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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 DARYOUSH M. JAHROMI, an individual,
13 FERNANDO A. MILLER, an individual,
14 on behalf of themselves and all others
15 similarly situated,

CASE NO. CV11-10721 CJC (RNBx)

Assigned to: Honorable Cormac J. Carney

Plaintiffs,

FIRST AMENDED COMPLAINT

vs.

1. Unlawful/Unfair Acts §17200
Improper Notarial Business Practices

16 AURORA LOAN SERVICES, LLC;
17 QUALITY LOAN SERVICE
18 CORPORATION; EXECUTIVE
19 TRUSTEE SERVICES, LLC and DOES 1
20 through 10, inclusive,

DEMAND FOR JURY TRIAL
Complaint filed: December 28, 2011

Defendants.

21
22
23 Plaintiffs captioned above, by and through his attorney of record, brings this action against
24 defendants AURORA LOAN SERVICES, LLC (“AURORA”), QUALITY LOAN SERVICE
25 CORPORATION (“QUALITY”), EXECUTIVE TRUSTEE SERVICES (“ETS”) AND DOES 1
26
27
28

1 through 10, inclusive, inclusive (collectively, “Defendants”) and alleges the following on
2 information and belief, except as to those allegations which pertain to the Plaintiffs:
3

4 **VENUE**

5 1. The Court has subject matter jurisdiction over this action under 28 USC § 1331
6 wherein the action arises under the Constitution, laws or treaties of the United States and/or under
7 28 USC § 1332 wherein this is a class action over \$10,000,000.00 where at least one plaintiff is
8 diverse from one defendant.
9

10 2. The Court has personal jurisdiction over the defendants in this action by the fact that the
11 Defendants are conducting business in the state of California.

12 3. Nothing in the Consent Order entered into between AURORA and its presumed parent
13 AURORA BANK, FSB, and the United States Department of Treasury’s Office of the Comptroller
14 of Currency (the “OCC”) signed on April 13, 2011 restricts this Court’s jurisdiction, as the
15 Plaintiffs’ rights here do not derive from the Consent decree nor is adequate relief provided for
16 under the Consent decree.
17

18 4. Plaintiffs seek equitable relief arising from defendants’ systemic violations of
19 California Notary laws and will not affect enforcement or otherwise restrict the scope of Consent
20 decree. Plaintiffs seek equitable relief to compel defendants to cure the effect of the widespread
21 dissemination of improperly acknowledged foreclosure documents in public land records and expect
22 that this action will be joined by several California county District Attorneys.
23

24 5. Venue is proper in this Court pursuant to 28 USC § 1392 because the action involves
25 real property located in the Central District of California; and pursuant to 28 USC § 1391(b) and a
26 substantial part of the events or omissions on which the claims are based occurred in this District.
27
28

1 **I. PARTIES**

2 6. Defendant, AURORA LOAN SERVICES, LLC (“AURORA”) is believed to be a Delaware
3 Limited Liability Company and subsidiary of a national banking association, AURORA
4 BANK, FSB, organized and existing under the laws of the United States, with its principal
5 banking association organized and existing under the laws of the United States, doing
6 business in the State of California.

7
8 7. Defendant QUALITY LOAN SERVICE CORPORATION (“QUALITY “), a California
9 Corporation, is the alleged Trustee in hundreds of California Deeds of Trusts serviced or
10 owned by AURORA. At all time relevant QUALITY acted an agent to and under the
11 exclusive control of AURORA.
12

13 8. Defendant EXECUTIVE TRUSTEE SERVICES, LLC (“ETS”), is believed to be a Delaware
14 Limited Liability Company is the alleged Trustee in hundreds of California Deeds of Trusts
15 serviced or owned by AURORA. At all time relevant ETS acted an agent to and under the
16 exclusive control of AURORA.
17

18 9. Plaintiff, DARYOUSH M. JAHROMI, at all times mentioned herein relevant to the First
19 Amended Complaint is a resident of the State of California and the owner of real property
20 secured by a defaulted Note and Deed of Trust allegedly serviced by Defendants.
21

22 10. Plaintiff, FERNANDO A. MILLER, at all times mentioned herein relevant to the First
23 Amended Complaint is a resident of the State of California and the owner of real property
24 secured by a defaulted Note and Deed of Trust allegedly serviced by Defendants.
25

26 11. Plaintiffs do not know the true names and capacities of the defendants DOES 1 through 10,
27 inclusive, and, as such, names said defendants by such fictitious names. Plaintiffs will amend
28

1 the complaint to state the true name and capacity of the DOE defendant(s) when such
2 information is ascertained.

3
4 12. Plaintiffs are informed and believe, and allege thereon, that each defendant is responsible in
5 some manner for the occurrences alleged in the complaint at all times mentioned and that
6 plaintiffs', and the general public's, actual injury were proximately caused by the defendants
7 business practices.

8
9 13. Plaintiffs are further informed and believe, and allege thereon, that each defendant was the
10 agent, servant, representative, and/or employee of their co-defendants, and in doing the things
11 hereinafter alleged were acting in the scope of their authority as agents, servants,
12 representatives, family members and/or employees, and with the permission and consent of
13 their co-defendants.

14
15 14. Additionally, plaintiffs are informed and believe, and allege thereon, that each defendant
16 assisted, aided and abetted, adopted, ratified, approved, or condoned the actions of every
17 other defendant and that each corporate defendant, if any, was acting as the alter ego of the
18 other in the acts alleged herein.

19
20 15. In response to the Original Complaint, AURORA alleges in its Motion to Dismiss that it is
21 *not* a covered person pursuant to TILA Section 1604(a), notwithstanding the express language
22 to the contrary contained the Plaintiffs' respective *Assignments of Deeds of Trust*. Rather,
23 AURORA asserts that it is merely the authorized loan servicer of the JAHROMI and
24 MILLER MLNs, but failed to provide any evidence or identification of the current
25 beneficiary holding the rights to enforce the subject MLN.

26
27 16. AURORA takes the opposite position in Plaintiffs' respective Unlimited Civil and Unlawful
28 Detainer cases and has requested judicial notice of documents of publicly filed documents.

1 Therein, AURORA claims it is the party entitled to enforce the terms of the Plaintiffs'
2 respective secured loans and therefore, that as the foreclosing beneficiary, that AURORA was
3 the proper party to take title to the Plaintiffs' properties following non-judicial foreclosure.

4
5 17. Plaintiffs do not seek to litigate wrongful foreclosure here as reserve their individual rights to
6 pursue such matters independently.

7 18. The details of Plaintiffs' wrongful foreclosure claims are described so as to provide the
8 context of the complained of business practice: that defendants solicit, coerce and influence
9 persons to commit improper notarial acts in furtherance of a broader business model that
10 results in wrongful foreclosures and the widespread pollution of public land records with
11 hundreds of improperly acknowledged documents.

12
13
14 **IMPROPER NOTARIAL BUSINESS PRACTICE ALLEGATIONS**

15
16 19. Plaintiff incorporates these allegations into the claim below as though fully set forth herein.

17 20. A notary public is an official entrusted by her state to serve as an objective witness to the
18 execution of specific legal documents. This function serves to inhibit the fraudulent
19 manipulation of identity and ensure a properly formatted signature. Normally commissioned
20 by the Secretary of State, and always subject to state laws and discipline, an individual
21 seeking commission as a notary must satisfy criteria regarding character and competence.

22 21. The acts of notaries are *official state act* regulated by professional code and state statutes.

23 The statutory and professional duties of notaries include verification that a signer of a
24 document presented satisfactory evidence of identity, oath, appeared in the Notary's presence,
25 and actually signed the document. It is unlawful for a non-notary to act as a notary or to use
26 the stamp, signature of sequential journal of a notary. In California and in other states, a
27
28

1 notary is required to possess, utilize and keep secure a notary seal and sequential journal. A
2 notary public is required to keep one active sequential journal at a time of all acts performed
3 as a notary public. The journal must be kept in a locked and secured area (such as a lock box
4 or locked desk drawer), under the direct and exclusive control of the notary public. The
5 sequential journal is the exclusive property of the notary public and shall not be surrendered
6 to an employer upon termination of employment.
7

8 22. The official acts of notarized, including proper acknowledgement; affect the evidentiary value
9 of documents. A duly notarized foreclosure document executed on behalf of an incorporated
10 or unincorporated entity by a duly authorized person is *prima facie evidence* that the
11 instrument is the duly authorized act of the entity named in instrument. As such, the public
12 assume the validity of notarized documents. Courts frequently take judicial notice of
13 documents at the request of defendants.
14

15 23. Defendants' loan servicing business includes the processing and acknowledgment of tens of
16 thousands of documents created in contemplation of non-judicial foreclosure of real property.
17

18 24. In a proper and lawful notarization business practice, compliance with notary laws and
19 standards, proper due diligence and maintenance of sequential notary logs would represent a
20 substantial cost of doing business for defendants and its competitors.
21

22 25. So as to substantially reduce legitimate notary related costs, and so as to enhance the illusion
23 and evidentiary value of non-judicial foreclosure documents, most of which contain a range
24 of inaccurate, deceptive and fraudulent representations of fact, defendants have implemented
25 a business practice that relies upon the systemic violation of notary laws and standards.
26
27
28

1 26. That this practice has polluted our public land records non-judicial foreclosure documents
2 which very often contain false, improper, inaccurate and fraudulent content as well as faulty
3 acknowledgements.

4
5 27. Notwithstanding their content, because these documents appear to be properly acknowledged,
6 the documents are presumed by the public, citizens, title companies, judges, trustees, buyers,
7 attorneys and borrowers to be *prima facie evidence* that the document is the duly authorized
8 act of the entity named in the instrument (see Civil Code Section 1190).

9
10 28. While the foreclosure documents themselves are published in contemplation of effectuating
11 non-judicial foreclosure, defendants have exploited the evidentiary presumption of validity of
12 improperly acknowledged documents in hundreds of bankruptcy and foreclosure defenses
13 cases, including those of each lead Plaintiff.

14
15 29. Where litigation or bankruptcy arises, defendants knowingly offer improperly acknowledged
16 documents published in contemplation of non-judicial foreclosure as evidence in the litigation
17 or bankruptcy, so as to invoke the benefit of Civil Code Section 1190. Said practice injures
18 Plaintiffs and the integrity of both the courts and public land records.

19
20 30. Each lead Plaintiff was the borrower of a residential mortgage loan (“MLN”) that is a non-
21 negotiable instrument and which MLN is now owned or serviced by Defendant or its agents.

22
23 31. In each case, Defendants initiated and completed a non-judicial foreclosure of the subject
24 properties under the California statutory scheme, Civil Code 2924.

25
26 32. In each, case Defendants caused various documents to be recorded in the public land records
27 each of which were created by Defendants in contemplation of a non-judicial foreclosure.

28
33. Said documents, including Assignments of Deeds of Trust, Substitutions of Trustee and
Deeds Upon Trustee Sale, are were each executed by an agent of Defendants who lacked any

1 personal knowledge as to the facts asserted in each document and who lacked any agency
2 relationship to the true party entitled to enforce the terms of the subject MLN.

3
4 34. That each foreclosure document was improperly acknowledged, derivative of a promoted
5 culture of speed obsessed “Robo-signing” and central to an institutionalized business practice
6 which relies upon the soliciting, coercing and influencing of improper notarial acts, known by
7 defendants to be wrongful, deceptive and improper.

8
9 35. Said foreclosure documents were acknowledged by non-notaries, acknowledged outside the
10 presence of the signers, acknowledged without verification of the signer’s identification, and
11 acknowledged without proper recordation in a sequential journal.

12
13 36. Plaintiffs are informed, believe and herein allege therein that in connection with a California
14 residential mortgage default servicing portfolio, Defendants have implemented and engaged
15 in a deceptive, unlawful and unfair business practices each of which institutionalize the
16 soliciting, coercing and influencing the performance of improper notarial acts in violation of
17 CA Government Code Section 8225 and other state laws.

18
19 37. As required under California law, certain foreclosure documents are required to be properly
20 acknowledged by a notary prior to recording in the public land record.

21
22 38. Central to this *unlawful* practice is the creation, execution and publication of tens of
23 thousands of improperly acknowledged foreclosure related documents in the public land
24 records. While the practice has saved defendants millions in processing costs, the practice
25 has polluted our public land records system with improperly acknowledged foreclosure
26 documents.

27
28 39. The business practice allows non-notaries to act in a notary’s capacity, eliminates the time,
need and effort to maintain notary standards, eliminates the time, need and effort to maintain

1 journals and further facilitates quick and inexpensive non-judicial foreclosure of California
2 real property with total disregard for the law and the rights of the affected Class members.

3
4 40. As stated in the Consent Order entered into between AURORA and the United States
5 Department of Treasury's Office of the Comptroller of Currency (the "OCC") on April 13,
6 2011, the Comptroller found that AURORA

7 "(b) filed or caused to be filed in state and federal courts, or in local land records
8 offices, numerous affidavits or other mortgage-related documents that were not
9 properly notarized, including those not signed or affirmed in the presence of a notary"

10
11 41. That while the Consent Order provides for an agreement wherein AURORA agrees to take
12 remedial measures to ensure that it implement procedures to remediate its unsafe and unsound
13 banking practices, the Order does not limit Plaintiffs' right to a private cause of action for
14 equitable relief including a much needed purging of the public land records.

15
16 42. Individual employees of defendants are required to "facilitate" the acknowledgment of over
17 700 foreclosure documents in a single week.

18 43. Faced with such a work load and in an effort to save due diligence costs and maximize profit
19 Defendants have elected to institutionalize systemic violation of notary laws and standards.
20 Rather than incur the legitimate cost of doing business in the Loan Servicing Market,
21 Defendants have chosen to rely upon systematic improper notarization as the center piece of
22 its foreclosure practice.

23
24 44. To this end, Defendants knowingly solicits, coerces and influences the performance of
25 improper notarial acts and has institutionalized the very practice of violating Notary laws and
26 professional standards. Defendants knowingly solicit, coerce and influence its notaries
27
28

1 through unrealistic productivity requirements and by intentionally mismanaging the
2 acknowledgment process.

