

BEFORE THE UNITED STATES SUPREME COURT
No. A _____

Ninth Circuit Court of Appeals No. 22-55106
United States District Court Case No. 2:20-cv-03781

ETHAN MARGALITH, an individual, and
LISA MARGALITH, an individual;
Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.;
MTC FINANCIAL dba TRUSTEE
CORPS; WEST H&A, LLC;
WARRANTED EFFECTUATION OF
SUBSTITUTE TRANSFEREE, INC.
dba W.E.S.T., INC.; MICHAEL C.
JACKSON, an individual; PATRICK
SORIA, an individual, and DOES 1
through 50 inclusive.
Defendants.

JPMORGAN CHASE BANK, N.A.,
Cross-Complainant,

v.

ETHAN MARGALITH, an individual,
and LISA MARGALITH, an individual;
CREST PROMONTORY COMMON
AREA ASSOCIATION, an
unincorporated association;
MOUNTAINGATE OPEN SPACE
MAINTENANCE ASSOCIATION, an
unincorporated association;
EMACIATION CAPITAL, LLC, a
California Limited Liability Company;
INTERNAL REVENUE SERVICE, a
government entity; MOUNTAINS

RECREATIONS AND
CONSERVATION AUTHORITY,
a government entity; EXPRESS
WORKING CAPITAL, LLC,
a California Limited Liability
Company; ASSURED LENDERS
SERVICES, INC.; and ROES 51
through 70, inclusive.
Cross-Defendants.

EMERGENCY
APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI UNDER
28 U.S.C. SEC. 1257(a) AND SUPREME COURT
RULE 13.3 FROM DECEMBER 29, 2024 TO
FEBRUARY 27, 2024_DUE TO EXTRAORDINARY
CIRCUMSTANCES PURSUANT TO SUPREME
COURT RULE 13.5

TO: The Honorable Elena Kagan
Circuit Justice for the Ninth Circuit
1 First Street, NE
Washington, DC 20543

INTRODUCTORY STATEMENT OF THE CASE

Ethan Margalith and Lisa Margalith

(“Applicants” or “Prospective Petitioners”) intend to
file a Petition for Writ of Certiorari under 28 U.S.C.
sec. 1257(a) and Supreme Court Rule 13.3. This
Application is brought under Rule 13.3, Rule 13.5, and

Rule 22 of the Rules of the United States Supreme Court. Movant seeks an extension of time to file the Petition for Writ of Certiorari (the “Petition”) from December 29, 2024 to February 27, 2023, pursuant to Rule 13.5 of the Rules of the United States Supreme Court under what is believed in good faith to be extraordinary circumstances set forth herein.

In the interests of the constitutional application of removal jurisdiction, Prospective Petitioners intend to urge this Court to provide supervisory review Opinion and Order Denying Rehearing of the Ninth Circuit Court of Appeals in order to assure that violations of Due Process Rights under the Fifth Amendment to the United States Constitution by the lower federal courts due not occur by the misapplication of the statutes providing for removal jurisdiction. The issues for which Applicants intend to seek review are of substantial importance to the jurisprudence of the United States of America which

governs the removal of civil actions from state courts to federal district courts pursuant 28 U.S.C. sec. 1441, et seq. Review is necessary to assure that litigants are not deprived of their Due Process Rights to full and fair hearing in removed actions in the manner by which the Applicants' Due Process Rights were violated.

The Applicants were deprived of their of Due Process Rights under the Fifth Amendment to the United States Constitution by the federal district court's failure to accept jurisdiction over the entire state court action. Applicants have been denied their right to proceed on their claims against JPMorgan Chase Bank, N.A. (hereinafter "Chase") in either the state court (where Applicants initiated the action which was subsequently removed) or in federal district court upon removal.

Applicants are in the process of seeking to obtain remand of the part of the removed action which was

never adjudicated because the federal district court judge decided that “the only operative complaint in this action is the Cross Complaint filed by JPMorgan Chase Bank, N.A. and removed to this Court by the United States of America” (Exhibit A attached hereto).

On December 23, 2024, despite knowing that Applicants are seeking their rights to be heard on their claims against Chase (which have been held in abeyance by the *de facto* severance of their claims from the part of the action that was “accepted” by the federal district court), Chase served Notice of Sale of Applicants’ homestead. Sale of Applicants’ homestead as enforcement of a judgment alleged to have been unconstitutionally entered threatens to cause Applicants irreparable harm by altering their ownership interests, including their property right to set-off damages caused by Chase against the debt which was claimed by Chase and has been reduced to judgment as well as irreparably harming their rights

to possess and occupy their homestead, subject only to a statutory right of redemption, without Applicants ever having been heard on their well-pleaded Complaint against Chase (see Exhibit B: August 29, 2019 Order Overruling Chase's Demurrer).

JURISDICTIONAL STATEMENT

The Petition for Certiorari will seek to have this Court review the Opinion of the Ninth Circuit Court of Appeals (Exhibit C attached hereto) and the Denial of the Combined Motions for Rehearing (Exhibit D attached hereto). Applicants sought rehearing on August 30, 2024 on the specific issue of misapplication of the removal statutes in violation of their Due Process Rights which was denied on October 1, 2024. Petitioners moved to stay the Mandate on October 7, 2024 and their Motion to Stay the Mandate was denied on October 24, 2024 (Exhibit E attached hereto).

Counsel appearing in the federal district court action contacted counsel for Chase on November 1,

2024 in an effort to resolve the due process issue by stipulation to sever Applicants' claims against Chase and to remand their claims to the state court. The parties could not resolve the dispute without court intervention, so Applicants' federal district court counsel was preparing to file Applicants' Motion to Sever and Remand. On December 23, 2024, Chase served a Notice of Sale, setting sale by the U.S. Marshall for January 23, 2025 (Exhibit F attached hereto).

Whereas Applicants had hoped to resolve the constitutional issue by agreement with Chase and to thereby avoid the filing of the Petition for Writ of Certiorari to this Court, it is now apparent that the filing of their Petition for Writ of Certiorari is necessary to protect their property rights in their claims against Chase and in their homestead based on the violation of their Due Process Rights.

The Petition for Writ of Certiorari is presently

due to be filed on December 29, 2024 under 28 U.S.C. § 2101(c) and Rule 13.1 of the Rules of the United States Supreme Court. The requested extension to February 27, 2024 provides Prospective Petitioners' counsel with sufficient time from the date of entry of the October 1, 2024 Order Denying Rehearing to prepare and file Applicants' Petition for Writ of Certiorari. Petitioners counsel has been retained to prepare and file Applicants' Petition for Writ of Certiorari on the date of this Application.

CASE STATUS

A. Status of the proceedings

The status of the proceedings is set forth in the foregoing Introductory Statement of the Case and Jurisdictional Statement and as further stated herein.

B. The Constitutional Issue of Deprivation of Due Process in the state and federal court proceedings as a result of the misapplication of removal procedures

The Prospective Petitioners were deprived of

their Due Process Rights when the federal district court “accepted” jurisdiction over the Cross-Complaint of Chase and declined to proceed on Applicants’ claims against Chase without severing the Applicants’ claims and remanding their claims to the state court. The state court refused to entertain Applicants’ claims against Chase without a Remand Order (Exhibits G and H) with the result that Applicants were unable to litigate their well-pleaded Complaint against Chase (Exhibit B) in defense of Chase’s Cross-Complaint to foreclose on their homestead in either state court or federal district court at a meaningful time and in a meaningful manner. The Ninth Circuit denied rehearing by which Applicants sought to have the denial of their Due Process Rights cured (Exhibit D), thereby ratifying the miscarriage of justice in this case.

C. Anticipated Questions for Review

Prospective Petitioners anticipate that the questions for review by this Court may include the

following question or similar questions. Applicants respectfully submit the prospective issue for review with their statement of the legal authority in support of the anticipated question for review set forth herein:

Did the federal district court and the Ninth Circuit Court of Appeals violate Petitioners' Due Process Rights guaranteed by the Fifth Amendment to the *Constitution of the United States* by denying them the right to be heard at a meaningful time and in a meaningful manner before judgment was entered in favor of Chase?

