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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

MORGAN LAWLEY, an individual; LARRY BLUFORD, an individual; ALEX UDARBE, an individual; NINA UDARBE, an individual; OTHELLO ABATA, an individual; ERLINDA ABATA, an individual; REFUGIO ALARCON, an individual; LEONARDO ALARCON, an individual; BURT ALEXANDER, an individual; ANTHONY ALTIERI, an individual; JUAN ALVAREZ, an individual; PATRICIA ALVAREZ, an individual; MANUEL AMAYA, an individual; ANA JULIA AMAYA, an individual; REBECCA ARTMORE, an individual; MICHEAL ARTMORE, an individual; KEVIN BADIEI, an individual; RUE BARROW, an individual; OSCAR BOBADILLA, an individual; BRENT BON, an individual; ALFONSO BORJA, an individual; AVELINA BORJA, an individual; CORNELIO BOSQUES, an individual; MANUEL BRITO, an individual; SONIA CANAS, an individual; ELIZABETH CARTER, an individual; FETUAO DESMOND, an individual; MILLICENT DICKINSON, an individual; ISIDRO DUARTE, an individual; SERGIO FAURRIETA, an individual; RUDESINDO FERNANDEZ, an individual; CHRISTOPHER FLORENDO, an individual; DELICIA FLORENDO, an individual; GUILLERMO

Case No.: 37-2016-00011715-CU-OR-CTL

COMPLAINT FOR:

1. **INTENTIONAL MISREPRESENTATION [VIOLATION OF CIV. CODE §§ 1572, 1709 AND 1710];**
2. **NEGLIGENT MISREPRESENTATION [VIOLATION OF CIV. CODE §§ 1572, 1709 AND 1710];**
3. **UNFAIR COMPETITION [VIOLATION OF BUS. & PROF. CODE §17200 *ET SEQ*.];**
4. **WRONGFUL FORECLOSURE [VIOLATION OF CIV CODE § 2924]**

[JURY TRIAL DEMANDED]

FLORES, an individual; WILBUR FUKUI, an individual; RUBEN GARCIA, an individual; HERMILO ROBLES GOMEZ, an individual; GUSTAVO GONZALES, an individual; BENITO GONZALEZ, an individual; GRACIELA GUADIANA, an individual; RAFAEL GUADIANA, an individual; JESUS GUEVARA, an individual; JANET HAGEN, an individual; JAMES HAGEN, an individual; STEPHEN HARRIS, an individual; DUNG HO, an individual; MATTHEW HOFER, an individual; GRACE HONG, an individual; LINDA K. HUNEKE, an individual; TONY KEUSSEYAN, an individual; EILEEN KEUSSEYAN, an individual; RONALD KOLODZIEJ, an individual; STEVE LAYTON, an individual; GEORGE LUCAS, an individual; WALTER LUSK, an individual; DAVID MANAOAT, an individual; LEAH MANAOAT, an individual; REBECCA MARINE, an individual; SALVADOR MARTINEZ, an individual; ROLANDO MARTINEZ, an individual; FREDDIE MCCULLOUGH, an individual; DONALD MILLER, an individual; FRANCO MIRANDA, an individual; RAMON MONTANO, an individual; FERNANDO MORALES, an individual; EDUARDO MUNOZ, an individual; AURORA MURILLO, an individual; HECTOR NIETO, an individual; THOMAS POLITZ, an individual; FRANCISCO RAMIREZ, an individual; MARIA RAMIREZ, an individual; MARCELINO ROMAN, an individual; DANIEL SALINAS, an individual; YVETTE SALINAS, an individual; JULIO SANTA CRUZ, an individual; MICHAEL SCOTT, an individual; BALDEV SINGH, an individual; KENNETH SKAIFE, an individual; LEVITA TAYLOR, an individual; WILLIAM TAYLOR, an individual; MARJEANNE TENDLER, an individual; ARTHUR TENDLER, an individual; JOAN TUCKER, an individual; HAROLD TUCKER, an individual; MERCY UMEOKAFOR, an individual; ANALILIA WADE, an individual; JAMES

WALKER, an individual; SHARON WILSON, an individual; ALLEN WILSON, an individual; WILMER YABAR, an individual; RICH ERNST, an individual,

Plaintiffs,

vs.

BANK OF AMERICA, N.A.; BANK OF AMERICA CORPORATION; COUNTRYWIDE FINANCIAL CORPORATION; BAC HOME LOANS SERVICING; COUNTRYWIDE HOME LOANS, INC.; RECONTRUST COMPANY, N.A.; CTC REAL ESTATE SERVICES; LANDSAFE, INC.; and DOES 1 through 1000, inclusive,

Defendants.

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Plaintiffs, and each of them, hereby demand a jury trial and allege as follows:

NATURE OF ACTION

1. From 2003 through 2008, Defendant BofA and all related affiliates and subsidiaries here named as Defendants developed and implemented a program of systematic banking fraud which caused tens of billions of dollars in losses to investors, business partners, and homeowners.

2. It is not at issue that Defendants engage in a lucrative and profitable business- it is the duty of all corporations to work in the best interest of their shareholders. It is the length to which Defendants went to attain that profit which is illegal and at issue here today. In a situation such as this, in the face of Defendants' blatant disregard for convention, ethics, and law that the courts *must* intervene – that an example *must* be set. A line must be drawn putting Defendant Corporations and Banks on notice that the law will not sanction such egregious manipulations of the public's trust and violations of law.

3. It bears emphasizing – that the gravamen of the Complaint is not about the harm and frauds that Defendants have perpetrated on 3rd party investors, but rather the harms and frauds perpetrated upon Plaintiffs herein. The fraud described in the Complaint upon the investor, were merely the *incentive* for Defendants' fraud on Plaintiffs, and only one prong, in Defendants' brazen, intertwined and multi-pronged fraudulent scheme. Defendants' business strategy was straightforward: (1) generate loan volume, (2) package bundles of loans for resale on the secondary market. This, on its face, is perfectly reasonable- a corporation is entitled to exercise its best business judgment. The crux of the issues at hand lie in the massive and centrally-directed strategies and schemes that Defendants engaged in to achieve that first goal of generating loan volume- schemes that were designed with the ultimate goal of defrauding Defendants' mortgagees- everyday homeowners who relied on Defendants and their fraudulent representations to their own detriment.

4. In order to generate a higher volume of total loaned amount (and the expectation of higher future revenue to be gained through interest), Defendants (1) placed homeowners into loans which Defendants *knew* Plaintiffs could not afford, abandoning industry-standard underwriting guidelines, and (2) intentionally inflated the appraisal values of homes in order to skew data which Defendants would then sell on the secondary market for further profit,

5. Defendant engaged in these actions with the explicit knowledge that this scheme would cause a large-scale collapse in values of all homes throughout California, including those of Plaintiffs, and causing billions of dollars of damages in the process.

6. Thousands of Borrowers, including the Plaintiffs named here, were intentionally placed in loans which Defendants knew Plaintiffs could not afford, and Defendants knew would be defaulted on as a mathematical certainty. Defendants' fraudulent inflation of real estate values throughout the State of California, the demise of which sent real estate values spiraling downward, caused Plaintiffs to be placed in homes that were immediately upside-down, and to instantly lose their equity – if not their homes altogether. And as a result of these two schemes coupled together, Plaintiffs were placed into loans far larger than would be supported by the true value of their property or their income. Then, based on these fraudulently inflated loan amounts, Defendants deceptively extracted excessive and unearned payments, points, fees, and interest from Plaintiffs. And as the final coup-de-grace, Defendants then intentionally steamrolled foreclosures upon those borrowers whose very peril was caused by Defendants' fraud in the first place, by charging grossly excessive "foreclosure fees' to line their pockets with ill-gotten profit.

7. The law must not allow corporate demand for greater profits to exceed the extant and imperative public need for informed disclosure. This Court must recognize Defendants' duty to disclose. Without such duties, Banks are effectively granted immunity for their continued future wrongs against the borrowing public which has a right to depend on the fundamental notion of good faith and fair dealing in contractual relationships. No business, particularly one as centrally-important to the American economy as banking, should be allowed to so egregiously deceive its consumers. A fair reading of this Complaint, including reasonable inferences from the facts alleged herein, is that the fraudulently concealed *not only* to the commission of torts and crimes involving third parties, but also to, among other things: (1) the possession of internal reports concluding that if a Plaintiff took a loan from Defendants that Plaintiff would suffer material losses; (2) contrary to its advertising and other broadly disseminated public statements, (i) Defendants had abandoned their conventional lending business, appraisal, underwriting and lending standards and was now granting credit as part of an overall unlawful scheme based on insider trading and other frauds that Defendants knew and expected

would gravely damage Plaintiffs, the mortgage market and home values, and (ii) Defendants now provided mortgages only for the purpose of immediately reselling the mortgage at an inflated value and without regard to laws intended to protect consumers, such as the Truth in Lending Act and Patriot Act; (3) Defendants' systematic and intentional inflation of Plaintiffs' property values in order to approve them for loans which Defendants knew Plaintiffs were not qualified for and would to a certainty default; (4) undocumented domestic and foreign transfers of multiple interests in the loans and sourcing of money for the loans, without complying with laws intended to protect consumers, including the Patriot Act and Truth in Lending Act; and (5) the fact that Defendant had ceased acting as a conventional money lender and had instead morphed into a fraudulent enterprise. Such information would be highly material to a borrower's decision to enter into a contract with lenders/Defendants.

INTRODUCTION

8. This lawsuit arises from: (1) Defendants' deception in inducing Plaintiffs to enter into mortgages from 2003 through 2008 with the Countrywide Defendants (defined below in Paragraph 11); (2) Defendants' breach of Plaintiffs' Constitutionally and statutorily protected rights of privacy; and (3) Defendants' continuing tortious conduct intended to deprive Plaintiffs of their rights and remedies for the foregoing acts, described below.

9. At all times relevant to this Complaint, Defendant Countrywide Financial Corporation ("*Countrywide*") was among the leading providers of mortgages in California. By 2005, Countrywide was the largest U.S. mortgage lender in the United States, originating over $490 billion in mortgage loans in 2005, over $450 billion in 2006, and over $408 billion in 2007.

10. In 2007, Defendant Bank of America ("BofA") commenced negotiations to acquire Countrywide. By late 2007, BofA began merging its operations with Countrywide and adopting some of Countrywide's practices. From and after its acquisition of Countrywide in July 2008 and continuing to the present, both as a successor-in-interest to Countrywide and as a principal, BofA has engaged in and continued the wrongful conduct complained of herein.

11. For the sake of clarity, Countrywide, as well as each Defendant originating a mortgage, each Defendant in the chain of title of the foregoing mortgages, and each Defendant servicing the

foregoing mortgages and the successors to each of the foregoing shall be collectively referred to as the "Countrywide Defendants."

12. The gravamen of this Complaint lies in the simple fact that Defendants ceased acting as conventional money lenders and instead morphed into an enterprise perpetrating systematic fraud upon all of its constituencies. To feed a highly profitable machine wherein Defendants pooled loans and sold them to investors at inflated prices, Defendants flagrantly abandoned their own underwriting standards and fraudulently inflated property values, lending to individuals who they knew were grossly under qualified and would as a mathematical certainty default, solely to create more loan product to sell to more investors and turn more profit.

13. The fraud perpetrated by the Countrywide Defendants from 2003 through 2008, including by BofA starting no later than 2007, was willful and pervasive. It began with simple greed and then accelerated when Countrywide founder and CEO Angelo Mozilo ("Mozilo") discovered that Countrywide could not sustain its business. So Countrywide Defendants hatched a simple plan – they would pool their loans, fraudulently inflate the value of these pooled loans and then sell the pools to unsuspecting investors for spectacular profit.

14. But, to feed its investors and continue to make such never-before-seen profits, Defendants needed more borrowers. In turn, Countrywide Defendants began disregarding its own underwriting standards and approving borrowers who were grossly under-qualified in the name of getting as many loans out the door, and sold to investors for a profit, as possible.

15. Rapidly, these two intertwined schemes grew into a brazen plot to disregard underwriting standards and fraudulently inflate property values – person-by-person, city-by-city, county-by county - in order to take business from legitimate mortgage providers, and moved on to massive securities fraud hand-in-hand with concealment from, and deception of, Plaintiffs and other mortgagees on an unprecedented scale

16. From as early as 2004, Countrywide's senior management led by Mozilo, and Countrywide Defendants ***knew*** the scheme would cause a liquidity crisis that would devastate Plaintiffs' home values and net-worths. But, they did not care, because their plan was based on insider

trading – pumping for as long as they could and then dumping before the truth came out and Plaintiffs' losses were locked in.

17. As Mozilo and Defendants knew from no later than 2004, these loans were unsustainable for Countrywide and the borrowers and to a certainty would result in a crash that would destroy the equity invested by Plaintiffs and other Countrywide borrowers.

18. However, because Defendants were no longer holding these loans, but rather selling them off into the secondary market, and moreover because their loans were insured, Defendants stood to profit regardless of whether their loans performed or not. Defendants couldn't lose. Only their victims – Plaintiffs and other borrowers, as well as investors - stood to pay the price for Defendants' pervasive fraud, or so it seemed. As it turns out, Defendants fraud was so pervasive, that its crushing effects have devastated more than just its borrowers and investors, but has permeated the global economy. This Complaint, however, seeks redress as it pertains to only one prong of Defendants' pervasive fraud – the wrongs perpetrated on their borrowers: Plaintiffs herein.

19. These acts are now subject of numerous complaints and very large scale settlements. The largest recently announced settlement exceeds an amount of $8.5 billion to settle Claims regarding representations and warranties. The settlement represents over 530 REMIC's (Real Estate Mortgage Investment Conduits) with an original balance of $424 Billion dollars. The majority of Plaintiffs loans seeking relief in this complaint are part of these REMIC's.

20. At the very least, at the time of entering into the notes and deeds of trust referenced herein with respect to each of the Countrywide Defendants was bound and obligated to fully and accurately disclose to each borrower, including each Plaintiff herein, that the mortgage being offered to the Plaintiff was, in fact, part of a massive fraud that Countrywide knew would result in the loss of the equity invested by Plaintiff in his home and in severe impairment to Plaintiff's credit rating.[1]

21. It is now all too clear that this was the ultimate high-stakes fraudulent investment scheme of the last decade. Couched in banking and securities jargon, the deceptive gamble with consumers' primary assets – their homes – was nothing more than a financial fraud perpetrated by

[1] This Complaint uses "mortgage" and "deed of trust" interchangeably. Depending upon the state and other factors, a loan may be secured by either form of security instrument, the deed of trust being the customary instrument in California.

Defendants and others on a scale never before seen. This scheme led directly to a mortgage meltdown in California that was substantially worse than any economic problems facing the rest of the United States. From 2008 to the present, Californians' home values decreased by considerably more than most other areas in the United States as a direct and proximate result of the Defendants' scheme set forth herein. The Countrywide Defendants' business premise was to leave the borrowers, including Plaintiffs, holding the bag once Countrywide and its executives had cashed in reaping huge salaries and bonuses and selling Countrywide's shares based on their inside information, while investors were still buying the increasingly overpriced mortgage pools and before the inevitable dénouement. This massive fraudulent scheme was a disaster both foreseen by Countrywide and waiting to happen. Defendants knew it, and yet Defendants still induced the Plaintiffs into their scheme without telling them.

22. As a result, Plaintiffs lost their equity in their homes, their credit ratings and histories were damaged or destroyed, and Plaintiffs incurred material other costs and expenses, described herein. At the same time, Defendants took billions of dollars in interest payments and fees from Plaintiffs and other borrowers and generated billions of dollars in profits by selling their loans at inflated values.

23. When Countrywide pooled the loans it originated and sold them in secondary mortgage market transactions, Countrywide recorded gains on the sales. In 2005, Countrywide reported $451.6 million in pre-tax earnings from capital market sales; in 2006, it recognized $553.5 million in pre-tax earnings from that activity. But, after the liquidity crisis hit, in 2007 it recognized a mere $14.9 million in pre-tax earnings from that activity and reported an overall pre-tax loss.

24. Defendants continue to demand payment and to threaten to foreclose on Plaintiffs, despite the facts that: (1) Defendants have no proof that they own the notes and deeds of trust they seek to enforce; (2) there is considerable evidence that Defendants do not own the notes and deeds of trust they enforce and seek to enforce and based thereon, Plaintiffs allege that they do not; and (3) whether or not they can demonstrate ownership of the requisite notes and deeds of trust, Defendants lack the legal right to enforce the foregoing because they have not complied with disclosure requirements intended to assure mortgages are funded with monies obtained lawfully.

25. As a proximate and foreseeable result of the Countrywide Defendants' sale of the notes

and deeds of trust regarding Plaintiffs' properties and others similarly situated for more than the actual value of such instruments, securitization pools lacked the cash flow necessary to maintain the securitization pools in accordance with their indentures. The unraveling of the Defendants' fraudulent scheme has materially depressed the price of real estate throughout California, including the real estate owned by Plaintiffs, resulting in the losses to Plaintiffs described herein.

26. Countrywide has asserted in it securities filings that it sold its mortgages. Defendants have produced no evidence that they have re-acquired Plaintiffs' notes or deeds of trust, even though BofA has explained in its Form 10-K for the year ending December 31, 2010 that it can find "certain" notes and deeds of trust and BofA has confirmed to this Court that it has made a complete disclosure.

27. Plaintiffs believe and thereon allege that Defendants have made demand for payment on the Plaintiffs with respect to Plaintiffs' properties at a time when Defendants are incapable of establishing (and do not have any credible knowledge regarding) who owns the promissory notes Defendants are purportedly servicing. Plaintiffs believe and thereon allege that because Defendants are not the holders of Plaintiffs' notes and deeds of trust and are not operating under a valid power from the current holders of the notes and deeds of trust, Defendants may not enforce the notes or deeds of trust.

28. The Defendants include some of the world's leading financial institutions – institutions on which Plaintiffs relied. But, Plaintiffs trust was proven wrong by the illegal actions of the Defendants. As is clear from the mounting number of federal and state enforcement actions against Defendants, it is now widely recognized that Defendants have taken unethical and illegal actions in furtherance of their mortgage business.

29. As a result of the scheme alleged in the Complaint, Defendants and their senior executives have already agreed to pay in excess of $10 billion in restitution, settlements and fines, including: (1) a $2.6 billion to $3 billion settlement with Fannie Mae and Freddie Mac in December 2010 over claims that Countrywide fraudulently sold mortgage pools to the plaintiffs therein; (2) the United States Securities and Exchange Commission ("SEC") charged Mozilo and other former senior officers of Countrywide with fraud for the securitization counterpart of the fraud perpetrated on Plaintiffs and settled for the largest financial penalty ever paid by a public company's senior executive

in an SEC settlement; (3) the SEC has obtained a $150 million settlement from BofA for fraud involving its acquisition of Merrill Lynch; (iv) the United States Federal Trade Commission ("FTC") has obtained $108 million from two Countrywide mortgage servicing companies to settle FTC charges that they collected excessive fees from cash-strapped borrowers who were struggling to keep their homes; and (v) in a 2008 settlement since joined in by at least 44 states over some of the same practices alleged in this Complaint, BofA agreed to implement loan modifications estimated by California Governor Jerry Brown (attorney general at the time of the 2008 settlement) to total more than $8 billion. In addition to numerous other enforcement actions and lawsuits against Defendants herein, New York has commenced fraud proceedings against the recently departed BofA CEO.

30. BofA disclosed that it is subject to far-reaching investigations in its Annual Report for the Year Ending December 31, 2010 filed with the SEC on Form 10-K ("BofA 2010 Form 10-k"). Page 10 thereof states, in part:

> Law enforcement authorities in all 50 states and the U.S. Department of Justice and other federal agencies, including certain bank supervisory authorities, continue to investigate alleged irregularities in the foreclosure practices of residential mortgage servicers. Authorities have publicly stated that the scope of the investigations extends beyond foreclosure documentation practices to include mortgage loan modification and loss mitigation practices. The Corporation is cooperating with these investigations and is dedicating significant resources to address these issues. The current environment of heightened regulatory scrutiny has the potential to subject the Corporation to inquiries or investigations that could significantly adversely affect its reputation. Such investigations by state and federal authorities, as well as any other governmental or regulatory scrutiny of our foreclosure processes, could result in material fines, penalties, equitable remedies (including requiring default servicing or other process changes), or other enforcement actions, and result in significant legal costs in responding to governmental investigations and additional litigation.
>
> While we cannot predict the ultimate impact of the temporary delay in foreclosure sales, or any issues that may arise as a result of alleged irregularities with respect to previously completed foreclosure activities we may be subject to additional borrower and non-borrower litigation and governmental and regulatory scrutiny related to our past and current foreclosure activities. This scrutiny may extend beyond our pending foreclosure matters to issues arising out of alleged irregularities with respect to previously completed foreclosure activities. Our costs increased in the fourth quarter of 2010 and we expect that additional costs incurred in connection with our foreclosure process assessment will continue into 2011 due to the additional resources necessary to perform

the foreclosure process assessment, to revise affidavit filings and to implement other operational changes.

31. In furtherance of this scheme Defendants made misrepresentations and concealments of material fact intended to induce Plaintiffs and other unsuspecting borrower into taking a loan which the bank knew Plaintiffs and other borrower were unqualified for.

32. This action seeks remedies for the foregoing improper activities, among others, including a massive fraud perpetrated upon Plaintiffs and other borrowers by the Countrywide Defendants that devastated the values of their homes, in most cases resulting in Plaintiffs' loss of all or substantially all of their net worths.

THE PARTIES

Plaintiffs

33. All Plaintiffs listed in the above caption are competent adults and individuals residing in the State of California, who borrowed money from one or more of the Defendants or its subsidiaries or affiliates or successors and assigns between January 1, 2003, and December 31, 2008, secured by a deed of trust on his or her California real estate(s). At all material times hereto, one or more of the Defendants have acted as Servicer or some other control or capacity over processing the loan.

34. The Plaintiffs in this action have been grouped within this lawsuit based on Defendants' actions and resulting harms suffered by Plaintiffs. The Groups are as follows:

a. Group 1 Appraisal Plaintiffs.

b. Group 2 Loan Product Plaintiffs.

c. Group 3: Modification Plaintiffs.

d. Group 4: Foreclosure Plaintiffs.

35. Group 1 Appraisal Plaintiffs are those whom have claims and suffered harms as a result of Defendants' actions in relation to the appraisal process conducted and/or directed by Defendants. All Plaintiffs in this action relied on appraisals completed by, or at the direction of Defendants and therefore every named Plaintiff in this matter is a member of Group 1.

36. Group 2 Loan Product Plaintiffs entered into a loan with Defendants. All Plaintiffs herein signed a "Negative Amortization" loan with Defendants. Plaintiffs' harms are directly linked to

Defendants' actions in the loan origination process, including but not limited to the process of entering into the loan with Defendants and the loan terms contained in the loan.

37. Group 3 Modification Plaintiffs are those whom have claims and suffered harms as a result of Defendants' actions in relation to the loan modification process, including but not limited to representations Defendants would offer and grant modifications, delays in processing modification applications, modification application denials, promising to offer a loan modification, and/or denying modification application by Plaintiffs.

38. The harms suffered by Group 4 Foreclosure Plaintiffs are those Plaintiffs whom have lost their home due to Defendants' actions related to the foreclosure process.