3
4 45. Defendants knowingly solicits, coerces and influences its notaries and non-notary agents to
5 engage in improper notarial acts frequently and in wide variety, including but not limited to:
6 soliciting, coercing and influencing acknowledgement of documents not in the presence of the
7 signer, acknowledgement of documents without proper identification, execution and
8 acknowledgement of documents by a notary, acknowledgement of documents by non-
9 notaries, use the notary stamps by non-notarizes, use of digital reproduction of notary stamps
10 and signatures, acknowledgement of documents where the notary has no personal knowledge
11 of a signer's corporate role, failure of the notary to record transactions in the notary
12 sequential journal, allowing access by non-notaries to the sequential journal, failure to obtain
13 the signature and thumbprint of the signer in the sequential journal at the time of
14 acknowledgement and the failure to secure the sequential journal in a safe and secure place.
15
16

17 **JAHROMI FACTS**

18 46. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

19 47. That the JAHROMI facts are a typical example of the implementation of defendants' business
20 practice where a loan's originator files for Chapter 11 bankruptcy prior to any alleged
21 transfers of the MLN.
22

23 48. So as to save costs, Defendants perpetrates the illusion that the sale of MLN to AURORA
24 occurred after the loan originator enters bankruptcy but without that court's authorization.
25 Defendants rely on the use of improperly notarized documents to accomplish this cost savings
26 objective.
27
28

1 49. JAHROMI's only significant asset is his residence at 12402 RANCHWOOD ROAD, SANTA
2 ANA, CA 92705. (The "JAHROMI Property"). On or about February 6, 2007, Plaintiff
3 entered into a residential refinance loan with FIRST MAGNUS FINANCIAL
4 CORPORATION ("FIRST MAGNUS") for \$840,000.00 secured by a deed of trust.

5
6 50. Soon after origination, AURORA claimed that it was the authorized servicer of his loan. In
7 reliance, JAHROMI began sending payments to AURORA.

8 51. On August 21, 2008, FIRST MAGNUS filed for protection under Chapter 11 in the District
9 of Arizona, Case number 07-BK-01578-JMM.

10
11 52. AURORA continued to demand and extract mortgage payments from JAHROMI and
12 represent it was the authorized servicer of the subject MLN without bankruptcy authorization.
13 The FIRST MAGNUS bankruptcy docket is void of any indication that any agency
14 relationship existed between any Defendants, MORTGAGE ELECTRONIC
15 REGISTRATIONS SYSTEMS, INC. ("MERS") and the FIRST MAGNUS bankruptcy estate
16 or how the estate disposed of this MLN prior to the dissolution of the corporation.

17
18 53. On March 25, 2008, ROSALIE SOLANO, as Assistant Secretary of Mortgage Electronic
19 Registration Systems, Inc. executed a Substitution of Trustee ("SOT") which purports to
20 name Defendant ETS as the TRUSTEE to the JAHROMI Deed of Trust, **EXHIBIT 1**. That
21 the Substitution of Trustee includes an acknowledgement executed by PATRICIA BABB, a
22 California Notary, Commission #1631316, and recorded in the Orange County public land
23 record on March 26, 2008.

24
25 54. That MERS, SOLANO, ETS and BABB were at all times herein acting as agents and at the
26 direction of AURORA. That AURORA and defendants published this SOT document in in
27 contemplation of non-judicial foreclosure.
28

1 55. That the referenced JAHROMI Substitution of Trustee is a fabricated and “photo-shopped”
2 document, containing inaccuracies and misrepresentations, created to support the illusion that
3 MERS was still an agent or nominee for FIRST MAGNUS as the true party in interest and
4 therefore had standing to name ETS as new trustee to the JAHROMI Deed of Trust.

5
6 56. That the JAHROMI Substitution was improperly acknowledged. That BABB and DOE 1
7 have engaged in improper notarial acts: that DOE 1 improperly acted as a notary when she
8 signed the JAHROMI Substitution of Trustee, that BABB was not duly commissioned, that
9 this document was not actually executed by SOLANO in the presence of BABB, that BABB
10 did not properly acknowledge this document, that BABB did willfully fail to keep her notary
11 seal under her direct and exclusive control, BABB did not duly record this transaction in a
12 sequential journal or keep said journal in a safe and secure place, that this document was
13 improperly acknowledged by DOE 1 in violation of California notary laws and professional
14 standards.
15

16
17 57. Those defendants AURORA, ETS, MERS and their agents solicited, coerced and influenced
18 DOE 1 and BABB to engage in the aforementioned improper notarial acts when each
19 defendant knew these acts to be improper notarial acts.

20
21 58. On April 2, 2009, FIRST MAGNUS was dissolved as a corporation according to the public
22 records maintained by the Arizona Secretary of State.

23 59. JAHROMI began experiencing financial difficulties, defaulted on the MLN and filed for
24 chapter 7 bankruptcy protections under Chapter 7 on or about June 17, 2010 (Case # 10-
25 18255-TA).
26
27
28

1 60. Notwithstanding the corporate dissolution of FIRST MAGNUS and termination of agency
2 relationships with AURORA and MERS, defendants caused a “Corporate Assignment of
3 Deed of Trust” (“JAHROMI Assignment”) on September 10, 2010.

4
5 61. On August 31st, 2010, defendants caused a CORPORATE ASSIGNMENT OF DEED OF
6 TRUST (“JAHROMI ASSIGNMENT”) to be drafted by THEA CHESNEY and executed by
7 THEODORE SCHULTZ, alleged Vice President of MERS; **see EXHIBIT 2.**

8
9 62. The JAHROMI Assignment purports to transfer all beneficial interest in the Deed of Trust
10 together with the Note to AURORA by MERS, and on behalf of the bankrupt and dissolved
11 FIRST MAGNUS FINANCIAL CORPORATION. The assignment includes an
12 acknowledgement executed by LINDA D. PARKS, a Nebraska notary and is recorded in the
13 Orange County public land records on September 10, 2010.

14
15 63. That in consenting to the appointment of MERS as the nominee of his Deed of Trust,
16 JAHROMI’s consent extended only to the rules, articles and bylaws of MERS itself. That in
17 transferring the JAHROMI note and continuing to act as an agent for FIRST MAGNUS after
18 that agency relationship was terminated by the Chapter 11 case and subsequent dissolution of
19 the FIRST MAGNUS; MERS exceeded the scope of its agency powers and authority.

20
21 64. That CHESNEY, SCHULTZ, PARKS, MERS, ETS and DOE 2 were at all times herein
22 acting as agents and at the direction of AURORA. That AURORA and defendants published
23 this SOT document in anticipation of non-judicial foreclosure.

24
25 65. That the referenced JAHROMI ASSIGNMENT is a fabricated and “photo-shopped”
26 document, containing inaccuracies and misrepresentations, created to support the illusion that
27 MERS had any remaining authority to act as an agent of a dissolved corporation, that
28 AURORA was now the true party in interest and that AURORA ever had standing to enforce

1 the terms JAHROMI MLN, notwithstanding the bankruptcy filing of the loan's originator
2 prior to the alleged transfer date.

3
4 66. That the JAHROMI Assignment was improperly acknowledged. That PARKS and DOE 2
5 have engaged in improper notarial acts: that DOE 2 improperly acted as a notary when she
6 signed the JAHROMI Assignment, that BABB was not duly commissioned, that this
7 document was not actually executed by SCHULTZ in the presence of BABB, that BABB did
8 not properly acknowledge this document, that BABB did willfully fail to keep her notary seal
9 under her direct and exclusive control, BABB did not duly record this transaction in a
10 sequential journal or keep said journal in a safe and secure place, that this document was
11 improperly acknowledged by DOE 2 in violation of California and Nebraska notary laws and
12 professional standards.
13

14 67. Those defendants AURORA, ETS, MERS and their agents solicited, coerced and influenced
15 DOE 2 and PARKS to engage in the aforementioned improper notarial acts when each
16 defendant knew these acts to be improper notarial acts.
17

18 68. On October 10, 2010 AURORA filed a Notice of Motion and Motion for Relief of the
19 Automatic Stay regarding the JAHROMI PROPERTY.
20

21 69. Defendants went to great lengths to create the illusion of standing in the Motion for Relief
22 offering the Assignment, previously recorded in public land records in contemplation of the
23 non-judicial foreclosure, as well as false declaration that supported the assertion that the Note
24 and the Deed of Trust had been duly transferred to AURORA for valuable consideration. A
25 copy of the First Magnus Note offered contained no endorsement of any kind.
26

27 70. Based on this fabricated evidence, the Bankruptcy Court entered an Order granting
28 AURORA's motion for relief on October 15, 2010. The bankruptcy court and the Chapter 7

1 Trustee each believed that AURORA's representations that it was the party entitled to enforce
2 the terms of the MLN. That AURORA added attorney fees to JAHROMI's loan balance for
3 attorneys and other fees related to the motion for relief.
4

5 71. **EXHIBIT 3** purports to be a DEED UPON TRUSTEE SALE which grants the JAHROMI
6 property to AURORA as the "Foreclosing Beneficiary" by way of a credit bid that renders the
7 sale tax exempt under CA Taxation and Revenue Code, Section 480.3.

8 72. The DEED UPON TRUSTEE SALE is executed by DIANNE CARTEE, authorized officer
9 of ETS. That the DEED UPON TRUSTEE SALE includes an acknowledgement executed by
10 SALLY BELTRAN, California Notary, Commission #1777085, and recorded in the Orange
11 County public land on July 20, 2011.
12

13 73. That the referenced JAHROMI DEED UPON TRUSTEE SALE is a fabricated and "photo-
14 shopped" document, containing inaccuracies and misrepresentations, created to support the
15 illusion that the non-judicial foreclosure sale was duly perfected and that AURORA is the
16 true party in interest and therefore standing to enforce the terms of the JAHROMI MLN, and
17 take title after a non-judicial foreclosure sale and notwithstanding the bankruptcy and
18 dissolution of the loan's originator prior to the alleged transfer date.
19

20 74. It should be noted that as contained in its Motion to Dismiss the TILA claims contained in the
21 Original Complaint, AURORA has admitted and argued that it is merely the Loan Servicer
22 and therefore *not liable* or obligated to provide the statutory TILA notices following a transfer
23 of an MLN.
24

25 75. That AURORA, ETS, CARTEE and BELTRAN lacked proper authorization to act on behalf
26 of the FIRST MAGNUS Bankruptcy estate.
27
28

1 76. That the JAHROMI DEED UPON TRUSTEE SALE was improperly acknowledged. That
2 BELTRAN and DOE 3 have engaged in improper notarial acts in violation of California
3 notary laws and professional standards: That BELTRAN and DOE 3 have engaged in
4 improper notarial acts: that DOE 3 improperly acted as a notary when she signed the
5 JAHROMI DEED UPON TRUSTEE SALE, that BELTRAN was not duly commissioned,
6 that this document was not actually executed by CARTEE in the presence of BELTRAN,
7 that BELTRAN did not properly acknowledge this document, that BELTRAN did willfully
8 fail to keep her notary seal under her direct and exclusive control, BELTRAN did not duly
9 record this transaction in a sequential journal or keep said journal in a safe and secure place,
10 that this document was improperly acknowledged by DOE 3 in violation of California notary
11 laws and professional standards..
12

13
14 77. Those defendants AURORA and ETS and their agents solicited, coerced and influenced DOE
15 3 and BELTRAN to engage in the aforementioned improper notarial acts when each
16 defendant knew these acts to be improper notarial acts.
17

18 78. Thereafter, AURORA on behalf of itself initiated an Unlawful Detainer case seeking damages
19 and possession of the subject property. Most egregiously, AURORA continues its attempts to
20 create the illusion that it was the foreclosure beneficiary and therefore a new creditor, for
21 purposes of its Unlawful Detainer case against JAHROMI. Both sets of facts cannot be true.
22

23 79. That JAHROMI has filed a Complaint in Superior Court alleging claims including fraud and
24 wrongful foreclosure.

25 80. That the JAHROMI is informed and believes that the subject MLN was owned by
26 HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE PASS-THROUGH
27 CERTIFICATES, SERIES 2007-2 prior to foreclosure sale.
28

1 81. That the JAHROMI is informed and believes that HARBORVIEW MORTGAGE LOAN
2 TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-2 was the
3 foreclosure beneficiary, rather than AURORA, notwithstanding the assertions to the contrary
4 contained in the JAHROMI DEED UPON TRUSTEE SALE.
5

6 82. That through an independent audit that JAHROMI's expert has discovered that the MLN was
7 owned by a mortgage backed security trust, HARBORVIEW MORTGAGE LOAN TRUST
8 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-2.
9

10 83. To date, AURORA has resisted JAHROMI's attempts at discovery in the unlawful detainer
11 case and has not admitted or denied the status of the HARBORVIEW MORTGAGE LOAN
12 TRUST as beneficiary of the subject Note. As such it is not known when the MLN was
13 transferred to HARBORVIEW MORTGAGE LOAN TRUST and by whom.
14

15 84. That the Superior Court case is pending but a demurrer is pending which relies upon a
16 Request for Judicial Notice of the ASSIGNMENT, "SOT" and TRUSTEE DEED UON
17 SALE.
18

19 85. That Plaintiff intends pursue individual claims outside of this Class Action and does not seek
20 a determination of his claims for Wrongful Foreclosure or the legal effect of improper
21 notarization of foreclosure documents affecting Plaintiff's property.
22

23 86. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
24 defendants' improper notarial practice, a determination of the validity of all acknowledgments
25 published by defendants affecting Plaintiff's property, a determination of malice, a
26 determination of restitution as appropriate and a determination of the remedial measures
27 necessary to correct the public land records public land records for all.
28

1 87. Given the institutional scope of defendants' improper notarial practice, as alleged herein and
2 further described in the CONSENT ORDER, it is impractical, repetitive and unnecessarily
3 expensive for Plaintiffs and those similarly situated, to individually prove allegations of
4 defendants illegal business practices.
5

6
7 **MILLER FACTS**

8 88. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

9 89. That the MILLER facts are a typical example of the implementation of defendants' business
10 practice where a borrower files for Chapter 7 bankruptcy and defendants cause fraudulent and
11 improperly acknowledged Substitution of Trustee, Assignments, Deeds upon Trustee Sale and
12 note endorsements to create the illusion that AURORA is the beneficiary of a securitized
13 MLN, rather than just a loan servicer.
14

15 90. Purely to save costs and chill borrower opposition, defendants perpetrate the illusion that the
16 sale of MILLER's MLN from loan originator directly to AURORA occurred after loan
17 default.
18

19 91. It is Defendants' business practice to rely on improperly notarized documents to establish a
20 false "chain of title". Defendants avoid the expensive process of establishing the true "chain
21 of title" of a typical securitized MLN which contemplates three true sales to create
22 bankruptcy remoteness.
23

24 92. That MILLER is informed and believes that RESIDENTIAL ACCREDIT LOANS INC.
25 MORTGAGE ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-QHI
26 was the owner of the MLN. Therefore, said Trust was the proper foreclosure beneficiary,
27
28

1 rather than AURORA, notwithstanding the assertions to the contrary contained in the
2 MILLER DEED UPON TRUSTEE SALE.

