

1 Raymundo Pacello, Jr., Esq.
2 John (Jack) A. Barrett, Esq.
3 "Legal Baller"SM - "Sapere aude"
4 A PROFESSIONAL LAW CORPORATION
5 INGERSOLL-TUTTON HISTORIC BUILDING
6 832 Fifth Avenue, Suites 2, 3, 4, & 5
7 San Diego, CA 92101
8 Ph: (619) 531-8831
9 Fax:(619) 374-2975
10 Email: legalballer@yahoo.com

11 Attorneys for Plaintiff,

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 Matthew Anderson

15 Plaintiff,

16 v.

17 Kimball, Tirey & St. John, and Christine Relph

18 Defendants.

19 '13CV0253 JM NLS

20 COMPLAINT FOR CLASS ACTION

21 CASE NO:

22 JURY DEMAND

23 Matthew Anderson, complains as follows against Defendants:

24 **PRELIMINARY STATEMENT**

25 1. This is an action brought under the FDCPA, 15 U.S.C. §§ 1692k et seq. and seeks,
26 statutory damages, actual damages, punitive damages and attorney's fees.

27 **INTRODUCTION**

28 2. At its core, this case is about predatory lending practices, and the biggest fraud ever
perpetrated in the U.S. – securitization and the efforts to foreclose on and evict homeowners,

1 mostly using forged and/or fraudulent documents (“ robo-signing”).

2 3. The Defendants in this case have participated in fraudulent and deceptive acts, and in so
3 doing, have violated a litany of state and federal securities laws, lending laws, consumer
4 protection laws, and fair debt reporting laws. Plaintiffs, by virtue of this complaint, seek
5 judicial redress for what have heretofore been mostly unchecked bad acts by the Defendants.
6

7 4. Notably, many of the parties who actually loaned Plaintiffs money in the first place
8 (“Investors”) and many government agencies have filed their own legal actions based at least
9 in part on the very same allegations of predatory lending and criminal acts in connection with
10 the collection of the loans Plaintiff was subjected to.

11 5. Strangers to the loans wrongfully foreclosed on Plaintiffs’ homes. They then prosecuted
12 unlawful detainer suits against Plaintiffs and the other occupants of the homes usually by
13 utilizing fraudulent documents through “unlawful detainer mills” such as Defendants. Such
14 law firms conspired and aided and abetted the other parties in the fraud. These wrongful
15 foreclosures and evictions have resulted in horrific and devastating financial losses to
16 Plaintiffs. Countless suicides and murders during the eviction process have occurred. This
17 action is to seek redress and restore to Plaintiffs, and those similarly situated, the financial
18 security that they had prior to these predatory assaults on their finances.
19

20 6. Plaintiffs’ loans were securitized. As is typical when a loan is securitized, the funds
21 Plaintiffs borrowed did not come from any source that Plaintiffs could readily identify.
22 Instead, the money came from “Investors,” the identity of whom was concealed by those
23 involved in originating the loan (“Originators”). The Investors involved in the pools into which
24 some of Plaintiff’s loans were placed have also filed many lawsuits.
25

26 7. To further perpetrate the fraudulent scheme, the Mortgage Electronic Registration
27 System (“MERS”) was created which has ruined the chain of title on millions of properties
28

1 throughout the U.S. Many state and local governments have filed suit and there are countless
2 class actions pending against MERS. (See e.g., legal action by the State Attorney General of
3 Kentucky [2013]; <http://goo.gl/IqkxA>).

4 7. Securitizers hire law firms such as Defendant, who know or should know collection of
5 loans such as the Subject Loan is improper and routinely conceal information concerning such
6 to the courts. (See, *In Re Nosek* 544 F. 3d 34 (1st Cir. 2008) California Law Firm sanctioned
7 tens of thousands of dollars by Massachusetts's appellate court and reported to the California
8 State Bar).