39. Groups 1-4 all allege causes of action for Intentional Misrepresentation, Negligent Misrepresentation, and Violation of California Business and Professions Code § 17200, *et. seq*. Unfair Competition Law.

40. Additionally, Group 4 alleges a cause of action for Wrongful Foreclosure.

41. Each Plaintiff in this action has a declaration attached to this complaint in Appendix A.

42. All Plaintiffs herein have claims in Group 1 and Group 2 as all Plaintiffs relied on appraisals completed on the properties and all Plaintiffs signed a loan. Plaintiffs may also have claims in Group 3 and/or Group 4. Therefore, Plaintiffs will be in at least two groups, but may be in as many as all four groupings.

43. Based on information now available to them, fewer than 100 plaintiffs are alleging claims in amounts that would, as to them, equal or exceed the jurisdictional amount for federal jurisdiction under 28 U.S.C. § 1332(a).

44. These frauds and concealments, partial misrepresentations and affirmative misrepresentations were unknown to all Plaintiffs referenced herein at the time of loan origination. All Plaintiffs herein discovered these frauds and concealments beginning no more than 3 years prior to the date of filing this action. A reasonable person would have been unable to reasonably discover said frauds any earlier.

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Defendants

45. Prior to 1983, Defendant BANK OF AMERICA CORPORATION ("BofA") exclusively did business in California and has deep roots in California business and culture. Now a Delaware corporation, BofA is currently a national bank with its principal place of business in Charlotte, North Carolina and doing business in the State of California and County of San Diego.

46. At all times material hereto, Defendant COUNTRYWIDE FINANCIAL CORPORATION ("Countrywide") was a Delaware corporation, or a division or subsidiary of BofA, doing business in the State of California and County of San Diego. COUNTRYWIDE FINANCIAL CORPORATION now does business as BAC HOME LOANS SERVICING.

47. At all material times hereto, Defendant COUNTRYWIDE HOME LOANS, INC. was a New York corporation, or a division or subsidiary of BofA, doing business in the State of California and County of San Diego.

48. Defendant RECONTRUST COMPANY, N.A. ("ReconTrust") is a wholly owned subsidiary of BofA that has intentionally and maliciously concealed the true names of entities to which Plaintiffs' home loans were transferred by other Countrywide Defendants. ReconTrust is one of BofA's agents which acts as trustee under the deeds of trust securing real estate loans so as to foreclose on property securing the real estate loans held or serviced by BofA. The foregoing is part of a scheme by which the Countrywide Defendants concealed the transferees of loans and deeds of trust, inter alia in violation of California Civil Code § 2923.5 and 15 U.S.C. § 1641, as more fully described herein.

49. At all material times hereto, defendant ReconTrust was and is a National Banking Association organized under the laws of the State of Texas, doing business in the State of California and County of San Diego. Upon information and belief, though ReconTrust's powers are limited to performing as a trust company, Defendant BofA, and the other Bank Defendants (defined below), have regularly used ReconTrust to foreclose, as trustee with power of sale, trust deeds on California realty and realty in other states. Such foreclosures are commonly conducted non-judicially. Such foreclosures result in the dispossession of debtors, including certain Plaintiffs herein, and also entail the assertion in certain instances of claims for the deficiency between amounts allegedly owed and sale prices. Such foreclosures are without authority.

50. Defendant CTC REAL ESTATE SERVICES, INC. ("CTC") is a California corporation – corporation number C0570795 – and is a resident of Ventura County, California. Defendant CTC has acted alongside and in concert with BofA in carrying out the concealment described herein and in continuing to conceal from Plaintiffs, from the California general public, and from regulators the details of the securitization and sale of deeds of trust and mortgages (including those of Plaintiffs herein) that would expose all Defendants herein to liability for sale of mortgages of California citizens – including all Plaintiffs herein – for more than the actual value of the mortgage loans. The sale and particularly the undisclosed sale of mortgage loans in excess of actual value violates California Civil Code, §§ 1709 and 1710, and California Business and Professions Code § 17200 et seq., 15 U.S.C. §§ 1641 et seq. and other applicable laws.

51. At all times material hereto, Defendant LANDSAFE, INC. ("Landsafe") was a Delaware corporation, and was and is a wholly owned division or subsidiary of Countrywide or BofA, doing business in the State of California. Landsafe Appraisals is a division of Landsafe, which conducted the appraisals of Plaintiffs herein.

52. Plaintiffs are informed and believe that the Granada Network consisted of at least 75 companies that worked on the front lines for Mozilo and the Defendants to implement Countrywide's plan to "take over" a substantial portion of the California lending process community-by-community, and eventually statewide. As Plaintiffs become aware of the identities of members of the Granada Network through discovery, Plaintiffs will seek leave to amend this Complaint accordingly.

53. At all times material hereto, all Defendants operated through a common plan and scheme designed to conceal the material facts set forth below from Plaintiffs, from the California public and from regulators, either directly or as successors-in-interest for others of the Defendants. The concealment was completed, ratified and/or confirmed by each Defendant herein directly or as a successor-in-interest for another Defendant, and each Defendant performed the tortious acts set forth herein for its own monetary gain and as a part of a common plan developed and carried out with the other Defendants, or as a successor-in-interest to a Defendant that did the foregoing.

54. Plaintiffs believe and thereon allege that the agents and co-conspirators through which the named Defendants operated included, without limitation, financial institutions and other firms that

originated loans on behalf of the Countrywide Defendants. These institutions acted at the behest and direction of the Countrywide Defendants, or agreed to participate – knowingly or unknowingly - in the fraudulent scheme described herein.

55. Those firms originating loans that knowingly participated in the scheme are jointly and severally liable with the Countrywide Defendants for their acts in devising, directing, knowingly benefitting from and ratifying the wrongful acts of the knowing participants. Upon learning the true name of such knowing participants, Plaintiffs shall seek leave to amend this Complaint to identify such knowing participants as Doe Defendants.

56. For avoidance of doubt, such knowing participants include, without limitation, legal and natural persons owned in whole or in part by the Countrywide Defendants or affiliates thereof; legal and natural persons owning directly or through affiliates financial interests in Countrywide; legal and natural persons directly or through affiliates acting pursuant to agreements, understandings and arrangements to share in the benefits of the wrongdoing alleged in this Complaint and knowingly, to at least some degree, committing acts and omissions in support thereof; and legal and natural persons knowingly, to at least some degree, acting in concert with the Countrywide Defendants.

57. As to those legal and natural persons acting in concert without an express legal relationship with Countrywide Defendants or their affiliates, on information and belief, Countrywide knowingly induced and encouraged the parallel acts and omissions, created circumstances permitting and authorizing the parallel acts and omissions, benefited therefrom and ratified the improper behavior, becoming jointly and severally liable therefore.

58. As to those legal and natural persons whose acts and omissions in support of the Countrywide scheme were unwitting, on information and belief, Countrywide knowingly induced and encouraged the acts and omissions, created circumstances permitting and authorizing the parallel acts and omissions, benefited therefrom and ratified the improper behavior, becoming liable therefore.

59. Upon completion of sufficient discovery, if there are Plaintiffs herein whose loans were originated by financial institutions that were not directly or indirectly, knowingly or otherwise a part of the Countrywide scheme, but rather, in an unrelated transaction, the originating financial institution

later assigned servicing rights to the Countrywide Defendants, then those Plaintiffs will withdraw their loan origination claims against the Defendants with respect to such mortgages.

60. Conversely, to the extent that certain Plaintiffs herein become aware of information that provides a basis for asserting the Defendants herein are liable for the origination of their loans, those Plaintiffs reserve the right to seek leave of this Court to re-assert the appropriate claims herein.

61. The true names and capacities of the Defendants listed herein as DOES 1 through 1,000 are unknown to Plaintiffs who therefore sue these Defendants by such fictitious names. Each of the DOE Defendants was the agent of each of the other Defendants herein, named or unnamed, and thereby participated in all of the wrongdoing set forth herein. On information and belief, each such Defendant is responsible for the acts, events and concealment set forth herein and is sued for that reason. Upon learning the true names and capacities of the DOE Defendants, Plaintiffs shall amend this Complaint accordingly.

62. Defendants Bank of America, N.A., Countrywide Financial Corporation, BAC Home Loans Servicing, and Countrywide Home Loans, Inc. shall be collectively referred to as **"Bank Defendants"**

Relationship of Bank of America to Countrywide

63. BofA's public disclosures, as reflected in its filings with the SEC, make clear that BofA considers itself both a common enterprise operating as a greater whole and without meaningful distinctions as to its operating units, and the successor to Countrywide and its subsidiaries. As stated in BofA's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 ("BofA 2007 10-K"), "[i]n August of 2007, we made a $2.0 billion investment in Countrywide Financial Corporation (Countrywide), the largest mortgage lender in the U.S. In January 2008, we announced a definitive agreement to purchase all outstanding shares of Countrywide . . . The acquisition would make us the nation's leading mortgage lender and loan servicer. BofA 2007 10-K, at 108.

64. Thereafter, as stated in BofA's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2008 ("BofA June 30, 2008 10-Q"), "On July 1, 2008, the Corporation acquired Countrywide through its merger with a subsidiary of the Corporation." BofA June 30, 2008 10-Q at 11.

Again, BofA boasts in the BofA June 30, 2008 10-Q that "The acquisition of Countrywide significantly improved our mortgage originating and servicing capabilities, while making us the nation's leading mortgage originator and servicer." BofA June 30, 2008 10-Q at 49.

65. BofA further makes clear the commonality of its business enterprise with that of Countrywide, and the greater whole of its various subsidiaries and operating units, by stating again that "On July 1, 2008, the Corporation acquired Countrywide . . . creating the nation's largest mortgage originator and servicer." BofA June 30, 2008 10-Q at 108.

66. Countrywide's remaining operations and employees have been transferred to Bank of America, and Bank of America ceased using the Countrywide name in April 2009. On July 1, 2008, a New York Stock Exchange Form 25 was utilized to deregister and delist Countrywide's common stock, and on July 22, 2008 Countrywide filed Securities and Exchange Commission Form 15 deregistering its common stock under Section 12(b) of the Securities Exchange Act of 1934, as amended.

67. Plaintiffs are informed and believe, and thereon allege, that: (1) BofA and its wholly-owned and controlled subsidiaries are liable for all wrongful acts of Countrywide prior to the date thereof as the successor-in-interest to Countrywide; (2) BofA directly and through its subsidiaries and other agents sued herein as Does have continued the unlawful practices of Countrywide since October 31, 2007, including, without limitation thereof, writing fraudulent mortgages as set forth above and concealing wrongful acts that occurred in whole or in part prior thereto, and (iii) BofA and its subsidiaries are jointly and severally liable as alter egos and as a single, greater unified whole.

JURISDICTION

68. The predicate acts complained of herein did occur within the territorial boundaries of this court, and the corpus of the complaint centers on state law questions. Thus, jurisdiction is proper in this court.

VENUE

69. Venue of this action is proper in this County because the property of Alex and Nina Udarbe, among others, is the subject of this action and is situated in San Diego County and the Defendants' acts complained of occurred in California.

COUNTRYWIDE'S MANDATE FOR GROWTH – BUT AT WHAT COST?

70. Countrywide Financial operates a Mortgage Banking segment that produces mortgage loans through a variety of channels on a national scale. Nearly all of the mortgage loans the company produces in this segment are sold into the secondary market, mainly in the form of mortgage-backed securities. In 2006, 45% of those mortgages were conventional non-conforming loans, loans that were too large to sell to Fannie Mae or to Freddie Mac. The company abandoned its conventional role as a conforming loan lender and morphed into a securitization machine. The company generally performs the ongoing servicing functions related to the mortgage loans that it produced. It also provides various loan closing services, such as title, escrow and appraisal. The Mortgage Banking segment consisted of three distinct sectors: Loan Production, Loan Servicing and Loan Closing Services.

71. In order for Countrywide to fuel the ever growing securitization machine they had to produce loans. The role of Loan Production is to originate and fund new loans, and to acquire already funded loans through purchases from other lenders. Loan Production produces mortgage loans through four divisions of Countrywide Home Loans: Consumer Markets, Full Spectrum Lending, Wholesale Lending and Correspondent Lending. Consumer Markets and Full Spectrum Lending offered loans directly to consumers. Loans produced by these two retail divisions are originated, funded, and sold by Countrywide. Consumer Markets offers a wide variety of products, whereas Full Spectrum Lending focuses primarily on products appropriate for customers with less than prime-quality credit.

72. Wholesale Lending offers loans to consumers whose loans are originated by another mortgage broker. These loans are funded and sold by Countrywide, but originated by other lenders. Correspondent Lending purchased mortgage loans from other lenders, which include mortgage bankers, commercial banks, savings and loan associations, home builders and credit unions. These loans may be sold by Countrywide to end-investors on the secondary market, but are originated and funded by other lenders using warehouse credit line facilities provided by Countrywide Warehouse Lending.

73. Loan servicing services loans, i.e., collects payments from the borrower handles escrow accounts, tax and/or insurance payments (if applicable), then remits "advances" to the investor's trustee as specified in the Pooling and Servicing Agreement (PSA). Loan servicing typically retains a fraction of the payment made (typically 25 – 45 basis points of the unpaid principal balance) as a "servicing

fee". Loan servicing also generates income in the form of interest on monies received and held prior to paying scheduled advances to the trustee, fees charged for late payments, force-placed insurance, document requests, legal fees, payoff statements, etc.

74. Loan Closing Services are provided by LandSafe and its subsidiaries offer loan closing services, including real estate appraisal services, automated credit reporting products, flood determination services and residential title services for the six major counties of Southern California.

75. The Banking segment consisted of Countrywide Bank, FSB and Countrywide Warehouse Lending. Formerly, the bank was known as Countrywide Bank, N.A., a nationally chartered bank that was regulated jointly by the Office of the Comptroller of the Currency and the Federal Reserve, but it converted its charter to a federally chartered thrift that is regulated by the Office of Thrift Supervision. Countrywide Bank is the 3rd largest Savings and Loan institution and is the fastest growing bank in United States history. Assets from deposits are currently approaching $125 billion. Countrywide Bank primarily originates and purchases mortgage loans and home equity lines of credit for investment purposes. The majority of these loans are sourced through its mortgage banking subsidiary, Countrywide Home Loans. The Bank obtains retail deposits, primarily certificates of deposit, through the Internet, call centers and more than 200 financial centers, many of which were located in Countrywide Home Loans' retail branch offices as of April 1, 2007. Countrywide Warehouse Lending provides warehouse lines of credit to mortgage bankers, who use these funds to originate loans. These mortgage bankers are primarily customers of Countrywide Home Loans' Correspondent Lending division and the Capital Markets divisions; the mortgage bankers use warehouse lines of credit from Countrywide Warehouse Lending to help originate loans, and then sell those loans to Countrywide through Correspondent Lending or Capital Markets.

76. The Capital Markets segment primarily operates as a registered securities broker dealer, a residential mortgage loan manager and a commercial mortgage loan originator. CFC also operates broker dealers in Japan and the United Kingdom, an introducing broker dealer of futures contracts, an asset manager and a broker of mortgage servicing rights. With the exception of its commercial mortgage activities, the company transacts only with institutional customers, such as banks, other depository institutions, insurance companies, asset managers, mutual funds, pension plans, other broker

dealers and governmental agencies. Customers of its commercial real estate finance business are the owners or sponsors of commercial properties, who can be individuals or institutions. Countrywide Asset Management Corporation manages the acquisition and disposition of loans from third parties, as well as loans originated by Countrywide Home Loans, on behalf of Countrywide Home Loans. These are typically delinquent or otherwise illiquid residential mortgage loans, which have primarily been originated under Federal Housing Administration (FHA) and Veterans Administration (VA) programs. The Company attempts to rehabilitate the loans, using the servicing operations of Countrywide Home Loans, with the intent to securitize those loans that become eligible for securitization. The remaining loans are serviced through foreclosure and liquidation, which includes the collection of government insurance and guarantee proceeds relating to defaulted FHA and VA program loans. Securities trading activities include the trading of debt securities in the secondary market after the original issuance of the security. Underwriting activities encompass the assumption of the risk of buying a new issue of securities from the issuer and reselling the securities to investors, either directly or through dealers. Capital Markets primarily underwrites mortgage-related debt securities.

77. Founder Angelo Mozilo and David S. Loeb set out to corner the market and gain market share at all cost. By diversifying their mortgage holdings and creating all of the above mentioned entities they can keep all segments of a mortgage transaction in house. They successfully cut out all middlemen and became market-makers and market-manipulators all at the same time. In order to fuel the growth of the company they had to aggregate loans and had to lower their standards in order to meet their quotas. For a securitization machine to function properly, it must churn out as many loans as possible and take them to market. In the case of Countrywide they were wildly successful in cornering the market to the tune of 20% of all originations in the United States.

78. In order to continue its unprecedented growth and return equity to shareholders, Countrywide set out to become the “Wal-Mart” of banking, catering to middle and lower income Americans, and “helping” the less-well-off buy homes. Before 2004, Countrywide held itself out to the public, including Plaintiffs, as a well-run, prudent bank that was a pillar of its community, but starting in about 2004, Countrywide formalized a strategy that it began to implement as part of a movement

from low-risk to high -risk home loans. That move to high-risk-lending was motivated by three little words: "Gain on Sale."

79. Gain on sale is a measure of the profit when a loan is sold on the secondary markets. Like a drug required in even higher doses gain on sale became Countrywide's drug of choice. In 2004 Angelo Mozilo met with his lieutenants and gave a presentation entitled, "Shift to Higher Margin Products." The shift he was referring to was the shift away from less profitable government loans, to the more-profitable Option ARM, home equity and subprime loans. Subprime loans, typically priced with an interest rate at least 150 basis points (1.5%) above a bank's borrowing cost are eight times more profitable for a bank than a conventional loan.

80. By Countrywide creating all the new Capital Markets divisions they were able to cut out the middle men and maximize profits for the firm. In Mozilo's quest to seek superiority over his competitors, he threw caution into the wind and set out to dominate the industry by any means necessary regardless of the homeowners he hurt.

81. Rapidly, this mandate for growth devolved into a race to the bottom; systematically Defendants disregarded underwriting standards, fraudulently inflated property values, misrepresented the terms of their loans to their borrowers, and induce Plaintiffs into mortgage products they knew would devastate both Plaintiffs and the economy, but which would be highly profitable to Defendants-county – all in the name of selling mortgages on the secondary market for spectacular profit. In this race to the bottom, Countrywide became a fraudulent enterprise. They became dangerous.

COUNTRYWIDE & DEFENDANTS CEASED ACTING AS A CONVENTIONAL MONEY LENDER AND INSTEAD MORPHED INTO AN ENTERPRISE ENGAGED IN SYSTEMATIC FRAUD

82. During the 1980s and 1990s, the mortgage securitization business grew rapidly, making it possible for mortgage originators to make more loans than would have been possible using only the traditional primary source of funds from deposits. During that period, Countrywide made loans in accordance with its stated underwriting and appraisal standards.

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83. Under the traditional mortgage model, which Countrywide and Defendants originally subscribed to, a mortgage originator originated loans to borrowers, *held* the loans to maturity, and therefore retained the credit default risk. As such, under the traditional model, the mortgage originator had a financial incentive to ensure that (i) the borrowers had the financial ability to repay the loans, and (ii) the underlying properties had sufficient value to enable the mortgage originator to recover its principal and interest if the borrowers defaulted on the loans.

84. Traditionally, mortgage lenders financed their mortgage business primarily using funds from depositors, retained ownership of the mortgage loans they originated, and received a direct benefit from the income flowing from the mortgages. When a lender held a mortgage through the term of the loan, it received revenue from the borrower's payments of interest and fees, and also bore the risk of loss if the borrower defaulted and the value of collateral was not sufficient to repay the loan. As a result of this "**originate to hold**" model, the lender had an economic incentive to verify the borrower's creditworthiness through prudent underwriting to obtain an accurate appraisal of the value of the underlying property before issuing the mortgage loan.

85. With the advent of securitization, the traditional "**originate to hold**" model gave way to the **"originate to sell"** model, in which mortgage originators sold the mortgages and transferred credit risk to their investors through the issuance and sale of Mortgage Backed Securities. Securitization concurrently provided lenders like Countrywide with an incentive to increase the number of mortgages they issued and reduced their incentive to ensure the mortgages' credit quality.

86. With the aforementioned mandate for growth as the backdrop and incentive for their fraud, Defendants abandoned the traditional model of "**originate to hold**" and instead adopted the much more lucrative "**originate to sell**" model, and in the early 2000s Citi began to systematically disregard its stated underwriting guidelines in an effort to originate an unprecedented number of loans for securitization.

87. The fraud perpetrated by the Countrywide Defendants from 2003 through 2008, including Countrywide starting no later than 2003, was willful and pervasive. It begins with simple greed and then accelerated when Countrywide CEO Anthony Mozilo ("Mozilo") and Countrywide's board members and officers discovered that Countrywide could not sustain its business, unless it used

its size and large market share in California to systematically create fraudulent and predatory mortgage loans throughout California.

88. As Mozilo knew since at least 2004, these loans were unsustainable for Countrywide and the borrowers and to a certainty would result in a real estate market crash for at least Countrywide's customers, including the Plaintiffs in particular. So Mozilo, Defendants, and others at Countrywide hatched a simple plan – they would pool as many loans as possible, fraudulently inflate the value of these pooled loans and then sell the pools to unsuspecting investors for grossly unmerited profit.

89. Because Defendant Banks stood to reap so much more profit by securitizing and selling these loans on the secondary market, than they would by holding their loans under the conventional "originate to hold model" of traditional banking, **Defendants ceased acting as conventional money lenders and instead adopted the "originate to sell" model - originating loans with an eye towards *immediately* selling the loans on the secondary market, and becoming a servicer of the loan** – both immensely profitable. Even the Department of Justice August 2014 Settlement ("DOJ Settlement") with Defendants recognized "Countrywide's business model was to serve as an intermediary between borrowers seeking residential mortgages, and investors seeking to purchase loans in the secondary market," not as a conventional money lender. Exhibit 1 is the signed DOJ Settlement and Exhibit 2 is the DOJ Settlement Statement of Facts.
(https://www.justice.gov/iso/opa/resources/3392014829141150385241.pdf *DOJ Settlement, Statement of Facts* at 7). This business scheme was so clear that Countrywide had different standards for loan products depending on whether the loan product was to be sold or purchased for the Bank's portfolio. (*DOJ Settlement, Statement of Facts* at 10). Servicers however have significantly different incentives and motivations than do lenders. Servicers earn more from foreclosing and collecting late fees, thus creating a massive conflict of interest– Knowing that they would soon become servicers, Defendant Banks had an (additional) incentive to place borrowers into loans they knew their borrowers could not afford, because as servicers they would make more money that way, by collecting late fees, default fees, foreclosure fees, etc. etc. It was the ultimate conflict of interest.

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90. Moreover, because Defendants knew the purchasers of these loans (secondary market investors) would bear all the risk in the event of default , Defendants no longer had any incentive to verify a borrower' creditworthiness, or ensure that borrower qualified for (or could afford) the loans they were being given. Indeed, Defendants had (yet another) incentive to once again place borrowers into loans they knew their borrowers could not afford: profit (i.e. gain on sale); Defendants made money by selling as many loans as possible regardless of quality.