3 93. The MILLER MLN was purportedly sold from originator to trust sponsor, to trust depositor
4 and finally to the trust RESIDENTIAL ACCREDIT LOANS INC. MORTGAGE ASSET-
5 BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-QHI, according to the Trust’s
6 Pooling and Servicing Agreement. Defendants rely upon improperly acknowledged
7 foreclosure documents so as to conceal the true chain of title and avoid the cost associated
8 with lawful non-judicial foreclosure.
9

10 94. By publishing such improperly acknowledge documents, Defendants save on processing
11 costs. Defendants’ culture and business practices include the solicitation, coercion and
12 influence of individuals to engage in these improper notarial acts.
13

14 95. MILLER owned a four-plex at 1329 N. Fashion Lane, Anaheim CA 92806. (The “MILLER
15 Property”). On or about August 28, 2006, Plaintiff entered into a residential refinance loan
16 with SCME MORTGAGE BANKERS, INC. (“SCME”), executed a non-negotiable Note for
17 \$640,250.00 secured by a deed of trust (“MILLER MLN”).
18

19 96. Soon after origination, AURORA claimed that it was the authorized servicer of his loan. In
20 reliance, MILLER began sending payments to AURORA.
21

22 97. On December 7, 2008, MARY JANE SARNE, as Vice President of Mortgage Electronic
23 Registration Systems, Inc. (“MERS”) executed a Substitution of Trustee (“SOT”) which
24 purports to name Defendant QUALITY as the TRUSTEE to the MILLER Deed of Trust,
25 **EXHIBIT 4.** That the Substitution of Trustee includes an acknowledgement executed by
26 BONNIE J. DAWSON, a California Notary, Commission #1628086, and recorded in the
27 Orange County public land record on January 27, 2009.
28

1 98. That MERS, SARNE, QUALITY, and DAWSON were at all times herein acting as agents
2 and at the direction of AURORA. That AURORA and defendants published this SOT
3 document in contemplation of non-judicial foreclosure.
4

5 99. That the referenced MILLER Substitution of Trustee is a fabricated and “photo-shopped”
6 document, containing inaccuracies and misrepresentations, created to support the illusion that
7 SARNE was a duly authorized agent for MERS, that MERS was a duly authorized agent the
8 true party in interest and therefore had standing to name QUAILITY as new trustee to the
9 MILLER Deed of Trust.
10

11 100. That the MILLER Substitution was improperly acknowledged. That DAWSON and
12 DOE 4 have engaged in improper notarial acts: that DOE 4 improperly acted as a notary
13 when she signed the MILLER Substitution of Trustee, that DAWSON was not duly
14 commissioned, that this document was not actually executed by SARNE in the presence of
15 DAWSON, that DAWSON did not properly acknowledge this document, that DAWSON did
16 willfully fail to keep her notary seal under her direct and exclusive control, DAWSON did not
17 duly record this transaction in a sequential journal or keep said journal in a safe and secure
18 place, that this document was improperly acknowledged by DOE 4 in violation of California
19 notary laws and professional standards.
20

21 101. Those defendants AURORA, QUALITY, MERS and their agents solicited coerced
22 and influenced DOE 4 and DAWSON to engage in the aforementioned improper notarial acts
23 when each defendant knew these acts to be improper notarial acts.
24

25 102. MILLER began experiencing financial difficulties, defaulted on the MLN and filed for
26 chapter 7 bankruptcy protections under Chapter 7 on or about August 24, 2010.
27
28

1 103. On September 10, 2010, AURORA caused a CORPORATE ASSIGNMENT OF
2 DEED OF TRUST (“MILLER ASSIGNMENT”), drafted by TRACI SCHNEIDER and
3 executed by THEODORE SCHULTZ, alleged Vice President of MERS, see **EXHIBIT 5**.
4

5 104. The MILLER ASSIGNMENT purports to transfer all beneficial interest in the Deed
6 of Trust together with the Note to AURORA by MERS, and on behalf SCME. The
7 assignment includes an acknowledgement executed by LINDA D. PARKS, a Nebraska notary
8 and is recorded in the Orange County public land records on September 22, 2010.
9

10 105. That in consenting to the appointment of MERS as the nominee of his Deed of Trust,
11 MILLER’s consent extended only to the rules, articles and bylaws of MERS itself. That in
12 transferring the MILLER NOTE to AURORA, MERS exceeded the scope of its agency
13 powers and authority.
14

15 106. That SCHNEIDER, SCHULTZ, PARKS, MERS, QUALITY and DOE 5 were at all
16 times herein acting as agents and at the direction of AURORA. That AURORA and
17 defendants published this MILLER ASSIGNMENT document in contemplation of non-
18 judicial foreclosure.
19

20 107. That the referenced MILLER ASSIGNMENT is a fabricated and “photo-shopped”
21 document, containing inaccuracies and misrepresentations, created to support the illusion that
22 MERS had any remaining authority to transfer the MILLER NOTE to AURORA, that
23 AURORA was a new party in interest and that AURORA therefore had standing to enforce
24 the terms MILLER MLN, notwithstanding the rights of RESIDENTIAL ACCREDIT
25 LOANS INC. MORTGAGE ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES
26 2006-QHI in the MLN.
27
28

1 108. That the MILLER ASSIGNMENT was improperly acknowledged. That PARKS and
2 DOE 5 have engaged in improper notarial acts: that DOE 5 improperly acted as a notary
3 when she signed the MILLER ASSIGNMENT, that PARKS was not duly commissioned, that
4 this document was not actually executed by SCHULTZ in the presence of PARKS, that
5 PARKS did not properly acknowledge this document, that PARKS did willfully fail to keep
6 her notary seal under her direct and exclusive control, PARKS did not duly record this
7 transaction in a sequential journal or keep said journal in a safe and secure place, that this
8 document was improperly acknowledged by DOE 5 in violation of California and Nebraska
9 notary laws and professional standards.

10
11
12 109. Those defendants AURORA, QUALITY, MERS and their agents solicited coerced
13 and influenced DOE 5 and PARKS to engage in the aforementioned improper notarial acts
14 when each defendant knew these acts to be improper notarial acts.

15
16 110. On January 11, 2011 AURORA filed a Notice of Motion and Motion for Relief of the
17 Automatic Stay regarding the MILLER PROPERTY.

18 111. AURORA went to great lengths to create the illusion of standing in the Motion for
19 Relief offering the MILLER ASSIGNMENT, a previously recorded in public land records in
20 contemplation of the non-judicial foreclosure, as well as false declaration that supported the
21 assertion that the Note and the Deed of Trust had been duly transferred to AURORA for
22 valuable consideration. Defendants attached an unattached piece of paper that purports to
23 include two endorsements to parties other than AURORA, as well as a third purported
24 endorsement payable to AURORA. The Chain of Title described by the alleged
25 endorsements contradicts the single transfer Chain of Title described in the MILLER
26 ASSIGNMENT.
27
28

1 112. Based on this fabricated evidence, the Bankruptcy Court entered an Order granting
2 AURORA's motion for relief. The bankruptcy court and the Chapter 7 Trustee each believed
3 that AURORA's representations that it was the party entitled to enforce the terms of the
4 MLN. That AURORA added attorney fees to MILLER's loan balance for attorneys and other
5 fees related to the motion for relief.
6

7 113. Thereafter, MILLER a Motion to Compel Chapter 7 Trustee's interest in mortgage
8 related against AURORA. An Order approving a compromise between MILLER and the
9 Chapter 7 Trustee was granted. As such, MILLER has standing to pursue his claims against
10 defendants.
11

12 114. **EXHIBIT 6** purports to be a DEED UPON TRUSTEE SALE which grants the
13 MILLER property to AURORA as the "Foreclosing Beneficiary" by way of a credit bid that
14 renders the sale tax exempt under CA Taxation and Revenue Code, Section 480.3.
15

16 115. The DEED UPON TRUSTEE SALE is executed by KARLA SANCHEZ, Assistant
17 Secretary of QUALITY. That the DEED UPON TRUSTEE SALE includes an
18 acknowledgement executed by MICHELLE NGUYEN, California Notary, Commission
19 #1885573, and recorded in the Orange County public land on June 7, 2011.
20

21 116. That the referenced MILLER DEED UPON TRUSTEE SALE is a fabricated and
22 "photo-shopped" document, containing inaccuracies and misrepresentations, created to
23 support the illusion that the non-judicial foreclosure sale was duly perfected and that
24 AURORA is the true party in interest and therefore standing to enforce the terms of the
25 MILLER MLN and take title after a non-judicial foreclosure sale and notwithstanding the
26 notwithstanding the rights of RESIDENTIAL ACCREDIT LOANS INC. MORTGAGE
27 ASSET-BACKED PASS-THOUGH CERTIFICATES, SERIES 2006-QHI in the MLN.
28

1 117. It should be noted that as contained in its Motion to Dismiss the TILA claims
2 contained in the Original Complaint, AURORA has admitted and argue that it is merely the
3 Loan Servicer and therefore *not liable* or obligated to provide the statutory TILA notices
4 following a transfer of an MLN.

5
6 118. That AURORA, QUALITY, SANCHEZ and NGUYEN lacked proper authorization
7 by RESIDENTIAL ACCREDIT LOANS INC. MORTGAGE ASSET-BACKED PASS-
8 THOUGH CERTIFICATES, SERIES 2006-QHI to name AURORA as “foreclosing
9 beneficiary” or to convey title to AURORA. Nothing in the construction of the California
10 non-judicial foreclosure state permits a loan servicer from taking title to property in its own
11 name. Such a sale would destroy the collateral and leave a borrower personally liable to the
12 Trust as the true beneficiary.

13
14 119. That the MILLER DEED UPON TRUSTEE SALE was improperly acknowledged.
15 That NGUYEN and DOE 6 have engaged in improper notarial acts in violation of California
16 notary laws and professional standards: That NGUYEN and DOE 3 have engaged in
17 improper notarial acts: that DOE 6 improperly acted as a notary when she signed the
18 JAHROMI DEED UPON TRUSTEE SALE, that NGUYEN was not duly commissioned, that
19 this document was not actually executed by SANCHEZ in the presence of NGUYEN, that
20 NGUYEN did not properly acknowledge this document, that NGUYEN did willfully fail to
21 keep her notary seal under her direct and exclusive control, NGUYEN did not duly record this
22 transaction in a sequential journal or keep said journal in a safe and secure place, that this
23 document was improperly acknowledged by DOE 6 in violation of California notary laws and
24 professional standards.
25
26
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28

1 120. Those defendants AURORA and QUALITY and their agents solicited, coerced and
2 influenced DOE 6 and NGUYEN to engage in the aforementioned improper notarial acts
3 when each defendant knew these acts to be improper notarial acts.
4

5 121. Thereafter, AURORA on behalf of itself initiated an Unlawful Detainer case seeking
6 damages and possession of the subject property. Most egregiously, AURORA continues its
7 attempts to create the illusion that it *was* the foreclosure beneficiary and therefore a new
8 creditor, for purposes of its Unlawful Detainer case against MILLER and his tenants. Both
9 sets of facts cannot be true.
10

11 122. That MILLER filed a Complaint in Superior Court alleging claims including fraud and
12 wrongful foreclosure. That said case was dismissed after AURORA requested judicial notice
13 of the aforementioned improperly acknowledged foreclosure documents.
14

15 123. That Plaintiff MILLER intends pursue his individual claims outside of this Class
16 Action and does not seek a determination of his claims for Wrongful Foreclosure or the legal
17 effect of improper notarization of foreclosure documents affecting Plaintiff's property.
18

19 124. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
20 defendants' improper notarial practice, a determination of the validity of all acknowledgments
21 published by defendants affecting Plaintiff's property, a determination of malice, a
22 determination of restitution as appropriate and a determination of the remedial measures
23 necessary to correct the public land records public land records for all.
24

25 125. Given the institutional scope of AURORA's improper notarial practice, as alleged
26 herein and further described in the CONSENT ORDER, it is impractical, repetitive and
27 unnecessarily expensive for Plaintiffs and those similarly situated, to individually prove
28 allegations of defendants illegal business practices.

CLASS ACTION ALLEGATIONS

1
2
3
4 126. Plaintiffs incorporate the allegations above in this claim as though fully set forth
herein.

5
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9
10
11 127. Plaintiffs seeks a determination of the scope of the systemic nature of the defendants'
improper notarial practice, a determination of the validity of all acknowledgments published
by defendants affecting Plaintiff's property, a determination of malice, a determination of
restitution as appropriate, the appropriate civil penalties for as yet un-joined municipalities
and a determination of the remedial measures necessary to correct the public land records
public land records for all.

12
13
14
15
16
17 128. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others
similarly situated to prove these allegations individually, as the allegations complain of a
systemic and institutional practice. It is more efficient for these facts to be discovered and the
issues addressed in one class action case. Individual Plaintiffs would then be free to pursue
individual claims for wrongful foreclosure or other claims, as appropriate.

