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15 Attorney for Plaintiff GLENN PACHEO,
16 for himself and persons similarly situated

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 GLENN PACHEO, individually, and on
20 behalf of others similarly situated,

21 Plaintiff,

22 v.

23 JPMORGAN CHASE BANK, N.A. d/b/a
24 CHASE, a National Banking Association,

25 Defendant.

) Case No.

) **CLASS ACTION**

) COMPLAINT

) (1) DECLARATORY RELIEF

) (2) ROSENTHAL FAIR DEBT

) COLLECTIONS PRACTICES ACT

) (4) UNFAIR COMPETITION LAW

) **JURY TRIAL DEMANDED**

26 Plaintiff GLENN PACHEO, by and through his attorneys, brings this action on behalf of
27 himself and all others similarly situated against the above named defendant, demands a trial by
28 jury on all claims so triable, and alleges on information and belief as follows:

1 **INTRODUCTION**

2 1. This class action addresses defendant bank’s practice and policy of routinely
3 continuing to collect on former junior mortgage debts that are not legally enforceable because it
4 foreclosed on senior mortgage debts on the same property.

5 2. Under section 580d of the California Civil Code (“section 580d”), a lender who
6 owns or controls both senior and junior mortgages on a single property may not legally enforce
7 the “sold-out” junior mortgage debt after it forecloses the senior mortgage on the same property.
8 *See Simon v. Superior Court*, 4 Cal. App. 4th 63, 72 (1992) (“*Simon*”).

9 3. Defendant’s policy of routinely seeking to collect on such debts violates section
10 580d. Defendant’s collection practices and correspondence are unlawful because they mislead
11 debtors into believing that these “sold-out” junior mortgage debts are legally enforceable when,
12 in truth, the debtors have no legal obligation to pay them. Defendant’s policies and practices are
13 also unlawful because, on information and belief, defendant fails to report to credit agencies the
14 true non-recourse nature of these debts.

15 4. Plaintiff was a victim of these unlawful policies and practice with respect to his
16 former-property located at 2471 South Manila Avenue, Fresno, CA 93727 (the “property”).
17 Specifically, the defendant foreclosed on the first mortgage of the property but continued (and
18 continues) to demand routine re-payment on the second mortgage debt without disclosing (or
19 admitting) that the debt was not (and is not) legally enforceable. To the contrary, following the
20 foreclosure of the property, the defendant affirmatively represented that the plaintiff was
21 required to pay the debt and that the debt remained legally enforceable notwithstanding the
22 foreclosure. As a result, the plaintiff made thousands of dollars in monthly payments to avoid
23 legal enforcement of a debt that was not legally enforceable in the first instance.

24 **PARTIES**

25 5. Plaintiff GLENN PACHEO (“Plaintiff”) is a resident of Petaluma, Sonoma
26 County, California.

27 6. Defendant JPMORGAN CHASE BANK, N.A. (“Chase”) is a National Banking
28 Association doing business throughout California.

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction pursuant to the provisions of the Class Action
3 Fairness Act, 28 U.S.C. § 1332(d) *et seq.* (“CAFA”).

4 8. Venue is proper in this Court because Chase’s unlawful conduct occurred and
5 its liability to Plaintiff arose within the jurisdictional region of this Court, where Chase does
6 substantial business.

7 **FACTS**

8 9. About June 18, 2004, Washington Mutual Bank or a related entity (hereafter
9 “WAMU”) lent Plaintiff \$144,000 secured by a promissory note and senior deed of trust on the
10 property (the “first mortgage”).

11 10. About January 17, 2006, WAMU lent Plaintiff \$80,000 secured by a promissory
12 note and junior deed of trust on the same property (the “second mortgage”).

13 11. About September 25, 2008, the Federal Deposit Insurance Corporation (“FDIC”)
14 was appointed the receiver for WAMU, and subsequently transferred substantially all WAMU's
15 assets and liabilities to Chase, including all of WAMU’s rights and obligations under both
16 mortgages on the property. Thereafter, Chase controlled and serviced both mortgages.

17 12. Plaintiff alleges on information and belief that Chase paid just a fraction of the
18 face value for the second mortgage debts of Plaintiff and persons similarly situated because they
19 were known to be unsecured or under-secured debts and subject to California anti-deficiency
20 protections.

21 13. About January 2011, Chase caused the non-judicial foreclosure of the deed of
22 trust that secured the first mortgage loan on the property, thereby extinguishing all junior liens on
23 the property, including the deed of trust associated with the second mortgage.

24 14. On information and belief, Chase or a related entity purchased the property at the
25 trustee’s sale using the credit from the first mortgage debt, then eventually marketed and sold the
26 property to a third party in “REO” transaction.

1 **Declaratory Relief Class**

2 All current Chase debt account holders of record on debts that originated as junior lien
3 mortgage debt on California real property where Chase foreclosed on the senior mortgage
4 debt secured by the same real property (the “Declaratory Relief Class”).

5
6 **Rosenthal Class**

7 All persons who received correspondence from Chase seeking payment for debt that
8 originated as junior lien mortgage debt on California real property after Chase foreclosed
9 on senior mortgage debt secured by the same real property where the correspondence
10 failed to disclose that the debt was not legally enforceable. (the “Rosenthal Act Class”).

11
12 **UCL Class**

13 All persons who paid money to Chase towards debts that originated as junior lien
14 mortgage debt on California real property after Chase foreclosed on senior mortgage debt
15 secured by the same real property (the “Restitution Class”).

