1 Mark D. Lonergan (State Bar No. 143622) mdl@severson.com 2 Edward R. Buell<sup>III</sup> (State Bar No. 240494) erb@severson.com 3 Daska P. Babcock (State Bar No. 215172) dpb@severson.com DeC 23 SEVERSON & WERSON A Professional Corporation One Embarcadero Center, Suite 2600 A WOOL By: San Francisco, California 94111 Deput Telephone: (415) 398-3344 Facsimile: (415) 956-0439 7 Attorneys for Defendants WELLS FARGO BANK, N.A. and U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WFASC 2005-AR1 10 SUPERIOR COURT OF CALIFORNIA 11 COUNTY OF SACRAMENTO 12 13 THADDEUS J. POTOCKI and Case No. 34-2014-00160873 14 The Hon. David W. Abbott, Dept. 39 KELLY R. DAVENPORT, 15 Plaintiffs. NOTICE OF DEMURRER AND 16 DEMURRER BY WELLS FARGO BANK AND U.S. BANK TO PLAINTIFFS' FIRST AMENDED COMPLAINT 17 WELLS FARGO BANK, N.A., 18 FIRST AMERICAN SERVICING Date: February 3, 2015 SOLUTIONS, LLC; Time: 2:00 p.m. US. BANK, N.A.; and 19 Dept.: 53 DOES 1 through 100, inclusive, Hon, David L. Brown Judge: Reservation No.: 2010118 20 Defendants. Action Filed: March 27, 2014 21 Trial Date: None 22 TO ALL PARTIES AND THEIR COUNSEL OF RECORD: 23 24 PLEASE TAKE NOTICE that on February 3, 2015, at 2:00 p.m. or soon thereafter as the matter may be heard, in Department 53 of the Sacramento County Superior Court, before the 26 | Honorable David L. Brown, defendants Wells Fargo Bank, N.A. ("Wells Fargo") and U.S. Bank 27 | National Association, as Trustee for WFASC 2005-AR! ("U.S. Bank"), will and hereby do demur to the First Amended Complaint of plaintiffs Thaddeus J. Potocki and Kelly R. Davenport.

NOTICE OF DEMURRER TO FIRST AMENDED COMPLAINT

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The demurrer is based on this notice, the memorandum of points and authorities and request for judicial notice submitted herewith, the Complaint and First Amended Complaint filed by the plaintiffs, and such other papers on file in this action and argument or evidence presented at the hearing as the Court may properly consider.

## **Tentative Ruling Procedure**

PURSUANT TO LOCAL RULE 1.06 (A), THE COURT WILL MAKE A TENTATIVE RULING ON THE MERITS OF THIS MATTER BY 2:00 P.M. THE COURT DAY BEFORE THE HEARING. THE COMPLETE TEXT OF THE TENTATIVE RULINGS FOR THE DEPARTMENT MAY BE DOWNLOADED FROM THE COURT'S WEBSITE. A PARTY WHO DOES NOT HAVE ONLINE ACCESS MAY CALL THE DEDICATED PHONE NUMBER FOR THE DEPARTMENT AS REFERENCED IN THE LOCAL TELEPHONE DIRECTORY BETWEEN THE HOURS OF 2:00 P.M. AND 4:00 P.M. ON THE COURT DAY BEFORE THE HEARING TO RECEIVE THE TENTATIVE RULING. IF THE PARTY WISHING TO BE HEARD DOES NOT CALL THE COURT AND THE OPPOSING PARTY BY 4:00 P.M. ON THE COURT DAY BEFORE THE HEARING, NO HEARING WILL BE HELD.

## **Demurrer to First Amended Complaint**

Wells Fargo and U.S. Bank demur to each of the causes of action in the plaintiffs'

First Amended Complaint on the following grounds:

- 1. Plaintiffs' first cause of action, for negligence per se, fails to state facts sufficient to constitute a cause of action. (Cal. Code Civ. P., § 430.10(e).)
- 2. Plaintiffs' second cause of action, for violation of California Business and Professions Code sections 17200, et seq., fails to state facts sufficient to constitute a cause of action. (Cal. Code Civ. P., § 430.10(e).)
- 3. Plaintiffs' third cause of action, for violation of California Civil Code section 2924(a)(6), fails to state facts sufficient to constitute a cause of action. (Cal. Code Civ. P., § 430.10(e).)

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1	4. Plaintiffs' fourth cause of action, for violation of California Civil Code section	
2	2924.17, fails to state facts sufficient to constitute a cause of action. (Cal. Code Civ. P.,	
3	§ 430.10(e).)	
4.	5. Plaintiffs' fifth cause of action, for breach of contract, fails to state facts sufficient	
5	to constitute a cause of action. (Cal. Code Civ. P., § 430.10(e).)	
6	6. Plaintiffs' sixth cause of action, for declaratory relief, fails to state facts sufficient	
7	to constitute a cause of action. (Cal. Code Civ. P., 430.10(e).)	
8	Dated: December 23, 2014 SEVERSON & WERSON	
9	A Professional Corporation	:
10	$\bigcap \mathcal{D} = \mathcal{D} \cap \mathcal{D}$	
11	By: Kaku T Wahrok  Daska P. Babcock	
12		
13	Attorneys for Defendants WELLS FARGO BANK, N.A. and	
14	U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WFASC 2005-ARI	
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PROOF OF SERVICE 1 Thaddeus J. Potocki, et al. v. Wells Fargo Bank, N.A., et al. Sacramento County Superior Court Case No. 34-2014-00160873 2 3 At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Embarcadero Center, Suite 2600, San Francisco, CA 94111. 4 5 On December 23, 2014, I served true copies of the following document(s): NOTICE OF DEMURRER AND DEMURRER BY WELLS FARGO BANK AND 6 U.S. BANK TO PLAINTIFFS' FIRST AMENDED COMPLAINT; 7 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WELLS FARGO BANK AND U.S. BANK'S DEMURRER TO FIRST AMENDED 8 COMPLAINT: 9 REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF WELLS FARGO BANK 10 AND U.S. BANK'S DEMURRER TO FIRST AMENDED COMPLAINT 11 on the interested parties in this action as follows: 12 SEE ATTACHED SERVICE LIST 13 BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and 14 mailing, following our ordinary business practices. I am readily familiar with Severson & Werson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of 15 business with the United States Postal Service, in a sealed envelope with postage fully prepaid. 16 I declare under penalty of perjury under the laws of the State of California that the 17 foregoing is true and correct. 18 Executed on December 23, 2014, at San Francisco, California. 19 20 21 22 23 24 25 26 27 28

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## SERVICE LIST

Thaddeus J. Potocki, et al. v. Wells Fargo Bank, N.A., et al. Sacramento County Superior Court Case No. 34-2014-00160873

2 Ted A. Greene Telephone: (916) 442-6400 Facsimile: (916) 266-9395 Christopher J. Fry Law Offices of Ted A. Greene, Inc. Email: tgreene@tedgreenelaw.com 1912 F Street, Suite 110 cfry@tedgreenelaw.com Sacramento, CA 95811 Attorneys for Plaintiffs Thaddeus J. Potocki and Kelly R. Davenport 6 Patrick Reider Telephone: (714) 250-3661 preider@firstam.com First American Law Group Email: 5 First American Way Santa Ana, CA 92707 Attorneys for Defendant 9 First American Servicing Solutions, LLC 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

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NOTICE OF DEMURRER TO FIRST AMENDED COMPLAINT