D. The importance of the issue

The issue proposed to be addressed in Applicants' Petition for Writ of Certiorari is of substantial importance. The deprivation of Applicants' Due Process Rights by the federal district court in the action which was only partially removed contrary to 28 U.S.C. §1441, et seq. (and as specifically set forth in 28 U.S.C. §§ 1446 and 1447) and the Ninth Circuit Court of Appeals' refusal to cure the violations of Applicants' Due Process Rights on Motion for Rehearing resulted in a miscarriage of justice by

allowing Chase to recover judgment on its Cross-Complaint and preventing Applicants from being heard on their claims against Chase.

The state court properly followed the removal statutes (28 U.S.C. §1446(d)) and declined to exercise jurisdiction over the action after the Notice of Removal was filed on April 24, 2020. See Exhibits F and G: February 22, 2021 and August 2, 2023 Orders of the Superior Court for Los Angeles County (“state court”) in which the state court declined to proceed on Applicants’ Motions without a Remand Order.

Applicants have had their rights to be heard on their claims against Chase blocked by the federal district court declining to accept jurisdiction over the entire action on removal and failing to sever Applicants’ claims against Chase and remand that part

of the action to state court.¹ The miscarriage of justice by the *de facto* blocking Applicants' opportunity to be heard on their claims against Chase in federal district court or by severance and remand to state court must be corrected. The supervision of this Court providing instruction on the proper handling of removed actions is needed so that parties' properly pleaded claims are not blocked from being heard by the type of procedural error of the federal district court in this case.

E. Extraordinary cause is believed to exist by virtue of the pending Notice of Sale being served while the Motion to Sever and Remand remains unresolved

Applicants' counsel believes that the circumstances set forth herein are extraordinary good cause for the filing of this Application on this date.

¹ There does not appear to be any authority for the federal district court to take jurisdiction over Chase's state claims and not to take jurisdiction over Applicant's state claims. The federal district court had jurisdiction over the claims of each party against the other under 28 U.S.C. § 1367. Both parties claims were properly before the federal district court on removal.

REASONS FOR GRANTING THE EXTENSION

I. Applicants' Prospective Petition will raise important issues for review.

The Fifth Amendment to the *Constitution of the United States* guarantees full and fair proceedings before an important liberty or property interest may be taken by judicial action. *Napue v. Illinois*, 360 U.S. 264 (1959); *Armstrong v. Manzo*, 380 U.S. 545 (1965); *Board of Regents v. Roth*, 408 U. S. 564 (1972); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). In *Armstrong v. Manzo*, 380 U.S. at 552, this Court held:

A fundamental requirement of due process is “the opportunity to be heard.” *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

Applicants have been denied the opportunity to be heard at a meaningful time and in a meaningful manner on their claims against Chase set forth in their well-pleaded Complaint as determined in the state court (Exhibit B). By serving the Notice of Sale, Chase

has appears to be intending to take advantage of the alleged due process violation by enforcing the unconstitutional judgment, thereby necessitating this effort to seek relief by Petition for Writ of Certiorari. This Court's review by certiorari will also benefit the development of federal jurisprudence regarding removal of actions to federal district court under 28 U.S.C. §1441, et seq. to assure that justice is not miscarried in actions removed from state courts to federal district courts.

II. If the extension is not granted, Applicants will lose their opportunity to have their Petition considered by the Court, but Chase will not suffer any loss if the extension is granted.

The requested extension of 60 additional days from the date of the Order Denying Rehearing by the Ninth Circuit Court of Appeals. If the extension is not granted, Applicants will lose their right to file their Petition which is terminal. If the Application for Extension of Time to submit Applicant's Petition for

Writ of Certiorari is granted, it is believed in good faith that the opposing party will suffer no loss whatsoever because there is more than adequate equity in the homestead to protect Chase against any pecuniary losses.

CONCLUSION

The Circuit Justice is asked to exercise her discretion to allow Applicants to file their Petition for Writ of Certiorari on or before February 27, 2024 for the reasons set forth above.

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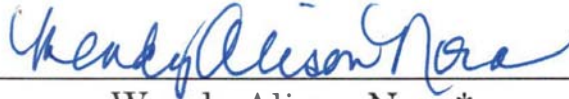
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Dated at Madison, Wisconsin this 26th day of
December, 2024.

Respectfully submitted,



Wendy Alison Nora*

Attorney for Applicants

ACCESS LEGAL SERVICES, LLC**

Mailing Address: 200 East Verona Ave., #13

Verona, Wisconsin 53593

(612) 333-4144

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*Admitted to practice before the United States Supreme
Court only and not admitted to practice in any other
jurisdiction

**Providing research, investigative, technical, filing and
process services at the direction of qualified attorneys in all
U.S. states exclusive of the State of Wisconsin

DECLARATION OF COUNSEL FOR APPLICANTS

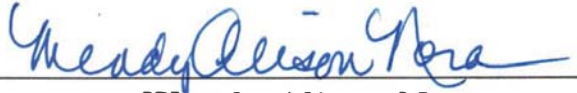
Wendy Alison Nora declares, under penalty of
perjury of the United States pursuant to 28 U.S.C. sec.
1746, that the facts set forth in the foregoing
Application for Extension of Time to File Petition for
Writ of Certiorari are true and correct to the best of
her knowledge, information and belief.



Wendy Alison Nora

CERTIFICATE OF COMPLIANCE

This Motion complies with Rule 33.2 of the Rules of the United States Supreme Court.


Wendy Alison Nora

DECLARATION OF SERVICE

Wendy Alison Nora declares, under penalty of perjury of the United States pursuant to 28 U.S.C. sec. 1746, that I have directed that service of the Application for Extension of Time to File Petition for Writ of Certiorari with Exhibits A, B, C, D, E, F, G and H with the Declaration of counsel included herein to be served by UPS on counsel for Respondent on December 27, 2024 at their addresses of record in the proceedings as set forth below:

Attorney Robert Hyatt
DYKEMA GOSSETT PLLC
444 South Flower Street, Suite 2200
Los Angeles, California 90071

Attorney Seth M. Harris
Attorney Richard L. Stevenson
TIFFANY & BOSCO PC
1455 Frazee Road, Suite 820
San Diego, California 92108

Courtesy copies of the said documents will also be served by email on counsel for Chase at their email addresses of record in the federal district court case.


Wendy Alison Nora

EXHIBIT LIST

EXHIBIT A: December 23, 2021 TEXT ONLY Order concluding that the only operative complaint in the removed action is the Cross-Complaint filed by Chase

EXHIBIT B: August 29, 2019 State Court Order Overruling Chase's Demurrer to Margaliths' First Amended Complaint

EXHIBIT C: July 16, 2024 Opinion of the Ninth Circuit Court of Appeals Panel

EXHIBIT D: October 1, 2024 Order Denying Combined Motions for Rehearing

EXHIBIT E: October 16, 2024 Order Denying Stay of Mandate from the Ninth Circuit Court of Appeals

EXHIBIT F: December 23, 2024 Notice of Sale served by Chase, setting sale by the U.S. Marshall for January 23, 2025

EXHIBIT G: February 22, 2021 State Court Order denying relief for lack of jurisdiction (no remand order from federal district court)

EXHIBIT H: August 2, 2023 State Court Order denying relief for lack of jurisdiction (no remand order from federal district court)

EXHIBIT A

Spencer, Lynn

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Wednesday, December 23, 2020 9:29 AM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:20-cv-03781-RGK-PJW Ethan Margalith et al v. JPMorgan Chase Bank, N.A. et al Text Only Scheduling Notice

***** EXTERNAL*****

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 12/23/2020 at 9:29 AM PST and filed on 12/23/2020

Case Name: Ethan Margalith et al v. JPMorgan Chase Bank, N.A. et al

Case Number: [2:20-cv-03781-RGK-PJW](#)

Filer:

Document Number: 30(No document attached)

Docket Text:

