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Re: Civil Code §§ 2923.52 and 2923.53
The People of The State of California vs. Countrywide et. al. LC093076
Petition for Writ of Mandamus

Dear Colleagues and Attorney General Edmund G. Brown Jr:

As you are aware, my office represents homeowners caught up in the foreclosure crisis currently occurring in the California housing market.

You may recall that my office sought your assistance in the matter of *Mabry vs. Aurora Loan Services*. Wherein the 4th Appellate District Division Three acknowledged a private right of action to prevent foreclosures on a citizen's primary residence, when the bank and/or mortgage holder has not complied with Civil Code § 2923.5. However, your office opted not to participated in what I believe was a landmark decision for homeowners in the battle against foreclosure prevention here in California.

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Notwithstanding the Stipulated Judgment and Injunction that your office had obtained against Countrywide/Bank of America in the above referenced case, Bank of America filed an Amicus Curia Brief in the *Mabry* action espousing no private right of action and no obligation to modify distressed loans.

I am fully aware, grateful and commend your office for its attempts to crackdown on loan modification schemes that have swindled millions of dollars out of frightened and frustrated homeowners. Some homeowners who were and still are willing to believe against all logic or reason that the companies, whom practiced such schemes, could actually get the mortgage holder to give them some sort of State or Federal assistance that could prevent the losing of their homes and becoming homeless.

I further commend your office for its 2008 lawsuit against then Countrywide Financial, Countrywide Home Loans, Inc., and Spectrum Lending, Inc., who are now commonly referred to as Bank of America N.A. and BAC Home Loans (BAC). An action which ultimately resulted in the successful acquiring of a Stipulated Judgment and Injunction against (BAC) on October 14, 2008.

The BAC lawsuit's primary focus was on the predatory lending practices of the Defendants. The Stipulated Judgment and Injunction provides a remedy that creates yet another avenue for BAC borrowers to find relief and even the possibility of preventing the loss of their homes. The loss of a home is a threat that is ever too common, albeit avoidable with help from BAC, for numerous California BAC borrowers in this foreclosure crisis.

I wish this letter could end here or at least continue to praise your efforts and accomplishments as the present Attorney General of California. However, unfortunately, it must now turn to the present state of affairs and your lack of aggressiveness in the pursuit against the foe you identified and successfully prosecuted in the People vs. Countrywide, et.al. action.

I believe judgment obtained against BAC was merely the tip of the iceberg. You may or may not be aware that IndyMac Bank, now OneWest Bank, has been sued by their investors for providing false and misleading appraisals along with committing many underwriting violations, which gave thousands of Californians their present unconscionable loans [a copy of the court's opinion is attached for your edification].

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There are presently hearings scheduled on September 21, 2010 and September 22, 2010, that involve issues that would substantially curtail the foreclosures in California:

- September 22, 2010 at 9:00 a.m. in Department 68 of the Los Angeles Superior Court, *Mabry vs. Preston Dufauchard, Commissioner For the California Dept of Corporations, Real Party in Interest Aurora Loan Services, LLC*, Case No: BS 127903. Petition for Writ of Mandamus.
- - The issue: Whether possessing a HAMP program equates as compliance with California Civil Code § 2923.53.
- September 21, 2010 at 9:00 a.m. at the California 4th Appellate Court Division Three *Vuki vs. Superior Court of California, Orange County Case No: GO43533, Real Party in Interest HSBC*. Oral Argument.
 - The issue: Whether a bad faith compliance with Civil Code § 2923.53 makes the foreclosing beneficiary (HSBC) a bona fide purchaser pursuant to Civil Code §2923.54.
- September 21, 2010 at 9:00 a.m. at the California 4th Appellate Court Division Three *Sanchez vs. Superior Court of California, Orange County Case No: G043300, Real Party in Interest Litton Loan Servicing LLC.* Oral Argument.
- - The issue: Whether a fully executed and performed loan modification is terminated by the lender's inadvertent sale of the subject real property in lieu of Civil Code § 2923.54.

These decisions are being sought by my office to help clarify citizens' rights under the present Foreclosure Prevention Statutes.

My office has been very instrumental in not only the prosecution of these issues, on behalf of my clients, but all citizens of the State of California.

Unfortunately, the BAC Stipulated Judgment and Injunction does not provide a component for a private right of enforcement. Thus, with respect to possible violations by BAC, such Stipulated Judgment and Injunction can only be enforced by your office.

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My office would love to step into your shoes and be granted permission and the rights to enforcement under the Stipulated Judgment and Injunctions. That way we may stop all the Countrywide loan foreclosures presently scheduled and being conducted in California until each prior Countrywide and/or BAC California borrower is offered the benefits under the Stipulated Judgment and Injunction your office obtained.

I do not believe that you could or are able to assign such a right, but I make it as a gesture of sincerity as to my conviction and belief of the wrongdoings of BAC.

I ask that you immediately seek Court intervention enjoining all Countrywide and/or BAC foreclosures proceedings that fall within the auspices of the Stipulated Judgment/Injunction.

Alternatively, you leave my office no choice but to seek a Writ of Mandamus asking the Court to instruct you and your office on your obligations as Attorney General of our great State. I realize your business and acknowledge that this may not be your primary priority, but if I do not receive a response indicating your intent by September 17, 2010, I will deem you have no intent to respond, investigate this matter, or take other appropriate action and at that time will seek the Writ of Mandamus.

Notwithstanding the aforementioned paragraph, I wish you well on your campaign to return to the position of Governor of our great State.

Sincerely

Moses S. Hall;
Msh;
Attachments.