9
10 8. The U.S. Supreme Court has found that these law firms may be held liable under the
11 Fair Debt Collection Practices Act. (See, *Jerman V. Carlisle, Mcnellie, Rini, Kramer & Ulrich*
12 *Lpa et al*; U.S. Supreme Court, 2010). Subsequent cases have ruled that foreclosure attorneys
13 are liable for falsely claiming that parties to securitization have the right to foreclose when they
14 don't. *Wallace v. Washington Mutual et. al.* (6th Cir. 2012)
15 (<http://www.ca6.uscourts.gov/opinions.pdf/12a0197p-06.pdf>)

16 9. The above facts, and far more, are widely stated in legal actions by the Investors,
17 publicized in countless books, articles, movies, and on the Internet such that Defendants knew
18 or should have known of the above facts. To put it succinctly, Defendants and each of them
19 knew or should have known their legal clients had no right to collect the loans. One such
20 attorney has had his license disciplined by the California State Bar to date. (Attorney David
21 Endres, who simply had an associate at his firm take over and continue to engage in the same
22 criminal conduct as has occurred in with other eviction mill law firms throughout the U.S.).

23 PARTIES

24
25 10. Plaintiff, Matthew Anderson is an individual residing in San Diego, California.

26 11. Defendant Kimball, Tirey & St. John, is a law firm, with a principal place of business in
27 San Diego, California.

1 12. Christine Relph, is an individual attorney, with her principal place of business in San
2 Diego, California.

3 **JURISDICTION AND VENUE**

4 13. This Court has jurisdiction under the Federal Fair Debt Collection Practices Act
5 ("FDCPA"), 15 U.S.C. § 1692k, and pursuant to supplemental jurisdiction, 28 U.S.C. § 1367.
6 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (c). Plaintiffs' action for
7 declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

8 **FACTUAL ALLEGATIONS**

9
10 14. The core of this action arises out of a loan made to Plaintiff ("the Subject Loan").
11 The funds for the loan were provided by Investors, and fraud was committed in the
12 securitization process as alleged above.

13 15. The Subject Loans were secured by Plaintiff's home.

14 16. There was subsequent foreclosure related activity on the Subject Loans that was
15 fraudulent in that forged and/or unauthorized documents were recorded to foreclose ("robo-
16 signing").

17
18 17. Plaintiff obtained the Subject Loan. During the closing, loan "Originators" acquired the
19 Subject Loan, evidenced by promissory notes and secured by a trust deed on the home. The
20 terms of the Subject Loan was memorialized in a promissory note. The deed of trust identified
21 various parties as the "lenders". This was false and misleading because, *inter alia*, the funds
22 came from Investors. In agreeing to sign the loan documents and to encumber the Subject
23 Property with a deed of trust, Plaintiffs relied upon promises made by the Originators.

24 18. The Originators concealed from Plaintiff their intent to securitize the loans and
25 misrepresented the identity of the party providing the funds for his loan, the actual lenders.

26
27 19. Assignments of the Deed of Trust were recorded which purportedly assigned the deeds
28

1 of trust from the original named “lender” to third parties. These assignments were invalid, and
2 created fraudulently and/or forged.

3 20. The amounts claimed to be in default were incorrect and/or includes charges not
4 permitted under the loan documents.

5 21. The Notice of Default (“NOD”) states, inter alia: “NOTE(S) FOR THE ORIGINAL
6 [Trust Deed] ...are presently held by the undersigned...” This was false. The foreclosing
7 parties did not hold the notes.
8

9 22. Defendants, in committing the acts alleged in this Complaint, are engaging in a pattern
10 and practice of unlawful activity. In making misrepresentations to the courts and pursuing the
11 non-judicial foreclosures and evictions, Defendants represented that their legal client had the
12 right to payment under the Note in connection with the Subject Loans, payment of which was
13 secured by the deed of trust. Whereas, in fact, the Defendants knew their clients were not in
14 possession of the Note and they were neither holders of the Note or assignees of the Note or
15 trust deed entitled to payment and therefore they were proceeding to foreclose without rights
16 under the law.
17

18 23. The final stage of a foreclosure proceeding is a sale of the property through a public
19 auction at which the current beneficial owner of the right to foreclose is the only lawful party
20 who can provide instructions to the trustee on the amount of money to accept at the sale or to
21 “credit bid” up to the amount owed on the loan. In fact, none of the Defendants, or any of their
22 authorized agents, who have played a part in the non-judicial foreclosure proceedings were
23 entitled to receive payment from the loan proceeds, or title to or possession of the Subject
24 Residence. The making of the assertion made in the foreclosure proceedings and eviction
25 actions that the beneficiary named on the trust deed is entitled to foreclose and the notices of
26 default and trustee sale based on amounts not properly owing is an act of fraud or deceit within
27
28

1 the meaning of Cal. Civ. Code §2924h.