TEXT ONLY ORDER (IN CHAMBERS) by Judge R. Gary Klausner: The Court finds that the only operative complaint in this action is the Cross Complaint filed by JPMorgan Chase Bank, N.A. and removed to this Court by the United States of America. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (jre) TEXT ONLY ENTRY

2:20-cv-03781-RGK-PJW Notice has been electronically mailed to:

Ashley R Fickel afickel@dykema.com, DocketLA@dykema.com, lspencer@dykema.com

Cassandra S. Franklin cfranklin@jamsadr.com

Eideh Manavi eideh@toubilaw.com

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Leonard Siegel lsiegel@kgswwlaw.com

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Robert A Hyatt rhyatt@dykema.com, DocketLA@dykema.com, lspencer@dykema.com

2:20-cv-03781-RGK-PJW Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

**ETHAN MARGALITH ET AL VS JP MORGAN CHASE
BANK N A ET AL**

August 29, 2019

8:30 AM

Judge: Honorable Christopher K. Lui
Judicial Assistant: M.Y. Carino
Courtroom Assistant: E. Villanueva

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS:

Ruling on Submitted Matter Re: Defendant's Demurrer to the First Amended Complaint

The Court, having taken the matter under submission on 07/03/2019, now rules as follows:
(Actual submitted matter is Defendant's Demurrer to the First Amended Complaint. Order to Show Cause Re: Sanctions has been continued. This is a system glitch.)

The Demurrer - without Motion to Strike filed by JP Morgan Chase Bank, N.A. on 03/26/2019 is Overruled.

Summary of Case

On June 22, 2018, Plaintiffs Ethan Margalith and Lisa Margalith filed this lawsuit against Defendants JPMorgan Chase Bank N.A., MTC Financial dba Trustee Corps, West H&A; LLC Warranted Effectuation of Substitute Transferee Inc. dba WEST Inc., Michael C. Jackson, and Patricka Soria, alleging:

- C/A 1: Against West H&A and West Inc. for Quiet Title
- C/A 2: Against West H&A and West Inc. for Cancellation of Instruments
- C/A 3: Against West H&A and West Inc. for Slander of Title
- C/A 4: Against Chase and Trustee Corps. for Violation HBOR
- C/A 5: Against West H&A and West Inc. for Fraud
- C/A 6: Against Chase for Negligent Misrepresentation
- C/A 7: Against Chase for Against Chase for Breach of Contract
- C/A 8: Against Chase for Breach Implied Covenant Good Faith & Fair Dealing
- C/A 9: Against Chase for Promissory Estoppel
- C/A 10: Against Chase for Negligence
- C/A 11: Against Chase for Violation of Business & Professions Code

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CSR: None

ERM: None

Deputy Sheriff: None

On January 24, 2019, Defendant's demurrer was taken off-calendar. Plaintiffs were instructed to file their First Amended Complaint with proof of filing by January 25, 2019.

On January 30, 2019, Plaintiffs filed their FAC alleging the same claims.

On March 12, 2019, the court granted Plaintiffs' counsel's motions to be relieved as Plaintiffs' counsel. On March 14, 2019, the court continued its OSC re: sanctions and/or dismissal for failure to serve all parties to May 8, 2019.

On March 26, 2019, Defendant Chase filed this demurrer.

On June 20, 2019, self-represented Plaintiffs filed an opposition.

On June 26, 2019, Defendant filed a reply.

Summary of Issues

Per Code of Civil Procedure sections 430.10(e) and (f), Defendant Chase demurs to the 1st, 4th, 6th-11th causes of action in the FAC on grounds that it fails to state facts sufficient to constitute a cause of action and is uncertain as to Defendant.

ANALYSIS

Meet and Confer – NOT OK

At least five days before filing a demurrer, the demurring party must meet and confer in person or by telephone with the party who filed the pleading to attempt to reach an agreement that would resolve the objections to the pleading and obviate the need for filing the demurrer. (Code Civ. Proc., § 430.41(a).) A declaration must be filed with the demurrer regarding the results of the meet and confer process. (Id., § 430.41(a)(3).) The failure to sufficiently meet and confer is not grounds to overrule or sustain a demurrer. (Id., § 430.41(a)(4).)

On March 21, 2019, defense counsel purportedly emailed Plaintiff Ethan Margalith to inform him of Chase's intent to file a demurrer to the FAC. (See Robert Hyatt Decl., ¶ 4.) The next day, Anna McDonough (an attorney, but not licensed to practice in California) called defense counsel to discuss the case on behalf of Plaintiffs. (See id., ¶ 5.) Defense counsel purports to have sent McDonough a copy of the demurrer. (See id., ¶ 6.) Defense counsel states McDonough stated she would check with her clients to see if they would move forward with the FAC. (See *ibid.*) Defense counsel declares that, as of March 25, 2019, he had not received any further

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CSR: None

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communication from Plaintiffs. (See *id.*, ¶ 7.)

Defendant did not subsequently meet and confer with self-represented Plaintiffs. Regardless, further meet and confer attempts would likely have been futile. Defendant is admonished to comply with the statutory requirements in the future.

Demurrer

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. (*Wilson v. Transit Authority of City of Sacramento* (1962) 199 Cal.App.2d 716, 720-721.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) “A demurrer tests the pleading alone, and not on the evidence or facts alleged.” (*E-Fab, Inc. v. Accountants, Inc. Servs.* (2007) 153 Cal.App.4th 1308, 1315.) As such, the court assumes the truth of the complaint’s properly pleaded or implied factual allegations. (*Ibid.*) The only issue a demurrer is concerned with is whether the complaint, as it stands, states a cause of action. (*Hahn, supra*, 147 Cal.App.4th at 747.)

First Cause of Action for Quiet Title - OVERRULE

“Plaintiffs seek to quiet title to themselves, . . . , as 100% fee simple interest in the Subject Property as of June 26, 2017 as against all other potential claimants, known and unknown.” Defendant demurs to Plaintiff’s quiet title action because the declaration of quiet title would extinguish Chase’s lien, Plaintiffs’ mortgage loan, without requiring Plaintiffs satisfy the lien. Defendant argues that Plaintiffs have not alleged tender, which is a threshold requirement to quiet title. In opposition, Plaintiffs argue Defendant improperly demurs to the quiet title cause of action, which is only against Defendants West H&A and West Inc.—not Chase. In reply, Defendant repeats the arguments raised in the moving papers. Defendant cites no case law that provides it has standing to demurrer to a cause of action not alleged against it. Defendant’s demurrer to the first cause of action is OVERRULED.

Fourth Cause of Action for Violation of HBOR - OVERRULE

The FAC alleges Chase violated Civil Code sections 2923.6 (FAC, ¶¶ 86-93) and 2923.7 (*id.*, ¶¶ 94-102). In addition, the FAC seeks a judicial determination and declaration of the parties’ respective rights and duties, i.e., that Chase failed to comply with the HBOR, so that the court

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CSR: None

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Deputy Sheriff: None

may grant immediate injunctive relief per Civil Code section 2924.12. (Id., ¶¶ 103-106.) Defendant demurs to the violation of HBOR claim for three reasons: (1) section 2923.6 has been repealed; (2) the facts establish no violation of section 2923.7; and (3) Defendant cannot be liable per section 2924.12(c) because no recorded deed of trustee’s sale exists and Defendant corrected/remedied any alleged wrongdoings.

1. Civil Code Section 2923.6

Civil Code section 2923.6 provides that “[i]f a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower’s mortgage servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or notice of sale, or conduct a trustee’s sale, while the complete first lien loan modification application is pending.” (Civ. Code, § 2923.6(c).) “[A]n application shall be deemed ‘complete’ when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.” (Id., § 2923.6(h).)

Effective January 1, 2018, Civil Code section 2923.6 was repealed and reenacted as Civil Code section 2924.11 in substantially the same form. For example, the 2017 version of section 2923.6(c) is substantively the same as the 2018 version of section 2924.11(a). (See *Arefi v. JP Morgan Chase Bank, N.A.* (Cal. Ct. App., July 2, 2018, No. B263947) 2018 WL 3217196, at 4, fn. 5 [“The dual tracking provisions of section 2923.6 in former subdivisions (c) through (h) ‘sunsetting’ on January 1, 2018 and now appear in section 2924.11, with somewhat different requirements and restrictions. (See former § 2923.6, subd. (k))”].)