91. To feed their investors and continue to make such never-before-seen profits, Defendants needed more borrowers. In turn, Bank Defendants began disregarding their own underwriting standards, and approving borrowers who were grossly under-qualified, in the name of getting as many loans out the door, and sold to investors for a profit, as possible.

92. In fact, they *preferred* under-qualified borrowers. Because Defendants had taken out insurance policies against the possibility of default, Countrywide and its co-conspirators (Defendants herein) would get paid in the event of a borrower's default. In fact, in many cases, Defendants had taken out numerous redundant policies on the same property, so that when default occurred, Defendants were getting paid out multiple times – they weren't just breaking even, they were *actually turning a profit* when borrowers defaulted. In other words, Defendants had yet *another incentive* to place borrowers into impossible loans, because by doing so they made a lot of money.

93. Rapidly, these two intertwined schemes grew into a brazen plan to disregard underwriting standards and fraudulently inflate property values – county-by-county, city-by-city, person-by-person – in order to take business from legitimate mortgage-providers, and moved on to massive securities fraud hand-in-hand with concealment from, and deception of, Plaintiffs and other mortgagees on an unprecedented scale.

94. To further this scheme, Countrywide, using its size and prominent market share, began systematically creating false and inflated property appraisals throughout California, hand-in-hand with the other Defendants herein. The purpose was twofold:

a. First, by falsely inflating said property values, investors were defrauded into believing their investments in these loans were less risky than they actually were. This in turn led to more sales and even more profits on the secondary market.

b. Second, Defendants would then turn around and use these false property valuations to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms.

95. From as early as 2004, Countrywide's senior management, led by Mozilo, ***knew*** the scheme would cause a liquidity crisis that would devastate Plaintiffs' home values and net worths. But, they didn't care, because their plan was based on insider trading – pumping for as long as they could and then dumping before the truth came out and Plaintiffs' losses were locked in.

96. Defendants, and each of them, wrongfully acted and continue to act as if they are either the owner, beneficiary, successor, assignee or servicer, or have some other right, title, or interest in Plaintiffs' notes and deeds of trust, when, in reality, they have no basis to assert any such right, title or interest.

97. This action seeks remedies for the foregoing improper activities, including a massive fraud perpetrated upon Plaintiffs and other borrowers by the Defendants' business that devastated the values of their residences, in most cases resulting in Plaintiffs' loss of all or substantially all of their net worth.

98. The Defendants' business premise (although concealed from the Plaintiffs) was to leave the borrowers, including Plaintiffs, holding the bag as the Defendants used the Plaintiffs and other borrowers as pawns in massive securities games and fodder to feed its fraud on investors perpetrated on a global scale. This massive fraudulent scheme was a disaster both foreseen by the Defendants and waiting to happen. Defendants knew it, and yet Defendants still misrepresented material facts such as Plaintiff's qualifications for the loans and loan terms to induce the Plaintiffs into their scheme without telling them. In fact, had the Plaintiffs been aware of the true facts which the Defendants concealed and failed to disclose, they would not have entered into these transactions.

99. At the very least, at the time of entering into the notes and deeds of trust referenced herein with respect to each Plaintiff, the Defendants were bound and obligated to fully and accurately disclose to each borrower, including each Plaintiff herein, that the loan and mortgage being offered to the Plaintiff was, in fact, part of a massive fraud that the Defendants knew would result in the loss of

the equity invested by each Plaintiff in his or her home, the severe impairment of each Plaintiff's credit rating, and the other damages described in this Complaint.

100. These inaccuracies with respect to their Loan-to-Values ratios also indicate that the representations that were made to them were false and that at Countrywide's direction appraisal practices were unsound. Countrywide and their affiliates furnished appraisals to the Plaintiff's that they understood were inaccurate and that they knew bore no reasonable relationship to the actual value of the underlying properties.

101. Since the homes of Plaintiffs herein were Defendants' main target, this scheme led directly to a mortgage meltdown for Plaintiffs in this complaint that was substantially worse than any economic problems facing Defendants' borrowers in the rest of the United States.

102. As a result of Defendants' improper scheme, Plaintiffs lost their equity in their homes, their credit ratings and histories were damaged or destroyed, and Plaintiffs incurred material other costs and expenses, described herein. At the same time, Defendants took from Plaintiffs and other borrowers billions of dollars in interest payments and fees and generated billions of dollars in illegal and fraudulently obtained profits by selling their loans at inflated values and using the loans as collateral for fraudulent swaps.

103. Further as a result of Defendant's (1) artificial and fraudulent inflation of Plaintiffs' property values, and property values throughout the State of California, as well as (2) Defendants' abandonment of their own as well as industry-standard underwriting guidelines, coupled with (3) Defendants incentive to package and sell as many dollars' worth of loans as they could to the secondary market, Defendants placed Plaintiff-borrowers into loans which were considerably larger than were justified by (a) the *true* uninflated valued of their properties, (b) Plaintiffs true uninflated incomes and (c) by Defendants own underwriting guidelines. As a result of Plaintiffs were placed into larger loans than they could afford or should have been placed into. The additional fees, points and interests paid as a result of the higher/inflated loan amounts constitute damages, and legally cognizable sources of restitution.

104. Further, Defendants either directly or through their subsidiaries, including Landsafe and CTC Real Estate Services, often charged fees associated with initiating or conducting the foreclosures

resulting from their fraudulent lending including inspection fees, default fees, late fees, advance fees, attorney fees, and trustee fees. In short, Defendants made money by wrongfully initiating foreclosures against Plaintiffs herein. The award of damages or restitution for these unmerited fees obtained through deceit is proper.

THE FRAUDULENT APPRAISAL PROCESS & DEFENDANTS' SILENT MARKET FIXING SCHEME: A POLICY OF EXERCISING CONTROL OVER APPRAISERS AND THEIR VALUES

105. An accurate appraisal performed pursuant to a legitimate appraisal process is critical to calculating the loan-to-value ("LTV") ratio, a financial metric commonly used to evaluate the risk associated with a mortgage, and which would also be used as part of the valuation of a Mortgage Backed Security (which were sold on the secondary market for profit).The LTV ratio expresses the amount of the mortgage or loan as a percentage of the appraised value of the collateral property. For example, if a borrower seeks to borrow $90,000 to purchase a home appraised for $100,000, the LTV ratio would be $90,000 divided by $100,000, or 90% - which was viewed in the industry as a risky loan. Typically, any loan over 80% LTV was considered risky, and would require the purchase of "Mortgage Insurance" to insure against the additional risk associated with such high LTV loans. The idea being that a high LTV means that a borrower has invested little of his own money in the property, and is thus more likely to walk away from the property when things get tough. Now imagine the above scenario with a slight modification - instead of the above property being appraised at $100,000 dollars, the appraisal was manipulated to reflect that the home was instead $112,500, now the Loan-to-Value ratio would appear as a much safer, and less risky 80% LTV ($90,000 Loan divided by $112,500 property value = 80%)

106. From an **investor's perspective**, a high LTV ratio represents a greater risk of default on the loan, which means they are unwilling to pay as much for that loan as they would one which was less risky. This is true for a number of reasons. First borrowers with a small equity position in the underlying property have "less to lose" in the event of default. Second, even a slight drop in housing prices might cause a loan with a high LTV ratio to exceed the value of the underlying collateral, which might cause the borrower to default and would prevent the issuing trust recouping its expected return in

the case of foreclosure and subsequent sale of the property. Investors were willing to pay much higher prices for loans with a low LTV ratio.

107. From the **Defendant bank's perspective**, their reasons for fraudulently inflating Plaintiff's appraisals, and engaging in a scheme to fix the market was four-fold

a. First, because of their shift from the "originate to hold" model to the "originate to sell" model, Defendants were incentivized to enter into as many loans as possible to sell on to the secondary market for profit. Because they weren't holding these loans anymore, Defendants held no risk – they had no reason to ensure that the borrower was adequately qualified, or more importantly, in the context of *this* discussion, that the property had sufficient value, because Defendants immediately turned around and sold that loan. Here's where things take a turn for the worst – **because investors were willing to pay more for less risky loans (lower LTV loans), Defendants were given an incentive to fraudulently inflate the appraisal values of their property**, thus making the collateral (the subject property) of the loan seem safer to the investor, and thus more valuable to them. More value to the investors means more money in Defendants pockets.

b. Second, Defendants had another reason for driving the prices of real estate up – **by doing so Defendants created the illusion of a naturally appreciating real economy, which resulted in a purchase *and* refinance boom** – which meant more loans for Defendants, and thus more money. And so it began, Defendants quickly embarked on a scheme to inflate their appraisals, and more broadly, property values throughout the State of California, because, in short, they made a *lot more money by doing so*.

c. Third, by doing so, Defendants intended to induce Plaintiffs to consummate their purchase transactions by falsely reassuring them that they were paying what the home was worth, and not more – the result of which was, once again, more loans generated by Defendants and thus more profit. Put another way, the conspiracy of Defendants intentionally inflated appraisals throughout California, including those of

Plaintiffs herein, with the intent of inducing Plaintiffs to enter into their loans, and moreover with the intent of assuring them that their collateral was sound.

d. Fourth, by driving the prices of real estate up, borrowers were required to take out larger loans to afford the same property, once again resulting in more profit to Defendants

108. At Countrywide and Defendants' behest, and at their direction, Landsafe Appraisals began systematically inflating the valuations they rendered upon the subject properties of each loan, including the loans of Plaintiffs herein. As is common knowledge in the real estate industry, appraisers are required to calculate the value of a home based almost entirely on the value of other nearby homes (called **comparables aka "comps**"). Defendants, including Countrywide and Bank of America seized on this vulnerability in the system. Countrywide directed Landsafe to begin systematically inflating the valuations they rendered upon the subject properties of each of their loans (including loans of Plaintiffs herein), *knowing that by doing so* their falsely inflated valuations would act as comps upon which numerous *other* appraisers based their valuations of *other* homes. **LandSafe's and Defendants' inflated appraisals caused other homes to be valued for more than they were worth, which in turn acted as the predicate for even higher appraisals, and which, in turn, caused even more homes to be valued for more than they were worth**. The result was a vicious self-feeding exponential cycle, both expected and intended by Defendants; the result was the intentional, systematic, artificial inflation of home values throughout California.

109. The inevitable and intended result of Defendants' scheme was the creation of a pricing "bubble" in the real estate economy, created by Defendants, and designed to manipulate and inflate property values for the purpose of making further profit without regard to the harm it inflicted to Plaintiffs herein, California's real estate economy, and more broadly, the American economy mattered little.

110. Because Landsafe and Countrywide (the single largest volume lender in America at the time) had such massive market share, they had the means and the ability to fully manipulate the market on a scale that few others could, and indeed they did.

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111. Because Defendants' silent conspiracy to fix California real estate prices was unknown to Plaintiffs, Plaintiffs had no choice but to accept the inflated values of the homes on sale as true when Plaintiffs went to purchase a property. In other words, Plaintiffs had no choice but to rely on what appeared to be true market values in deciding to purchase their homes. They had no way of knowing that the value of the homes they were purchasing was not the result of naturally-occurring appreciation, but rather Defendants' silent fraud and market fixing.

112. From the **Borrower's perspective** (Plaintiffs herein), the harm was five-fold:

a. The hyper-inflated property values resulting from Defendants' inflated appraisals and market-fixing scheme directly caused Plaintiffs to pay a substantially higher price for their home than they would have otherwise and much more than their home was truly worth at the time. The additional amounts Plaintiffs were forced to pay above and beyond the true uninflated value of their property at the time of purchase, constitutes damage to Plaintiffs directly caused by Defendant's scheme. The damage didn't end there however - the unraveling of Defendants' scheme sent the market into a downward spiral, causing Plaintiffs' home value to plummet *much below the true value* of the property at the time of purchase. These two losses in sum constitute Plaintiffs' loss of equity, and can be determined by subtracting the current depressed value of Plaintiffs' property from the artificially inflated price they were forced to purchase it for. Even for those Plaintiffs who did not purchase their property, but rather refinanced it, the demise of Defendants' scheme drove the value of their property far below its original purchase price, once again resulting in the loss of substantial equity.

b. Another intended effect of Defendants' silent market-fixing/appraisal inflation fraud was that Plaintiffs were forced to take out larger loans to purchase the inflated-value homes. Not only were Plaintiffs forced to pay additional principal on this artificially created-value, but additional interest as well. As an example, let's say that because of Defendants' market inflation, Plaintiffs purchased a home for $600,000 (when in reality its true uninflated value would have been $500,000), and took a loan from

Defendants at 6% interest. Not only were Plaintiffs forced to pay $100,000 more for this home than they should have had to, but they were also forced to pay interest on that additional $100,000 in false value, in the amount of $500 dollars per month. Absent Defendant's misrepresentation, Plaintiffs would never have needed to pay the interest on this falsely created value. The additional interest Plaintiffs were forced to pay constitutes damage to Plaintiffs.

c. For the same reason as directly above (in sub-paragraph "b"), Plaintiffs were also forced to pay additional fees and points (all of which are a function of the inflated loan size). As is common knowledge throughout the industry, lenders, including Defendants herein, often charge what are known as "points" to originate a loan. Charging one "point" is another way of saying that the bank will charge you 1% of your loan amount. Two points would be 2% of the loan amount, etc. etc. Now, using the above example (of a 500k home, artificially inflated to 600k), let's say a borrower was forced to pay 2 points (or in other words 2% of his total loan amount). Because the loan amount was inflated he was forced to pay 2% of 600k ($12,000), when in reality, absent Defendants' scheme, the borrower would only have had to pay 2% of 500k ($10,000). The additional $2,000 paid ($12,000 - $10,000) constitutes additional damage.

d. The hyper-inflated property values also caused Plaintiffs to pay substantially higher property taxes.

e. Defendants used these inflated values to induce Plaintiffs and other borrowers into entering larger loans on riskier terms than a reasonable borrower would, absent Defendant's misrepresentation.

f. The resultant higher payments, coupled with the housing crash, resulted in Plaintiffs' inevitable default, damaging their credit, and upon which Defendants charged a host of excessive fees (trustee fees, default fees, cleanup fees, inspection fees, late fees, advance fees, and attorney fees) all of which were marked up dramatically. In short, Defendants couldn't lose; they were making money no matter what, and were

benefitting from Plaintiffs' default. By tossing on so many fees Defendants made it impossible for Plaintiffs to be able to ever pay off their "default" amounts. Why? Because Defendants made money by doing so. Remember, that by this time, Defendant Banks had already sold these loans to their investors, and were only acting as servicers. Servicers have significantly different motivations than do lenders. Servicers earn more from foreclosing even when the noteholder (investors) may benefit financially in the long-term by modifying Plaintiffs' loans. And because they were servicers (rather than note-holders), Defendants' incentives were not to preserve the loans and prevent default, but rather to the contrary, they made money initiating foreclosures and charging fees. In other words Defendant Banks' interests as a servicer were exactly the opposite of those when they originated the loan and were note-holders. By making it impossible for Plaintiffs to pay off their unilaterally imposed default amounts, Defendants could come in and scoop up whatever equity Plaintiffs had left in the property. It was a win, win, win scenario.

113. Many mortgage loan originators, including Countrywide and Defendants herein, allowed the sales personnel or account executives to order and control the appraisal process. These personnel were typically on a commission-only pay structure and were therefore motivated to close as many loans as possible. These sales personnel and account executives would pressure… borrowers to accept larger loan amounts that they were able to afford and would falsify data in order to secure approval for those higher loan amounts. All of these actions were taken at the direction of Countrywide.

114. According to the April 7. 2010 FCIC testimony of Richard Bitner, a former executive of a subprime mortgage originator for 15 years and the author of the book *Confessions of a Subprime Lender*, "the appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted, [and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value." He continued:

> To put things in perspective, during my company's history, half of all the loans we underwrote were overvalued by as much as 10%. This means one out of two appraisals were still within an acceptable tolerance for our end investors. Our experiences showed that 10% was the most an appraisal could be overvalued and still be purchased by

> investors. Another quarter that we reviewed were overvalued by 11-20%. These loans were either declined or we reduced the property to an acceptable tolerance level. The remaining 25% of appraisals that we initially underwrote were so overvalued they defied all logic. *Throwing a dart at a board while blindfolded would've produced more accurate results*.

115. Mr. Bitner testified about the implications of inflated appraisals:

> **If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals**. The process then repeats itself. We saw it on several occasions. We'd close a loan in January, and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. Of course, demand is a key component to driving value, but the defective nature of the appraisal process served as an accelerant

116. Mr. Bitner testified that the engine behind the increased malfeasance was the Wall Street Banks: "[T]he demand from Wall Street investment banks to feed the securitization machines coupled with an erosion in credit standards led the industry to drive itself off the proverbial cliff."

117. Alan Hummel, Chair of the Appraisal Institute, testified before the Senate Committee on banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraiser "experience[d] systemic problems of coercion" and were "ordered to doctor their reports" or they might be "placed on exclusionary or 'do-not-use' lists." Too often, this pressure succeeded in generating artificially high appraisals and appraisals being doing on a "drive-by" basis which appraisers issued their appraisal without reasonable bases for doing so

118. A 2007 survey of 1,200 appraisers conducted by October Research Corp., which publishes *Valuation Review*, found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through. This figure was nearly double the findings of a similar study conducted just three years earlier. The 2007 study also "found that 75% of appraisers reported 'negative ramifications' if they did not cooperate, alter their appraisal, and provide a higher valuation."

119. Because Landsafe Appraisals was wholly-owned by Countrywide, Countrywide and Defendants herein directed Landsafe to provide the results requested and engaged in a systematic practice of pressuring and intimidating appraisers into using appraisal techniques that met Countrywide and Defendants' business objectives even if the use of such appraisal technique was improper and in

violation of industry standards and prevailing law. Countrywide black-listed appraisers who would not provide appraisal reports with Countrywide's expectations.

120. This coercion to fraudulently inflate appraisal values was particularly rampant in the context of refinance transactions. When a property didn't appraise for a high enough value, a deal wouldn't "go through." This meant that (1) the loan consultant on the transaction wouldn't get a commission, (2) the Area Divisions (sometimes referred to as "Home Loan Centers" – often comprised of hundreds of loan consultants over several cities, and managed by a single manager) which was paid handsomely for each funded loan wouldn't get paid, and (3) Defendants wouldn't be able to sell the loan on the secondary market for profit. Nobody made money. However, the system was set up to allow coercion, bribery, and undue influence over the appraisers. Loan consultants would contact appraiser and direct them specifically as to what value was "needed" to make the deal go through, some even going so far as to give gifts to the appraisers, and many were given outright bribes. Area Division managers who also had a financial incentive as mentioned earlier, would contact appraisers and demand certain values from them. The same Area Division Managers, because of their power and influence within the company, would even go so far as to call the appraisal group's *managers* and request (read "demand") an appraisal to come in at a certain value, or if that appraisal had already been rendered and it was too low, would request the appraisal value to be "bumped" or increased. The Area Division Managers who often had personal or friendly relationships with the Appraisal *managers* would coerce, bribe or influence, give gifts to or "call in favors" from the Appraisal managers to ensure that the appraised value of the subject property was high enough to make the deal "go through", so that all parties could make their money.

121. This coercion also existed in the context of purchase transactions. Indeed, Landsafe and Defendants had an internal policy requiring their appraisers to appraise purchase transactions at *whatever* the agreed upon sale price of the home was, if not higher (to allow Defendants to roll costs and fees into the body of the loan - making the loan an easier sell since borrowers would have to spend less out-of-pocket), *regardless* of whether or not such value was truly justified or supported by the market and/or surrounding comps. By doing so, Defendants intended to induce Plaintiffs to consummate their purchase transactions by falsely reassuring them that they were paying what the

home was worth, and not more (when in reality they almost always were paying more). This policy also played directly into Defendants broader market fixing scheme insofar as it further fueled false inflation by removing the "hurdle" of unbiased appraisers who would provide checks & balances in the price-setting process of a sale negotiation. Moreover, as mentioned, this policy actually allowed for appraisers to appraise a home for even higher than the sale price so that Defendants could build loan costs and fees into the sale price, and to allow borrowers to get kick-back credits from sellers. At Defendant Bank's suggestion, then, the buyer and seller would then increase the sale price accordingly to allow the buyer to make the loan work; and of course the seller would oblige because it guaranteed the sale of their loan. In turn, these higher sales prices and appraisals acted as inflated comps in future home appraisals, and had the intended net effect of inflating the valuations of other properties, and falsely inflating the overall market.

122. On other occasions appraisers and/or their managers would be instructed to use overvalued, inflated or out-of-area comps from non-comparable *superior* properties in valuating the subject property for the purpose of arriving at a higher value than would be supported by nearby or appropriate comps. Defendants intended this to artificially inflate the appraised value of the subject property to increase loan volume.

123. On the rare occasion when a loan consultant's or Area Division Manager's influence didn't get the appraiser to inflate the value of the appraisal by a sufficient amount, Defendants' policies gave them another, more effective way to fraudulently inflate the amount – they were allowed to hire an *outside appraiser*. It was well known in the industry that outside appraisers would deliver an appraisal in the amount they were told to deliver. Why? Because they were being paid directly by the loan consultant, or the Area Division Manager. In other words, loan consultants and Area Division Manager's had outside appraisers "in their pockets." Outside appraisers would deliver the results (meaning inflated values) they were expected to deliver for two reasons: (1) In the interest of keeping the client happy and hopefully earning future business and (2) for fear of not getting paid on their individual deal if they didn't deliver the results they were expected to deliver. This procedure (allowing the hiring of easily-influenced outside appraises) was explicitly made part of Defendants'

own policies, and its use was encouraged by Defendants, as well as their mid-level and upper management.

124. This coercion and influence even existed from the top down – Regional Managers (responsible for multi-state regions of the country) would demand appraised values to be inflated or changed to make deals happen. This pattern was not only tolerated by Defendants, but ratified and encouraged by them, because more funded loans meant greater profit with no increase in risk. In fact, Defendants had intentionally set up the appraisal system in such a way as to allow for the exercise of influence over appraisals and the appraisal departments. This influence was intended and foreseen.

125. In short, Defendants intentionally designed an appraisal system which they could manipulate through influence and coercion to further their own ends – namely, profit. By its very design, the independence of thought necessary for a professional appraiser to render a good faith opinion was decimated. (1) Defendants *owned* the very appraisal company which was supposed to render independent appraisals. Then, (2) Defendants through its explicit (as well as unwritten) policies and procedures, intentionally allowed their own employees who made commission/money as a function of every funded loan (managers, loan consultants, etc.), to contact individual appraisers and bribe, exercise influence, call in favors, harass, and coerce appraisers into rendering the exact value they needed. And finally, when all else failed (3) Defendants set up a fail-safe-they created an internal policy which allowed for the hiring of outside appraisers who would provide appraisals with the numbers that they were directed to.

126. Moreover, as Landsafe was Countrywide's wholly owned subsidiary, Landsafe was specifically directed by Defendants to systematically "bump" or inflate appraisal values of homes throughout California, with the intent of creating housing appreciation, leading to a real estate boom, which Defendants could then capitalize on by selling more loans at even higher loan amounts. From the very top to the very bottom, Defendants created a system intended to render consistently inflated appraisals. But they knew the 'boom' they were creating, was one stilted up and fueled by their fraud – would come crumbling down destroying any and all equity they had in their home.