18
19
20
21
22 129. As AURORA and other defendants are engaged in the malicious practice of
systemically violating California and other state laws which forbid improper notarial acts,
Class Plaintiffs file this First Amended Complaint as private attorney generals seeking
declaratory relief, injunctive relief, restitution and damages.

23
24
25 130. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure, on
behalf of the themselves and on the following Classes:

- 26
27
28 (1) All California real property owners whose property is allegedly encumbered
by a Deed of Trust securing a Note in default owned or serviced by AURORA
or its agents AND where AURORA or its agents has caused any document to
be recorded in the public land records after January 1, 2008 which required an
acknowledgment under California law.

1 (2) Excluded from the Class are defendants, and their affiliates, subsidiaries,
2 current or former employees, officers, directors, agents, representatives, and their
3 family members.

4 131. Plaintiffs do not know the exact size or identities of the members of the proposed
5 class, since such information is in the exclusive control of the Defendants.

6 132. Industry statistics suggest that the national loan servicing market is currently
7 estimated to be \$7.846 Trillion, of which California represents over 50%. The top 10 loan
8 servicers control over 78% of the Loan Servicing Market.

9 133. AURORA is eighteenth among the largest servicers of residential mortgages in the
10 United States, services a current portfolio of 276,000 residential mortgage loans worth
11 \$63.6 Billion and holds a Market Share of approximately 1% nationally, but 9% in California.
12

13 134. However, AURORA is in the top 5 of loan servicers based on defaulted loans with
14 26.2% of its loans in default in 2008, 33.0% in 2009 and 32.4% in 2010. Aurora stopped
15 reporting its delinquency rates in mid 2010. 1 in 283 homes in California are currently in
16 some stage of non-judicial foreclosure, approximately 5% of those loans are serviced by
17 AURORA.
18

19 135. ETS and QUALITY each play a crucial role in creating, executing, publishing
20 recording and improperly notarizing thousands of foreclosure related documents. A
21 conservative estimate suggests that the Class size could approach 10,000 to 15,000 defaulted
22 borrowers.
23

24 136. Therefore, the proposed Class is so numerous that joinder of all members is
25 impracticable. Furthermore, it is impractical for individual Plaintiffs to individually attempt
26 to discover the scope of AURORA and other defendants' systemic violations of state notarial
27 laws and would require repetitive efforts.
28

1 137. The Class Plaintiffs do not seem to litigate their individual wrongful foreclosure cases
2 here. Instead the Plaintiffs seek appropriate restitution, judicial determinations injunctive and
3 equitable remedies given AURORA and other defendants' institutionalization of a business
4 practice that is based on the intentional solicitation, coercing and influence on individuals to
5 commit improper notarial acts.
6

7 138. Under these circumstances, a class action is superior to other methods for the fast and
8 efficient adjudication of this controversy and to avoid the risk of disparate and inconsistent
9 rulings in different courts. A class action regarding the issues in this case does not create any
10 problems of manageability.
11

12 139. A pattern and practice of conduct by defendants exist in this case wherein common
13 questions of fact and law predominate over any questions affecting only individual members
14 including, but not limited to the following:

- 15 a. Whether AURORA and other defendants have engaged in the *unlawful and systemic*
16 *practice* of soliciting, coercing or influencing the performance of improper notarial
17 acts, including the creation, execution and publication of improper acknowledgments,
18 in violation of CA Government Code Section 8225 and other state laws;
- 19 b. Whether an out of state notarial acknowledgment executed in violation of other state's
20 notary laws, is sufficient for purposes of recording in California under Civil Code
21 Section 1189;
- 22 c. Whether the alleged creation, institution management and maintenance of the practice
23 of systemically violating state notarial laws for profit rises to the level of malice or a
24 reckless disregard of the rights of the Class members;
25
26
27
28

- 1 d. Whether the a systemic practice of soliciting, coercing or influencing the performance
2 of improper notarial acts so as to reduce the true cost of servicing defaulted loans
3 constitutes *unfair competition*;
4
5 e. Whether members of the public are likely deceived by the systemic practice of
6 soliciting, coercing or influencing the performance of improper notarial acts including
7 the recording of improper acknowledgments in the public land records;
8
9 f. The determination that any improperly acknowledged documents shall not constitute
10 *prima facie evidence* that said documents are the duly authorized act of the entity
11 named in the instrument.
12
13 g. The determination of the appropriate seek appropriate restitution, judicial
14 determinations injunctive and equitable remedies;
15
16 h. The determination of a method for correcting and/or removing and/or purging
17 improperly acknowledged documents from the public land records; and providing
18 proper notice to Class members, the affected public, bankruptcy courts, unlawful
19 detainer courts, Superior Courts, Federal District Courts and title companies of the
20 judicial determination as to each document;
21
22 i. The determination of the amount of restitution, costs and disgorgement appropriate for
23 defendants' violation of Cal B&P §17200;
24
25 j. The determination of the amount of cost savings benefiting defendants from the anti-
26 trust practices violating Cal B&P §17200;
27
28 k. Common questions of fact and law *do not include* the determination of the validly,
accuracy or veracity of the content of foreclosure documents recorded in the public
land records and determined to be improperly acknowledged.

1 140. This is a matter of the important public policy because the fair treatment of distressed
2 borrowers and respect for the integrity of public land records is a county, state and national
3 policy priority.

4
5 141. The improper notarial claims of the individual named Plaintiffs are typical of the
6 claims of the Class and do not conflict with the interests of any other members of the Class.

7 142. The individually named Plaintiffs will fairly and adequately protect the interests of the
8 Class. They are committed to the vigorous prosecution of the Class' claims and have retained
9 attorneys who are qualified to pursue this litigation.

10
11 143. The putative class action meets the requirements of Federal Rules of Civil Procedure
12 23(a), 23(b) and/or 23(c).

13 144. The nature of notice to the proposed class required and/or contemplated is the best
14 practicable method possible and contemplated the defendant's list when disclosed would most
15 likely be media outlets, mailing to the property addresses affected by the filed foreclosures
16 and internet and other general notices are contemplated to ensure notice.

17
18 145. Defendants have acted or refused to act on grounds that apply generally to the Class
19 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the
20 Class as a whole.

1 **CLAIMS**

2
3 **FIRST COUNT**

4 **Unlawful, Unfair and Deceptive Business Practices**
5 **(Against All defendants and Does 1 through 10)**

6 146. Plaintiffs incorporate in this claim all of the allegations above as though set forth in
7 full herein.

8 147. Plaintiffs bring this claim on their own behalf and on behalf of each member of the
9 Class described above.

10 148. That California's Unfair Competition Law (UCL) defines unfair competition to
11 include any "unlawful, unfair, or fraudulent" business act or practice. Cal Bus & Prof Code
12 §17200 et seq.

13
14 149. That Defendants' standard operating procedure to solicit, coerce and influence
15 improper notarial acts, knowing those acts to be improper, in furtherance of a broader scheme
16 to process tens of thousands of California foreclosures at the lowest possible cost by
17 systemically misrepresenting standing and the chain of title of securitized MLNs.

18
19 150. That said broader scheme includes the crucial practice of improperly acknowledging
20 and recording *after-the-fact, as-needed* Assignments, Substitutions of Trustee and Deeds
21 upon Trustee Sale. Defendants file other foreclosure documents such as endorsements,
22 allonges, Notices of Defaults and affidavits so as to create the *illusion* of valid mortgage
23 transfers and standing in tens of thousands of foreclosure matters, bankruptcy cases and civil
24 matters. To the extent those documents are not improperly acknowledged, they are beyond
25 the scope of this case but reserved in Plaintiffs' individual wrongful foreclosure cases.
26
27
28

1 151. Plaintiffs' claims are by no means speculative but are supported by the findings of the
2 Office of Currency Comptroller, the Federal Reserve, the San Francisco assessor-recorder's
3 office, other independent governmental agencies, media reports, whistleblowers and courts.
4

5 152. As stated in the Consent Order entered into between AURORA and the United States
6 Department of Treasury's Office of the Comptroller of Currency (the "OCC") on April 13,
7 2011, the Comptroller found that AURORA

8 "(b) filed or caused to be filed in state and federal courts, or in local land records
9 offices, numerous affidavits or other mortgage-related documents that were not
10 properly notarized, including those not signed or affirmed in the presence of a notary"
11

12 153. That while the Consent Order provides for an agreement wherein AURORA agrees to
13 take remedial measures to ensure that it implement procedures to remediate its unsafe and
14 unsound banking practices, the Order does not limit Plaintiffs' right to a private cause of
15 action for equitable relief including a purging of the public land records.
16

17 154. That the "independent foreclosure review" included in the Consent Order and ending
18 in July 2012 is also a wholly inadequate device. It requires that unsophisticated homeowners
19 make a showing of "financial injury" but subject to no defined standard of review. The
20 allegedly "independent" auditors are chosen, controlled and influence by defendants
21 notwithstanding assertions to the contrary.
22

23 155. That the Consent Order does not constitute the Plaintiffs' sole remedy, especially for
24 borrowers who have already lost their homes. That the Consent Order does not address the
25 defendants' criminal activity nor does it provide any equitable remedy to cleanse the pollution
26 of California public land records.
27
28

1 156. Whether Plaintiffs have suffered injury will vary greatly depending on individual
2 circumstances and what type of document has been improperly acknowledged. Whether a
3 Trustee Deed upon Sale versus a Substitution of Trustee or an Assignment of Deed of Trust is
4 improperly acknowledged, the damage to Class Members may range for minimal to extreme.
5 However, it is undeniable that the mass recording of improperly acknowledged documents
6 injures the integrity of the public recording system.
7

8 157. Here, Plaintiffs do not seek damages for individual financial injury but equitable relief
9 restitution for defendants' widespread pollution of public land records with improperly
10 acknowledged foreclosure documents.
11

12 158. The Office of the Comptroller of Currency has no jurisdiction to amend California
13 criminal, California Notary Laws or in any way inhibit Plaintiffs' right to pursue this private
14 cause of action on behalf of affected citizens. Plaintiffs reserve the right to pursue claims
15 based on the effect of improperly notarized documents but those issues need not be decided in
16 this case.
17

18 **THE INSTITUTIONALIZATION OF THE IMPROPER NOTARY PRACTICE**
19 **DEMONSTRATES MALICE AND A RECKLESS DISREGARD FOR THE RIGHTS OF**
20 **PLAINTIFFS AND THE INTEGRITY OF THE PUBLIC LAND RECORDS**
21

22 159. That by institutionalizing an improper notarial practice in the quest for profit,
23 Defendants has demonstrated its actual malice towards Plaintiffs and those similarly situated.
24

25 160. Those defendants are motivated by greed, contempt, hatred and ill will toward this class
26 of Plaintiffs. By institutionalizing this business practice, defendants have demonstrated herein
27
28

1 that it lacks any reasonable belief in the truth of matters asserted in tens of thousands of
2 acknowledgements attached to tens of thousands of false and misleading foreclosure documents.

3
4 161. Defendants have acted in reckless disregard of the rights of Plaintiffs, similarly situated
5 property owners, citizens, taxpayers and private investors in mortgage backed securities.

6
7 162. The improper notarial practice is designed to *enhance the illusion* created by fabricated
8 foreclosure documents, many which purport to transfer the rights to enforce the terms of tens of
9 thousands of non-negotiable promissory notes (the “MLNs”).

10
11 163. The improper notarial practice is designed to *enhance* defendants’ ability to play “hide-
12 and-seek” with class Plaintiffs, debtors, judges, bankruptcy trustees, investors and other affected
13 parties. That the Pooling and Servicing Agreements of every private Mortgage Backed Security
14 Trust (“MBST”) serviced by Defendants contemplates no less than THREE true sales of each
15 MLN from originator, to sponsor, to depositor and finally to the designated Trustee of the
16 MBST (the “Chain of Title”).

17
18 164. That the cost of properly transferring a single MLN to a MBST through the
19 contemplated “Chain of Title” is approximately \$1,500.00. That a typical MBST contemplates
20 a pool of 5,000 MLNs. To save money, Defendants refuse to produce or lack access to the
21 evidence of the actual transfers to MBSTs. The “technology” cost, processing and legal fees
22 associated with proving standing of the true “chain of title” is cost prohibitive given defendants’
23 volume of bankruptcy and litigation matters. Defendants misrepresent the “chain of title”
24 through the use of Assignments and other foreclosure documents by creating, executing and
25 improperly acknowledging fabricated “photo-shopped” foreclosure documents.
26
27
28

1 165. That defendants' network of attorneys is financially rewarded based on the speed in
2 which the attorneys complete non-judicial foreclosures, bankruptcy and litigation matters. Said
3 network attorneys incur a performance penalty based on the amount of correspondence with
4 defendants and the amount of evidence the attorney's require "prove-up" a matter. Defendants
5 impose "technology fees" through a complex web based interface platform for correspondence,
6 access and copies of the documentary evidence required in a matter. Such a practice relies on
7 the speed and deception, the implementation of which demonstrates malice and a reckless
8 disregard of Plaintiffs' rights.
9

10
11 166. Most egregiously, the network attorneys utilize the business practice to obtain attorney
12 fees awards from by the bankruptcy judges ranging from \$600-\$1000 for each successful
13 motion for relief of stay and allowed proofs of claim. Said awards allow AURORA to pad its
14 claims and add fees to the loan balances arrearage claims of class members.
15

16 167. Those defendants' manufactured and improperly acknowledged evidence is so
17 persuasive that 95% of motions for relief of stay are granted without opposition and over 95%
18 of AURORA's Proofs of Claims are allowed.
19

20 168. That the systemic use of the fabricated evidence has a chilling effect on class debtors
21 and their attorneys. Said business practice discourages bankruptcy players from offering
22 objections or from questioning the validity of AURORA's false claims based on standing.
23

24 169. That the improper acknowledgement of these manufactured documents is *the* crucial
25 element in creating the illusion of the legitimacy of the foreclosure documents.
26
27
28

1 170. Those defendants employ the improper notary practice to *support* the broader business
2 model of manufacturing and publishing foreclosure documents *as needed* and without regard
3 to the truth.
4

5
6 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS UNLAWFUL**

7 171. Those defendants have knowingly engaged in the systemic solicitation, coercion and
8 influence of individuals to commit improper notarial acts related to the execution of
9 acknowledgments of documents created in contemplation in non-judicial foreclosure in
10 violation of CA Government Code Section 8225 and other state laws.
11

12 172. Those defendants know are that said notarial acts are improper, deceptive and
13 fraudulent but solicit, coerce and influence such improper acts as part of a broader business
14 model that also incorporates the creation and publication of fabricated, misleading inaccurate
15 and fraudulent foreclosure documents in various incarnations described herein.
16

17 173. Defendants manufacture and publish chain of title transfer evidence and other
18 foreclosure documents on demand so as to falsely prove standing in thousands of matters.
19

20 174. That the utilization of this broader business model is driven by defendants' relentless
21 pursuit of cost savings. The broader business model results in widespread deception of
22 Plaintiffs, borrowers, other creditors, bankruptcy courts, bankruptcy trustees, title companies,
23 Federal courts, Superior courts, Unlawful Detainer courts and mortgage trust investors.
24

25 175. That the effective utilization of the broader model begins with the offensive practice
26 of institutionalizing a culture and practice of improper acknowledgment of those foreclosure
27 documents with are then published in land records in contemplation of non-judicial
28 foreclosure.