In its moving papers, Defendant argues section 2923.6 has been repealed.

In opposition, Plaintiffs argue that 2923.6 has not been repealed and is valid.

In reply, Defendant argues that section 2923.6(h) requires the mortgage servicer to deem a loan modification application complete—and the FAC does not allege Chase ever deemed the application complete.

As an initial matter, Defendant’s reply raises a new argument without giving Plaintiffs the opportunity to respond. Regardless, Defendant’s argument fails as the FAC alleges that, after the August 17, 2016 Notice of Default, “Plaintiffs applied for a loan modification with Chase, submitting every document Chase requested throughout the process.” (See FAC, ¶ 89.) The FAC goes on to allege that, notwithstanding the submission of those documents, Defendants Chase and Trustee Corps. Caused a Notice of Trustee’s Sale on November 21, 2016 to be recorded

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against the property. (See *id.*, ¶ 90.) The FAC then provides “Defendants recorded the NOTS in violation of section 2923.6 because Plaintiffs’ complete loan modification application was pending at the time of recording, and Plaintiffs had not yet received the required written determination or appeals information.” (See *id.*, ¶ 91, emphasis added.) This is sufficient.

2. Civil Code section 2923.7

Civil Code section 2923.7 provides that “[u]pon request from a borrower who requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact.” (Civ. Code, § 2923.7(a).) “The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower’s situation and current status in the alternatives to foreclosure process.” (Ibid.) A “‘single point of contact’ means an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described” in the statute. (Id., § 2923.7(e).)

“The single point of contact shall remain assigned to the borrower’s account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower’s account becomes current.” (Civ. Code, § 2923.7(c).)

The SPOC’s responsibilities include: (1) communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options; (2) coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application; (3) having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevent alternative; (4) ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any; and (5) having access to individuals with the ability and authority to stop foreclosure proceedings when necessary. (Civ. Code, § 2923.7(b).)

Here, the FAC alleges that:

95. Chase failed to provide a competent single point of contact (“SPOC”) that could effectively handle the loss mitigation process, specifically moving forward with processing Plaintiffs’ loan modification.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

**ETHAN MARGALITH ET AL VS JP MORGAN CHASE
BANK N A ET AL**

August 29, 2019

8:30 AM

Judge: Honorable Christopher K. Lui

CSR: None

Judicial Assistant: M.Y. Carino

ERM: None

Courtroom Assistant: E. Villanueva

Deputy Sheriff: None

96. During or around the month of July 2017, Plaintiffs received a call from a new SPOC, informing Plaintiffs the previous SPOC had passed away.

97. Based upon minute and seemingly insignificant details on the documents Plaintiffs provided, Plaintiffs' SPOC informed Plaintiffs the documents Plaintiffs submitted were insufficient.

98. Plaintiffs provided revised documents to the SPOC, with the requested adjustments. SPOC responded saying that the newly provided documents were insufficient but provided no explanation as to what the deficiencies were[.]

99. The SPOC further stated Plaintiffs would not be allowed to submit new documents, further informing Plaintiffs the Subject Property would be foreclosed the following week.

100. Moreover, in July 2017 alone, Ethan must have spoken to more than a dozen representatives at Chase. Ethan spent essentially entire days being transferred around to different Chase representatives, none of whom had access to current information about his loss mitigation application and nor seemingly had access to persons authorized to stop the foreclosure sale. Many of the representatives were overseas and did not even speak or understand English well.

101. Such actions do not comport with the specific requirements outlined by HBOR and does not protect Plaintiffs as the legislature intended by adopting the HBOR.

102. Assignment of a SPOC, under California Civil Code §2923.7, requires the SPOC to communicate the process to the loan applicant, ensuring the borrower is considered for all foreclosure prevention alternatives. Here, the SPOC offered only a definitive end to the process and failed to inform them of their options. SPOC did no actual work to ensure the Plaintiffs was considered for all available foreclosure prevention alternatives. Further, the SPOCs gave incorrect information and thus did not have access to current information or apparently access to people who had the power to stop the sale.

Defendant argues that there is no violation of section 2923.7 because: (1) it is undisputed that Chase appointed a SPOC; (2) the SPOC discussed Plaintiffs' loss mitigation application with Plaintiffs and requested additional documentation; (3) Chase notified Ethan that he had been approved for a TPP for his mortgage that was the first step toward receiving a permanent loan modification. In opposition, Plaintiffs argue that the FAC alleges the SPOC was so ineffective in carrying out her responsibilities per the Code so as to violate HBOR. Specifically, Plaintiffs assert the complaint alleges that the SPOC requested changes that were insignificant and not in

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

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Courtroom Assistant: E. Villanueva

CSR: None

ERM: None

Deputy Sheriff: None

good faith, e.g., the SPOC requiring Plaintiff to resubmit a financial statement because Defendant had requested a 3-month financial statement, but Plaintiff provided a 6-month statement. In reply, Defendant argues that it is undisputed that Chase appointed a SPOC to Plaintiffs that ultimately helped them obtain a TPP.

Defendant's arguments are unpersuasive and ignore the facts alleged, which are sufficient to constitute a violation of 2923.7.

3. Civil Code Section 2924.12(c)

In its moving papers, Defendant argues section 2924.12(c) precludes liability under section 2923.6 and 2923.7. Civil Code section 2924.12 limits recovery after a trustee's deed upon sale has been recorded to actual economic damages resulting from a material violation of section 2923.6 by the mortgage servicer. (See Civ. Code, § 2924.12(b).) Per this section, a mortgage servicer "shall not be liable for any violation that it has corrected and remedied prior to the recordation of a trustee's deed upon sale" (Id., § 2924.12(c).)

Defendant argues any violation was cured by Chase offering the TPP prior to the foreclosure sale. Defendants assert that the only Notice of Trustee's Sale alleged in the FAC expired per 2924g(c), which provides a notice of sale is only valid for 365 days from the date set forth in the notice of sale. Defendant argues there are no allegations the sale was postponed, nor that a new notice of sale was recorded—thus, there is no valid notice currently recorded against the property—Plaintiffs received the benefit of a loan modification review and accepted a TPP.

Here, the FAC alleges that Chase fraudulently sold the property after a Trustee's Deed Upon Sale was recorded on July 10, 2017. (See FAC, ¶¶ 31-39.) Defendant's arguments involve questions of fact that are not relevant on demurrer. Defendant ignores that the TPP offer increased the monthly amount to \$14,000 a month, and then stopped the TPP and demanded a lump sum of \$263,000. (See id., ¶¶ 40-47.) Moreover, Defendant has not pointed to any facts alleged in the complaint that demonstrate that Chase actually has remedied the alleged 2923.6 violation (to which Defendant originally said was repealed) and alleged 2923.7 violation (the SPOC acted in conformance with the specific requirements outlined in the HBOR).

In sum, Defendant's demurrer to the fourth cause of action is **OVERRULED**.

Sixth Cause of Action for Negligent Misrepresentation - **OVERRULE**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

August 29, 2019

ETHAN MARGALITH ET AL VS JP MORGAN CHASE

8:30 AM

BANK N A ET AL

Judge: Honorable Christopher K. Lui

CSR: None

Judicial Assistant: M.Y. Carino

ERM: None

Courtroom Assistant: E. Villanueva

Deputy Sheriff: None

The elements of negligent misrepresentation are: (1) assertion of an untrue fact; (2) believed by defendant to be true; (3) lack of reasonable ground for the belief; (4) defendant's intent to induce plaintiff's reliance upon the representation; (5) plaintiff's justifiable reliance upon the representation; and (6) resulting damage. (*Melican v. Regents of Univ. of Cal.* (2007) 151 Cal. App. 4th 168, 182.)