127. These artificially inflated appraisal reports and values were then used by homeowners and real estate agents alike in setting sales prices for their homes, resulting in artificially inflated sales,

both known and intended by Defendants. Defendants told their borrowers that the value their property appraised for was the true value of their property. Furthermore, Defendants went so far as to furnish the appraisal reports to many of their borrowers, including Plaintiffs herein. The result was a vicious exponential cycle. The artificially inflated sales would act as **comps**, inflating the sales prices of other homes. The cycle would repeat. And Defendants intended it to repeat because it perpetuated an inflationary real estate economy in California, which resulted in massive profit to the Defendant Banks. Countrywide and Defendant conspirators perpetrated this systematic appraisal fraud at the direction of the conspiracy, and with the knowledge and acquiescence of their executives and board members.

Countrywide's Massive Scheme to Artificially Inflate Property Values & Fix the Real Estate Market Through its Wholly-owned Subsidiary: Landsafe Appraisals

128. To carry out this fraud, Countrywide, hand-in-hand with the other Defendants herein, used its size and market share as the largest lender in California to systematically create false and inflated property appraisals throughout California, through its wholly-owned subsidiary Landsafe Appraisals. (Landsafe Appraisals is a division of Defendant Landsafe, Inc. – hereinafter "Landsafe")

129. Landsafe Appraisals was created in 1996 by Mozilo. Mozilo figured that if he could control all of the settlement service providers, including appraisers, it would make it easier for Countrywide Defendants to carry out this fraud. Any borrower, broker or lender that chose to conduct business with Countrywide was forced to use their settlement service providers as a standard course of business. If a broker submitted a loan, the appraisal was to be done by someone on the Landsafe approved appraisal list. The homeowners were also required to pay for a secondary appraisal review through Landsafe. Since there were two appraisals that were done on each property the aggregator, Countrywide, was now able to choose which appraisal would suit them best for their multiple transactions. The homeowners would be disclosed one value and the secondary appraisal done by Landsafe could be used for Secondary Market purposes.

130. As the owner, Countrywide exercised its total control over Landsafe to artificially inflate and manipulate the values of these properties, including the properties of Plaintiffs, to further its fraud and increase its profits. Their purpose was twofold:

a. First, by falsely inflating said property values, investors were defrauded into believing their investments in these loans were less risky than they actually were. This in turn led to more sales and even more profits on the secondary market.

b. Second, Defendants would then turn around and use these false property valuations to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms. The result was, again, more profits.

131. Furthering this scheme, Countrywide then struck sweetheart deals with some of the Nation's largest homebuilders in which they collaborated to artificially inflate the values of new properties being developed by those entities, and through a joint venture called Delaware Secular LLC they would become part of the Countrywide Lender family. Some of the largest homebuilders such as KB Home Loans, Jon Lang Homes, K Hovnanian, and many others were all part of the plan. KB Home Loans, a Countrywide Mortgage Ventures, LLC series was a Countrywide Joint Venture. The unsuspecting homebuyers would be forced to pre-qualify through the builders' "In-House Lender" and they would be incentivized with offers of free upgrades or credits towards their closing costs only to be overcharged for these loans and artificially inflated purchase price that would cover the incentives. Since Countrywide was the "in-house" lender they could easily manipulate the value of the homes since their own appraisers would be appraising the properties, and in fact, they did just that.

132. Hand-in-hand with their builders and Landsafe companies, Defendants could carry out the fraud without any outside scrutiny. If the appraisals were done by independent appraisers the homeowners would have found out the homes they were purchasing or refinancing were being overvalued and that the loans they were obtaining was taking every last bit of equity out of their homes. The customer never had a choice as to the settlement providers. Countrywide Defendants controlled and took the choice out of the customer's hands and directed and collaborated with all their partners to systematically inflate and disgorge the homeowners of their freedom to choose and suck every last bit of equity out of their homes. In furtherance of this act they used the manipulated property valuations to seek premiums on Secondary Market transactions. Countrywide Defendants not only defrauded the Plaintiffs, but the rating agencies that graded the paper being sold, the insurance companies who assessed the risk of the loans being insured through loan to valuation risk models and their investors.

133. An internal letter from a Landsafe employee-turned-whistleblower, to Countrywide's top execs makes clear that not only were Landsafe & Countrywide engaged the *exact wrongs complained of herein* – namely the systematic and fraudulent inflation of appraisal values for the purpose of fixing the market - but moreover that Countrywide knew of this fraud and ratified it. That letter states:

> I believe that [Countrywide] and KB homes are engaged in a fraud to manipulate the local market…. In looking at Catechis reports, when he needs to for value, he goes outside the market to access **superior sales to bump up the market and the uses the same sales in future sales, thus establishing and manipulating the market**. The appraisal reports I have examined have a **continual characteristic of selective manipulation of the market data in an effort to pump up the market**. It is my opinion that, based on very limited data, we could be making 115% loans in the markets and if you examine some KB Homes subdivisions you see significant foreclosure rates. I believe that by our allowing the situation to continue we are condoning the activity…. I am even more concerned that…. the individuals who mandated that only one appraiser be utilized may be a Countrywide employee and could be implicated in a conspiracy to defraud both the homeowners and stockholders.
>
> **We are <u>charged with the responsibility</u> of protecting our client's assets.** If I am correct on any of this, and if it blows up, **the blame will rightly fall on us for failing in our task.** This has the potential to be a lightning rod for the demise of Landsafe and **we will need to act to make sure every effort has been made to safeguard against this**…

<u>Defendants Systematically Abused & Abandoned Their Underwriting Guidelines To Place Unqualified Borrowers Into Loans They Could Never Afford</u>

134. Defendants' fraud was multipronged and to support their scheme, Defendants needed more borrowers. In order to generate greater volume, Defendants Banks systematically and intentionally began disregarding their own underwriting standards, and approving borrowers who were grossly under-qualified, in the name of getting as many loans out the door, and sold to investors for a profit, as possible.

135. In other words, not only did Defendants inflate appraisal values in the name of making the loans appear safer to investors, and thus more profitable to the banks, but Defendants also abandoned their own underwriting guidelines to approve more and more borrowers for loans. In doing

so, Defendants intentionally placed borrowers into loans which would imperil their entire livelihoods, and often cases into loans whose default was an absolute mathematical certainty. The result was, once again, more profit obtained through deception.

136. To achieve their fraud, Defendant Banks intentionally and grossly falsified Plaintiffs' salary, income, bank accounts, liquid assets, non-liquid assets, employment, real estate owned values, rental income, and other pertinent financial data, and by doing so simultaneously achieved two goals. First, they were able to approve borrowers who could never have been approved under their own published conventional underwriting guidelines (as well as industry standard underwriting guidelines used throughout the United States.) Second, they were able to conceal from the investor the highly risk nature of the loan, which resulted in more profit to the Bank. Investors were willing to pay more money for less risky loans. The translation is that Defendants had every incentive to deceive borrowers into entering loans which they realistically could never afford. The result was that Defendants turned unimaginable ill-gotten profit, *at the sole expense of their borrowers*. When the music stopped, only the borrowers were left without a chair.

137. In fact, Defendants intentionally put mechanisms and programs in place to direct Countrywide employees and outside Loan Consultants (and others with similar titles tasked with selling Countrywide loan products) to **falsify** the income, asset and other material information of their borrowers without a borrower's knowledge or consent. One such program was called the **"Stated Income"** program. Under this program, Defendant Banks would take as true any income stated on the application, without requesting any documentation in support. Seizing this unbridled free-for-all, Defendants' own employees who were paid commission based on the number and size of loans they got approved, rampantly falsified material income and asset information of their borrowers. By doing so they were paid more commission. But more importantly, Defendant Banks themselves created more product to be sold on the secondary market for even more profit. In other words, Defendants intentionally put policies and programs into motion which would allow it to place unqualified borrowers into loans – all while maintaining the semblance of propriety, and all without ever having to disclose to their investors or their borrowers that the incomes listed on their loan applications were false.

138. Defendants, particularly Countrywide, intentionally set up these policies and programs to place unqualified borrowers that were used so frequently they were refer to as so-called **"Shadow Guidelines."** And as if this was not bad enough, there were even loopholes for underwriters to write loans where the borrower did not even meet these "Shadow Guidelines." If the loan application did not meet the "Shadow Guidelines," Countrywide would determine if the loan could be priced and sold on the secondary market. If so, then without regard to whether the borrower was truly qualified or not for any loan, Countrywide would still put the borrower into a loan they knew the borrower could not afford.

139. Defendants, despite the numerous loopholes and exceptions, never disclosed how the borrower qualified for their loan. Defendants did not disclose whether borrowers, including Plaintiffs, qualified cleanly for the loan, met "Shadow Guidelines," or made it through some other loophole. Instead, borrowers were simply qualified and written a loan that Defendants knew the borrower could not afford.

140. Numerous others similar programs were also adopted such as **"stated assets**", and **"low documentation loans."** Both of which allowed Defendants to falsify information in order to get loans approved which would never have been approved under traditional documentation. These programs were intentionally created to allow Defendants to encourage the falsification of information in order to sell unsustainable loan products.

141. Even in the absence of these programs Defendants and their employees nevertheless had the ability to and did, falsify their borrower's income and assets through numerous other means. For example, Defendants would inflate a borrower's income by making it appear as though the borrower was earning rental income on of their other properties when in fact they were earning none. To legitimatize this false income, Defendants would draft fictitious rental agreements, showing the false monthly rental income, complete with the forged signature of a non-existent renter.

142. Defendants *regularly* inflated borrowers' incomes by over 50% and on many occasions by as much as an egregious 700%.

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Authority to Bind

143. Defendants, agents, and employees ("**Loan Representatives**") who were specifically employed by Defendants to walk Plaintiff borrowers through the loan process, and vested with the authority, both apparent and actual, to bind Defendants made representations that were not made as statements of opinion, but as statements of fact.

144. These Loan Representatives were charged with the duties of educating borrowers about the loan process, the various type of loans, the payments that would result for each given type of loan, the pros and cons of each loan, how each loan would amortize, offering interest rate quotes, cost quotes, point quote, and APR quotes, and running all the various payment calculations and debt to income calculations. These Loan Representatives were also charged with properly taking each borrower's loan application, as well as the loan application fee and/or ensuring the accuracy of each loan application filled out, and collecting and analyzing documentation relating to each borrower's income, job stability, assets, creditworthiness, outgoing debt, as well as collateral as well as giving the necessary Truth in Lending disclosures required under law.

145. These Loan Representatives were charged with the duty of quarterbacking the entire loan process from start to finish, including initiating escrow, acquiring title reports and initiating title insurance, collecting necessary documents, regularly interfacing between Defendants' underwriting department and each borrower to make sure the loan gets approved, coordinating the appraisal and appraisal dates, rendering estimated HUD or HUD-1 disclosures, through loan document printing, loan signing side by side with a notary, to loan funding, and post-funding issues.

146. It was through these Loan Representatives, and only through these Loan Representatives, that borrowers (Plaintiffs herein) came to understand exactly what the bank wanted from them, and whether the bank was going to give them a loan, and on what grounds the loan was going to be granted. Each and every one of these Loan Representatives was vested by the respective bank they work for – the bank/lending institution from which a Plaintiff got his/her loan – with both actual and apparent authority to bind that bank/lending institution. These Loan Representatives were the ***sole*** interface between the bank/lending institution and the customer/borrower/plaintiff. Defendant banks very much intended to create the distinct perception that the representations made by these Loan

Representatives, were factual representations coming directly from the bank, and representations upon which the borrower Plaintiffs could reasonably rely, well above-and-beyond that of mere opinion.

147. Specifically, with regard to subparagraph "f)", above, the representation made by Defendants to Plaintiff borrowers, that they could "afford" the loans they were being given were statements delivered as statements of fact upon which Plaintiffs could reasonably rely, particularly in light of the specialized expertise of the Defendant employees who made the statements. These employees spend months and years, undergoing specialized education, to learn the highly complicated mathematics of lending such as loan amortization, loan re-casting, front end debt to income ratios, back end debt to income ratios, and loan to value ratios – mathematics which borrowers simply don't understand, nor could they be expected to. Because of their vastly superior knowledge, and because of the actual and apparent authority vested in these employees by the Defendant Banks, as described above, Plaintiffs herein reasonably relied on these statements. By making these false and misleading statements, they incurred a duty to be truthful.

<u>The Difference Between Being "Qualified" for a Loan and Being able to "Afford" a Loan</u>

148. The difference between the term "qualified" and "afford" is a palpable one in this case.

149. Even despite this difference, it is important to understand that a bank's qualification process is by its very nature designed to measure a borrower's ability to *afford* a loan.

150. There may be no more material fact to a Plaintiff's acceptance of a loan than the representation that a Plaintiff "qualified" for a loan and thereby the representation that a Plaintiff may "afford" the loan.

151. In determining whether a borrower is "qualified" for a loan, banks, including Defendant Banks, use two principal metrics known as **"front-end"** debt to income ratio, and "**back end"** debt to income ratio – both of which are intended to measure a borrower's ability to afford their loan.

152. A **"front end"** debt to income ratio compares ONLY the loan payment (as well as taxes and insurance) to a person's income, and does not take into account any other debt whatsoever. For example, a person who makes $10,000 per month, and whose mortgage costs $3,000 per month (including tax and interest), has a "front end" debt to income ratio of 30%.

153. A **"back end"** debt to income ratio, by contrast, takes into account not only a person's loan payment (as well as taxes and insurance) but also *all other* debt reflected on their credit report. If that same person used in the example above, also had an additional $4,000 in monthly expenses such as credit card debt, car loans/payments, other mortgages, student debt, etc. etc., then that person's "back end" ratio would be 70%. ($3,000 per month for her loan, taxes & insurance plus, $4,000 per month for other debts = $7,000 per month in debt. $7,000 of debt divided by $10,000 in monthly income equals, 70% "back end" debt to income ratio).

154. Industry Standard and Conventional Underwriting guidelines, including those used by Defendants herein, required that loans with a "front end" debt to income ratio higher than **35%** be rejected. They also required that loans with a "back end" debt to income ratio of higher than **45%** be rejected – and that 45% figure was on the on the *very* high end. For a loan with a 45% "back end" debt to income ratio to be approved, a borrower had to have excellent credentials in all other areas such as 720+ median credit score and high liquid asset reserves totaling more than 12 months of their monthly income). In other words, Defendant Banks would not approve borrowers whose loan payment was more than 35% of their total monthly income, or whose total outgoing monthly debt as reflected on their credit report (including the loan payments) was more than 45% of their total monthly income.

155. Intuitively, these two figures seem low. The typical lay borrowers ask "why are these figures so low? Clearly, I'm able to afford a larger loan if I still have **55% (**100% - 45% back end ratio) of my income available to me, after I've paid all my other debts, to pay for that larger loan**." And therein lies the fundamental problem.** Borrowers, because of their lack of knowledge, simply don't understand that, in fact, they **cannot** afford more. They often overestimate themselves. By contrast, Banks have made a science of understanding exactly how much a borrower can afford, dedicating millions of dollars, hiring teams of expert statisticians, and spending years formulating underwriting guidelines, predicated on hundreds of years of prior underwriting acumen, all to craft underwriting guidelines which reflect what appears to be a deceptively simple question – how much debt can a borrower realistically shoulder without imperiling themselves or their ability to pay back their loan? It is through their detailed efforts that Banks have settled upon the 35% front-end and 45% back-end debt-to-income ratios as a realistic measure of what borrowers can afford.

156. The answer to the above question ("why are these figures so low?") is that banks, unlike borrowers, have recognized through their detailed research, that borrowers simply cannot *afford* a loan unless they are left with at least 55% of their income (after having paid their mortgage payment as well as all the other debt reflected on their credit report) to account for life's myriad non-credit reported expenditures such as emergency expenditures, unexpected events, non-credit reported debts, as well as one-time (non-recurring) expenses, including: health care, medical emergencies, educational expenses/tuition, food, water, electricity, catastrophic & natural disasters, emergency home repairs, medication, doctor's bills, medical insurance, car payments, fuel, auto insurance, phone bills, internet, medication– these items are even more expensive if a borrower has children. And this is before even turning to the discussion of a borrower's need set money aside for their savings and/or retirement.

157. In other word the term *afford* as used herein describes a borrower's ability to shoulder the additional debt burden resulting from the subject loan, in light of the **numerous** other real-life demands placed on that borrower's income such as their…

a. **Credit-reported debts** (i.e. credit card debt, car loans/payments, other mortgages or financing, installment debt student debt, etc. etc.);

b. **Non-Credit Reported Expenses/Debt** (i.e. health care, medical emergencies, educational expenses/tuition, food, water, electricity, catastrophic & natural disasters, emergency home repairs, medication, doctor's bills, medical insurance, car payments, fuel, auto insurance, phone bills, internet, medication)

c. Real world need to set aside some of their income into a savings account, such that they are not living month to month.

158. Thus, the back-end debt to income ratio is a measure of a borrower's ability to afford their loan which takes into account that borrowers have great demands placed on their money outside of their credit reported debts – demands which borrowers typically fail to account for or demands which, because of their lack of expertise, borrowers are not as cognizant of, as banks are.

159. Moreover, a Bank's qualification/underwriting process is also meant to temper borrowers who overestimate themselves or their ability to pay back/afford their loan.

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160. Because Defendant Banks have seen the pitfalls associated with the loans of *hundreds of thousands* of borrowers, unlike borrowers who only know the pitfalls of their own solitary loan, and because banks enjoy the benefit of hundreds of years of underwriting acumen, unlike borrowers who enjoy no such benefit, banks are substantially better positioned to understand the myriad expected and unexpected demands placed on a borrower's income which would jeopardize a borrower's ability to afford the additional debt burden resulting from a loan. Thus, banks, unlike borrowers, are intimately familiar with how much a borrower is truly capable of affording. The sum result of their detailed studies, established underwriting principles, and statistical analysis is that a borrower would be imperiled and likely to default on his loan if their loan payment exceeds more than 35% of their total income (front end), and that a borrower's loan payments in combination with their credit-reported debts cannot exceed more than 45% of their income (back end). And for that reason, they have made back end and front end debt to income ratios - which are intended to measure a borrower's ability to *afford* a loan - a cornerstone element of their qualification process.

161. In sum, then, by its own nature Defendants' qualification process is intended to measure whether a borrower can truly *afford* the loan they're being given.

162. Yet even despite the fact that the qualification process is implicitly predicated on the notion that a borrower can afford the loan, Defendants went one step further, and affirmatively and explicitly (mis)represented to Plaintiffs that they would be able to *afford* the loans that they were being given. In part, if not in whole, Defendants did this in order to assuage Plaintiffs of rightful concerns regarding their ability to shoulder the additional debt burden caused by taking on the loan – and Defendants did so in an attempt to induce Plaintiffs into accepting financing so that the Loan Representatives could make their commission, and so that Defendant Banks could make their money by selling the loan on the secondary market for profit.

163. Specifically, Plaintiff Borrowers in this action were explicitly told by Defendants and their employee Loan Representatives that they could *afford* the loans they were being given, and that they need not worry about whether they would be able to shoulder the additional debt burden. Defendants told Plaintiffs that their calculations show that the Plaintiffs will be able to afford their loans and comfortably shoulder the additional debt from the loan, when taking into account all of

Plaintiffs' other monthly debt. These statements were not offered as statements of opinion, but rather as outright statements of fact.

164. More specifically, the Plaintiff-borrowers in this action were told by Defendants and their employee Loan Representatives that they would be able to comfortably afford the fully amortized payments under the loan, or in some instances they were told that they would be able to comfortably afford the payments on the loan, but Defendants failed to additionally disclose that the initial payments were not the permanent payments on the loan, or that those payments would drastically increase in the future, and that the Plaintiffs would not be able to afford such drastically increased payments.

165. In fact, in many instances, Plaintiffs were additionally told by Defendants that a determination that they were qualified indeed meant, and was synonymous with, that Plaintiffs could in fact *afford* their loans.

166. Defendants told their borrowers, and Plaintiffs herein, that a determination by the Bank that they were "*qualified*" for a loan meant that the borrowers would be able to "*afford*" their loan.

167. Defendants represented themselves as experienced professionals and industry leaders with superior knowledge, education, and expertise, that a borrower could rely on. As a result, borrowers, including the Plaintiffs herein, justifiably relied on those representations.

168. For the purposes of the following paragraphs it is important to define two key terms: **"front-end"** debt to income ratio, and "**back end"** debt to income ratio.

169. A **"front end"** debt to income ratio compares ONLY the loan payment (as well as taxes and insurance) to a person's income, and does not take into account any other debt whatsoever. For example, a person who makes $10,000 per month, and whose mortgage costs $3,000 per month (including tax and interest), has a "front end" debt to income ratio of 30%.

170. A **"back end"** debt to income ratio, by contrast, takes into account person's loan payment (including taxes and insurance) and *all other* debt reflected on the borrower's credit report. If that same person used in the example above also had an additional $4,000 in monthly credit obligations (such as credit card debt, car loans/payments, other mortgages, student debt, etc.) then that person's "back end" ratio would be 70%. ($3,000 per month for her loan, taxes & insurance plus, $4,000 per

month for other debts = $7,000 per month in debt. $7,000 of debt divided by $10,000 in monthly income equals, 70% "back end" debt to income ratio).

171. Industry Standard and Conventional Underwriting guidelines, including those used by Defendants herein, required that loans with a "front end" debt to income ratio higher than **35%** be rejected. They also required that loans with a "back end" debt to income ratio of higher than **45%** be rejected – and that 45% figure was on the on the *very* high end. For a loan with a 45% "back end" debt to income ratio to be approved, a borrower had to have excellent credentials in all other areas such as 720+ median credit score and high liquid asset reserves totaling more than 12 months of their monthly income).

172. However, Defendants in this action regularly approved loans with front end ratios wildly exceeding 35% (and back end ratios wildly exceeding 45%) on a regular basis, and as a matter of course, in violation of their own published underwriting guidelines as well industry standard underwriting guidelines used throughout the banking industry.

173. In many cases, borrowers were approved with front-end debt to income ratios at almost, and frequently over, 100%. In other words, borrowers were being approved for mortgages that would make them unable to pay for ANY other essential such as electricity, gas, car payments, telephone, insurance, medicine, or even food.

Defendants Turned Substantial Profit Through Their Borrowers' Default – Furthering Their Incentive To Intentionally Place Plaintiffs Into Impossible And Unaffordable Loans

174. Not only did Defendants approve under-qualified borrowers – they preferred them. That's because a defaulting borrower meant profit for Defendants.

175. All of the Defendants managed risk through leverage and derivatives trading. With the advent of "Credit Default Swaps" ("CDS"), they had the protection they needed to push these loans out the door to grossly under-qualified borrowers, without any fear of loss whatsoever. The CDS gave defendants *another* incentive to give grossly under-qualified borrowers–borrowers whose default was virtually certain. Defendants were incentivized to give loans to unqualified borrowers because they were turning other-worldly profit by selling as many loans on the secondary market as possible.

176. Because Defendants had taken out these insurance policies – aka Credit Default Swaps - against the possibility of default, Countrywide and its co-conspirators (Defendants herein) would still be paid in the event of a borrower's default. In fact, in many cases, Defendants had taken out numerous redundant Credit Default Swaps and insurance policies out on the same property, so that when default occurred, Defendants were getting paid out multiple times the value of the mortgage and *turning a substantial profit* when borrowers defaulted. This system created an *incentive* for Defendants to place borrowers into impossible loans.