2 24. The intent to securitize, the fraudulent acts and omissions involved in the origination,
3 transfers of the Subject Loan, and securitization of the Subject Loan, were concealed from
4 Plaintiff. The lack of authority for persons signing and forgeries on the recorded documents
5 was concealed from Plaintiff.
6

7 25. The true facts are that Defendants were/are fully aware that Plaintiff's loan was
8 securitized, and that their clients had no legal right to foreclose, or evict and intentionally
9 concealed this from the Courts in in order to steal the Subject Property.

10 26. Unlawful Detainer Complaints are required to be verified. Defendants verified the
11 complaints under oath claiming their clients had performed a legal foreclosure and were
12 authorized to foreclose and evict when they had actual knowledge such was not true,
13 defrauding the Plaintiff, the courts, and the public at large.
14

15 **CLASS ALLEGATIONS**

16 27. This Class Action is being filed by Plaintiff, pursuant to Federal Rule of Civil
17 Procedure 23 on behalf of himself and others similarly situated as against the defendant law
18 firm and attorneys within the meaning of the Fair Debt Collection Practices Act ("FDCPA"),
19 and the Rosenthal Act.
20

21 28. The Law Firm Defendants are debt collectors within the meaning of the FDCPA and
22 Rosenthal Act.

23 29. Plaintiff brings this action on behalf of himself and all other persons similarly situated,
24 as members of a proposed Plaintiff Class. The class that Plaintiff seeks to represent is defined
25 as:

26 All persons that have been named defendants in unlawful detainer actions by
27 Defendants, where the plaintiff was a purported named beneficiary on a deed of trust
28

1 or it's purported successor in interest in the state of California.

2 30. This action has been brought and may properly be maintained as a class action under Rule
3 23 of the Federal Rules of Civil procedure.

4 31. This Court may maintain these claims as a class action pursuant to Fed. R. Civ. P. 23(b)
5 (1), 23(b) (2), 23(b) (3), and/or 23(c) (4)(A).
6

7 32. Existence of an Identifiable Class - The proposed Class definition is sufficiently
8 definite so that it is administratively feasible for the Court to determine whether a particular
9 individual is a member. Members of the Class may be identified from records maintained by
10 Defendants, various court records and by reviewing the named plaintiffs and defendants in all
11 actions filed by the Defendants.

12 33. Numerosity of the Class - Fed. R. Civ. P. 23(a) (1): The members of all Classes are so
13 numerous that joinder of all members is impracticable. The precise number of Class members
14 and their addresses are unknown to Plaintiff, but can be obtained from Defendants and from
15 various court records. Class members can be notified of the pendency of this action based on
16 those records, or by any means used by the defendants to notify them of the underlying
17 unlawful detainer suits. The disposition of the claims of the Class members in a single action
18 will provide substantial benefits to all parties and the Court.
19

20 34. Existence of Common Questions of fact and Law - Fed. R. Civ. P. 23(a)(2) Plaintiff, as
21 a Class Representative alleges that the questions of law and fact relating to his claims are
22 common to the claims of the class and the claims predominate over any questions affecting
23 solely individual members, in satisfaction of rule 23(a)(2). These common legal and factual
24 questions include:
25

26 Whether defendant debt collectors, by collecting the loans and foreclosing and filing
27 unlawful detainer actions, and evicting plaintiff without having an assignment and/or
28

1 possession of the promissory note, without a proper assignment of the trust deed mortgage,
2 creating and using improper documents created by them to foreclose, and when they knew or
3 should have known of the fraudulent scheme involved in securitization have violated:

4 - the Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692et. seq. by
5 engaging in unfair and unlawful debt collection practices.

6 - the California Civil Code § 1788 - California Rosenthal Fair Debt Collection Practices Act;
7 and/or California Civil Code § 2924h; and/or
8

9 - California Business and professions Code § 17200.

10 - Whether Plaintiff and Class members have been injured by defendant's conduct;

11 - Whether Plaintiffs and Class members are entitled to compensatory damages, and the amount
12 of such damages; and

13 - Whether Plaintiff and Class members are entitled to statutory damages and the amount of
14 such damages.
15

16 - Whether Plaintiff and Class members are entitled to legal costs and fees.