Defendant demurs to Plaintiffs' negligent misrepresentation claim because Plaintiffs do not allege the specific misrepresentation. In opposition, Plaintiffs argue that the FAC alleges an abundance of facts that support their allegation of misrepresentations by Chase, including that Chase misrepresented the fact that they would offer Plaintiffs a TPP when they had no grounds for believing it to be true (which is indicated by Defendant's conduct shortly after the TPP was agreed upon). In reply, Defendant argues that the TPP clearly provided "Please send these payment amounts, even if you receive a monthly statement that shows a different amount." Defendant thus argues that the TPP clearly anticipated a situation where the mortgage statement did not yet reflect the terms of the TPP and told Plaintiffs how to deal with this situation.

Plaintiff's argument is well-taken. The FAC alleges: (1) on August 17, 2016, a Notice of Default was recorded; (2) Plaintiffs were determined to save their home and submitted the application for loan modification with Chase; (3) Plaintiffs diligently responded to Chase's requests for additional documents; (4) on November 21, 2016, Defendants Chase and Trustee Corps. Recorded a Notice of Trustee's Sale against the property—the foreclosure sale was scheduled for December 21, 2016; (5) Plaintiffs continued working with Chase to have their loan modification application approved—Plaintiffs received letters stating their home would not be foreclosed during the review; (6) in October 2017, Plaintiffs received a letter from Chase stating they had been approved for a loan modification and were required to make three TPP payments before a permanent loan modification would be agreed to; (7) under the TPP, Plaintiffs' monthly payment amount increased to \$14,000 (8) Chase was aware that Plaintiffs could not reasonably afford this monthly amount and the TPP was merely pretext for Chase to foreclose on Plaintiffs; (9) Plaintiffs contacted the SPOC, requesting an extension to make the first TPP, which the SPOC agreed to; (10) Chase then changed its position without reason and suddenly demanded Plaintiffs pay \$263,000; and (11), as a direct and proximate result of the negligent misrepresentations, Plaintiffs suffered loss of the loan modification, inability to refinance the home, inability to secure lines of credit, loss of opportunity to pursue other alternatives to foreclosure, severe emotional distress, damage to credit, and attorneys' fees. (See FAC, ¶¶ 120-145.)

Moreover, Defendant's argument is unpersuasive because the complaint alleges that Plaintiffs contacted Defendant after receiving the December 2017 mortgage statement, asking for

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

August 29, 2019

ETHAN MARGALITH ET AL VS JP MORGAN CHASE

8:30 AM

BANK N A ET AL

Judge: Honorable Christopher K. Lui

CSR: None

Judicial Assistant: M.Y. Carino

ERM: None

Courtroom Assistant: E. Villanueva

Deputy Sheriff: None

confirmation as to whether the TPP was still in effect or not. The complaint alleges that Defendant refused to provide a conclusive answer. (See FAC, ¶ 134 [“To make matters worse, when Plaintiffs called Chase to determine whether this was a mistake or whether they did indeed have to pay the \$263,000.00 Chase could not provide them with a(n) answer.”], see also ¶ 135 [“Plaintiffs then called Chase and spoke with one of the many dozens of their alleged SPOCs to determine why there was such a drastic increase and whether the TPP was valid. The SPOC could not and did not indicate whether or not Plaintiffs could simply disregard the increased amount or whether the TPP was no longer valid.”].) Defendant’s demurrer to the sixth cause of action is **OVERRULED**.

Seventh Cause of Action for Breach of Contract and Eighth Cause of Action for Breach Implied Covenant Good Faith & Fair Dealing - **OVERRULE**

To state a cause of action for breach of contract, Plaintiff must allege “(1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) resulting damages to the plaintiff.” (Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 821.) “The covenant of good faith is implied as a supplement to express contractual covenants to prevent a contracting party from engaging in conduct that frustrates the other party’s rights to the benefits of the agreement.” (Charpentier v. Los Angeles Rams Football Co. (1999) 75 Cal.App.4th 301, 314, 89 Cal.Rptr.2d 115.)” (Thompson Pacific Construction, Inc. v. City of Sunnyvale (2007) 155 Cal.App.4th 525, 541.)

Defendant demurs to the breach of contract and breach of the implied covenant of good faith and fair dealing causes of action because the TPP offer informed Plaintiff to send the payment amounts “even if you receive a monthly statement that shows a different amount.” Defendant argues that Plaintiffs’ argument is manufactured to conceal the fact that they did not make all the plan payments. In opposition, Plaintiffs argue that Defendant improperly seeks to argue the merits of the case. Plaintiffs assert that they have alleged facts that they complied with the TPP sufficient to support a cause of action for breach of contract and breach of covenant of good faith and fair dealing. Plaintiff further argues that the FAC sufficiently alleges that Defendant ‘s inaction and delays in the entire review process injured their right to receive the benefit of a loan modification. In reply, Defendant maintains its argument that any cause of action based on the premise that Defendant breached the TPP lacks merit and is not subject to amendment. Defendant’s argument is a question of fact and not grounds to sustain a demurrer. Defendants’ demurrer to the seventh and eighth causes of action are thus **OVERRULED**.

Ninth Cause of Action for Promissory Estoppel - **OVERRULE**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

August 29, 2019

ETHAN MARGALITH ET AL VS JP MORGAN CHASE

8:30 AM

BANK N A ET AL

Judge: Honorable Christopher K. Lui

CSR: None

Judicial Assistant: M.Y. Carino

ERM: None

Courtroom Assistant: E. Villanueva

Deputy Sheriff: None

“The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise.” (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 803.)

Defendant demurs to the promissory estoppel claim as to the promise of a loan modification because the FAC demonstrates only a preliminary agreement towards modification, i.e., Plaintiffs had to timely make their TPP payments to qualify for permanent loan modification—which is not alleged. In opposition, Plaintiffs argue the complaint sufficiently alleges that Defendant “promised that Plaintiffs’ loan would be permanently modified after an initial TPP,” that Plaintiffs complied with the TPP, but Defendant failed to offer a permanent loan modification. In reply, Defendant argues that any cause of action based on the premise that Defendant breached the TPP lacks merit because the TPP offer informed Plaintiff to send the money regardless of the monthly statement indicating a different amount.

Defendant’s arguments are unpersuasive. The FAC alleges that a promise of a loan modification was made and that Plaintiffs contacted Defendant after receiving the December 2017 mortgage statement, asking for confirmation as to whether the TPP was still in effect or not. The complaint alleges that Defendant refused to provide a conclusive answer. (See FAC, ¶ 134 [“To make matters worse, when Plaintiffs called Chase to determine whether this was a mistake or whether they did indeed have to pay the \$263,000.00 Chase could not provide them with a(n) answer.”], see also ¶ 135 [“Plaintiffs then called Chase and spoke with one of the many dozens of their alleged SPOCs to determine why there was such a drastic increase and whether the TPP was valid. The SPOC could not and did not indicate whether or not Plaintiffs could simply disregard the increased amount or whether the TPP was no longer valid.”].) Defendant’s demurrer to the ninth cause of action is **OVERRULED**.

Tenth Cause of Action for Negligence - **OVERRULE**

The elements for negligence are: (1) a legal duty owed to the plaintiff to use due care; (2) breach of duty; (3) causation; and (4) damage to the plaintiff. (County of Santa Clara v. Atlantic Richfield Co. (2006) 137 Cal.App.4th 292, 318.) Generally, financial institutions owe no duty to borrowers to offer, consider, or approve a loan modification. (See Lueras v. BAC Home Loans Servicing, LP (2013) 221 Cal.App.4th 49, 67.) However, a lender owes a duty of care to a borrower in reviewing the loan modification when the lender agrees to undertake a review of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

**ETHAN MARGALITH ET AL VS JP MORGAN CHASE
BANK N A ET AL**

August 29, 2019

8:30 AM

Judge: Honorable Christopher K. Lui

Judicial Assistant: M.Y. Carino

Courtroom Assistant: E. Villanueva

CSR: None

ERM: None

Deputy Sheriff: None

borrower's request for loan modification. (See *Alvarez v. BAC Home Loans Servicing, L.P.* (2014) 228 Cal.App.4th 941, 948.)