177. This technique gave Defendants the insurance they needed to pass the risk along to third party without taking the risk themselves. Since they planned on securitizing all of their loans and not keeping any of them, the Defendants could not care less about quality or who they hurt. They would push insurance on the investors and actually over insure the loan pools, at times betting that the Plaintiffs and other borrowers would default.

178. Since the Defendants created these pools to begin with, they were fully aware of the lack of quality and lack of due diligence that went into setting up these pools. These "swaps" are life insurance policies that are placed on Plaintiffs' loans. If the loan dies, the Defendants get paid.

179. These swaps have been considered to be so dangerous that the majority of the financial world has simply stayed away. They are best described by the following prominent experts:

a. Nobel prize-winning economist George Akerlof predicted that CDS would cause the next meltdown;

b. Warren Buffett (Chairman, CEO, and majority owner of Berkshire Hathaway) called them "weapons of mass destruction";

c. Charles T. Munger (Vice-Chairman of Berkshire Hathaway), has called the CDS prohibition the best solution, and said "it isn't as though the economic world didn't function quite well without it, and it isn't as though what has happened has been so wonderfully desirable that we should logically want more of it;"

d. Former Federal Reserve Chairman Alan Greenspan says CDS are dangerous;

e. Newsweek called CDS "The Monster that Ate Wall Street"

f. President Obama said in a June 17, 2009 speech on his plans for finance industry regulatory reform that credit swaps and other derivatives "**have threatened the entire financial system;**"

g. In a February 9th, 2012 speech, President Obama scolded "irresponsible" and "reckless" lenders, who "sold homes to people who couldn't afford them." He continued:

> It's well known that millions of Americans who did the right thing and the responsible thing -- shopped for a house, secured a mortgage that they could afford, made their payments on time -- were, nevertheless, hurt badly by the irresponsible actions of others: by lenders who sold loans to people who couldn't afford them; … by banks that took risky mortgages, packaged them up, and traded them for large profits.
>
> It was wrong and it cost more than 4 million families their homes to foreclosure.
>
> Even worse, many companies that handled these foreclosures didn't give people a fighting chance to hold onto their homes. In many cases, they didn't even verify that these foreclosures were actually legitimate. Some of the people they hired to process foreclosures used fake signatures to -- on fake documents to speed up the foreclosure process. Some of them didn't read what they were signing at all.
>
> The mortgage fraud task force I announced in my State of the Union address retains its full authority to aggressively investigate the packaging and selling of risky mortgages **that led to this crisis.**

h. George Soros (Business Magnate and Chairman of Soros Fund Management) says the market is still unsafe, and that credit- default swaps are "toxic" and "a very dangerous derivative" because it's easier and potentially more profitable for investors to bet against companies by purchasing swaps rather than shorting their publicly traded stocks.

180. But insurance against default wasn't the only way Defendants made money from the losses of their imperiled borrowers. Defendant banks also made money by charging a litany of unearned and egregiously marked up fees associated with the initiation of and conducting (their own wrongful) foreclosures including: inspection fees, default fees, late fees, advance fees, attorney's fees,

and trustee fees. In short Defendants had an incentive *to place Plaintiff borrowers into loans they knew their borrowers could not afford* because by doing so, the bank would turn a profit. Not only that, but Defendants had an incentive *to wrongfully initiate foreclosures* because they made money by doing so through the assessment of excessive, disproportionate and unearned fees.

Countrywide Misled the Public – Including Plaintiffs

181. The Countrywide Defendants concealed and did not accurately or fully disclose to any Plaintiff herein any of the foregoing facts. Further, Defendants did not disclose or explain their scheme to Plaintiffs at any time. They did the foregoing with the intent to deceive Plaintiffs and the investing public. Plaintiffs did not know the massive scheme Countrywide had devised.

182. To the contrary, Countrywide affirmatively misrepresented its underwriting processes, the value of its mortgages and the fundamental nature of its business model in its press releases, annual report and securities filings, and publicly published underwriting guidelines all of which were widely distributed to the public, including Plaintiffs. Countrywide intended the public, including Plaintiffs, to rely upon its misrepresentations and made those misrepresentations to create false confidence in Countrywide and to further its fraud on borrowers and investors.

183. Plaintiffs would never have done business with the Countrywide Defendants if Defendants had disclosed their scheme. Had the Plaintiffs known the facts concealed from them by Defendants, Plaintiffs would have never entered into bogus and predatory transactions with the Countrywide Defendants designed only to line the pockets of Defendants and their executives and not to actually and justifiably create value and generate capital from the Plaintiffs' equity investments in their primary residences.

184. If the Plaintiffs had later learned the truth, each Plaintiff would have either (1) rescinded the loan transaction under applicable law and/or (2) refinanced the loan transaction with a reputable institution prior to the decline in mortgage values in late 2008. Instead, each Plaintiff reasonably relied on the deceptions of the Countrywide Defendants in originating their loans and forbearing from exercising their rights to rescind or refinance their loans.

185. After entering into the transactions with each Plaintiff herein as alleged herein, the Countrywide Defendants, with the assistance of the other Defendants herein, sold in securities

transactions the notes and deeds of trust pertaining to Plaintiffs' properties. The sales:

a. Included sales to nominees who were not authorized under law at the time to own a mortgage, including, among others, the Mortgage Electronic Registration System (*hereinafter*, MERS);

b. Involved misrepresentations by Countrywide Defendants to investors and concealment from investors of Plaintiff's true financial condition and the true value of Plaintiff's property and mortgage;

c. Involved misrepresentations by Countrywide Defendants to investors and concealment from investors of the true financial condition of other borrowers and the true value of their homes and mortgages also included in the pools;

d. Were for consideration greater than the actual value of the said notes and deeds of trust;

e. Were for consideration greater than the income stream that could be generated from the instruments even assuming a 0% default rate thereon; and

f. Were part of a scheme by which the Countrywide Defendants defrauded investors by selling collateralized mortgage pools at an inflated value.

186. Countrywide hid from Plaintiffs that Countrywide was engaged in an effort to increase market share and sustain revenue generation by taking on higher risk investments.

187. At the time the Countrywide Defendants induced Plaintiffs to enter into mortgages, they knew their scheme would lead to a liquidity crisis and grave damage to each Plaintiff's property value and thereby result in each Plaintiff's loss of the equity such Plaintiff invested in his/her property, as well as damage the Plaintiff's credit rating, thereby causing the Plaintiff additional severe financial damage consisting of the foregoing damages and damages described elsewhere in this Complaint. The Defendants concealed the foregoing from Plaintiffs and California consumers and regulators initially at Countrywide's direction and later at BofA's direction.

188. Based upon the Defendants' (1)long term media campaign representing themselves as a trustworthy and reputable lending institutions, (2) position as leading financial institutions, (3)Defendants' expertise, highly specialized training, unique understanding of the highly complicated

terms and mathematics of financing as well as Defendant Banks' capacity as an advisor, in addition to their (4) intentionally misleading statements and omissions, including in their securities filings, numerous documents, advertisements and other media, statements made by their employees and agents with apparent and/or actual authority and their publicly available underwriting guidelines the Plaintiffs reasonably relied upon the statements and omissions made by Defendants and reasonably relied that no material information necessary to their decisions would be withheld or misrepresented. In so relying, the Plaintiffs were gravely damaged, as detailed herein. The Defendants acted willfully with the intention to conceal and deceive in order to benefit therefrom at the expense of the Plaintiffs

189. The other Defendants followed BofA's direction because they are either subsidiaries of BofA, directly or indirectly owned, or controlled by BofA, or because they are in an unequal economic and/or legal relationship with BofA by which they are beholden to BofA's directives in order to stay in business.

190. From no later than 2005 through no earlier than 2007, Countrywide falsely assured the public, including Plaintiffs, that Countrywide was primarily a prime quality mortgage lender which had avoided the excesses of its competitors. As described herein with specific examples, affirmative misrepresentations and material omissions permeated Countrywide's website, customer and investor materials, required securities filings and presentations.

191. Without limiting the foregoing, Countrywide's Forms 10-K for 2005, 2006, and 2007 falsely represented that Countrywide "manage[d] credit risk through credit policy, underwriting, quality control and surveillance activities," and the 2005 and 2006 Forms 10-K falsely stated that Countrywide ensured its continuing access to the mortgage backed securities market by "consistently producing quality mortgages."

192. During the course of this fraud, Mozilo engaged in insider trading in Countrywide's securities.

193. Countrywide's Forms 10-K deceptively described the types of loans upon which the Company's business depended. While Countrywide provided statistics about its originations which reported the percentage of loans in various categories, the information was misleading because its descriptions of "prime non-conforming" and "nonprime" loans in its periodic filings were insufficient

to inform Plaintiffs what types of loans were included in those categories, and many of the loans issued were reliant on falsified information in order to meet published standards.

194. Nothing in Countrywide's securities filings informed Plaintiffs that Countrywide's "prime non-conforming" category included loan products with increasing amounts of credit risk. While guidance issued by the banking regulators referenced a credit score ("FICO score") at 660 or below as being an indicator of a subprime loan, some within the banking industry drew the distinction at a score of 620 or below. Countrywide, however, did not consider **any** FICO score to be too low to be categorized within "prime." Nor did Countrywide's definition of "prime" inform Plaintiffs that its "prime non-conforming" category included so-called "Alt-A" loan products with increasing amounts of credit risk, such as (1) reduced or no documentation loans; (2) stated income loans; and (3) loans with loan to value or combined loan to value ratios of 95% and higher. Finally, it did not disclose that Pay-Option ARM loans, including reduced documentation Pay-Option ARM loans, were included in the category of prime loans.

195. Though Countrywide proclaimed in its Forms 10-K for 2005, 2006, and 2007 that it managed credit risk through its loan underwriting, the company's increasingly wide underwriting guidelines and exceptions process materially increased Countrywide's credit risk during that time.

196. Countrywide depended on its sales of mortgages into the secondary market as an important source of revenue and liquidity. As a result, Countrywide was not only directly exposed to credit risk through the mortgage-related assets on its balance sheet, but also indirectly exposed to the risk that the increasingly poor quality of its loans would prevent their continued profitable sale into the secondary mortgage market and impair Countrywide's liquidity. Rather than disclosing this increasing risk, Countrywide gave false comfort, again touting Countrywide's loan quality. For example, Countrywide stated in its 2005 Form 10-K: "We ensure our ongoing access to the secondary mortgage market by consistently producing quality mortgages. . . . We make significant investments in personnel and technology to ensure the quality of our mortgage loan production." A virtually identical representation appears in Countrywide's 2006 Form 10-K. Accordingly, Countrywide's failure to disclose its widening underwriting guidelines and the prevalence of exceptions to those guidelines in 2005 and 2006 constituted material omissions from Countrywide's periodic reports.

197. In January 2007, a senior Countrywide executive, John P. McMurray, sent an email to Sieracki, which he subsequently incorporated by reference in his MD&A questionnaire, explaining that Countrywide's delinquencies would increase in the future due to a weakening real estate market and what McMurray characterized as credit guidelines that were "wider than they have ever been." On January 29, 2007, McMurray provided Sambol and others with an outline of where credit items impacted Countrywide's balance sheet. McMurray then forwarded the email to the financial reporting staff, and specifically requested that a version of the outline be included in the 2006 Form 10-K. The information was not included in the 2006 Form 10-K.

198. Countrywide never made any disclosures in its Forms 10-Q or 10-K for 2005, 2006, or 2007 about the expansion of its underwriting guidelines. Instead, Countrywide made public statements from 2005 through 2007 that were intended to mislead Plaintiffs about the increasingly aggressive underwriting at Countrywide and the financial consequences of those widened underwriting guidelines.

199. These documents contained misrepresentations as follows:

a. Third, the descriptions of "prime non-conforming" and "subprime" loans in Countrywide's Forms 10-K were misleading because they failed to disclose what types of loans were included in those categories. The definition of "prime" loans in Countrywide's 2005, 2006, and 2007 Forms 10-K was: "Prime Mortgage Loans include conventional mortgage loans, loans insured by the Federal Housing Administration ("*FHA*") and loans guaranteed by the Veterans Administration ("*VA*"). A significant portion of the conventional loans we produce qualify for inclusion in guaranteed mortgage securities backed by Fannie Mae or Freddie Mac ("conforming loans"). Some of the conventional loans we produce either have an original loan amount in excess of the Fannie Mae and Freddie Mac loan limit for single-family loans ($417,000 for 2006) or otherwise do not meet Fannie Mae or Freddie Mac guidelines. Loans that do not meet Fannie Mae or Freddie Mac guidelines are referred to as "nonconforming loans."

200. Nothing in that definition informed Plaintiffs that Countrywide included in its prime category loans with FICO scores below 620. Nor did the definition inform Plaintiffs that the "prime non-conforming" category included loan products with increasing amounts of credit risk, such as (1) reduced and/or no documentation loans; (2) stated income loans; or (3) loans with loan to value or combined loan to value ratios of 95% and higher. Finally, it did not disclose that Countrywide's riskiest loan product, the Pay-Option ARM, was classified as a "prime loan."

201. Mozilo and Sambol made affirmative misleading public statements in addition to those in the periodic filings that were designed to falsely reassure Plaintiffs about the nature and quality of Countrywide's underwriting. Mozilo repeatedly emphasized Countrywide's underwriting quality in public statements from 2005 through 2007. For example, in an April 26, 2005 earnings call, Mozilo falsely stated that Countrywide's Pay-Option portfolio at the bank was "all high FICO." In that same call, in response to a question about whether the company had changed its underwriting practices, Mozilo stated, "We don't see any change in our protocol relative to the quality of loans that we're originating."

202. In the July 26, 2005 earnings call, Mozilo claimed that he was "not aware of any change of substance in [Countrywide's] underwriting policies" and that Countrywide had not "taken any steps to reduce the quality of its underwriting regimen." In that same call, Mozilo touted the high quality of Countrywide's Pay- Option ARM loans by stating that "[t]his product has a FICO score exceeding 700. . . . the people that Countrywide is accepting under this program . . . are of much higher quality . . . that [sic] you may be seeing . . . for some other lender." On January 31, 2006, Mozilo stated in an earnings call "It is important to note that [Countrywide's] loan quality remains extremely high." On April 27, 2006, Mozilo stated in an earnings call that Countrywide's "pay option loan quality remains extremely high" and that Countrywide's "origination activities are such that, the consumer is underwritten at the fully adjusted rate of the mortgage and is capable of making a higher payment, should that be required, when they reach their reset period." These statements were false when made, because on April 4, 2006, Mozilo wrote of the bank's pay-option portfolio, "[s]ince over 70% [of borrowers] have opted to make the lower payment it appears that it is just a matter of time that we will be faced with much higher resets and therefore much higher delinquencies."

203. Then, on May 31, 2006, at the Sanford C. Bernstein Strategic Decisions Conference, Mozilo addressed investors and analysts and made additional false statements that directly contradicted the statements he was making internally within Countrywide. Specifically addressing Pay-Option loans, Mozilo told the audience that despite recent scrutiny of Pay-Option loans, "Countrywide views the product as a sound investment for our Bank and a sound financial management tool for consumers." At the May 31 conference, Mozilo added that the "performance profile of this product is well-understood because of its 20-year history, which includes 'stress tests' in difficult environments."

204. Mozilo's statements at the Sanford Bernstein Conference were false, because at the time that he made them he had just written to Sambol and Sieracki in a May 19, 2006 email that Pay-Option loans would continue to present a long-term problem "unless rates are reduced dramatically from this level and there are no indications, absent another terrorist attack, that this will happen."

205. At a Fixed Income Investor Forum on September 13, 2006, Mozilo upheld Countrywide as a "role model to others in terms of responsible lending." He went on to remark that "[t]o help protect our bond holder customers, we engage in prudent underwriting guidelines" with respect to Pay-Option loans. These statements were false when made.

206. In the January 30, 2007 earnings conference call, Mozilo attempted to distinguish Countrywide from other lenders by stating "we backed away from the subprime area because of our concern over credit quality." On March 13, 2007, in an interview with Maria Bartiromo on CNBC, Mozilo said that it would be a "mistake" to compare monoline subprime lenders to Countrywide. He then went on to state that the subprime market disruption in the first quarter of 2007 would "be great for Countrywide at the end of the day because all of the irrational competitors will be gone."

207. Sambol also made misleading statements that were designed to reassure Plaintiffs. For example, at a May 24, 2005 investor day presentation, Sambol reassured analysts that Countrywide addressed the higher credit risk associated with adjustable rate mortgage programs by requiring different underwriting criteria such as "higher credit scores or lower loan to value ratios." At the September 13, 2006 Fixed Income Investor Forum, Sambol downplayed Countrywide's participation in originating subprime loans by falsely stating that Countrywide had been "on the sidelines" of the risky subprime market. The statements in Countrywide's periodic filings and statements by its chief

executives were materially false when made because Mozilo and Sambol were well aware that Countrywide had increasingly widened its underwriting guidelines year over year from 2004 through 2006, and Countrywide's loan quality had deteriorated as a result.

208. The foregoing misrepresentations were made with the intention that Plaintiffs rely thereon directly and indirectly, by causing individuals and the media to report to the lies, which thereby were broadly disseminated to the public, including Plaintiffs. It was important to Countrywide that Plaintiffs rely on its misrepresentations so that Plaintiffs would come to a false understanding as to the nature of Countrywide's business. The foregoing misrepresentations were specifically intended to convince Plaintiffs and others to take mortgages from Countrywide Defendants.

Defendants Were Well Aware Of Their Fraud

209. A poignant forty-five (45) page chronicle of internal emails between Countrywide CEO, Angelo Mozilo, and other Countrywide top executives, makes it unequivocally clear that Countrywide continued to originate loans despite their internal knowledge that such loans were "toxic", "poisonous", and "dangerous" to the borrowing public, and would result in inevitable default. ("Internal Emails") These Internal emails are attached hereto as Exhibit 3, and hereby incorporated into this Complaint by reference.

210. Throughout the Internal Emails forty-five (45) pages, Countrywide's (1) internal knowledge of the risky nature of their loan product (2) internal knowledge of the harms they were wreaking on the borrowing public, (3) intent to defraud their borrowers, (4) public statements and omissions made in furtherance of their fraud, and (5) their continued origination of loans which they had long-ago deemed dangerous and unfit for consumers – are all made painfully and explicitly clear.

211. The following excerpts detail Countrywide's deliberate and pervasive campaign to suppress highly material information from their borrowers, knowing the devastation that would be wreaked on borrower Plaintiffs, as well as the economy at large

a. Discussing the foreseen damages and dangers created by their Option ARM product

"The simple reason is that when the [pay option ARM] loan resets in five years, there will be an **enormous amount of payment shock** and if the borrower is not

sufficiently sophisticated to truly understated this consequence then **the bank will be dealing with foreclosure in potentially a deflated real estate market. This would be both a financial and reputational catastrophe**." (Mozilo email to Carlos Garcia, and Stan Kurkland dated 8/1/2005 at 10:13 PM)

b. Discussing Pay Option ARM borrowers as "**being set up for foreclosure**

c. Discussing Countrywide's awareness that there Pay Option ARM would cause their borrowers to default: "As for pay options the Bank faces potential unexpected losses because higher rates will cause these loans to reset much earlier than anticipated and **as a result causing mortgagors to default due to this substantial increase in their payments**." (Mozilo Email dated 5/18/2006 at 8:29 PM)

d. Discussing the dangers of the Pay Option ARM: "The reset payments are going to be substantially **higher than the buyer expects and what was used in the initial qualification**…. It is clear that the lower fico [sic] borrowers are **going to experience a payment shock** which is going to be **difficult if not impossible for them to manage**" (Mozilo Email dated 6/01/2006 at 10:38:21 PM)

e. Describing their sub-prime product as "the **most dangerous product in existence** and **there can be nothing more toxic.**" (Mozilo Email dated 3/27/2006 at 8:53:31 PM)

f. Regarding Countrywide's HELOC (Home Equity Line of Credit) Loans: "helocs [sic] will become **increasingly toxic** in that mortgagors will be and are facing substantially higher payments then [sic] when the loan was originated." (Mozilo Email dated 5/18/2006 at 8:29 PM)

g. Regarding Countrywide's sub-prime second business: "In all of my years in the business, **I have never seen a more toxic product**…. With real estate values coming down and interest rates rising, this product **this product will become increasingly worse**." (Mozilo Email dated 4/17/2006 at 5:55:49 PM)

h. Recognizing the foreseen dangers of the Option ARM product "This is important data that could portend **serious problems with [the Pay Option ARM] product.**"

Since over 70% [of Pay Option ARM borrowers] have opted to make the lower payment it appears that it is just a matter of time that we will be faced with a substantial amount of resets and therefore much higher delinquencies. (Mozilo Email dated 4/03/2006 at 9:13:57 PM)

i. Recognizing the Dangers of the Pay Option ARM and trying to the loan off their books ASAP: "I personally share the same sentiment [as Angelo Mozilo] (that we should be shedding rather than adding Pay Option Credit risk to the portfolio… I argue against adding more Pay Option risk). (McMurray Email dated 9/26/2006 at 10:45 AM)

j. Recognizing the Dangers of the Pay Option ARM and trying to the loan off their books ASAP: "I believe the timing is right for us to sell all newly originated pay options and begin rolling off the bank balance sheet." (Mozilo Email dated 9/26/2006 at 10:15 AM)

k. Recognizing that Option ARM loans increase a borrower's chance of foreclosure "[Steve Bailey (Countrywide Senior Managing Director for Loan Administration)] also pointed out to me that in his opinion **the pay option loans were the ones most vulnerable to foreclosur**e because of the neg am [sic] component and because the borrower has been paying at an interest rate on average of 3%. Obviously these loans cannot stay at this rate once the 15% threshold has been reached…" (Mozilo Email dated 10/31/2007 at 3:35:19 PM)

l. Recognizing the impossibility of Option ARMS - "**The only way [pay option ARMs] can work out is with stable to ever increasing real estate values**. I do not like this product…" (Mozilo Email dated 11/04/2007 at 8:25:52 AM)

m. "The bottom line is that we are **flying blind** on how these loans will perform in a stressed environment of higher unemployment, reduced values, and slowing home sales." (Mozilo Email dated 9/26/2006 at 10:15 AM)

212. Yet despite all the dangers they knew of internally, Countrywide continued to sell these loans to borrowers including Plaintiffs herein.

a. "I want to cease doing any subprime business that is not saleable." (Mozilo Email dated 8/24/2007 at 12:46:21 PM). But yet Countrywide continued to sell these loans.

b. Internal Memo from Jess Lederman (Countrywide's Chief Risk Officer) dated November 2, 2007:

> **Q: [posed by Anthony Mozilo] "Are we still putting these loans on our balance sheet, and if so, <u>why</u>?"**
>
> **A: [by Jess Lederman]** "Yes, the bank continues to retain [pay option ARM] loans for investment on balance sheet."