17 35. Typicality - Fed. R. Civ. P. 23(a) (3): Plaintiff’s claims are typical of the claims of the
18 Class because defendants initiated suit against him without having an assignment of the note
19 and mortgage, creating fraudulent documents to foreclose, and when they knew or should have
20 known about the fraudulent recorded documents and scheme of securitization. Furthermore, all
21 members of the Class are similarly affected by defendants’ wrongful conduct.
22

23 36. Adequacy - Fed. R. Civ. P. 23(a) (3) (4): Plaintiff is an adequate representative of the
24 Class because Plaintiffs’ interests overlap and are not in conflict with the interests of the Class.
25 Plaintiff has retained counsel competent in complex litigation, and Plaintiff intends to
26 prosecute this action vigorously. The interests of the Class will be fairly and adequately
27 protected by Plaintiff and his counsel.
28

1 37. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(1). Class certification is
2 appropriate pursuant to Rule 23(b)(1) because the prosecution of separate actions by individual
3 members of the classes would create a risk of inconsistent or varying adjudications that would
4 establish incompatible standards of conduct for Defendants and/or because adjudications
5 respecting individual members of the classes would be a practical matter, be disparities of the
6 interests of the other members or would risk substantially impairing or impeding their ability
7 to prosecute their interests.
8

9 38. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(2). Class certification is
10 appropriate pursuant to Rule 23(b)(2) because Defendants have acted or refused to act on
11 grounds generally applicable to all members of the class, thereby making final injunctive relief
12 or declaratory relief as a whole appropriate. Plaintiffs and members of the Class have suffered,
13 and will continue to suffer, harm and damages as a result of Defendants' unlawful and
14 wrongful conduct.
15

16 39. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(3). A class action is
17 superior to other available methods for the fair and efficient adjudication of the controversy
18 under Rule 23(b)(3). Absent a class action, most members of the Class likely would find the
19 cost of litigating their claims to be prohibitive, and will have no effective remedy at law. The
20 class treatment of common questions of law and fact is also superior to multiple individual
21 actions or piecemeal litigation in that it conserves the resources of the courts and the litigants
22 and promotes consistency and efficiency of adjudication.
23

24 **FIRST CAUSE OF ACTION**

25 ***Violation of the FDCPA, 15 U.S.C. § 1692***

26 ***(Against All Defendants)***

27 40. Plaintiffs hereby incorporate the preceding paragraphs by reference as though fully set
28 forth herein.

1 41. Except for the Defendant debt collectors named in this cause of action above,
2 Defendants have concealed the roles of the parties and Plaintiff is unsure who the other “debt
3 collectors” of the loan are.

4 42. Federal law (the FDCPA) prohibits the use of "any false, deceptive or misleading
5 representation or means in connection with the collection of any debt..."

6 43. In making misrepresentations to the court to aid and abet their clients in foreclosing on
7 Plaintiff's home, the Defendants:

8 a. made false, deceptive and misleading representation concerning their
9 standing to sue the plaintiffs and the interest in the debt;

10 b. falsely represented the status of the debt, in particular, that it was due and
11 owing to defendants at the time suit was filed;

12 c. falsely represented or implied that the debt was owing to defendants as an
13 innocent purchaser for value, when in fact, such assignment had not been
14 accomplished;

15 d. threatened to take action, namely engaging in collection activities and
16 collection and foreclosure proceedings as trustees that cannot legally be
17 taken by them, and

18 44. Securitizers discovered that that the assignments and proper documents to collect the
19 Subject Loans could not actually be located. To solve the problem of missing assignments, and
20 other documents, new assignments were made and recorded. Most of these Assignments
21 including those allegedly affecting the notes and mortgage for Plaintiff's residence contained
22 false statements. The Assignments were prepared by specially selected law firms and companies
23 that specialized in providing "mortgage default services" to banks and mortgage companies and
24 which is the subject of many pending criminal investigations. It is now well established that law
25 firms, including Defendants also “robo-signed” by, *inter alia*, signing the verifications required
26 in Unlawful Detainer actions and other court documents.

27 45. Assignments were prepared to conceal that no valid or proper assignments of the
28

1 promissory notes or trust deeds ever occurred.

2 46. The foregoing acts and omissions of Defendants constitute violations of the FDCPA,
3 including, but not limited to, 1692c, 1692d, 1692e, 1692f, 1692g, and 1692i.