Defendant argues it, as the servicer of the loan, does not owe Plaintiffs any legal duty. Defendant further argues that the FAC fails to allege any facts that establish Defendant was acting in any way beyond the scope of a financial institution. In opposition, Plaintiffs argue that a duty exists. In reply, Defendant asserts that, even if a duty exists, Defendant did not breach that duty—Plaintiffs' conclusory allegations about the loan modification process do not support a breach of any duty. Defendant also argues Plaintiffs have suffered no damages because they still reside at the property and were offered a TPP.

Defendant again improperly raises a new argument in its reply. Regardless, Defendant's arguments are unavailing. The FAC alleges sufficient facts to constitute a cause of action for negligence. Defendant's demurrer to the tenth cause of action is **OVERRULED**.

Eleventh Cause of Action for Violation of Business & Professions Code - OVERRULE

California Business and Professions Code section 17200 prohibits "any unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Prof. Code § 17200; see *Clark v. Superior Court* (2010) 50 Cal.4th 605, 610.) To establish an unlawful business practice, there must be a violation of other laws, whether federal, state, or local. (See *Law Offices of Mathew Higbee v. Expungement Assistance Services* (2013) 214 Cal.App.4th 544, 554.) To establish a fraudulent business practice, the plaintiff must show that members of the public are likely to be deceived. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 806.) A business practice is unfair under section 17200 if it violates an established public policy or if it is immoral, unethical, oppressive, or unscrupulous and causes injury to consumers which outweighs its benefits. (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1473.)

Defendant demurs to the eleventh cause of action because Plaintiffs' predicate claims fail. As discussed above, Plaintiffs' predicate claims (including negligent misrepresentation) do not fail. Accordingly, Defendant's demurrer to the eleventh cause of action is **OVERRULED**.

Clerk is to give notice. Certificate of Mailing is attached.

EXHIBIT C

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 16 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ETHAN MARGALITH, an individual; LISA MARGALITH, an individual,

No. 22-55106

Plaintiffs-Appellants,

D.C. No.

2:20-cv-03781-RGK-PJW

v.

MEMORANDUM*

JPMORGAN CHASE BANK, N.A.; MTC FINANCIAL, INC., DBA Trustee Corps; WEST H&A, LLC; WARRANTED EFFECTUATION OF SUBSTITUTE TRANSFEREE, INC., DBA W.E.S.T, Inc.; MICHAEL C. JACKSON; PATRICK SORIA, an individual,

Defendants-Appellees,

v.

CREST PROMONTORY COMMON AREA ASSOCIATION; MOUNTAINGATE OPEN SPACE MAINTENANCE ASSOCIATION; EMACIATION CAPITAL, LLC; UNITED STATES INTERNAL REVENUE SERVICE; MOUNTAINS RECREATIONS AND CONSERVATION AUTHORITY; EXPRESS WORKING CAPITAL, LLC; ASSURED LENDERS SERVICES, INC.; ROES, 51 through 70, inclusive,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Cross-defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted July 16, 2024**

Before: D. NELSON, O'SCANNLAIN, and KLEINFELD, Circuit Judges:

Ethan and Lisa Margalith, proceeding pro se, appeal the district court's order granting summary judgment to JPMorgan Chase Bank, N.A. (Chase) on its judicial foreclosure and deficiency judgment claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Reynaga v. Roseburg Forest Prods.*, 847 F.3d 678, 685 (9th Cir. 2017), *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004), and we affirm.

The district court properly exercised jurisdiction over Chase's cross-complaint, which the United States removed to federal district court because Chase sought to foreclose on real property on which the Internal Revenue Service claimed a lien. 28 U.S.C. §§ 1444, 2410; *see also Quality Loan Serv. Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*, 635 F.3d 1128, 1131–32 (9th Cir. 2011).

The district court properly granted summary judgment on Chase's judicial

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

foreclosure and deficiency judgment claims because the Margaliths failed to raise a triable issue of fact as to whether their loan was not in default, or about the amount of the default. *See Coker v. JPMorgan Chase Bank, N.A.*, 364 P.3d 176, 178 (Cal. 2016) (explaining that, in a judicial foreclosure action, “the lender must prove that ‘the subject loan is in default and the amount of default.’”) (quoting *Arabia v. BAC Home Loans Servicing, L.P.*, 208 Cal. App. 4th 462, 470 (2012)).

The district court did not abuse its discretion in advancing the summary judgment hearing date because it enjoys wide discretion over its own calendar. And the Margaliths have failed to establish that they were prejudiced by the district court’s decision to advance the hearing date. Indeed, the court extended the deadline for the Margaliths to oppose Chase’s motion, and the Margaliths’ attorney filed an opposition. *See United States v. 2.61 Acres of Land, More or Less, Situated in Mariposa Cnty., State of Cal.*, 791 F.2d 666, 670–71 (9th Cir. 1985) (noting that we consider four factors, including prejudice, to determine if district court abused its discretion in denying a trial continuance, and that “[a]bsent a showing of prejudice suffered by the appellant . . . this Court will not disturb the ruling below.”).

The district court did not abuse its discretion in declining to continue the hearing to allow additional discovery because the Margaliths failed to establish that they were entitled to a continuance under Federal Rule of Civil Procedure 56.

Fam. Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp. 525 F.3d 822, 827 (9th Cir. 2008) (explaining that a party seeking a continuance under Rule 56 must provide an affidavit containing the specific facts they hoped to elicit from further discovery and how the sought-after facts would allow them to defeat summary judgment).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments made for the first time on appeal. *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

The Margaliths' motion to file a substitute reply brief (Docket Entry No. 40) is granted.

AFFIRMED.

EXHIBIT D

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

OCT 1 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ETHAN MARGALITH, an individual; LISA
MARGALITH, an individual,

Plaintiffs-Appellants,

v.

JPMORGAN CHASE BANK, N.A.; et al.,

Defendants-Appellees,

v.

CREST PROMONTORY COMMON AREA
ASSOCIATION; et al.,

Cross-defendants-Appellees.

No. 22-55106

D.C. No.

2:20-cv-03781-RGK-PJW

Central District of California,

Los Angeles

ORDER

Before: D.W. NELSON, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

The panel voted to deny the petition for rehearing and recommended denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed R. App. P. 35. The petition for rehearing en banc is DENIED.

The motion for judicial notice is also DENIED.

EXHIBIT E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 16 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ETHAN MARGALITH, an individual; LISA MARGALITH, an individual,

Plaintiffs-Appellants,

v.

JPMORGAN CHASE BANK, N.A.; et al.,

Defendants-Appellees,

v.

CREST PROMONTORY COMMON AREA ASSOCIATION; et al.,

Cross-defendants-Appellees.

No. 22-55106

D.C. No.

2:20-cv-03781-RGK-PJW

Central District of California,
Los Angeles

ORDER

Before: O'SCANNLAIN and KLEINFELD, Circuit Judges.

Appellants' motion to stay the mandate is DENIED.

EXHIBIT F

1 **TIFFANY & BOSCO**
P.A.

2 **SETH M. HARRIS (SBN 253802)**

smh@tblaw.com

3 **RICHARD L. STEVENSON (SBN 239705)**

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4 1455 Frazee Road, Suite 820

San Diego, CA 92108

5 Tel.: (619) 501-3503

Attorneys for Judgment Creditor,

6 JPMorgan Chase Bank, N.A.

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION – LOS ANGELES**

10 ETHAN MARGALITH AND LISA MARGALITH,

11 Plaintiffs,

12 v.

13 JPMORGAN CHASE BANK, N.A.; MTC
14 FINANCIAL dba TRUSTEE CORPS; WEST H&A,
15 LLC; MICHAEL C. JACKSON; WARRANTED
16 EFFECTUATION OF SUBSTITUTE
17 TRANSFEREE, INC. dba W.E.S.T., INC.;
18 PATRICK SORIA; and DOES 1-50 inclusive,

19 Defendants.

Case No. 2:20-CV-03781-RGK-AGR

**NOTICE OF SALE OF REAL
PROPERTY LOCATED AT 12675
MOUNTAIN CREST LANE, LOS
ANGELES, CA 90049**

[Fed.R.Civ.Pro. 69; Cal.Civ.Proc. Code
§§701.510 et seq and 704.750 et seq.]