213. These Internal Emails also demonstrate Countrywide's utter and repeated departure from proper origination:

a. "**[L]oans were originated through our channels with serious disregard for process, compliance with guidelines**… As a result we delivered loans with **deficient documentation**… thereby permitting loans to have a greater chance **for early payment default**." (Mozilo Email dated 4/13/2006 at 7:42:35 PM)

b. "**[U]nacceptable conduct relative to every aspect of originating, documenting and delivering the [loan] product.**" (Mozilo Email dated 4/13/2006 at 7:42:35 PM)

c. "I have personally observed a **very serious lack of compliance within our origination system as it relates to documentation and generally a deterioration in the quality of loans originated**." (Mozilo Email dated 4/13/2006 at 7:42:35 PM)

214. Countrywide also embarked on a public campaign of misinformation, as is demonstrated, in part, by the Internal Emails:

a. <u>Carlos Garcia directs Countrywide's Managing Directors to</u>: "Place newspaper ads like MATEL did to reassure customers and the public that the Bank is strong." (Garcia Email dated 81/17/2007/ at 1:17:09 AM)

b. <u>Carlos Garcia directs Countrywide's Managing Directors to</u>: "Use PR, ads, local area marketing, etc. We need national and regional focus. I feel we can tell a great story and inspire confidence." (Garcia Email dated 8/11/2007 at 1:17:09 AM)

215. In short, Defendants loan products were entirely unsafe for the consuming public they

were being sold to. More importantly though Defendants knew they were unsafe for consumers.

216. The pervasive suppression of such overwhelmingly material information, now documented before this Court, *must* be recognized as systematic and intentional fraud on the borrowing public. To hold otherwise would grant civil immunity to financial institutions everywhere. It is clear that Countrywide/Bank of America intentionally sold deceptive and unsafe loan products which wreaked havoc on the economy, ultimately resulting in the inevitable default by borrower, including Plaintiffs, all in the name of corporate self-preservation and profit.

217. A letter written by a Landsafe executive-turned-whistleblower to Countrywide's top executives, not only demonstrates that Countrywide was in fact perpetrating the exact market fixing and appraisal inflation frauds complained of in this action, but also that Countrywide directed, ratified and was aware of these frauds. In pertinent part, that letter states:

> I believe that [Countrywide] and KB homes are **engaged in a fraud to manipulate the local market**…. In looking at Catechis reports, when he needs to for value, **he goes outside the market to access superior sales to bump up the market and the uses the same sales in future sales, thus establishing and manipulating the market**. The appraisal reports I have examined have a continual characteristic of **selective manipulation of the market data in an effort to pump up the market**. *It is my opinion that, based on very limited data, we could be making 115% loans in the markets and if you examine some KB Homes subdivisions you see significant foreclosure rates*. I believe that by our allowing the situation to continue we are condoning the activity…. **I am even more concerned that…. the individuals who mandated that only one appraiser be utilized may be a Countrywide employee and could be implicated in a conspiracy to defraud <u>both the homeowners and stockholders</u>.**
>
> **We are charged with the responsibility of protecting our client's assets**. If I am correct on any of this, and if it blows up, **the blame will rightly fall on us for failing in our task**. This has the potential to be a lightning rod for the demise of Landsafe and we will need to act to make sure every effort has been made to safeguard against this…

218. The mortgage market was struggling in March 2007 when Countrywide promoted Eileen Foster to executive vice president and tapped her to take over the company's mortgage fraud unit. In a recent 60 Minutes interview, Eileen Foster told CBS 60 Minutes reporter Steve Kroft that mortgage fraud was a common occurrence at the firm. Foster goes on to say that she faced illegal retaliation for filing reports investigating the fraud, alleging that Countrywide fired her when she refused to lie to federal regulators on Countrywide's behalf. "From what I saw, the types of things I

saw, it was, it appeared systemic," Foster said on 60 Minutes. "It wasn't just one individual or two or three individuals, it was branches of individuals, it was regions of individuals."

219. In 2007 Foster sent a fraud investigation team to Boston to examine their sub-prime division. They rummaged through recycling bins and found evidence that Countrywide loan officers were forging and manipulating asset statements in order to put borrowers into loans they could not afford.

220. All the recycle bins were full of documents were signatures were cut from one document and taped and photocopied onto others. Once the photocopy was made, they would fax themselves the document to make it seem like it came from the borrowers and they would pass them off as legitimate documents. According to Foster, loan officers would receive incentives, bonuses, and commissions and would be compensated regardless of the quality of the loan. "There was no incentive for quality, there [were] or [sic] incentives for fraud."

221. After Foster's investigation Countrywide closed six (6) branches in the Boston area and 44 out 60 employees were fired or quit. She described the same issues in Chicago, Miami, Detroit, Los Angeles, Las Vegas, and Phoenix-all of the nation's largest mortgage markets. After the Boston investigation, Countrywide's sub-prime division began to systematically conceal evidence of fraud from Mrs. Foster. This was in violation of company policy and Countrywide's internal financial control system.

222. According to Mrs. Foster, someone high up in the executive suite gave the order to circumvent her office and instead report the fraudulent activity to the personnel department which routinely fired and punished other whistleblowers and protected the highest earning loan officers. There were many incidents reported to that department, but they never made it to her office, never reported to the board, and were never reported to the Government.

223. In late 2008, she was promoted by Bank of America and not long afterwards was asked to speak to the Government regulators about Countrywide's fraud reports. Prior to the meeting, Mrs. Foster got a call from a high ranking executive at Bank of America that suggested how she should downplay the reports. When she refused, she was fired. It is a crime, under Sarbanes Oxley Corporate and Criminal Fraud Accountability Act of 2002, among others, to retaliate against someone who makes

a report regarding mail fraud, wire fraud, bank fraud, mortgage fraud and things that would harm the public, shareholders, and investors, yet she got fired over it.

224. In the fall of 2011 Eileen Foster was vindicated and her name was cleared when she won a whistleblower lawsuit against Bank of America and was awarded nearly $1 million in back pay and benefits.

Defendants Intentionally Misrepresented, Partially Misrepresented, & Concealed Information Which They Knew Was Highly Material To Plaintiffs' Decision To Enter Into A Loan With Defendants

225. Defendants concealed their plan to resell high-risk mortgages, falsified documentation, and misled consumers about the terms of their loans because Defendants knew that if Plaintiffs knew the truth, Plaintiffs would never have entered into the loans with Defendant Banks.

226. To that end, Defendants embarked on a campaign of misinformation, including intentional misrepresentations, partial misrepresentations, half-truths calculated to deceive, and an active suppression of material facts, with the aim of inducing Plaintiffs to enter into a loan contract with Defendant which they would not have otherwise.

227. Defendants, hand-in-hand with one another, **actively concealed** the following highly material items of information:

a. The fact that Defendants had intentionally abandoned their own as well as industry standard underwriting guidelines;

b. The fact that Defendants had intentionally abandoned their own as well as industry standard underwriting guidelines *for the purpose of* placing borrowers into loans which they knew borrowers could not afford and upon which they knew borrowers would default to a mathematical certainty;

c. The fact that Defendants had intentionally and falsely inflated the appraisals on Plaintiffs properties, hand in hand with Defendant Landsafe-appraisals, Countrywide's wholly-owned appraisal subsidiary;

d. The fact that Defendants had systematically, intentionally, and artificially inflated

the prices of real estate throughout California (otherwise known as "market fixing") through Countrywide's wholly-owned appraisal subsidiary, Landsafe Appraisals, resulting in:

i. Plaintiffs being forced to pay much more for their properties than they were truly worth;

ii. Plaintiffs being forced to take out larger loans to afford the same property, resulting in more profit to Defendant Banks by virtue of additional interest Plaintiffs would have to pay;

e. That Defendants had fixed the real-estate market and systematically driven the prices of property well above what they were worth, with the intent of creating the illusion of a naturally-appreciating real estate economy to spur a purchase and refinance boom resulting in more business and thus more profits for the bank;

f. That Defendants knew that the true uninflated value of Plaintiffs' homes were insufficient to justify the amount of the loans Plaintiffs were being issued;

g. That Defendants falsely inflated the appraisals of Plaintiffs' properties in order to place Plaintiffs into loans that they would not otherwise be able to obtain or afford, violating their fiduciary duty, in order to increase the overall volume of sales.

h. That Defendants falsely inflated the appraisals of Plaintiffs' properties in order to assure them that the property was indeed worth what they were paying for it, such that Plaintiff would move forward with the purchase;

i. That Defendants falsely inflated the appraisals of Plaintiffs' properties to induce Plaintiffs to enter into loan and assure them that their collateral was sound;

j. That Defendants had falsified Plaintiffs' income and asset documentation to intentionally place them into loans they could not otherwise afford;

k. That Defendants and co-conspirator LandSafe Appraisals, as the wholly-owned appraisal arm of Countrywide, was subject to a massive conflict of interest precluding it from being able to render good-faith, accurate, technically proper appraisals in conformity with the standards required in the profession;

l. That Defendants internally knew the products they were selling were "toxic" and "highly dangerous" as established by a slew of internal emails between Countrywide's highest officers;

m. That Defendants possessed internal reports concluding that if a Plaintiff took a loan from Defendants, that Plaintiff would suffer material losses, including but not limited to the loss of substantial equity;

n. That Defendants knew their scheme would cause a liquidity crisis that would devastate home prices;

o. That Defendants ceased to consider a borrower's qualifications or ability to afford the loan they were issued in order to generate a greater volume of product to sell to investors on the secondary market for profit;

p. That Defendants *knew* Plaintiff-borrowers could not afford the loans they were being placed into and they knew that Plaintiffs would default on these loans as a mathematical *certainty*, but intentionally placed them into these unaffordable loans in order to generate more volume.

q. That Defendants actively concealed the material terms of their loans from their borrowers, including but not limited to the likelihood that a borrower would elect to defer interest under an Option ARM loan by making the minimum payment, because the borrower had been induced into signing a loan he/she could not afford and would not have chosen absent Defendant's misrepresentation.

r. That Defendants changed focus from issuing loans that would return consistent and reliable value over the life of the loan to a focus on issuing loans that would return the highest short-term gain from selling those loans to third parties created an incentive for Defendants and their various related entities to issue loans that were likely to fail over the long term.

s. That because of this profitable scheme and because their loans were insured, Defendants stood to profit regardless of whether their loans performed and as such had no incentive to insure that borrowers were actually qualified for (or could make

payments on) the loans into which they were being placed – in fact they had a disincentive to do so;

t. That Defendants were, in fact, dependent on selling loans it originated into the secondary mortgage market, to sustain its business;

u. That Defendants were making loans simply to create sufficient product to sell to investors for profit;

v. That Defendants morphed into an enterprise engaged in systematic fraud on all of its material constituencies, including Plaintiffs;

w. That Defendants abandoned their conventional lending business and prudent lending standards, consistently lending to those who were grossly under-qualified;

x. Defendants knew these loans were unsustainable for themselves and the borrowers and to a certainty would result in a crash that would destroy the equity invested by Plaintiffs and other of Defendants' borrowers;

y. Defendants, their officers and employees internally referred to these loans as "Sacks of Shit" and "Garbage Loans";

z. Defendants knew the sheer scope of their loan portfolio and fraudulent packaging of the portfolio would cause a liquidity crisis that would devastate home prices and gravely damage Plaintiffs;

aa. Defendants knew Plaintiffs would be materially and substantially harmed by contracting with Defendants;

bb. Defendants knew their business model was unsustainable;

cc. Defendants' pursuit of a matching strategy in which it matched the terms of any loan being offered in the market, even loans offered by primarily subprime originators dangerously placed borrowers into loans regardless of whether or not they were actually qualified for the loan or could actually afford the loan, instead ceding their underwriting guidelines to whoever was the most lax lender at the time, regardless of whether or not *that* lenders guidelines were proper, safe, negligent or even dangerous or guided by reason;

dd. The high percentage of loans Defendants originated that were outside their own overly-inclusive underwriting guidelines due to loans made as exceptions to guidelines;

ee. Defendants' definition of "prime" loans included loans made to borrowers with FICO scores well below any industry-standard definition of prime credit quality;

ff. The high percentage of Defendants' subprime originations that had a loan to value ratio of 100%; and

gg. Defendants' subprime loans had significant additional risk factors, beyond the subprime credit history of the borrower, associated with increased default rates, including reduced documentation, stated income, piggyback second liens, and LTVs in excess of 95%.

228. The Plaintiffs did not know any of the concealed facts.

229. Defendants intended to deceive Plaintiffs and induce their reliance, by intentionally failing to disclose the above concealments.

230. Plaintiffs did in fact rely on each of the aforementioned concealments in deciding to contract with Defendants

231. Plaintiffs reasonably and foreseeably relied upon the deception of Defendants in deciding to enter into a mortgage contract with Countrywide Defendants - Defendants were among the nation's leading providers of mortgages. Countrywide was highly regarded and by dint of its campaign of deception through securities filings, press releases, public utterances, web sites, advertisements, brokers, loan consultants and branch offices, Countrywide Defendants had acquired a reputation for performance and quality underwriting.

232. Moreover, as consumers unfamiliar with the myriad intricacies, terms and mathematics of mortgages, it was both reasonable and foreseeable (if not entirely intended) that Plaintiffs would rely on the advice of loan professionals and bank representatives (many of whom held the title "Loan CONSULTANT") trained to understand the highly-complicated terms and mathematics of financing, amortization, indices, margins, and collateralization in the mortgage world, in deciding to contract with Defendants. Their knowledge of this process, its details, as well as their loan products was vastly

superior to those of Plaintiff borrowers. Indeed, Defendants had exclusive knowledge of these material facts which were not known to Plaintiff.

233. The same is true of the appraisal process. A professional appraiser's (such as those used by Defendants) knowledge of property valuation is vastly superior to that of the lay borrower. The complicated mathematics and calculations of appraisals require highly specialized education. Their training and knowledge is so specialized, in fact, that one cannot act as an appraiser without being properly trained and licensed. It is reasonable and foreseeable that a consumer would rely upon an appraisal arrived at by a professional appraiser – particularly in light of their complicated nature. Plaintiffs did in fact rely on the representations and concealments of these parties. Indeed Defendants had exclusive knowledge of their silent scheme to inflate appraisals and fix the market.

234. In reliance on the above concealments and/or material misrepresentations, Plaintiffs entered into mortgage contracts with Defendants they otherwise would not have entered into and as a result thereof were damaged. This damage was not only foreseeable by Defendants, but actually foreseen (and then concealed) by them.

235. The unraveling of Defendants' scheme has caused the material depression of real estate values throughout California, including the real estate of Plaintiffs herein.

236. Defendants knew that the deteriorating quality of the loans that Countrywide Defendants were writing, and the poor performance over time of those loans, would ultimately curtail Countrywide Defendants ability to sell those loans in the secondary mortgage market and/or to purchase credit default swaps as hedges.

237. Defendants knew that within a foreseeable period, its investors would discover that Defendants' borrowers could not afford their loans and the result would be loan failures, defaults, foreclosures, and economic devastation.

238. Despite Defendants' awareness of and concerns about the increasing risk the Defendants were undertaking, they hid these risks from the Plaintiffs, borrowers, potential borrowers, and investors.

239. The unraveling of the Defendants' scheme has materially depressed the price of real estate throughout California, including the real estate owned by the Plaintiffs, resulting in losses to the

Plaintiffs.

240. As a result of the foregoing, Plaintiffs' damages herein are exacerbated by a continuing decline in residential property values and further erosion of their credit records.

241. Defendants' concealments and misrepresentations, both as to the their scheme to profiteer from the mortgage melt-down and as to their purported efforts to resolve loan modifications with Plaintiffs, are substantial factors in causing the harm to Plaintiffs described in this Complaint.

242. Defendants, hand-in-hand with one another, further stated numerous half-truths and made partial representations calculated to deceive Plaintiffs and to create a substantially false impression. Such **partial misrepresentations** include:

a. Representations calculated to make a borrower believe that his or her payment would only be X dollars, when in reality such payment was only available for a limited undisclosed period of time and would then drastically increase;

b. Representations that a borrower could afford payments under their loan, calculated to make a borrower believe that the loan payment would always be constant, but made knowing that the such payments would later drastically increase and knowing that the borrower would be *unable* to afford such increased payments;

c. Representations that a borrower qualified for a loan, when in reality the borrowers' qualification was only obtained through Defendants falsification of the borrowers' income, asset and other documentation, done without the borrower's knowledge;

d. Defendants' intentional publication and dissemination of their underwriting guidelines intended to create the perception that Countrywide lent in conformity with those guidelines and that their lending standards were safe, when in reality Defendants had abandoned their underwriting guidelines and were issuing loans which they knew were in unsafe;

e. Representations made that a borrower *qualified* for a loan (oftentimes based on documents falsified by Defendants) calculated to induce the borrower's belief they could *afford* their loan, when in reality Defendants knew borrowers would be unable to afford their loan as a matter of fact (oftentimes because Defendants had falsified

their income and asset documentation as well as abandoned their own underwriting guidelines);

f. Representations to a borrower that his payment would cover both principal and interest, and calculated to induce the borrower to believe that his or her payment would always cover principal and interest, when in reality that same payment would no longer cover any principal after a very short period of time, and indeed would not even cover the minimum interest on the loan resulting in deferred interest, meaning that the overall loan balance would continue to rise, even as payments were made;

g. Representations that by making the minimum payment of an Option ARM loan, a party *may* defer interest (aka "negatively amortize"), when in *reality* by making the minimum payment a party was *certain* to defer interest, meaning that the overall loan balance would continue to rise even as payments were made. As the California Court of Appeals in *Boschma* put it, a disclosure of what may happen, is not a disclosure of what will happen;

h. Defendants were federally mandated to include a Truth in Lending Disclosure ("TILDS") Payment Schedule with each loan issued, and did so, but made it intentionally misleading in that borrowers could have avoided negative amortization (under an Option ARM loan) by making payments larger than those that were mandated by the payment schedule, in fact the payment schedule created the materially false impression that by following the recommended payment schedule, Plaintiff borrowers would not negatively amortize their loan;

i. Representations that ""During the initial interest rate period [of an Option ARM loan], Option 1 [the minimum payment] represents a *full principal* ***and*** *interest payment*" intentionally couched in ambiguous terms to obfuscate the length of the 'initial interest rate period" and deceiving a borrower into believing that the Option 1 payment would pay principal and interest for a significant amount of time, when in reality, the Option 1 payment did not pay any principal, and in fact did not even pay interest – it paid less than interest resulting in negative amortization. (See **Exhibit**

B, which is hereby incorporated into this Complaint by reference);

j. Other partial misrepresentations and half-truths calculated to induce the borrower to fundamentally misunderstand the nature of their loan, such that Plaintiff-borrowers would agree to a loan they would not have otherwise agreed to, such as the meaning of a pre-payment penalty, or whether they had a pre-payment penalty.

243. Defendants, working in conjunction with one another, **intentionally and affirmatively misrepresented**:

a. The true terms of the borrowers' loans, including their interest rate, the terms of their loans, whether the loan was variable or fixed, the duration of any fixed period, and the inclusion of a prepayment penalty;

b. That Plaintiffs would be able to *afford* the loans they were being given;

c. That Defendants' calculations confirmed that Plaintiffs will be able to afford the loans they were being given;

d. That Defendants calculations confirmed that Plaintiffs would be able to afford the additional financial obligation resulting from Defendant's loans, taking into account Plaintiffs' other debts and expenses;

e. That the term "qualify" was synonymous with being able to "afford" a loan.

f. That by paying the minimum payment on the Option ARM loan they would not be deferring interest (aka "negatively amortizing"), when in reality, they would be deferring interest;

g. That by paying the minimum payment on the Option ARM loan, Plaintiffs would be paying principal and interest, when in reality the minimum payment did not pay down any principal, and actually resulted in deferred interest (aka negative amortization);

h. That the value arrived at by Defendants' appraisals of Plaintiffs' property was indeed the true value of Plaintiffs' property (when in reality Defendants appraisals' were intentionally and artificially inflated, and moreover when Defendants had engaged in a systematic price fixing scheme which had already falsely inflated the value of

Plaintiffs' property);

i. That the value arrived at by Defendants' appraisals of Plaintiffs' property was sufficient to justify the size of the loan they were being given (when internally Defendants were inflating appraisal values and knew that the values being used did not justify the size of the loans being placed on the property, and moreover that Defendants knew such valuations would inevitably result in the home going "upside" down followed by inevitable default);

j. That Defendants only entered into mortgages with qualified borrowers when in reality Defendants were recklessly and intentionally ignoring their own underwriting standards, and offering mortgages to substantially under-qualified borrowers, including Plaintiffs herein who they knew could not afford their loans);

k. That Defendants held their loans in their own portfolio and did not sell them on the secondary market (when in reality Defendants sold the overwhelming majority of their loans on the secondary market);

l. That Defendants were engaged in lending of the highest caliber. (when in reality Defendants (1) were disregarding industry standard quality assurance and underwriting guidelines and failing to enforce their own published standards, (2) had lowered their underwriting standards to include high-risk mortgages to unqualified borrowers, and (3) were lending to under-qualified borrowers upon properties which were intentionally overvalued – to inflate the short-term sale value of these mortgages when sold in packages to third party investors.

m. That the loans they offered were safe and secure for borrowers (including Plaintiffs) when internally Defendants and their corporate officers referred to their loans as "SACKS OF SHIT" and "GARBAGE LOANS";

n. That Plaintiffs and other borrowers were qualified for the loans Defendants were placing them into and that Plaintiffs were capable of affording the fully-amortized payments on those loans when internally Defendants knew that Plaintiffs were not qualified, that Plaintiffs could not afford the loan, and that, in many instances, it was

a mathematical inevitability that the Plaintiffs would default;

o. That Plaintiffs would be able to refinance their loans at a later date when internally Defendants knew that Plaintiffs would not be able to refinance Plaintiffs as a result of the depressed real estate market created by Defendants, the overvaluation of Plaintiffs' property, the damage to Plaintiffs' credit score which defendants knew would ensue, and for the many reasons already set forth above;

p. That Defendants would modify Plaintiffs' loans when in fact Defendants did not modify Plaintiffs' loans, had no intentions to do so, and it was more profitable for Defendants to leave the loans unmodified.

DEFENDANTS' DECEPTION CONTINUED WITH LOAN MODIFICATIONS

Defendants Deceived Borrowers Into Entering Loan Modifications In An Outright Cash-Grab With No Intent Of Ever Modifying, For Fear Of Having Their Own Fraud Discovered By Their Investors

244. After inducing Plaintiff-Borrowers into entering unaffordable loans Defendants refused to modify Plaintiff Borrowers' loans despite laws and court orders which required them to make good faith efforts to do.

245. Every Pooling and Servicing Agreement (the contracts that the Defendants would sign when "selling" bundles of loans to investors) had strict Warranties and Material Misrepresentation Provisions that must be honored by the Depositors (in this action- Defendants). In the event that a loan was based on a material misrepresentation or violates the warranties given to certificate holders and the Trustee of the REMIC, the loan must be purchased from the Certificate Holders and whatever insurance that was in place would automatically void due to the fraud in its origination.

246. Defendants were required to buy back loans from their investors if a material misrepresentation was discovered. Because of this, Defendants refused to modify loans which qualified in every regard for one in order to prevent discovery of their fraud and falsified information and being required to buy back their fraudulent loans and incurring massive losses in the process. In the case of loan modifications, it benefits the servicer to keep vital information away from the Certificate Holders and the Trustee that oversees the Trust. In the event that fraud is detected on a

mortgage loan the "**buy back**" provisions kick in and the servicer or originator, which is sometimes the same company, would be forced to take back the loan. In this case Countrywide /BofA and other Bank Defendants herein would be forced to put an already-foreclosed loan on their balance sheet with no hopes of being able to collect on the insurance policy that is in place due to fraud.

