr. Jones fear of losing his home of 50 years to
21 unnecessary foreclosure, said foreclosure proceedings contrary to the Court's orders. Further,
22 Plaintiff is informed and believes and thereupon alleges that said anxiety and depression
23 contributed to John Jones, Sr. death, thus depriving Plaintiff Irene Jones of the love,
24 companionship and consortium of John Jones, Sr., her husband of 50 years.
25

1 allegation of all paragraphs both prior and subsequent to this cause of action as fully set forth
2 herein.

3 60. Plaintiffs are informed and believe and thereon allege that at all times mentioned
4 in this complaint Defendant BANK, and each of the unknown defendants, was the agent and
5 employee of each of the remaining defendants, and in doing the things alleged in this complaint,
6 was acting within the scope of this agency and employment.

7 61. Defendant BANK each of the unknown defendants, had a common law duty of care to
8 exercise reasonable skill and diligence in canceling Plaintiff's note and deed of trust and
9 providing Plaintiff with a deed of full reconveyance and to take reasonable precautions to
10 prevent injury to Plaintiff. Defendant BANK has a duty to Plaintiff to make certain that a Deed
11 of Full Reconveyance and Lien Release is recorded in connection with Plaintiff's February 20,
12 2007 loan (DOT#1) in the amount of approximately \$334,750, of which BANK was the assignee
13 of the Kay-Co loan.
14

15 62. Defendant BANK has a statutory duty arising under the CC § 2941 to cause to be
16 recorded a deed of reconveyance, satisfaction of mortgage and release of lien and shall execute a
17 discharge of the mortgage or deed of trust, which defendant BANK has refused to do,
18 notwithstanding the court's orders regarding the Preliminary Injunction dated February 20, 2008
19 and the court's order granting Plaintiffs' Motion for Summary Adjudication dated March 27,
20 2009.

21 63. Plaintiff alleges that defendant BANK was and is the proximate cause of damages to
22 Plaintiff. By BANK'S acts, conduct or omission to act, Defendant BANK, each of them,
23 negligently caused the damage to Plaintiff's real property interests.
24
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64. As a result of defendant BANK'S negligence Plaintiff has been damaged in an amount in excess of the jurisdictional limit of this court and in an amount to be proved at time of trial.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

PRAYER

WHEREFORE, Plaintiff prays for relief as follows:

On the FIRST CAUSE OF ACTION: Quiet Title

1. For a judgment that title to the above described Property shall be quieted in the name of Plaintiff Irene Jones, whereupon Defendant BANK and/or Indymac shall own no right, title, estate, interest, or lien whatever in the Property, that Plaintiff is the owner in fee simple of the Property and that Defendant has no interest in the Property adverse to the Plaintiff's;
2. For costs of suit herein incurred; and
3. For such other relief as the court may deem proper.

On the SECOND CAUSE OF ACTION:

1. That the defendant deliver a Deed of Reconveyance and Release of Lien for the February 20, 2007 note and deed of trust;
2. That the Defendant discharge the lien recorded February 20, 2007, by a certificate signed by the mortgagee all according to California Civil Code Sections 2939, 2940, 2941 and 2941.7.
3. That Defendant BANK and/or Indymac immediately return to Plaintiff the original note and deed of trust marked as "cancelled" and 'Paid in Full.'

On the THIRD CAUSE OF ACTION:

1. For up to treble damages pursuant to CC § 3345(b),

- 2. For punitive and exemplary damages and penalties pursuant to Civil Code §§3294;
- 3. For attorneys' fees pursuant to Welfare & Institutions Code §15657.5; and
- 4. For such other and further relief as the Court deems proper.

On the FOURTH CAUSE OF ACTION:

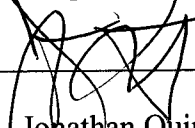
- 1. For general damages for severe emotional distress and mental suffering in the sum of \$350,000;
- 2. For loss of the companionship of John Jones, Sr., deceased;
- 3. For costs of suit herein incurred;
- 4. For other and further relief as the court may deem proper.

On the FIFTH CAUSE OF ACTION:

- 1. For general damages within the jurisdiction of the Court;
- 2. For immediate cancellation of Plaintiff's note and deed of trust;
- 3. For costs of suit herein incurred;
- 4. For such other and further relief as the Court may deem proper.

Dated this 16th day of November, 2009

Respectfully Submitted,



Jonathan Quint, Esq.,
Attorney for Plaintiff Irene Jones