20 **NOTICE OF SALE OF REAL PROPERTY**

21 PLEASE TAKE NOTICE that the above-captioned court has ordered the United States Marshals
22 Service, as levying officer (“Levying Officer”), to sell the legal, right, title and interest of Ethan
23 Margalith in the real property commonly known as 12675 Mountain Crest Lane, Los Angeles, CA 90049
24 with Tax Parcel Number 4493-030-006 and as more particularly described on Attachment A hereto (the
25 “Subject Property”), and which contains a dwelling and is subject to a homestead exemption (the
26 “Sale”). The described property is sold with right of redemption.

The order requiring the Sale of the Subject Property was entered by the Court on November 1,
2024 at the request of Assignee of Record, JPMorgan Chase Bank, N.A. (“Judgment Creditor”) and with

NOTICE OF SALE OF REAL PROPERTY

1 respect to a judgment issued on November 17, 2021, in favor of JPMorgan Chase Bank, N.A. and against
2 Defendant and Judgment Debtor Ethan Margalith (“Judgment Debtor”) for Three Million Eight Hundred
3 Eighty-Two Thousand Four Hundred Fifty-Seven Dollars and Twenty-One Cents (\$3,882,457.21),
4 accrued costs and interests, and daily interest at 10.0% per annum in the amount of One Thousand Sixty-
5 Three Dollars and Sixty-Eight Cents (\$1,063.68) per day.

6 PROSPECTIVE BIDDERS SHOULD REFER TO SECTIONS §§701.510 TO 701.680, INCLUSIVE,
7 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE (CCP) FOR PROVISIONS GOVERNING
8 THE TERMS, CONDITIONS, AND EFFECT OF THE SALE AND THE LIABILITY OF
9 DEFAULTING BIDDERS.

10 **PUBLIC NOTICE IS HEREBY GIVEN** that the Levying Officer will sell the Subject Property
11 at public auction to the highest bidder, by cashier’s check made payable to the United States Marshals
12 Services in lawful money of the United States of America, and including all the right, title and interest
13 of said Judgment Debtor in the above-described Subject Property, or so much as may be necessary to
14 satisfy said execution, with accrued interests and costs on

15 JANUARY 23, 2025, at 10:00 AM at the FRONT OF THE UNITED STATES DISTRICT
16 COURTHOUSE, 350 WEST 1ST STREET, LOS ANGELES, CALIFORNIA 90012, LOS ANGELES
17 COUNTY. Any person, including any party, may purchase Ethan Margalith’s interest in the Subject
18 Property at the Sale. Judgment Creditor’s Judgment is secured by an involuntary lien on the Subject
19 Property recorded on May 10, 2024, in the Los Angeles County Recorder’s Office as Instrument No.
20 20240309907. The amount of the secured indebtedness under the order requiring the Sale, with interest
21 and costs, is \$5,021,665.88.

22 **The minimum sale price for Ethan Margalith’s interest in Subject Property to submitted**
23 **by any party shall be \$0.00. The sale shall extinguish all senior liens on the Subject Property as**
24 **and to the extent provided in CCP §701.630.** Any further bids shall be made in at least \$1,000.00
25 increments up to the final bid amount, and no bid shall be received unless it exceeds this minimum
26 amount. Judgment Creditor may credit bid, as it may direct the United States Marshals Service, up to
the full remaining unpaid amount of the Judgment at the sale pursuant to CCP §701.590(b), which, as

1 entered on November 17, 2021 is at least \$3,882,457.21, plus interest accruing at the rate of \$1,063.68
2 per day, thereafter, as well as any additional costs authorized by the Court Order.

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Branch: Los Angeles, California

Dated: 12/24/2024

By:



Deputy United States Marshal

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LINK TO 87

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

ETHAN MARGALITH, an individual,
and LISA MARGALITH, an individual;

Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.;
MTC FINANCIAL dba TRUSTEE
CORPS; WEST H&A, LLC;
WARRANTED EFFECTUATION OF
SUBSTITUTE TRANSFEREE, INC.
dba W.E.S.T., INC.; MICHAEL C.
JACKSON, an individual; PATRICK
SORIA, an individual, and DOES 1
through 50 inclusive.

Defendants.

Case No. 2:20-cv-03781 RGK (PjWx)

**JUDGMENT OF FORECLOSURE
AND ORDER OF SALE AND
DEFICIENCY JUDGMENT**

The Hon. R. Gary Klausner

JPMORGAN CHASE BANK, N.A.,

Cross-Complainant,

v.

ETHAN MARGALITH, an individual,
and LISA MARGALITH, an individual;
CREST PROMONTORY COMMON
AREA ASSOCIATION, an
unincorporated association;
MOUNTAINGATE OPEN SPACE
MAINTENANCE ASSOCIATION, an
unincorporated association;
EMACIATION CAPITAL, LLC, a
California Limited Liability Company;

1 INTERNAL REVENUE SERVICE, a
2 government entity; MOUNTAINS
3 RECREATIONS AND
4 CONSERVATION AUTHORITY, a
5 government entity; EXPRESS
6 WORKING CAPITAL, LLC, a
7 California Limited Liability Company;
8 ASSURED LENDERS SERVICES,
9 INC.; and ROES 51 through 70,
10 inclusive.

Cross-Defendants.

11 On April 6, 2021, the Court granted Cross-Complainant JPMorgan Chase
12 Bank, N.A.'s ("Chase") Motion for Summary Judgment or in the alternative Motion
13 for Summary Adjudication as to Chase's claims for judicial foreclosure and
14 deficiency judgment, and dismissed Chase's claim for breach of contract.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

15 1. Now due and owing to Chase from Cross-Defendant Ethan Margalith
16 are the following sums under the Adjustable Rate Note executed on or about
17 December 22, 2006 (the "Note"), the Deed of Trust recorded on January 3, 2007, in
18 the Los Angeles County Recorder's Office as Instrument Number 20070010900 (the
19 "DOT"), and the Loan Modification Agreement between Ethan Margalith and Chase
20 effective December 1, 2011 (the "2011 Loan Mod").

21 a. Principal, interest, escrow and other advances, and other fees and
22 charges in the amount of \$3,876,979.47 up through and including February 26,
23 2021;

24 b. Attorney's fees as determined by motion;

25 c. Chase's cost of suit in the amount of \$5,477.74

26 for a total Judgment in the amount of \$3,882,457.21.

27 These debts and the Judgment amount are liens upon the real property
28 described below pursuant to the DOT.

1 2. The real property described, or as much of it as may be necessary, shall
2 be sold in the manner prescribed by law by the levying officer of Los Angeles
3 County, California, on proper application for issuance of a Writ of Sale to the
4 levying officer. Any party to this action may be a purchaser at the sale.

5 3. From the proceeds of the sale, the levying officer shall deduct the
6 expenses for the levy and sale and shall then pay Chase the sums adjudged due
7 together with interest at the rate of 10% per annum from the date of this Judgment.

8 4. If any surplus remains after the making of those payments first to
9 Chase, it shall be paid by the levying officer as follows, pursuant to stipulation of
10 the parties:

11 a. Second, to Internal Revenue Service's federal tax liens filed on
12 April 15, 2016;

13 b. Third, to Emaciation Capital, LLC's lien;

14 c. Fourth, to Express Working Capital, LLC's lien;

15 d. Fifth, to Mountaingate Open Space Maintenance Association's
16 lien;

17 e. Sixth, to Internal Revenue Service's federal tax lien filed on
18 October 10, 2019;

19 f. Seventh, to Ethan and Lisa Margalith.

20 5. Cross-Defendant Ethan Margalith is personally liable for payment of
21 the entire sum due under the Note and secured by the DOT, and a deficiency
22 judgment may be ordered against him following proceedings prescribed by law.
23 This Court retains jurisdiction to determine the amount of the deficiency, if any, and
24 to render a money judgment on proper application.