247. When Plaintiffs are desperate for help, Defendants refuse to assist them. In the event that Bank Defendants herein forward the true and accurate financial information to the Trustee overseeing the REMIC or to a third party chosen by the Trustee, they can and sometimes do find material misrepresentations that took place at origination. A Plaintiff supplies current financial information up to and including a signed 4506-T and the investor or Defendants through their processing centers find out that the income listed on the initial loan application was not correct.

248. This leads to a chain of events that Plaintiffs and the Courts are unaware of. Based on evidence Plaintiffs will introduce at trial Defendants instructed their employees to decline any application that contained a material misrepresentation for ***fear of having to buy back the loan*.**

249. This practice led to numerous lawsuits including Government lawsuits in which Government Sponsored Enterprises have independently sent out modification requests and have verified that fraudulent information was used at the origination of the Plaintiffs loans.

250. This practice alone has led to millions of American's losing their homes for fear of reprisal from investors that were lied to, when they purchased these *Toxic* loans.

251. Defendants' wrongful acts continue to this day with hardball tactics and deception that continue to threaten Plaintiffs' rights and financial security. Since 2010, these tactics and Defendants' other wrongful acts have finally been revealed as a result of extensive litigation and Government investigations.

Defendants Used The Promise Of Loan Modifications As Bait To Damage Plaintiffs' Credit, Preventing Plaintiffs From Obtaining Financing Anywhere Else

252. Defendants had a fraudulent pattern of telling borrowers who requested a loan modification that modifications would only be granted to borrowers who were more than three months behind on their payments. Defendants induced Plaintiffs to skip payments, fraudulently representing that the borrower would be granted a modification at that point. Relying on these representations,

Plaintiffs fell behind on their loan payments, but were then denied their loan modification.

253. In doing so, Plaintiffs' credit was substantially damaged; they suffered greatly-diminished access to credit and financing; and they were penalized with fees, penalties and charges in addition to their missed payments.

254. By recommending that Plaintiffs fall behind, Defendants effectively trapped Plaintiffs into keeping their loan with Defendants, because no other institution would help Plaintiffs after they became delinquent on their mortgage, or after their credit was destroyed.

255. At its most fundamental level, these sorts of unscrupulous business tactics, undermine notions of fair play and good faith in business dealings, and jeopardize the well-being of the consuming public.

Defendants Used The Promise Of Loan Modifications As Bait For An Outright Cash-Grab With No Intent To Ever Modify Plaintiffs

256. Defendants also implemented an unfair and fraudulent strategy of granting borrowers "trial payment plans" which Defendants represented as a sort of application process for a loan modification, but in reality these trial payment plans were nothing more than a means of forcing Plaintiffs to pay all of the additional fees that Defendants induced Plaintiffs to incur, without any of the payments working toward the interest or the principal of the loan. Specifically, Defendants would offer Plaintiffs and homeowners who were already on the brink of default/foreclosure a lower payment called a "trial payment." Defendants promised that if Plaintiffs were able to make the trial payment for 3 (or more) months, Defendants would permanently modify Plaintiffs' payment to be the same amount under the trial payments. But, Defendants engaged in a systematic practice of delaying the loan modification process by extending the trial payment period more than four (4) times its initially agreed-upon term, only to reject fully-compliant Plaintiffs' modification applications without cause at the end of the trial payment plan. Defendants would use the offer as bait to induce Plaintiffs to make payments which would never be applied to the principal and interest of their loan, but instead would be applied to the mountain of unmerited late charges, and fees, taking what little money the financially imperiled Plaintiffs had left, and duping them into spending it on unfairly placed fees and late charges.

257. Defendants never had any intent of modifying their loans, despite Plaintiffs' full

compliance with the terms of the offer.

258. Such acts are patently unfair and fraudulent, and Plaintiffs are entitled to remuneration of all payments made under such trial payment plans, as well as an injunction prohibiting Defendants from this deceptive business practice. More specifically, Defendants' unlawful and unfair practices in this regard include, but are not limited to, the following:

a. Failing to make good faith efforts to provide Plaintiffs with loan modifications and breaching their contractual obligations, written and implied promises, and loan servicing functions owed to Plaintiffs who fulfilled their obligations by making timely modified payments;

b. Making false and/or misleading representations that Plaintiffs were eligible and entered into the trial modification period, which would lead to a permanent modification of their mortgage payment;

c. Failing to disclose to Plaintiffs that their modified payments may be reported to credit bureaus as default or late payments that would destroy their credit scores;

d. Delaying processing, demanding duplicate documentation, and failing to provide adequate information or communication regarding the loan modification programs to Plaintiffs;

e. Engaging in conduct that undermined or violated the spirit and intent of the consumer protection laws alleged in this Complaint; and

f. Failing to inform Plaintiffs that they could be rejected from the trial modification period at any point, and that this would result in the immediate demand for a balloon payment consisting of purported delinquency payments and substantial late fees, default fees, foreclosure fees, inspection fees, property preservation fees, trustee fees, trustee sale guarantee fees, mail fees, recording fees, and default servicing fees.

<u>An Example of Defendants' Wrongs</u>

259. Plaintiff John Wright is one example of the Defendants' wrongful activities- both initial and continuing. On about August 16, 2004, Mr. Wright bought his first home for $700,000. Countrywide provided mortgage financing to Mr. Wright with a first loan for $400,000, fixed interest

rate of 6.5% for 30 years, and a second loan (Home Equity Line of credit) at 7.75% interest. Then, less than a year later, defendant Countrywide contacted Mr. Wright and strongly encouraged him to "refinance" his first loan into an adjustable rate loan instead, which he did, due to his reliance on Countrywide's reputation and experience, since he was a first time home buyer. This refinancing resulted in a new loan with an 8.5% interest rate in June 2005.

260. When issues with the sub-prime mortgage industry became a public scandal in 2007, Mr. Wright contacted Countrywide to refinance his Countrywide-recommended Adjustable-Rate-Mortgage into a fixed rate loan but a Countrywide representative told Mr. Wright that Countrywide was "too busy" and that Mr. Wright should wait to refinance due to market conditions, though fixed rate loans were then at a roughly 5% interest rate. When Countrywide finally let Mr. Wright start the refinance process, it recommended an appraiser which Countrywide represented had the ability to obtain approval for Mr. Wright's refinance, while an "average" appraiser could not. After hiring the appraiser recommended by Countrywide, Mr. Wright received an appraisal which later was revealed to be extremely-inflated. Countrywide refinanced Mr. Wright's adjustable-rate loan into a new 30-year fixed loan at 6.5%, rather than the 5% interest rate available when he started the second refinance process. With each successive refinancing, the Defendants reaped multiple fees, profits, and additional points of interest, to Mr. Wright's detriment.

261. In 2008, Mr. Wright was having difficulty making payments on his newly-refinanced loan so he petitioned Countrywide for a loan modification. After a long and tortuous process, Countrywide finally approved a loan modification which would only reduce his monthly payments of over $3,300 by $61. At this point, Mr. Wright hired a lawyer to assist him, Countrywide engaged in more fraudulent and predatory business practices such as denying receipt of documents sent by Mr. Wright and his attorney, attempting to discredit Mr. Wright's attorney to Mr. Wright, and communicating to Mr. Wright that it was improper to obtain legal counsel.

262. On July 1, 2008, Bank of America acquired Countrywide and substantially all of Countrywide's assets and liabilities. From this point forward, Countrywide ceased to exist as a legal entity and all Countrywide operations were assumed by Bank of America. Bank of America then began a series of harassing phone calls directly to Mr. Wright seeking payments for the loan Bank of

America then engaged in further fraudulent and dilatory tactics, including claiming necessary documents to modify the loan were missing or never received, when they had been sent by Mr. Wright repeatedly, and assuring Mr. Wright that he had nothing to worry about and apologizing to him, blaming the "lost" documents on Bank of America's own incompetence. Although he continued to send BofA the documents that he had already sent at least once, and often multiple times, before, Bank of America finally sent him a letter which denied him the loan modification in February 2010, and demanded a lump sum payment of $40,000 in past-due payments. When Mr. Wright called BofA, a BofA representative told him to disregard the letter he had received and that he was still qualified for a loan modification. Mr. Wright tape recorded many of his conversations with BofA/Countrywide, made with the knowledge and consent of Countrywide BofA, which will be introduced as evidence in this action. Many of these recordings are also available online, on his blog, along with other details regarding the problems caused by Countrywide and Bank of America.

263. Countrywide/BofA representatives even told Mr. Wright NOT TO PAY his mortgage payments for a period of time, which Mr. Wright recorded on tape. Bank of America told Mr. Wright that the letter to him demanding a large lump sum payment, **"went out in error"** and that the Bank of America had had **"millions of calls" about the erroneous letters** like this one that it had sent out to its borrowers. Mr. Wright also recorded a phone call with a BofA representative in which he was told that a training seminar by BofA employee Jennifer Long directed the Customer Service Department to handle calls from borrowers requesting loan modifications to by "send[ing] it into **the black hole**." The "black hole" here was the Loan Modification Department, which had a reputation for taking in requests and never dealing with them because there was "no profit" in doing loan modifications for borrowers.

264. The foregoing, even to this day, benefits the very people who were behind the Countrywide fraud. For example, Stanford Kerlund, the former President of Countrywide, left Countrywide as the scheme was accelerating in late 2006. He then formed PennyMac, his current business. PennyMac buys up the mortgages on which Plaintiffs and other Countrywide borrowers defaulted at pennies on the dollar, repackages the mortgages and sells them for a profit, thereby adding

continued injury and profit to the original scheme. PennyMac's business is supported and sanctioned by the Defendants herein.

265. These acts continue to this day with hardball tactics and deception that continue to threaten Plaintiffs' Constitutional rights and financial security, as well as the economic future of the State of California.

DEFENDANTS THEN INTENTIONALLY INITIATED WRONGFUL FORECLOSURE ACTIONS WITHOUT ANY OWNERSHIP INTEREST

266. Defendants intentionally foreclosed on Plaintiffs' properties, even when Defendants had no legal right to ownership or right to foreclosure then collected egregiously high and unmerited "foreclosure fees" including: inspection fees, default fees, late fees, advance fees, attorney fees, and trustee fees.

267. Defendants charged these ill-defined and ambiguous fees whose amounts were *never* disclosed to Plaintiffs in any writing or contract whatsoever unilaterally often charging double, triple or even quadruple the fair market value for these "services." Needless to say, the outrageous price markups all inured to the benefit of the conspiracy of Defendants. Especially in light of the fact that Defendants did not have an ownership interest in the property upon which to foreclose, these charges and fees were entirely unjustified, and constitute numerous cognizable sources of restitution.

Defendants Seek to Enforce Notes & Deeds of Trust Without Evidencing Their Ownership Interest

268. "Securitizing" entails the sale of the remaining payments under a debt, loan, or contract to a third-party investor in exchange for an up-front payment that is less than the total value of that debt/loan/contract over time. For example, a $100,000 loan may by "worth" $150,000 over the entire course of payments, with the additional $50,000 being income gained through interest. Securitizing that loan would be the sale of that loan to another entity which might pay a price of $125,000 up front, with the expected return of the additional $25,000 over the course of time. These types of transactions, in which short-term gain is traded for long-term gain, are extremely common in all industries. In the case at hand, large numbers of individual loans would be combined into a "pool" of loans which would then be sold for an immediate cash out. As typically executed by Defendants, a securitization process may result in up to three successive sales of the loan or in interests in the loan. These interests in the

same loan are sold in "tranches," or portions, almost like shares of a company's stock, that can be found in many collateralized debt obligation securities. As a result, the ultimate note holders are many disparate and unrelated entities (like how a large corporation oftentimes has tens of thousands of individual stockholders), no one of which can lawfully enforce the note without the participation of all the other anonymous note holders to partial interests in a single home loan.

269. Defendants' continue to demand payment and to foreclose and threaten to foreclose on Plaintiffs, despite the facts that:

a. Defendants have no proof that they own the notes and deeds of trust they seek to enforce;

b. There is considerable evidence that Defendants do not own the notes and deeds of trust they enforce and seek to enforce and based thereon, Plaintiffs allege that they do not; and

c. Whether or not they can demonstrate ownership of the requisite notes and deeds of trust, Defendants lack the legal right to enforce the foregoing because they have not complied with disclosure requirements intended to assure mortgages are funded with monies obtained lawfully.

270. Plaintiffs believe and thereon allege that Defendants have made demand for payment on the Plaintiffs with respect to Plaintiffs' properties at a time when Defendants are incapable of establishing (and do not have any credible knowledge regarding) who owns the promissory notes Defendants are purportedly servicing. Plaintiffs believe and thereon allege that because Defendants are not the holders of Plaintiffs' notes and deeds of trust and are not operating under a valid power from the various current holders of the notes and deeds of trust, Defendants may not enforce the notes or deeds of trust.

Defendants' Improper Securitization: The Foreclosing Trusts Had No Ownership Interest In Plaintiffs' Notes Or Deeds Of Trust Under The Explicit Terms Of Their Own Pooling & Service Agreements

271. Almost every Mortgage loan investigated which was produced by a major Banking Institution between the years 2000 - 2008 was securitized. Securitization is the act of producing an

investment vehicle of Mortgage-Backed Securities ("MBS") using the Borrower's Mortgage NOTE as the under-lying corpus, as collateral.

272. In a typical Securitization Transaction, mortgage loans are transferred by loan "Originators" to a "Sponsor." The "Sponsor", in turn, sells the mortgage loans to a "Depositor," a single –purpose entity. When the Sponsor acts in selling capacity, it is often referred to as a "Seller," as well as a Sponsor. The Depositor, in turn, deposits the loans into the securitization trust also known as a "REMIC", pursuant to a Pooling and Servicing Agreement ("PSA") or similarly-named agreement.

273. The parties to the Pooling and Servicing Agreement (PSA) generally are the Seller, the Depositor, the "Master Servicer," which services the mortgage loans and/or monitors the servicing of the mortgage loans by sub-servicers, and the "Trustee" who administers the trust that is established pursuant to the PSA.

274. The reason loans are pooled and placed into these loan trusts named REMIC's is due to income tax purposes. A REMIC is an "SPV" or Special Purpose Vehicle that is treated by the IRS as a "QSPE" or Qualifying Special Purpose Entity. It specifically was designed by Congress to allow the vehicle to not be taxed as the cash flows through the vehicle and distributed to the investor and certificate holders. It is like an S Corp where there is no double taxation.

275. Pooling and Servicing Agreements only allow loans to be placed into a REMIC for **two years** after the set-up of the Trust due to tax implications. You can only substitute in loans for two years thereafter, if there is non-compliance with the aforementioned PSA the penalty is 100% of the face value of the asset in tax penalties.

276. Plaintiffs believe that their loans are illegally being substituted in and out of these loan Trusts in direct violation of the PSA's in order to cure deficiencies with the Chain of Title that never should have occurred to begin with. Defendants have attempted to cure these defects with the use of (MERS) Mortgage Electronic Registration System.

277. Moreover, Plaintiffs allege that in numerous instances, Defendants foreclosed on behalf of trusts which had no ownership interest whatsoever in the Deeds of Trust (*hereinafter*, DOT), **because the trusts had been-long closed under the terms of their very own PSA.** In other words, it was impossible for the subject loan to be placed into the trust such that the trust would have any

ownership interest in the loan upon which to foreclose.

278. Defendants are defrauding Plaintiffs by transferring or purporting to transfer ownership of these loans to entities that **can no longer accept these assigned loans**, and thus have no ownership interest in the loans upon which they could foreclose. Under strict REMIC rules a loan must follow a specific protocol in order to become property of the Trust.

279. Originator/ Lender must endorse the Note in Blank to the Sponsor/Seller

280. The Seller assigns the Note to the Depositor/Purchaser who is to insure that all of the trust assets are actually deposited into the REMIC.

281. The Depositor assigns all of the Notes and Deeds of Trust/Mortgages into the name of the Issuing Entity.

282. The Issuing Entity is the newly formed REMIC that obtains an issuer number from the Securities and Exchange Commission to issue Certificates to Investors.

283. The Issuing Entity hires an independent Trustee to become the Custodian of the Trust. Trustee's job is to supervise the activities of the Trust and to insure that the Certificate Holders/Investors **"True Owner's"** of the loans are paid based on the Certificate grades they purchased.

284. The Trustee hires a Master Servicer and Sub-Servicers to collect mortgage payments and service the loans on behalf of the Trust.

285. In the event of a foreclosure action the REMIC Trustee must follow proper foreclosure procedures as laid out in the Pooling and Servicing Agreement.

286. It is standard in the securitization industry and the secondary markets to endorse a note to blank. Most often times the pool servicing agreement requires the Depositor to endorse the Note to Blank, in other words it is not endorsed to a person or entity, it's endorsed in blank making the Note a bear or bear instrument making it possible for the holder of that instrument to Deposit it into the Trust as required by the pool agreement. However, with this endorsement the pooling and servicing agreement requires that the Depositor transfer the Note to the Trustee for the benefit of the certificate holders.

287. A "Custodian" is sometimes a party to the PSA and sometimes enters into a separate

Custodial Agreement with the Trustee or the Trustee can act as both if so designated in the PSA.

288. Pursuant to the Custodial agreement, the Custodian maintains possession of the loan files on behalf of the Trustee.

289. An "Underwriter" typically enters into an Underwriting Agreement with the Depositor pursuant to which the Underwriter commits to purchase certain of the trust certificates and/or notes issued by the trust. In turn, the trust certificates and/or notes are sold to investors by the Underwriter (or Underwriters) pursuant to a Registration Statement or Prospectus filed with the Securities and Exchange Commission ("SEC").

290. When the transaction is complete, the Trust files a Form 8-K with the SEC. The form is accompanied by the documents involved in the securitization transaction.

291. Trust certificates are frequently issued in different classes. The different classes are associated with different payment terms, and different levels of risk. One loan can be placed in multiple classes of securities; these different classes of trust certificates are called "Tranches". The terms, including payment schedule, distribution priority, and allocation of losses, and the level of risk attributable to each class of certificates, or tranche, are defined in the PSA and related exhibits, and in the Prospectus and Prospectus Supplements.

292. When a loan is placed into a Tranche there can be more than one owner of the security since the loan has been chopped up into smaller pieces and listed as security in different classes of certificates based on risk.

293. The relative risk associated with any class, or tranche, of the trust certificates may be set by various devices, including credit enhancements, the subordination of lower level tranches through an agreement to absorb losses first, the over-collateralization of loan pools in excess of the aggregate amount of the trust certificates, or the creation of an excess spread fund to cover the difference between the interest collected from the pooled mortgage notes and the amounts owed to investors who purchase the trust certificates.

294. Subordinating the right of certain of the trust certificates to receive cash flow from the pooled mortgage until senior trust certificates have been paid, or allocating the cash flow from the pooled mortgages until senior certificates have been paid, or allocating the cash flow from the pooled

mortgages to different levels of trust certificates may be employed to create a tiered structure known as a **"Waterfall."**

295. Losses from mortgage defaults, delinquencies, or other factors may be allocated in reverse seniority, with the junior tranches incurring losses first until their interests are reduced to zero. Each class of trust certificates or tranche may have a credit rating issued by one or more nationally recognized statistical rating organizations who rate the likelihood of payment of interest and principal owed to the tranche, based on their internal projections of expected losses from the loan pool.

296. Securitization transactions involving government sponsored entities such as Fannie Mae and Freddie Mac follow the same general pattern involving the pooling of loans and sale of securities to investors, although the terminology and intermediate entities may be different.

297. In simple terms, in a securitization transaction, the loan is made by the "originator," and then sold into the market. Ownership of the loan is transferred to a trust. Certain files, including the original note and original deed of trust are maintained by a custodian or the trustee. The loan is serviced by the servicer, who collects the payments, keeps the payment history, and initiates (but typically does not conduct) foreclosure sales. Participants in the trust earn income, and absorb losses, according to the terms of the trust and associated contracts.

298. The following diagram illustrates the various parties involved in the typical securitization transaction, and also evidences custody and ownership of the underlying mortgage note:

It is important to have a general familiarity with mortgage securitization in order to understand the foreclosure process. Securitization involves a series of conveyances of the note evidencing the residential loan and assignment of the mortgage or trust deed securing it. Therefore, chain of title and beneficial interest issues frequently turn on the securitization trajectories.

Securitization is the process pooling loans into "mortgage-backed securities" or "MBS" for sale to investors. MBS is an investment instrument backed by an undivided interest in a pool of mortgages or trust deeds. Income from the underlying mortgages is used to pay interest and principal on the securities. Figure A below is a simplified schematic depicting the general securitization process and some of the parties involved.

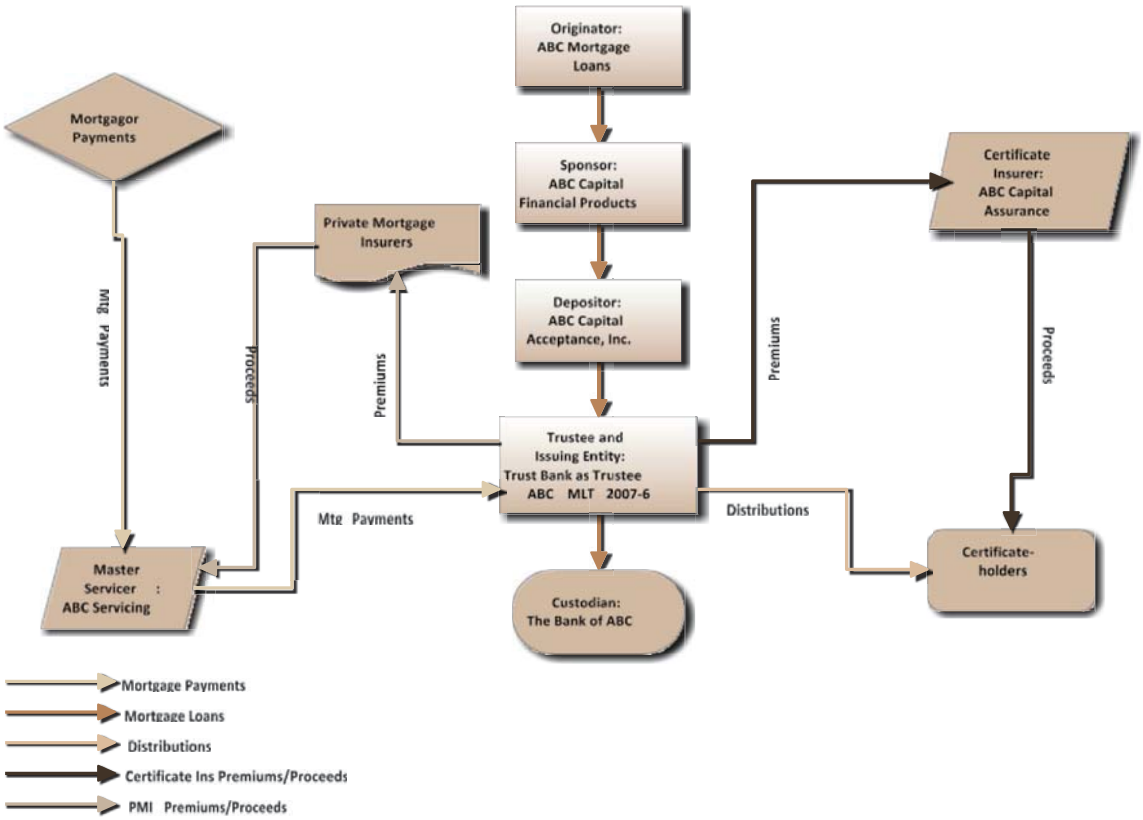

Figure A - Securitization Schematic

299. The process begins with Originators, which are the lenders (such as banks or finance companies) that initially make the loans to homeowners. Sponsor/Sellers (or "sponsors") purchase these loans from one or more Originators to form the pool of assets to be securitized. (Most large financial institutions are both Originators and Sponsor/Sellers.) A Depositor creates a Securitization Trust, a special purpose entity, for the securitized transaction. The depositor acquires the pooled assets from the Sponsor/Seller and in turn deposits them into the Securitization Trust. An Issuer acquires the Securitization Trust and issues certificates to eventually be sold to investors. Defendants, and each of them, wrongfully acted and continue to act as if they are either the owner, beneficiary, successor, assignee or servicer, or have some other right, title, or interest in Plaintiffs' notes and deeds of trust, when, in reality, they have no basis to assert any such right, title or interest.