1 176. Beyond their contemplated use within the non-judicial foreclosure process, the
2 improper acknowledgements attached to foreclosure documents constitute *prima facie*
3 *evidence* that the document is the duly authorized act of the entity named in the instrument.
4

5 177. That where a Plaintiff files bankruptcy or attempt to litigate issues related to debt,
6 foreclosure or title, defendants assert the improperly acknowledged documents as *prima facie*
7 evidence that the subject document is duly authorized.

8 178. That in reality, no such presumption should exist. While the improperly notarized
9 documents are published in contemplation of non-judicial foreclosure, but they have a direct,
10 negative and burdensome effect Plaintiff's success in bankruptcy and litigation when they are
11 subsequently used in a deceptive manner.
12

13 179. That the practice of soliciting, coercing and influencing improper notarial acts is the
14 equally offensive as defendants' broader business model of creating Assignments and other
15 foreclosure documents that are inaccurate, fraudulent, not based on personal knowledge and
16 not what the purport to be. But the improper notarial practice is much more egregious as it is
17 based on the corruption of the Notary office.
18

19
20 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS UNFAIR**

21 180. That the improper notarization practice is implemented for the ultimate purpose of
22 maximizing Defendants' profit through the reduction of due diligence and foreclosure
23 processing costs.
24

25 181. Central to this *unfair* practice is the creation, execution and publication of tens of
26 thousands of improperly acknowledged foreclosure related documents in the public land
27 records since 2008. These illegal short cuts result in substantial cost savings.
28

1 182. The Relevant Market is defined as residential loan servicing. The national loan
2 servicing market is currently estimated to be \$7.846Trillion of which California represents
3 over 50%. Defendant AURORA is in the top five among the largest servicers of *defaulted*
4 residential mortgages in the United States and California.

5
6 183. AURORA is eighteenth among the largest servicers of residential mortgages in the
7 United States, services a current portfolio of 276,000 residential mortgage loans worth
8 \$63.6Billion and holds a Market Share of approximately 9% in California.

9
10 184. AURORA is in the top 5 of loan servicers based on defaulted loans with 26.2% of its
11 loans in default in 2008, 33.0% in 2009 and 32.4% in 2010. Aurora stopped reporting its
12 delinquency rates in mid 2010. 1 in 283 homes in California are currently in some stage of
13 non-judicial foreclosure, approximately 5% of those loans are serviced by AURORA

14 185. That Defendants realizes a tangible, measurable cost benefit from this improper notary
15 practice which results in a competitive advantage, especially over *default* loan servicing
16 companies in the California Market who do not engage in soliciting, coercing and influencing
17 improper notarial acts.

18
19 186. That the improper notary practice of facilitates quick and inexpensive non-judicial
20 foreclosure of California real property without any regard for the law or the rights of the
21 affected Class members. The Defendants improper notary practices cause increased
22 productivity, lower processing costs, lower litigation expenses, lower attorney fees and
23 increased foreclosure related revenue. The presumptive evidentiary value of these improperly
24 acknowledged documents has a chilling effect on borrowers' objections, litigation and
25 opposition which results in greater cost savings for defendants.
26
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1 187. One court has said that an unfair business practice is one that "offends an established
2 public policy or when the practice is immoral, unethical, oppressive, unscrupulous or
3 substantially injurious to consumers" (*People v. Casa Blanca Convalescent Homes, Inc.*
4 *(1984) 159 Cal. App. 3d 509, 530 [206 Cal. Rptr. 164, 53 A.L.R.4th 661]*). While no clear test
5 to determine what constitutes *unfair* business practice has been established in California, the
6 improper notary practice is unfair by this definition.

7
8 188. That another court has stated that to determine whether a business practice is unfair,
9 courts must "weigh the utility of the defendant's conduct against the gravity of the harm to
10 the alleged victim . . ." (*State Farm Fire & Casualty Co. v. Superior Court (1996) 45 Cal.*
11 *App. 4th 1093, 1104 [53 Cal. Rptr. 2d 229]*.) The improper notary practice is unfair by this
12 definition.

13
14 189. The only utility for defendants is its own cost savings advantage over competitors.
15 Rather than treat the residential foreclosure process with the utmost care and strict liability,
16 Defendants maliciously utilizes the improper notary practice in combination with the
17 widespread use of false statements, misrepresentations and deception just to save money.

18
19 190. That since the foreclosure crisis began in 2008, this institutional business practice of
20 violating the Notary laws and professional standards has lead to increased profits through the
21 elimination of the otherwise time consuming and expensive process of ensuring proper
22 acknowledgement of foreclosure documents.

23
24 191. That in the context of this national mortgage crisis, a massive taxpayer bailout of
25 defendant AURORA and the general devastation caused by home foreclosures, the alleged
26 business practice is immoral, unethical, oppressive, unscrupulous *and* substantially injurious
27
28

1 to *all* consumers. That whether a consumer is a homeowner in financial distress or not, there
2 is a common interest in preserving the integrity of our public land records and court system.
3

4
5 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS DECEPTIVE**

6 192. Central to this *deceptive* business practice is the creation, execution and publication of
7 tens of thousands of improperly acknowledged foreclosure related documents in the public
8 land records since 2008.

9
10 193. That the improper notary practice of soliciting, coercing and influencing improper
11 notarial acts is *deceptive* by definition but not conducted in isolation. While no longer the
12 subject of this lawsuit, the false and misleading *content* contained in the foreclosure
13 documents is equally oppressive and demonstrative of defendants' blatant disregard for the
14 rights of homeowners in financial distress.

15
16 194. Notwithstanding that these and other foreclosure documents and contain false
17 assertions as to ownership of notes, transfers of notes, transfers of deeds of trusts and
18 transfers of the power to enforce the terms of California MLNs, only the improper notary
19 practice is the subject of this lawsuit.

20
21 195. The practice of creating improper acknowledgments restricts borrowers from
22 challenging the veracity of a document's assertions and the validity of any non-judicial
23 foreclosure sale.

24
25 196. The *illusionary* certificates of acknowledgement attached to an executed instrument,
26 such as a Substitution of Trustee, Assignment or Deed Upon Trustee Deed, is *prima facie*
27 *evidence* that the document is the duly authorized act of the entity named in the instrument.
28

1 The deceptive effect of improper acknowledgement cascades throughout bankruptcy and civil
2 cases, in addition to non-judicial foreclosures.

3
4 197. Therefore, even where the party who executes a document lacks personal knowledge
5 or any agency relationship with the party entitled to enforce the terms of an MLN, an
6 *illusory* acknowledgement wrongfully obstructs borrowers from making legitimate
7 challenges to the validity of the foreclosure document.

8
9 198. That defendants have processed tens of thousands of non-judicial foreclosure
10 proceedings based on the purported validity of improperly notarized documents in addition to
11 failing to ensure that either the promissory note of deed of trust were properly endorsed or
12 assigned or in possession of the appropriate party at the appropriate time.

13
14 199. That while the content and attestations contained in the foreclosure documents are
15 themselves false, misleading and deceptive, it is the systemic use of these documents and
16 defendants' solicitation, coercion and influence of individuals to commit improper notarial
17 acts that is the subject of this action.

18
19 200. That the public, including Plaintiffs, Courts, bankruptcy trustees, new creditors, credit
20 reporting agencies, potential buyers and title insurance companies are likely to be *deceived* by
21 the improperly acknowledged foreclosure documents filed in the public land records,
22 notwithstanding the truth of the matters asserted in those documents.

23
24 201. That defendants have generated tens of millions of dollars in revenue through
25 premature or unjustified foreclosure fees, attorney fees, notary fees, insurance fees, Chapter
26 13 trustee distributions, broker service fees, late fees and servicing fees charged to borrowers.
27
28

1 202. Those defendants have wrongfully foreclosed and prevailed in bankruptcy motions,
2 Unlawful Detainer cases, Superior Court cases and Federal cases by offering improperly
3 notarized foreclosure documents as self-authenticating and presumptively valid evidence.
4

5 203. That until the public record is corrected, there is no reason to expect that these unjust
6 results accruing from defendants' improper notarization practice will ever cease.

7 204. As a proximate result of defendants' conduct, Plaintiffs and the public at large have
8 suffered injury in fact and will continue to suffer until this matter is resolved. Said injuries
9 vary from wrongful foreclosure to a degradation of the integrity of the public land records.
10

11 205. The improperly acknowledged documents are used against Plaintiffs' interest to
12 support the illusion of valid transfers of rights in MLNs including the right to foreclose, to
13 name trustees of deeds of trusts and to grant title in real property to buyers at non-judicial
14 foreclosure sales. The use of said documents has caused Plaintiffs collectively to suffer
15 actual injury, incur improper loan servicing fees, increased loan charges, a loss of personal
16 rights, and loss of property rights, decreased property values, lost costs, lost time, and
17 increased attorney fees combating the effect and cure the widespread publication of
18 improperly acknowledged documents.
19

20 206. The improperly acknowledged documents, while published in contemplation of non-
21 judicial foreclosure, are used against Plaintiffs' interests in bankruptcy cases, federal court
22 cases, civil court cases and unlawful detainer cases to support the illusion of valid transfers of
23 rights and the *prima facie* evidence of the validity of said documents.
24

25 207. The improperly acknowledged documents are used with such frequency and
26 abundance so as to degrade the integrity of the public land records system, the office of
27
28

1 notaries and our court system. As such, said practice is causing irreparable injury to members
2 of the general public.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial
5 as to all issues triable by jury.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of them, as follows:
8

- 9
- 10
- 11 a. That the Court determine that this action may be maintained as a class action under Rule
12 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiffs be certified as
13 class representative and Plaintiffs' counsel be appointed as counsel for the Class.
- 14
- 15 b. A determination whether defendant's improper notarial business practices, related actions,
16 failures to act, representations and assertions constitute violations of California Business
17 & Professions Code §17200;
- 18
- 19 c. An order compelling defendants, their successors, agents, representatives, employees, and
20 all persons who act in concert with them be permanently enjoined from committing any
21 acts of unfair competition, related to the filing of improperly acknowledged documents in
22 the public land records in violations of § 17200, including, but not limited to, the
23 violations alleged herein.
- 24
- 25 d. An determination of the scope of the nature and seriousness of the alleged misconduct, the
26 number of violations, the persistence of the misconduct, the length of time over which the
27 misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's
28 assets, liabilities and net worth.

- 1 e. A determination of as to which the scope of the nature and seriousness of the alleged
2 misconduct, the number of violations, the specific identification of each violation, the
3 persistence of the misconduct, the length of time over which the misconduct occurred, the
4 willfulness of the defendant's misconduct, and the defendant's assets, liabilities and net
5 worth.
6
7 f. A determination of the amount of cost savings benefiting defendants from the deceptive
8 practices violating Cal B&P §17200 in this context;
9
10 g. A determination of the amount of restitution and disgorgement of profits appropriate for
11 violations of Cal B&P §17200 in this context;
12
13 h. For an order requiring defendants to record in the public land records a “Notice of
14 Improperly Acknowledged Document”, or such similar Notice as the Court deems
15 appropriate, each of which shall correspond and identify each specific improperly
16 acknowledged document previously recorded in public land records.
17
18 i. For an order requiring defendants to record in the docket or claims register of each court’s
19 official record. a “Notice of Improperly Acknowledged Document”, or such similar
20 Notice as the Court deems appropriate, each of which shall correspond and identify each
21 specific improperly acknowledged document previously filed as an exhibit or referenced
22 within any pleading by defendants’ in any court’s docket or claims register;
23
24 j. Only where this matter is joined by the California Attorney General, any California
25 County District Attorney or City Attorney, a civil penalty not to exceed two thousand five
26 hundred dollars (\$2,500) for each act of recording of an improperly acknowledged
27 document or soliciting, coercing or influencing an improper notarial act;
28

- 1 k. That Plaintiff and the Class recover their costs of suit, including attorney's fees as provided
2 by law; and
3 l. For such other and further relief, equitable or otherwise, as is just under the
4 circumstances.