25 6. A deficiency judgment not being waived or prohibited, the property
26 shall be sold subject to the right of redemption as provided for in California Code of
27 Civil Procedure §§ 729.010, et. seq.

28 7. From and after delivery of the deed by the levying officer to the

1 purchaser at the sale, Ethan Margalith, all Cross-Defendants, and all persons
2 claiming under them or having liens subsequent to the DOT on the real property
3 described below (the "Property"), and their personal representatives, are forever
4 barred and foreclosed from all equity or redemption in, and claim to, the Property
5 and every part of it.

6 8. The Property that is the subject of this Judgment is located in Los
7 Angeles County, California, and is commonly known as 12675 Mountain Crest
8 Lane, Los Angeles, California 90049, is legally described as follows:

9 LOT 4 OF TRACT 42481, IN THE CITY OF LOS ANGELES, COUNTY
10 OF LOS ANGELES STATE OF CALIFORNIA, AS PER MAP RECORDED
11 IN BOOK 1018 PAGES 72 TO 77 INCLUSIVE OF MAPS, IN THE OFFICE
12 OF THE COUNTY RECORDER OF SAID COUNTY.

13
14 EXCEPT ALL OIL, GAS, MINERALS AND HYDROCARBON
15 SUBSTANCES BELOW THE DEPTH OF 500 FEET FROM THE
16 SURFACE OF SAID LAND WITHOUT THE RIGHT OF SURFACE OF
17 ENTRY THROUGH SAID 500 FEET, AS SET FORTH IN DEED FROM
18 BARCLAY HOLLANDER CORPORATION, A CORPORATION,
19 FORMERLY BARCLAY HOLLANDER CURCI, INC., A
20 CORPORATION, IN DEED RECORDED DECEMBER 28, 1979 AS
21 INSTRUMENT NO. 79-1449082.

22 APN: 4493-030-006

23 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

24
25 DATED: November 17, 2021



26 The Hon. R. Gary Klausner

27
28

I hereby attest and certify on 11/13/24
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CMF
DEPUTY CLERK



1175

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES**

ETHAN MARGALITH AND LISA
MARGALITH,

Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A.; MTC
FINANCIAL dba TRUSTEE CORPS;
WEST H&A, LLC; MICHAEL C.
JACKSON; WARRANTED
EFFECTUATION OF SUBSTITUTE
TRANSFEE, INC. dba W.E.S.T, INC.;
PATRICK SORIA; and DOES 1-50
inclusive,

Defendants.

CASE NO. 2:20-CV-03781-RGK-AGR

WRIT OF SALE – Real Property

1. The United States Marshals of the Central District of California are directed to enforce the judgment described below with daily interest and the United States Marshals' costs as provided by law.

2. Registered process servers are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.

3. JPMorgan Chase Bank, N.A. is the original judgment creditor.

1 4. The judgment debtor is Ethan Margalith. His last known address is 12675
2 Mountain Crest Lane, Los Angeles, CA 90049. There is no joint judgment debtor.

3 5. Judgment was entered on November 17, 2021. The judgment is for judicial
4 foreclosure.

5 6. Judgment was entered for sale of real property. The complaint was filed by Ethan
6 Margalith and Lisa Margalith in the Superior Court of California, County of Los Angeles
7 on June 22, 2018. The cross-complaint was filed by JPMorgan Chase Bank, N.A. on April
8 24, 2020. The case was removed to District Court on April 24, 2020.

9 7. Judgment has not been renewed.

10 8. A Notice of Sale under this writ has not been requested.

11 9. The Property to be sold is described as follows:

12 LOT 4 OF TRACT 42481, IN THE CITY OF LOS ANGELES,
13 COUNTY OF LOS ANGELES STATE OF CALIFORNIA, AS PER
MAP RECORDED IN BOOK 1018 PAGES 72 TO 77 INCLUSIVE
OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF
SAID COUNTY.

14 EXCEPT ALL OIL, GAS, MINERALS AND HYDROCARBON
15 SUBSTANCES BELOW THE DEPTH OF 500 FEET FROM THE
SURFACE OF SAID LAND WITHOUT THE RIGHT OF SURFACE
16 OF ENTRY THROUGH SAID 500 FEET, AS SET FORTH IN DEED
FROM BARCLAY HOLLANDER CORPORATION, A
17 CORPORATION, FORMERLY BARCLAY HOLLANDER CURCI,
INC., A CORPORATION, IN DEED RECORDED DECEMBER 28,
1979 AS INSTRUMENT NO. 79-1449082.

18 APN: 4493-030-006

19 Commonly known as 12675 Mountain Crest Lane, Los Angeles, CA 90049.
20

1 10. A notice of levy and a claim of exemption form were served upon the cross-
2 defendants and all other parties to the District Court case.

3 11. This writ is not issued on a sister-state judgment.

4 12. Total judgment as entered was \$3,882,457.21.

5 13. As of October 23, 2024, accrued costs and interests total \$1,139,208.67.

6 14. The total amount due as of October 23, 2024 is \$5,021,665.88.

7 15. Daily interest accrues at 10.0% per annum, in the amount of \$1,063.68 per day,
8 to which must be added the commission and costs of the officer executing this writ of sale.

9
10 Dated: 11/1/2024

Clerk, U.S. District Court



11 By: s/ J. Remigio
12 Deputy Clerk

I hereby attest and certify on 11/31/24
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAF
DEPUTY CLERK



EXHIBIT G

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

ETHAN MARGALITH ET AL VS JP MORGAN CHASE

BANK N A ET AL

February 22, 2021

8:30 AM

Judge: Honorable Rafael A. Ongkeko

Judicial Assistant: M. Y. Carino

Courtroom Assistant: E. Villanueva

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Gina M. Simas for Eideh Manavi (LA Court Connect)

For Defendant(s): Robert Hyatt for Ashley Richard Fickel, Esq. (LA Court Connect)

NATURE OF PROCEEDINGS:

Hearing on Ex Parte Application for Leave to File a Second Amended Complaint;

The matter is called for hearing.

Moving party filed duplicate ex parte application. Ex parte application is heard and argued.

The Ex Parte Application Ex Parte for Leave to File a Second Amended Complaint filed by Lisa Margalith, Ethan Margalith on 02/18/2021 is Denied. No exigent circumstances, no immediate harm and there is no order of remand.

Notice is waived.

EXHIBIT H

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 73

BC711350

ETHAN MARGALITH ET AL VS JP MORGAN CHASE

BANK N A ET AL

August 2, 2023

8:30 AM

Judge: Honorable Timothy Patrick Dillon

CSR: None

Judicial Assistant: M. Y. Carino

ERM: None

Courtroom Assistant: D. Ortiz

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Stephen Francis Lopez Via LA CourtConnect

For Defendant(s): Robert Hyatt for Ashley Richard Fickel, Esq. Via LA CourtConnect

NATURE OF PROCEEDINGS:

Hearing on Motion - Other to Reopen Case (Res ID: 7047)

The matter is called for hearing.

Motion is heard and argued. The Court issues its final rulings after the hearing, as follows:

The Motion re: to Reopen Case (Res ID: 7047) filed by Ethan Margalith, Lisa Margalith on 05/18/2023 is Denied. By the notice of removal, the entire action (“civil action”) was removed to federal court on April 28, 2020. There is no order from the federal court remanding any part of this action. While pursuant to 28 U.S.C. § 1441 (c)(2), a federal court may sever and remand part of a civil action, the federal court did not do so. The federal court’s order of December 23, 2020 is not an order of remand. Accordingly, the entire case remains in federal court.

In any event, because of Plaintiffs’ prior application based on the same facts and theory that this court denied on February 22, 2021, this motion is improper under Code of Civil Procedure section 1008. There is no new law or facts asserted. The court thus also lacks jurisdiction to hear this motion.

Plaintiffs’ motion is denied. Plaintiffs are ordered to give notice. Certificate of Mailing is attached.