4 47. Plaintiff is entitled to recover equitable relief, statutory damages, actual damages,
5 reasonable attorney's fees, and costs.

6 **SECOND CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA ROSENTHAL FAIR DEBT COLLECTION**

8 **PRACTICES ACT (“Rosenthal Act”)**

9 **California Civil Code § 1788, et seq.**

10 (Against All Defendants)

11 48. Plaintiff re-alleges and incorporates herein by reference each and every allegation
12 contained in the above paragraphs of the Complaint herein as though set forth in full.

13 49. Attorney “Debt collectors” named in this cause of action are subject to the Rosenthal
14 Act.

15 50. Defendants’ actions constitute a violation of California Civil Code § 1788 et seq., also
16 known as the Rosenthal Act, in that they threatened to take actions prohibited by law,
17 including, without limitation: falsely stating the amount of a debt; increasing the amount of a
18 debt by including amounts not permitted by law or contract; improperly foreclosing upon the
19 Subject Residence; and using unfair and unconscionable means in an attempt to collect a debt.
20

21 51. Defendants’ misconduct has caused Plaintiff to suffer actual damages.

22 52. As a result of Defendants’ misconduct, Plaintiff is entitled to actual damages and
23 statutory damages in an amount to be determined at trial. Moreover, said Defendants’
24 misconduct was willful, malicious, and outrageous, and therefore punitive damages are
25 warranted and demanded. These remedies under the Rosenthal Act are cumulative under
26 *Gonzalez v. Arrow Financial Services, LLC*, — F.3d —, 2011 WL 4430844 (9th Cir Sept. 23,
27

28

1 2011).

2 53. Pursuant to the controlling contractual document(s) and applicable law, Plaintiff is
3 entitled to recover costs and reasonable attorneys' fees.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**

6 (Against All Defendants)

7 54. Plaintiff re-alleges and incorporates herein by reference each and every allegation
8 contained above of the Complaint as though set forth in full.

9 55. Defendants committed unlawful, unfair and/or fraudulent business practices, as defined
10 by California Business & Professions Code § 17200, by engaging in unlawful, unfair and
11 fraudulent business practices as alleged herein.
12

13 56. As a result of Defendants' misconduct, Plaintiff has suffered various damages and
14 injuries according to proof at trial.

15 57. Plaintiff seeks injunctive relief enjoining Defendants from engaging in unfair business
16 practices described herein.
17

18 58. Plaintiff further seeks restitution, disgorgement of sums wrongfully obtained, costs of
19 suit, reasonable attorneys' fees, and such other and further relief as the Court may deem just
20 and proper.

21 **FOURTH CAUSE OF ACTION**

22 **NEGLIGENT MISREPRESENTATION**

23 (Against All Defendants)

24 59. Defendants represented to Plaintiff and the courts that important facts were true.
25

26 The facts were not true and Defendants had no reasonable basis for claiming they were true at
27 the time they made them.
28

1 60. Defendants intended that Plaintiff rely on the facts.

2 61. Plaintiff reasonably relied on the facts until discovering they were false.

3 62. Plaintiff was damaged.
4

5
6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment and order against Defendants, inclusive, as
8 follows:

- 9 1. Declaratory judgment that defendants' conduct violated the FDCPA and an
10 injunction prohibiting such acts in the future;
- 11 2. An award of compensatory damages;
- 12 3. An award of pre-judgment and post-judgment interest;
- 13 4. Awarding Plaintiff his costs and expenses in this litigation, including reasonable
14 attorneys' fees and expenses pursuant to 15 U.S.C. §§ 1692k;
- 15 5. An order awarding Plaintiff and the Class damages and other compensatory relief
16 as the Court deems proper in the maximum amount allowed by law; including
17 but not limited to actual damages, statutory damages pursuant to 15 U.S.C. §
18 1692k, and disgorgement, and injunctive relief under California's common and
19 statutory law of unfair business practices
- 20 6. Any other further legal and/or equitable relief to which Plaintiff might be entitled
21 at law or which the Court deems proper, according to proof,
- 22 7. Exemplary or punitive damages as may be necessary and appropriate to punish
23 and deter any reprehensible or intentional misconduct.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff demands a trial by jury.

26 Dated: January 31, 2013

27 s/Raymundo Pacello
28