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8
9 Dated: April 9, 2012

LAW OFFICES OF J. ARTHUR ROBERTS

10
11 _____
12 JOSEPH ARTHUR ROBERTS, ESQ.
13 Attorney for Plaintiffs
14 and all others similarly situated
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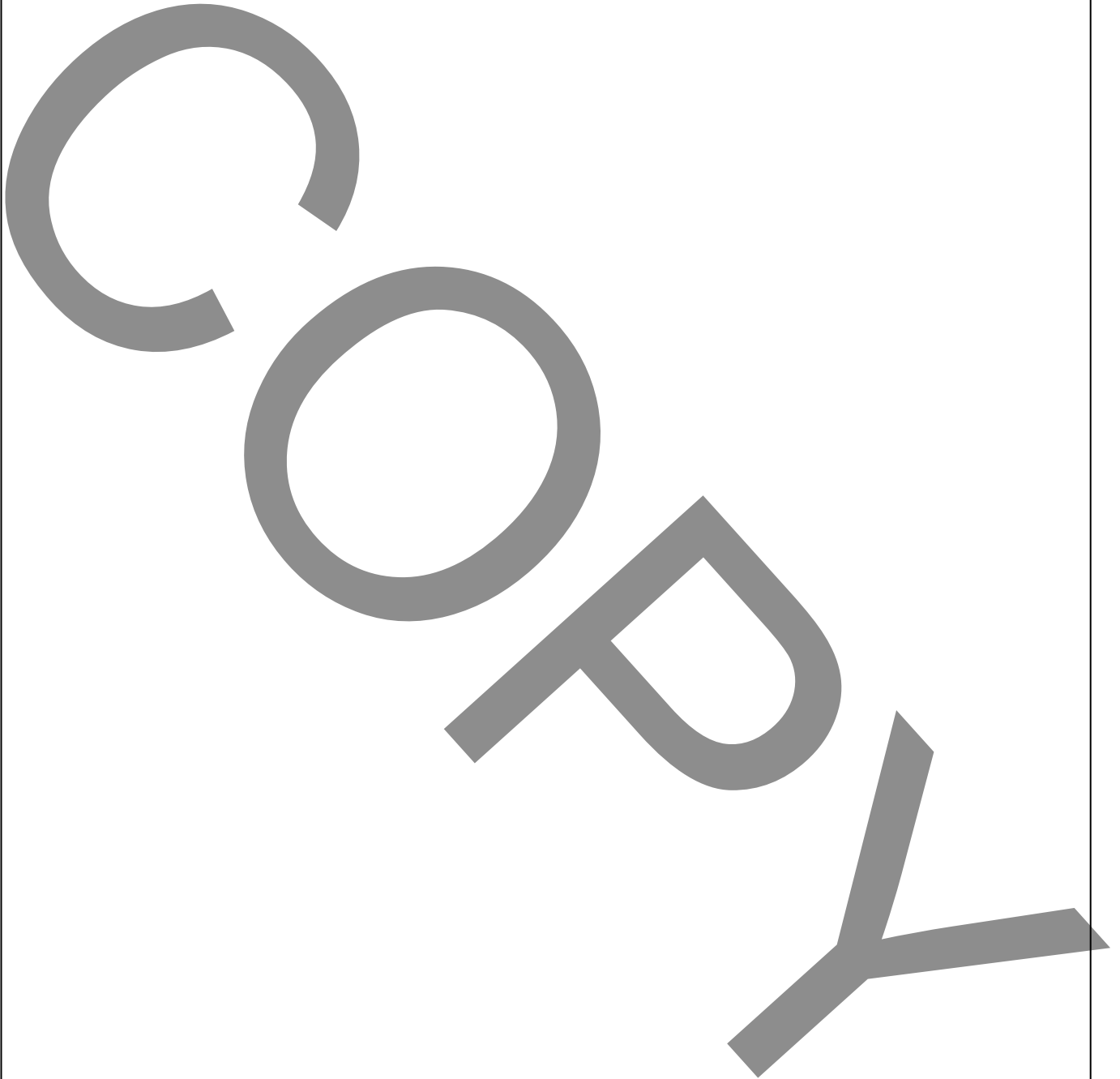


EXHIBIT 1

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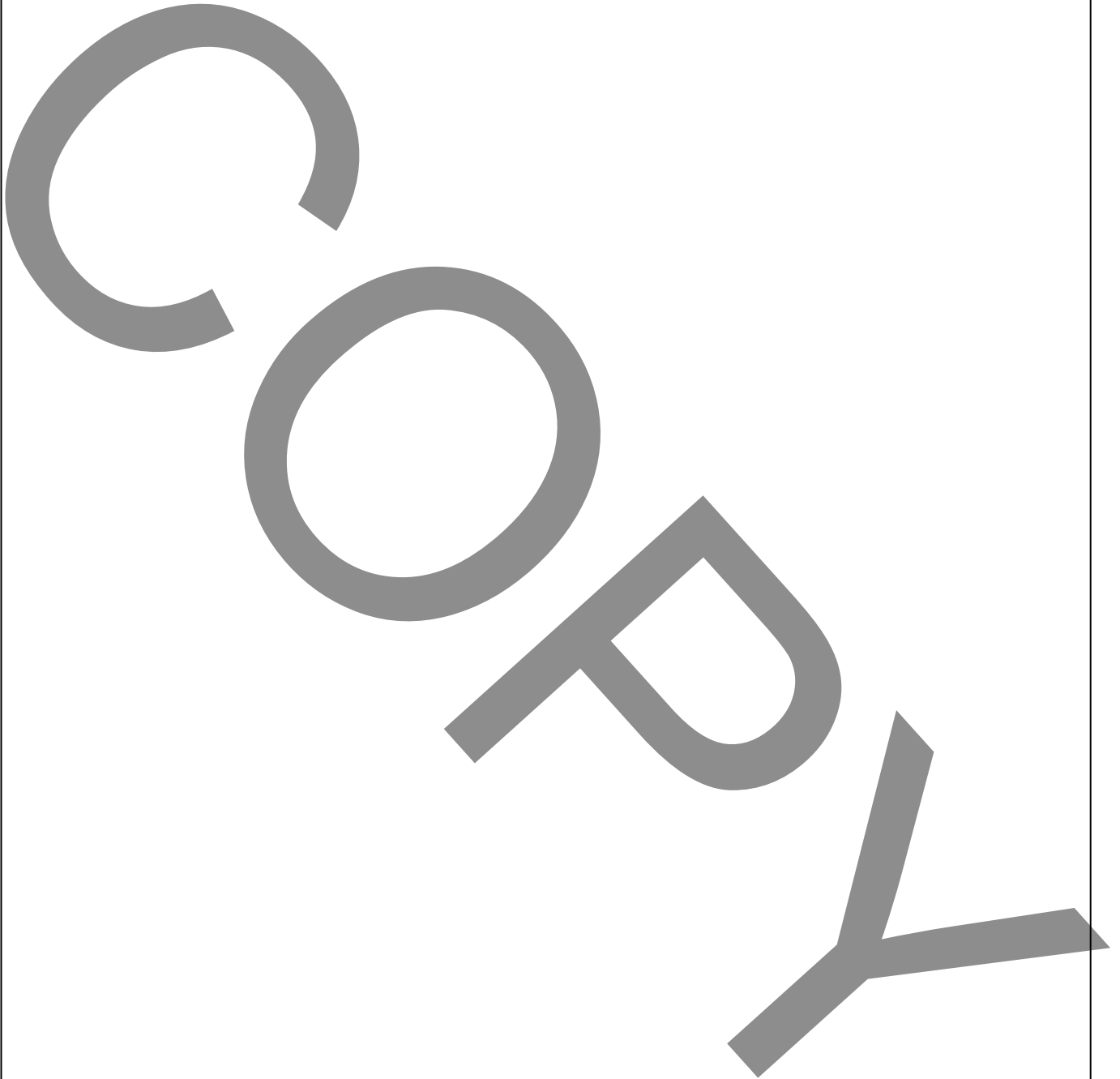


EXHIBIT 2

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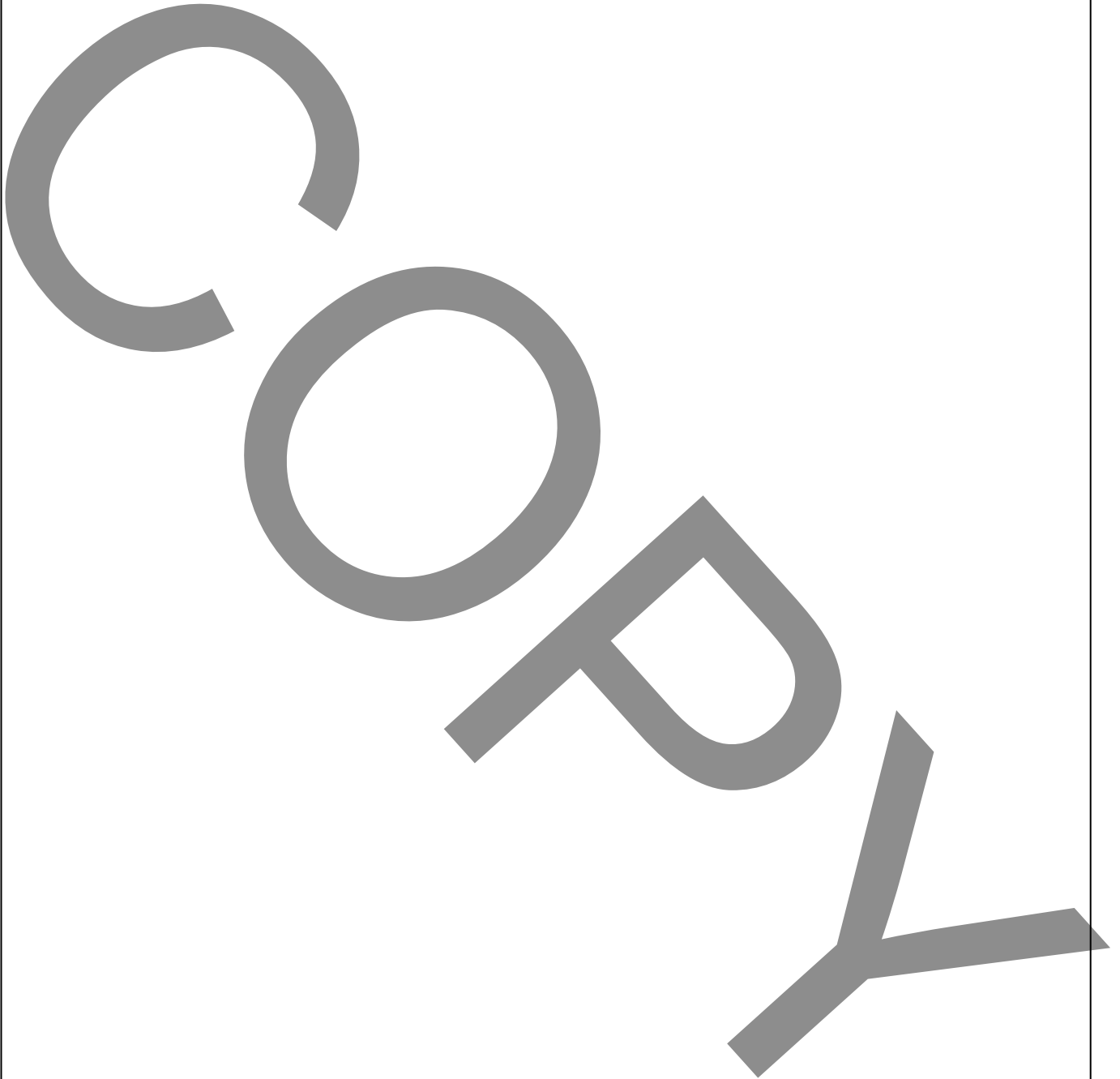


EXHIBIT 3

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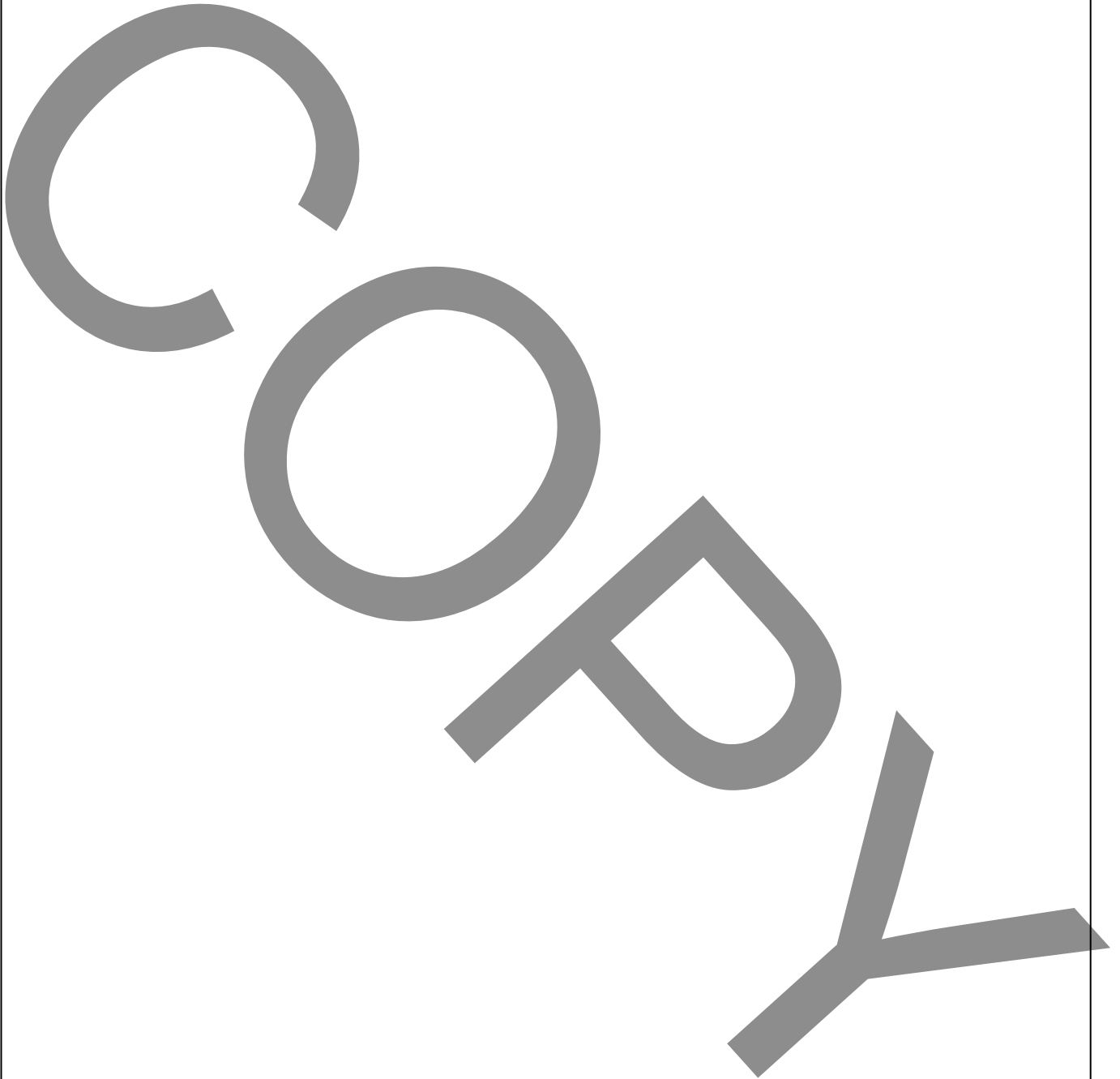