16
17 21. Plaintiff does not know the exact size or identities of the proposed classes because
18 that information is in the control of Chase. Plaintiff alleges on information and belief that the
19 classes encompass thousands of members, whose identities are readily ascertainable based on
20 Chase’s servicing records.

21 22. Common questions of fact and law predominate over any questions affecting only
22 individual members because all putative class members are subject to the same California law,
23 were subject to the same policies and practices by Chase, and received the same or similar form
24 statements and collections correspondence from Chase.

25 23. Plaintiff’s claims are typical of the claims of the class members, and Plaintiff
26 does not have any conflicts with the interests of any other class members.

27 24. Plaintiff will fairly and adequately represent the interests of the class members.
28 Plaintiff is committed to the vigorous prosecution of the class claims and has retained attorneys

1 who are qualified to pursue this litigation and have experience in class action and consumer
2 mortgage matters such as this.

3 25. A class action is superior to other methods for the fast and efficient adjudication
4 of this controversy and to avoid the risk of disparate and inconsistent rulings throughout the
5 state. The amounts of money at stake for the individual class members are too small to justify
6 and support litigation of this sort on an individual basis.

7 **1ST CLAIM FOR RELIEF**
8 **Declaratory Relief**

9 26. The preceding paragraphs are incorporated by reference.

10 27. A clear and present controversy exists between Plaintiff and persons similarly
11 situated, on the one hand, and Chase, on the other hand, with respect to the nature of debts
12 purportedly owed to Chase that originated and existed as junior lien mortgage debt on California
13 real property at the time when Chase foreclosed on the senior mortgage debt secured by the same
14 real property (hereafter, the “subject debt”).

15 28. Specifically, Chase contends (a) that the subject debt is legally enforceable, (b)
16 that Chase has the right to pursue routine collections practices with respect to such debt, (c) that
17 Chase may seek to collect such debt without disclosing to the debtors that it is not legally
18 enforceable, (d) that Chase may sell or transfer such debt to third party debt collectors without
19 disclosing that such debt is not legally enforceable, (e) that Chase may report the non-payment
20 of such debt to the credit agencies without also reporting that such debt is not legally
21 enforceable, (f) and so forth.

22 29. Plaintiff, on the other hand, contends (a) that the subject debt is not legally
23 enforceable, (b) that Chase does not have the right to pursue routine collections practices with
24 respect to such debt, (c) that Chase may not seek to collect such debt without disclosing to the
25 debtors that it is not legally enforceable, (d) that Chase may not sell or transfer such debt to
26 third party debt collectors without disclosing that such debt is not legally enforceable, (e) that
27 Chase may not report the non-payment of such debt to the credit agencies without also reporting
28 that such debt is not legally enforceable, (f) and so forth.

1 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

2 **2ND CLAIM FOR RELIEF**
3 **Rosenthal Act**

4 30. The preceding paragraphs are incorporated by reference.

5 31. Chase is a “debt collector” engaging in “debt collection” practices within the
6 meaning of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.* (the
7 “Rosenthal Act”). *See* Cal. Civ. Code § 1788.2(c).

8 32. Chase violated the Rosenthal Act by using false, deceptive, or misleading
9 representation or means in connection with the collection Plaintiff’s mortgage debt as alleged
10 herein. *See* Cal. Civ. Code § 1788.17, *incorporating* 15 U.S.C. § 1692e; *see also* *Rahoi v.*
11 *JPMorgan Chase Bank, N.A.*, 2013 U.S. Dist. LEXIS 83571, 65-66 (N.D. Cal. June 12, 2013);
12 *Herrera v. LCS Fin. Servs. Corp.*, 2009 U.S. Dist. LEXIS 122775, 20 (N.D. Cal. Dec. 22, 2009).
13 Specifically, Chase misrepresented the legal status of the subject debt in violation of the
14 Rosenthal Act because unsophisticated debtors who received Chase’s collections correspondence
15 and communications would have been led to believe that the subject debts were legally
16 enforceable.

17 33. Plaintiff and persons similarly situated are entitled to (a) actual damages within
18 the meaning of the Rosenthal Act in the amount of the payments they made to Chase in response
19 to the unlawful communications and correspondence and (b) statutory damages as allowed by the
20 Rosenthal Act. *See* Cal. Civ. Code § 1788.17, *incorporating* 15 U.S. Code § 1692k (a).

21 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

22 **3RD CLAIM FOR RELIEF**
23 **Unfair Competition Law**

24 34. The preceding paragraphs are incorporated by reference.

25 35. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*
26 (the “UCL”), defines unfair competition to include any “unlawful, unfair, or fraudulent”
27 business act or practice.
28

1 report the non-payment of such debt to the credit agencies without also reporting that such debt
2 is not legally enforceable, (f) and so forth.

3 C. An award of monetary damages and/or restitution in the amount of all payments
4 made by the class members to Chase towards these debts.

5 D. Statutory damages as allowed by the Rosenthal Act.

6 E. Punitive damages according to proof.

7 F. Attorneys' fees, costs, and expenses.

8 G. And such other and further relief as the Court may deem proper.

9
10 DATE: December 11, 2015

LAW OFFICE OF PETER FREDMAN PC

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13 By: /s/ Peter Fredman

14 PETER FREDMAN,
15 Attorney for Plaintiff
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