EXHIBIT 4

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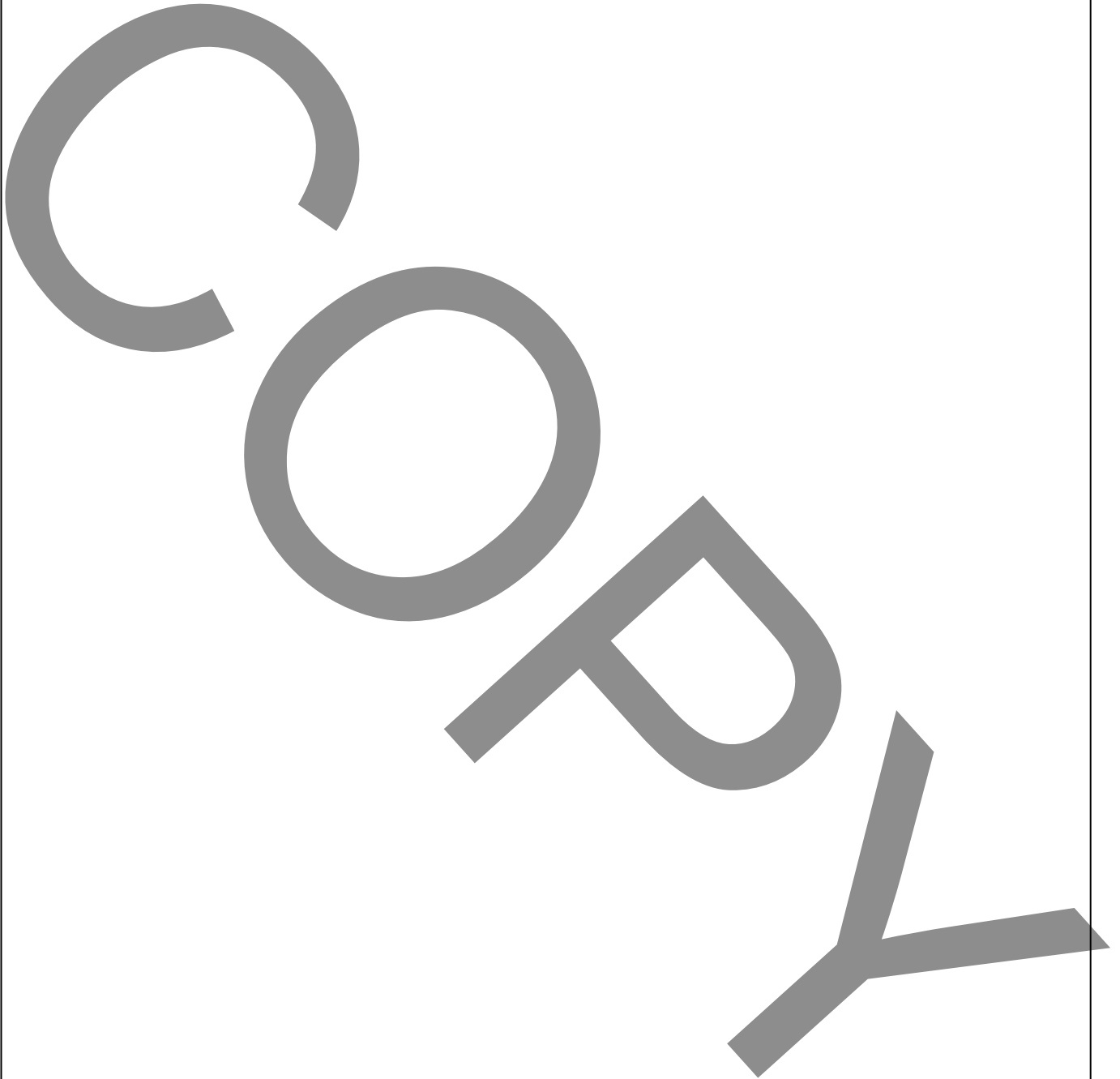


EXHIBIT 5

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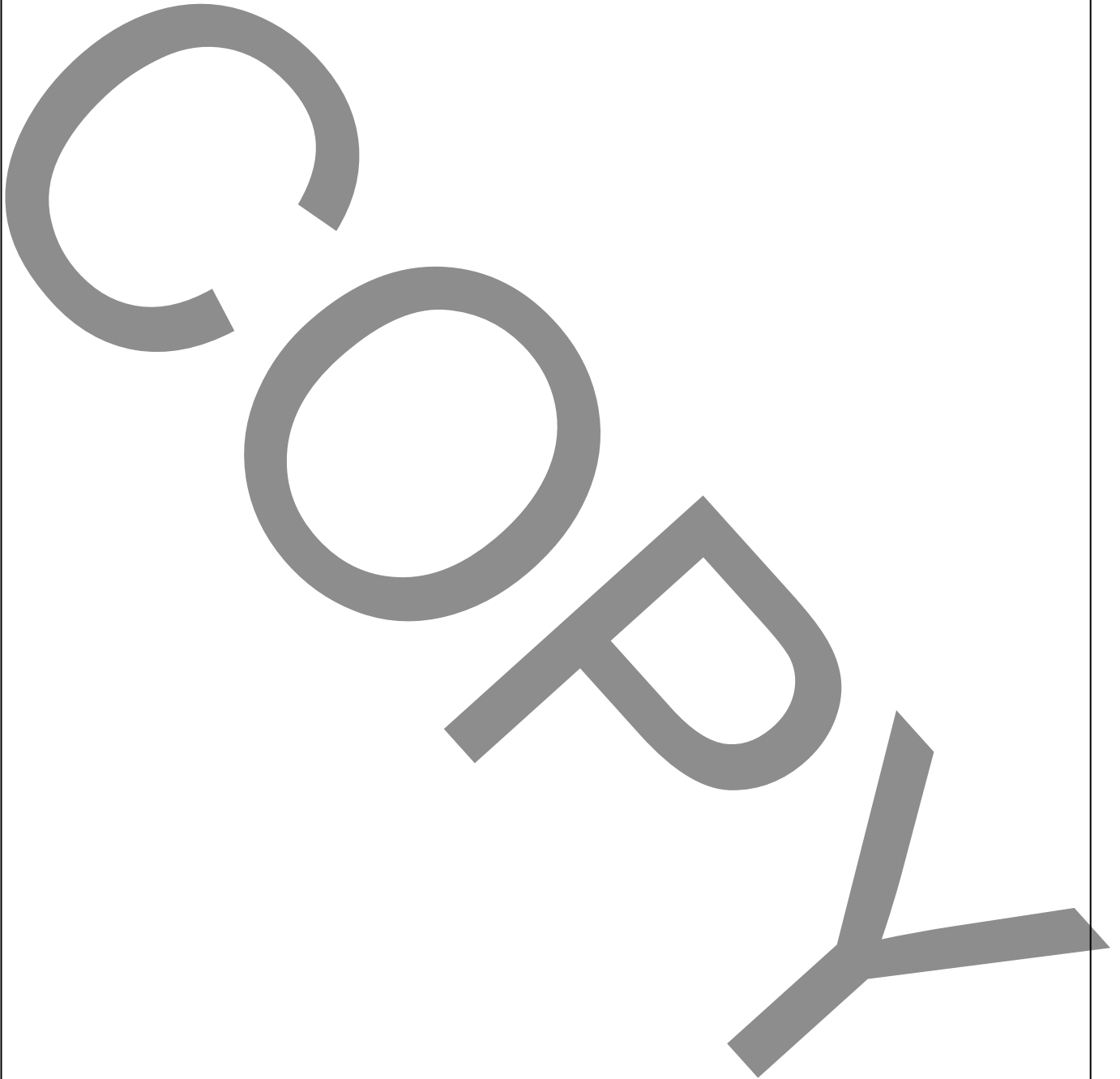


EXHIBIT 6

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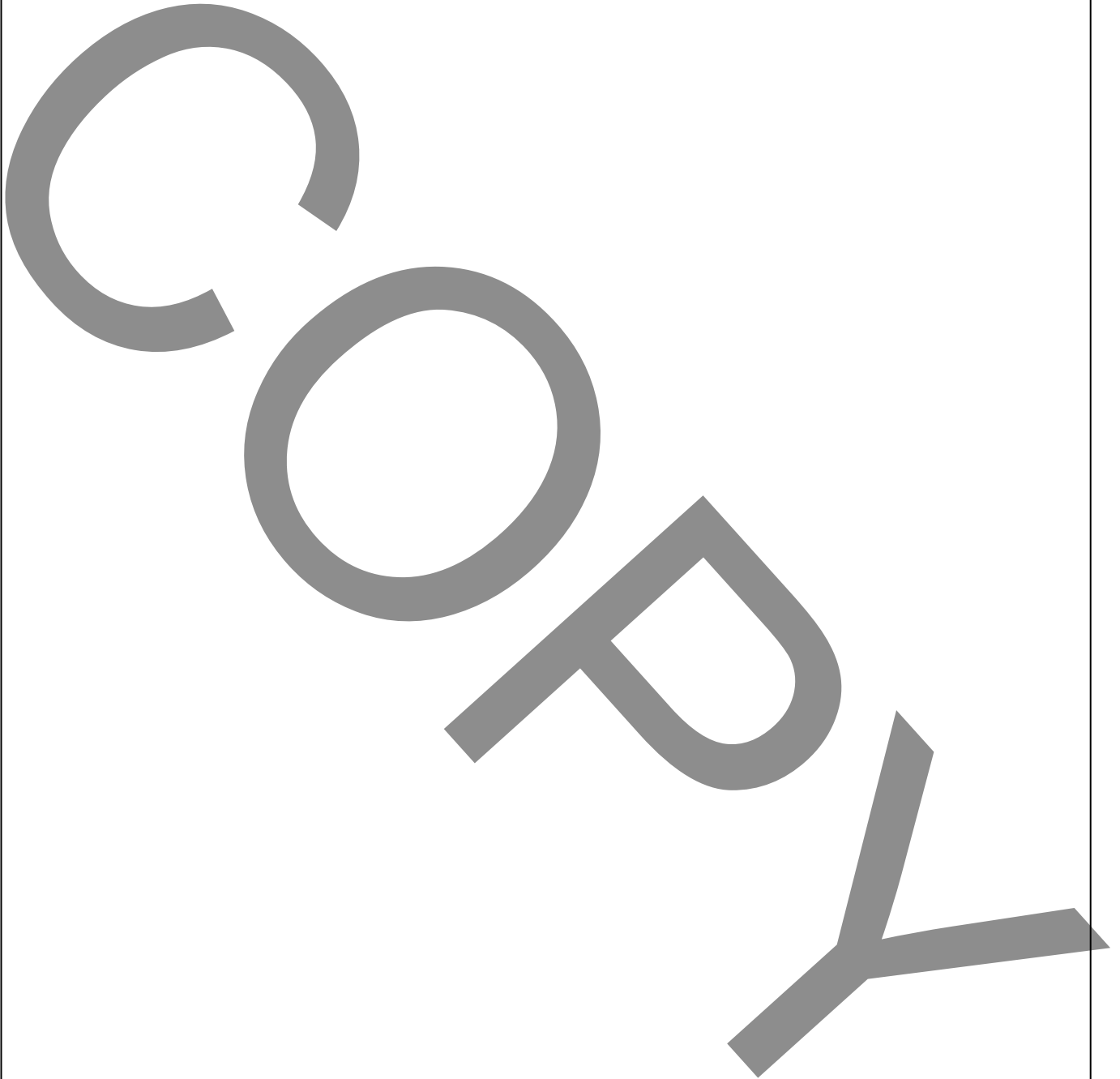


EXHIBIT 7

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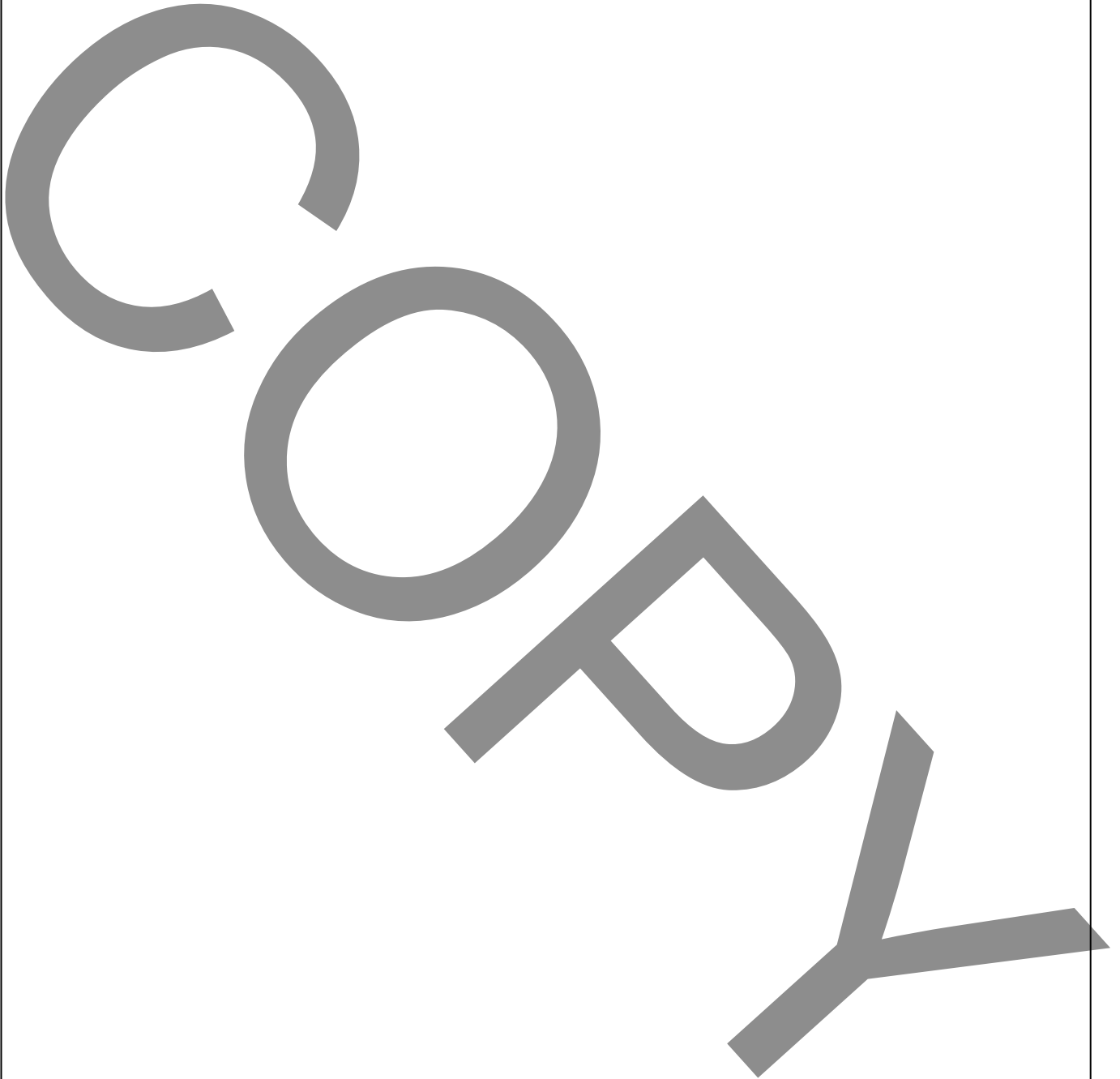
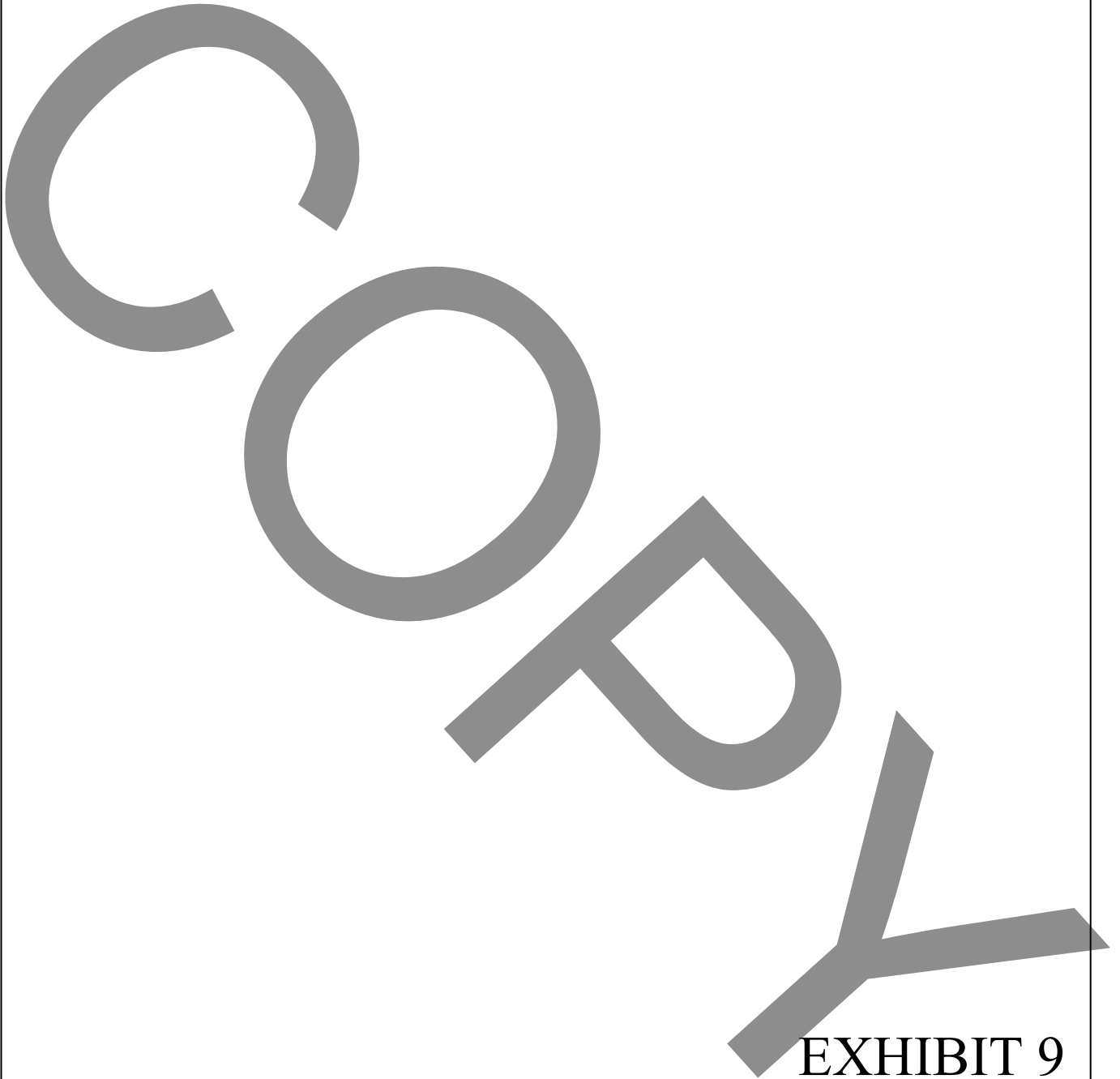
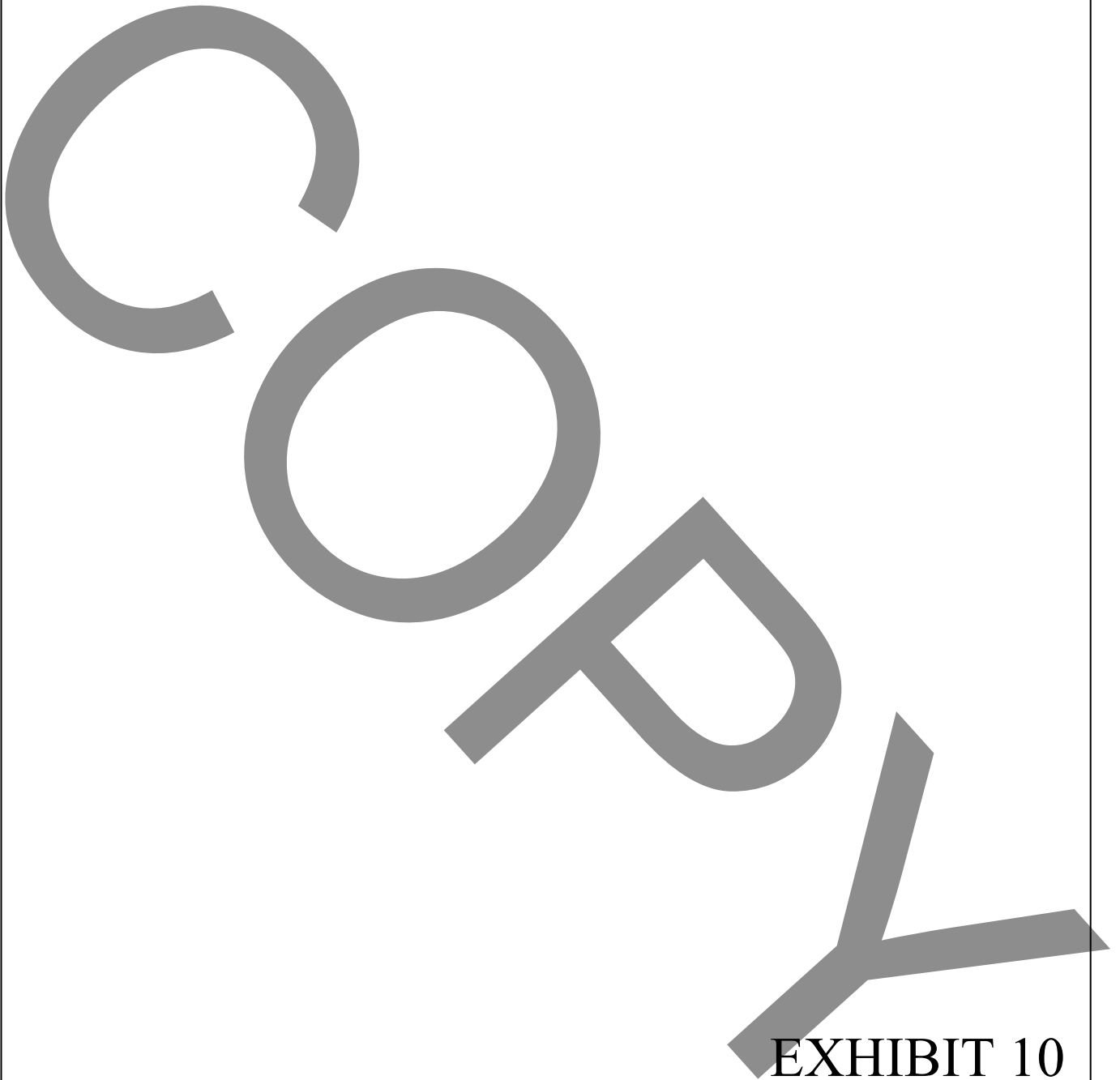


EXHIBIT 8

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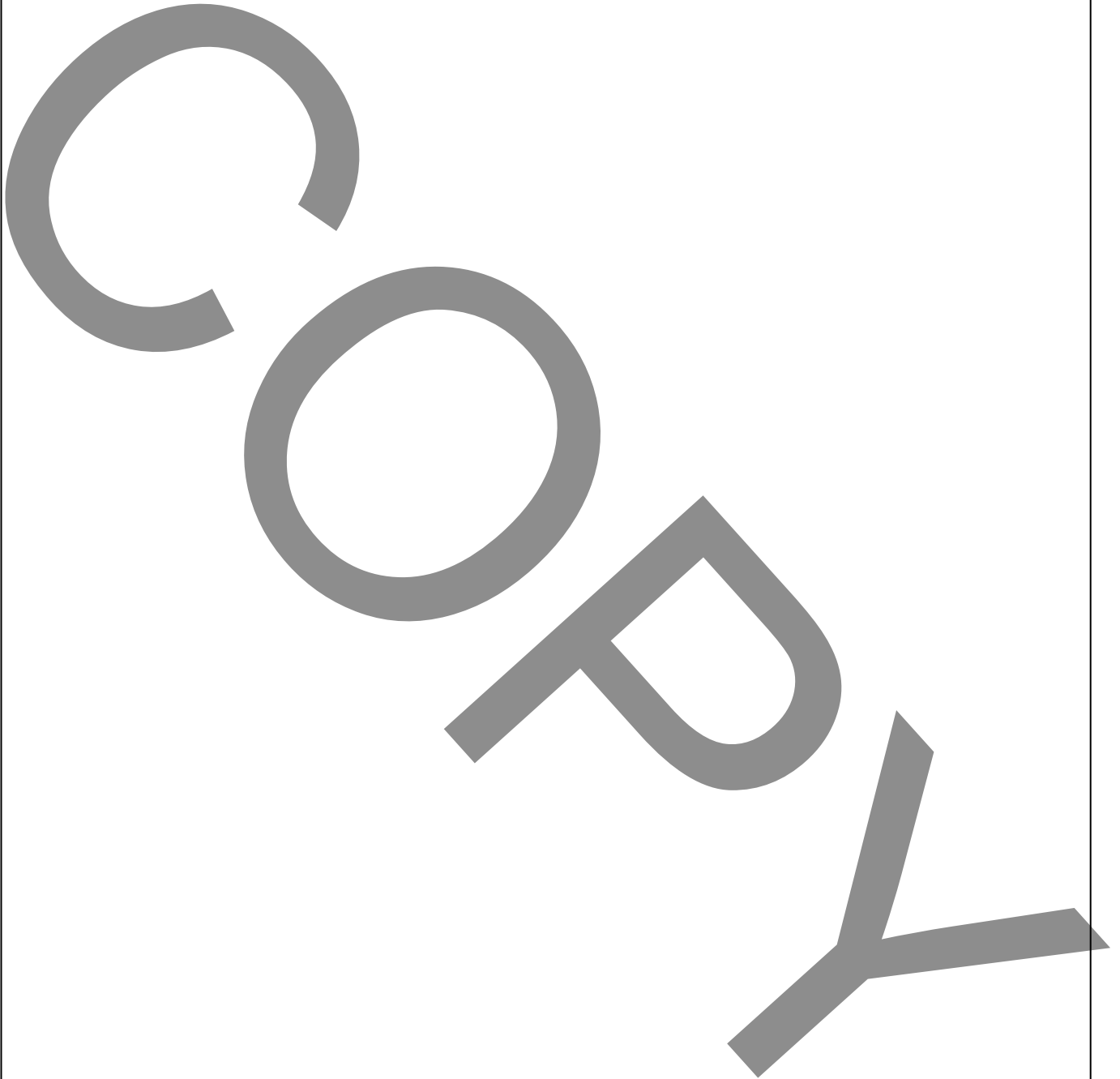


EXHIBIT 11

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