300. As a result of Defendants' improper scheme, Plaintiffs were wrongfully dispossessed of their home, and/or were charged numerous unmerited and unjustified foreclosure-related fees by

Defendants. Plaintiffs also lost the equity in their homes, their credit ratings and histories were damaged or destroyed, and Plaintiffs incurred material other costs and expenses, described herein. At the same time, Defendants took from Plaintiffs and other borrowers billions of dollars in interest payments and fees and generated billions of dollars in illegal and fraudulently obtained profits by selling their loans at inflated values and using the loans as collateral for fraudulent swaps.

<u>There is No Chain of Title</u>

301. In Note 2 to the Financial Statements in the Countrywide Annual Report on Form 10-K for the Fiscal Year ended December 31, 2006 (filed March 1, 2007) ("*Countrywide 2006 Form 10-K*") on page F-10, Countrywide stated it routinely "[sold] most of the mortgage loans it produces in the secondary mortgage market, primarily in the form of securities, and to a lesser extent as whole loans."

302. "Nearly all of the mortgage loans that we originate in our Mortgage Banking and Capital Markets Segments are sold into the secondary mortgage market." Countrywide 2006 Form 10, at 37. "Most of the mortgage loans that we produce are sold in the secondary mortgage market, primarily in the form of MBS and ABS." *Id.* at 117. "Our mortgage loan securitizations are normally structured as sales as specified by SFAS 140, and as such involve the transfer of the mortgage loans to qualifying special-purpose entities that are not subject to consolidation." *Id.* at 122.

303. The BofA 2010 Form 10-K informs the public that Defendants have no idea of the "chain of title" of the investors and owners of the notes and deeds of trust at issue in this litigation.

304. The BofA 2010 Form 10-K advises the S.E.C., investors and public as follows (emphasis supplied):

> Many derivative instruments are individually negotiated and non-standardized, which can make exiting, transferring or settling some positions difficult. Many derivatives require that we deliver to the counterparty the underlying security, loan or other obligation in order to receive payment. ***In a number of cases, we do not hold, and may not be able to obtain, the underlying security, loan or other obligation. This could cause us to forfeit the payments due to us under these contracts*** or result in settlement delays with the attendant credit and operational risk, as well as increased costs to us. [page 13]
>
> ***If certain required documents are missing or defective, or if the use of MERS is found not to be effective, we could be obligated to cure certain defects or in some circumstances be subject to additional costs and expenses,*** which could have a material

adverse effect on our cash flows, financial condition and results of operations. [page 35]

305. Countrywide sold the Plaintiffs' mortgages, generally as part of securitization pools. Based upon Countrywide's and BofA's securities filings, published reports and other litigation against Defendants of which Plaintiffs' counsel is aware, Plaintiffs believe and thereon allege that Defendants either do not own the notes and deeds of trust they seek to enforce against Plaintiffs, or, at the very least, cannot prove that they do.

Understanding MERS – And Its Role In Defendants' Wrongful Foreclosure Process

306. Mortgage Electronic Registration Systems Inc., a/k/a MERSCORP, Inc. ("*MERS*") operates an electronic registry designed to track servicing rights and the ownership of mortgages. MERS is sometimes named as the "nominee" for lenders, and at other times MERS is named as the "beneficiary" of the deed of trust on behalf of unknown persons. When a loan is transferred among MERS members, MERS purports to simplify the process by avoiding the requirement to re-record liens and pay county recorder filing fees.

307. MERS' principal place of business is in Vienna, Virginia. Its national data center is located in Plano, Texas. At present, MERS appears to serve as nominee for more than 65 million mortgages based on published reports.

308. For the substantial majority of the Plaintiffs herein, MERS claims to be the owner of the security interest indicated by the mortgages transferred by lenders, investors and their loan servicers in the county land records. MERS claims its process eliminates the need to file assignments in the county land records which lowers costs for lenders and consumers by reducing county recording revenues from real estate transfers and provides a central source of information and tracking for mortgage loans.

309. Based upon published reports, including the MERS website, Plaintiffs believe and thereon allege, MERS does not: (1) take applications for, underwrite or negotiate mortgage loans; (2) make or originate mortgage loans to consumers; (3) extend credit to consumers; (4) service mortgage loans; or (5) invest in mortgage loans.

310. MERS is used by Defendants to facilitate the unlawful transfers of mortgages, unlawful pooling of mortgages and the injection into the United States banking industry of unsourced (read: unknown) funds, including, without limitation, improper off-shore funds. Plaintiffs are informed and

thereon believe and allege that MERS has been listed as beneficial owner of more than half the mortgages in the United States. MERS is improperly listed as beneficial owner of many Plaintiffs' mortgages.

311. MERS states in their Quality Assurance and Procedures Manual which protocol to follow on active MERS loans and which protocol to follow for non-MERS member loans. Prior to a MERS member bringing any type of foreclosure action they must prepare and assignment and give it to the Servicer for it to be recorded before first legal action is brought including the filing of Notice of Defaults.

312. If the loan is deactivated from the MERS system, MERS must prepare and record an assignment transferring the beneficial interests of the MERS member loan to the beneficiary and must insure that this assignment is recorded within fourteen calendar days of the Deactivation Date.

313. At all times MERS must disclose who the investor or beneficiary is of the mortgage note in accordance with 15 USC Section 1641 (f)(2), yet when loans are searched in their database they state that the investor has chosen not to display that information or they list the servicer as the investor on the loan. By hiding the true beneficiary they are preventing the Plaintiffs from contacting or negotiating loan modifications or short sales with the "True Party in Interest".

314. Nationwide, there are courts requiring banks that claim to have transferred mortgages to MERS to forfeit their claim to repayment of such mortgages.

315. MERS' operations undermine and eviscerate long-standing principles of real property law, such as the requirement that any person who seeks to foreclose upon a parcel of real property: (1) be in possession of the original note and mortgage; and (2) possess a written assignment giving it rights to the payments due from the borrower pursuant to the mortgage and note.

316. Many of the mortgages issued by Defendants include intentionally ambiguous provisions pertaining to MERS. These standardized mortgages are crafted to allow Defendants to situationally modify their positions, as demonstrated by the following language from some of the underlying documents used in mortgages involving MERS:

//

//

b. MERS is Mortgage Electronic Registration Systems, Inc.; (2) MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns; (3) MERS is the mortgagee under this security instrument; (4) MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

c. TRANSFER OF RIGHTS IN THE PROPERTY: This Security Instrument secures to Lender: (1) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (2) the performance of Borrower's covenants. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS,2 the following described property in the County of [_____].

317. The Defendants did not want to pay the fees associated with recording mortgages and they did not want to be bothered with the trouble of keeping track of the originals. That is the significance of the word 'Electronic' in Mortgage Electronic Registration Systems, Inc. The Defendants, through this sophisticated legerdemain, made over the judicial system's long-honored requirements for mortgages and foreclosures. They undermined long-established rights and sabotaged the judicial process eliminating, "troublesome" documentation requirements. While conversion to electronic loan documentation may eventually be implemented, it will ultimately be brought about only through duly enacted legislation which includes appropriate safeguards and counterchecks.

318. Upon information and belief:

a. MERS is not the original lender for any of the Plaintiffs' loans;

b. MERS is not the creditor, beneficiary of the underlying debt or an assignee under the terms of any the Plaintiffs' promissory notes;

c. MERS does not hold the original of any Plaintiff's promissory note, nor has it ever held the originals of any such promissory note;

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[2] The provision cannot reconcile that the borrower simultaneously "conveys" the property: (1) to MERS as nominee for Lender and Lender's successors and assigns; and (3) to MERS's *own* successors and assigns.

d. At all material times, MERS was unregistered and unlicensed to conduct mortgage lending or any other type of real estate or loan business in the State of California and has been and continues to knowingly and intentionally improperly record mortgages and conduct business in California and elsewhere on a systematic basis for the benefit of the Defendants and other lenders;

319. Following a crescendo of rulings that MERS lacks the authority to foreclose, on February 16, 2010 MERS issued an Announcement to "All MERS Members" advising them:

> MERS is planning to shortly announce a proposed amendment to Membership Rule 8. The proposed amendment will require Members to not foreclose in MERS' name. Consistent with the Membership Rules there will be a 90-day comment period on the proposed Rule. During this period we request that Members do not commence foreclosures in MERS' name.

320. The Announcement also instructed MERS' members to cease executing assignments and other documents, except pursuant to new procedures being developed.

321. Based upon published reports, other litigation and the investigations of Plaintiffs' counsel, Plaintiffs believe and thereon allege that MERS has been used by Defendants to facilitate the unlawful transfers of mortgages, unlawful pooling of mortgages and the injection into the United States banking industry of improper off-shore funds

322. On April 13, 2011, the Federal Reserve Board of Governors, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the Federal Housing Finance Agency found "certain deficiencies and unsafe or unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal and reputational risks." As a result, the various agencies entered into a Consent Order requiring those practices be audited and corrected.

DEFENDANTS' VIOLATION OF NUMEROUS OTHER LAWS

Defendants' Pervasive Scheme Of Fraud & Deception

323. Under California Civil Code § 1709 it is unlawful to willfully deceive another "with intent to induce him to alter his position to his injury or risk."

324. Under California Civil Code § 1710, it is "deceit" to do any one or more of the following: (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be

true; (2) the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; (3) the suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, (4) a promise, made without any intention of performing it.

325. Under California Civil Code § 1572, the party to a contract further engages in fraud by committing "any other act fitted to deceive."

326. At the time of entering into the notes and deeds of trust referenced herein with respect to each Plaintiff, Defendants were bound and obligated to fully and accurately disclose the following and did not do so:

a. Who the true lender and mortgagee were;

b. That to induce a Plaintiff to enter into a mortgage, the Defendants disregarded their underwriting requirements, thereby causing Plaintiff to falsely believe that Plaintiff was financially capable of performing Plaintiff's obligations under the mortgage, when the Defendants knew that was untrue;

c. Defendants qualified Plaintiff's loans as exceptions to its Loan Program Guides;

d. That Defendants not only had the right to securitize and sell Plaintiff's mortgage to third-party investors;

e. That as to the intended sales:

i. The sales would include sales to nominees who were not authorized under law at the time to own a mortgage, including, among others, MERS, which according to its website, was created by mortgage banking industry participants to be only a front or nominee to "streamline" the mortgage re-sale and securitization process;

ii. Plaintiff's true financial condition and the true value of Plaintiff's home and mortgage would not be disclosed to investors to whom the note and/or mortgage would be sold or used as collateral;

iii. Defendants intended to sell the note and mortgage together with other notes and mortgages as to which they also intended not to disclose the true

financial condition of the borrowers or the true value of their homes, notes or mortgages;

iv. The consideration to be sought from investors would be greater than the actual value of the said notes and deeds of trust; and

v. The consideration to be sought from investors would be greater than the income stream that could be generated from the instruments even assuming a 0% default rate thereon;

f. That the notes and mortgages would thereby be used as part of a scheme by which the Defendants would defraud investors by selling collateralized mortgage pools at an inflated value and/or by entering into swaps at inflated value;

g. That, at the time they did the foregoing, the Defendants knew the foregoing would lead to a liquidity crisis and the likely collapse of Defendants;

h. That the Defendants also knew the foregoing would lead to grave damage to each Plaintiff's property value and thereby result in Plaintiff's loss of the equity Plaintiff invested in his house, as well as damaging Plaintiff's credit rating and resulting in other costs and damages to Plaintiff, thereby causing Plaintiff additional severe financial damage; and

i. The Defendants did not have documents to establish that they were holders in due course of the notes or deeds of trust, or otherwise operating under a valid power of attorney with respect thereto to support the right to enforce the notes and deeds of trust against Plaintiffs property.

327. When property values started falling – just as Defendants knew would occur – Defendants could no longer continue the pretense, concealment and affirmative misrepresentations. Plaintiffs, through their losses and the U.S. taxpayer, through Trouble Asset Relief Program (TARP) and other programs, have paid the price of Defendants' misrepresentations.

328. In violation of their own underwriting guidelines, Defendants induced Plaintiffs and other borrowers into accepting loans at loan-to-value ratios that were unsustainable for Plaintiff to repay. The Defendants knew, but concealed from Plaintiffs that they knew, Plaintiffs would soon be

unable to afford the loans once introductory discount interest rates ended, and variable interest and balloon payments kicked in.

329. The Defendants knew that when interest payments increased and balloon payments became due, if not before, Plaintiffs and others would begin defaulting on their mortgages and would suffer grievous losses from mortgages for which they were not qualified.

330. The Defendants knew that the scale of the lending – based on inflated property values, without income verification and in violation of numerous other Defendants underwriting guidelines – would lead to widespread declines in property values, thereby putting Plaintiffs and others into extremes through which they would lose the equity invested in their homes and have no means of refinancing or selling, other than at a complete loss. That is precisely what happened to Plaintiffs herein.

The Patriot Act

331. Enacted in 2001, the USA Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("*Patriot Act*") is comprised of nine principal titles, including Title III: International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.

332. In the Patriot Act, Congress found that "money laundering, and the defects in financial transparency on which money launderers rely, are critical to the financing of global terrorism and the provision of funds for terrorist attacks." Congress specifically found that "money launderers subvert legitimate financial mechanisms and banking relationships by using them as protective covering for the movement of criminal proceeds and the financing of crime and terrorism…" Title III, § 302.

333. Congress also noted that correspondent accounts involving off-shore persons were particularly vulnerable to improper use. Title III, § 302 (8).

334. Title III of the Patriot Act requires each financial institution that establishes, maintains, administers, or manages accounts in the United States for an individual or representative of a non-United States person to establish due diligence policies, procedures and controls reasonably designed to detect and report instances of money laundering through those accounts. Title III, § 312.

335. Section 327 makes it more difficult for banks to merge if they lack a good track record

in combating money laundering. Sections 312, 213, 219 and 325 provide for forfeitures in specified circumstances pertaining to terrorism and money laundering.

336. Section 326 requires financial institutions to establish procedures to take reasonable and practicable measures to verify the identity of those applying for an account with the institution (31 U.S.C. § 5318(I)(2)(A)) and maintain records of the information used to verify a person's identity, including name, address, and other identifying information (31 U.S.C. § 5318(I)(2)(B)).

337. These enhanced due diligence policies, procedures, and controls require that each financial institution ascertain the identity of any foreign bank and the nature and extent of the ownership interest of each such owner, conduct enhanced scrutiny to guard against money laundering and report any suspicious transactions, and ascertain whether such foreign bank provides correspondent accounts to other foreign banks. Title 3, § 312. The Patriot Act, therefore, places an affirmative burden on United States banks to ascertain the identity and nature of the individuals and the sources of the monies it receives from foreign banks or individuals.

338. Plaintiffs are informed and believe that a significant number of Countrywide mortgages were transferred to foreign banks.

339. To comply with the Patriot Act, Defendants must determine and report the sources of funds used for the mortgages they originate and service, as well as the source of funds used to acquire any mortgages. Bank of America's acquisition of Countrywide Financial also was subject to the Patriot Act.

340. Defendants bundled and resold Plaintiffs' mortgages, without any accountability or notices, as well as the transfer off-shore of records pertaining to the foregoing. This scenario is precisely what Congress sought to prevent in enacting the Patriot Act. Anonymous owners may have used these multiple transactions to launder money, further criminal activity, or even fund terrorist operations.

341. Defendants perpetrated their massive fraud knowing it would result in a crash, including a wave of foreclosures. To the extent non U.S. citizens have acquired the mortgages (and can be identified), Plaintiffs' homes could be foreclosed upon by transferees, including persons engaged in activities intended to be quarantined by the Patriot Act.

342. Pursuant to Title III, §319, when an act or omission of a bank results in property being transferred, sold to, or deposited with a third party or placed beyond jurisdiction of the Court, such property is subject to forfeiture.

343. On information and belief, contrary to the Patriot Act, Defendants did not: (1) establish due diligence policies, procedures and controls reasonably designed to detect and report instances of money laundering, (2) establish procedures to take reasonable and practicable measures to verify the identity of those applying for an account and maintain records of the information used to verify a person's identity, including name, address, and other identifying information, (3) determine and report the sources of funds used for the mortgages they originate and service, as well as the source of funds used to acquire any mortgages, or (4) disclose to Plaintiffs the identities, address and telephone numbers of transferees of their mortgages.

344. As a consequence of the foregoing, Defendants may be liable for a forfeiture of any loans or interests in Plaintiffs' homes, or other appropriate relief.

345. This Complaint does not allege a cause of action for breach of the Patriot Act. Rather, Defendants actions and omissions are relevant to the causes of action alleged herein for the following reasons: (1) such actions and omissions and the potential consequences thereof were concealed from Plaintiffs, (2) such actions and omissions are relevant to determining the availability of punitive damages, and (3) such actions and omissions are relevant to assessing whether there is liability under the California Unfair Competition Law which is the basis for the seventh cause of action herein.

TILA /Notification of Sale or Transfer of Mortgage Loans

346. Effective May 20, 2009, pursuant to an amendment to the Federal Truth in Lending Act ("*TILA*"), transferors of mortgage loans must disclose to the mortgagee the identify of any transferees. The notice must include the identity, address and telephone number of the new creditor; the date of the transfer; how to reach an agent or party having authority to act on behalf of the new creditor; the location of the place where transfer of ownership of the debt is recorded; and any other relevant information regarding the new creditor.

347. Section 404. of TILA, NOTIFICATION OF SALE OR TRANSFER OF MORTGAGE LOANS, provides**:**

(a) IN GENERAL.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following:

‘‘(g) NOTICE OF NEW CREDITOR.—

‘‘(1) IN GENERAL.—In addition to other disclosures required by this title, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

‘‘(A) the identity, address, telephone number of the new creditor;

‘‘(B) the date of transfer;

‘‘(C) how to reach an agent or party having authority to act on behalf of the new creditor;

‘‘(D) the location of the place where transfer of ownership of the debt is recorded; and

‘‘(E) any other relevant information regarding the new creditor.

‘‘(2) DEFINITION.—As used in this subsection, the term ‘mortgage loan’ means any consumer credit transaction that is secured by the principal dwelling of a consumer.’’.

(b) PRIVATE RIGHT OF ACTION.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended by inserting ‘‘subsection (f) or (g) of section 131,’’ after ‘‘section 125,’’.

348. The amendment above was signed into law as part of the Helping Families Save Their Homes Act of 2009, with immediate effect from the President’s signature. The purpose of the amendment is to ensure that homeowners know who owns their mortgages and to prevent lenders from standing behind nominees. The requirement for “any other relevant information” is particularly strong, underscoring the strong Congressional intent for complete disclosure. Using MERS to foreclose may violate 15 U.S.C. § 1641.

349. The Board of Governors of the Federal Reserve System (the “*Board*”) promulgated an interim final rule (the “*Interim Final Rule*”). The Interim Final Rule amends Regulation Z by implementing Section 131(g) of TILA With respect to the content of the notices, the Interim Final Rule provides, among other things:

- The party identified as the owner of a mortgage loan must be the actual owner, regardless of whether another person has been appointed as agent or servicer of the owner;
- If there are multiple "covered persons" with respect to a mortgage loan, identifying information must be provided for each covered person; however, only one notice is to be given, and the covered persons must determine among themselves which one of them will deliver the notices ("covers persons" means, generally, creditors);
- The date of acquisition of a mortgage loan is the date of acquisition recognized in the books and records of the covered person;
- The notice must identify the persons who are authorized to receive legal notices on behalf of the covered person and to resolve issues concerning the mortgagor's payments on the mortgage loan; if there are multiple agents performing these functions, the scope of authority for each agent must be specified.

350. Remedies for TILA violations include rescission, damages and equitable relief. 15 U.S.C. §§ 1635 – 1640.

351. This Complaint does not allege a cause of action for breach of TILA. Rather, Defendants actions and omissions are relevant to the causes of action alleged herein for the following reasons: (1) such actions and omissions and the potential consequences thereof were concealed from Plaintiffs, (2) such actions and omissions are relevant to determining the availability of punitive damages, and (3) such actions and omissions are relevant to assessing whether there is liability under the California Unfair Competition Law which is the basis for the seventh cause of action herein.

352. For avoidance of any doubt, this Complaint asserts no causes of action under Federal law. All references to Federal laws violated by the Defendants are set forth either for informational purposes or as predicate violations with respect to the Fourth Cause of Action and then only to the extent that such assertion does not give rise to a federal question sufficient to permit removal. Any allegation herein that might permit removal to federal court shall be deemed stricken or otherwise modified such that it does not permit removal to federal court.

Enforcement Actions Against Defendants Tell the Tale

353. The first major lawsuit against Countrywide was commenced by the State of California and alleged that Countrywide deceived borrowers by misrepresenting loan terms, loan payment increases and the borrowers' ability to pay the loans. On October 6, 2008, California Attorney General

Jerry Brown (currently Governor of California) announced a multi-state settlement of up to $8.68 billion with Countrywide for home loan and foreclosure relief. Brown announced that the settlement would provide up to $3.5 billion to California borrowers by allowing eligible subprime and pay-option mortgage borrowers to obtain modified loans. According to published reports, the settlement covered pay-option and adjustable-rate mortgage loans in which the borrower's first payment was between Jan. 1 2004 and Dec. 31 2007. As part of the settlement, BofA agreed to stop offering subprime loans or loans that could amortize under its own name or Countrywide. Initially, eleven states participated in the settlement. Now, a total of at least 44 states have joined in the settlement.

354. When he announced the settlement, Brown said: "'Countrywide was, in essence, a mass-production loan factory, producing ever increasing streams of debt without regard for borrowers… Californians...were ripped off by Countrywide's deceptive scheme."

355. But BofA failed to abide by terms of the settlement, as reported by *The Nation* in November 2010:

> But two years later, many Countrywide borrowers facing foreclosure have not even been notified that they may qualify for the settlement. It has kept, at best, about 134,000 families in their homes, and most of these only temporarily. Countrywide and its parent company, Bank of America, have blocked many subprime borrowers from access to the best aspect of the deal—principal reduction—in favor of short-term fixes that could easily spell disaster down the road. The settlement is silent on the question of second liens— home equity loans—which have played such a significant part in the foreclosure crisis, jeopardizing the possibility of truly affordable modifications. And the biggest loophole of all? Bank of America has the right to foreclose on the victims of Countrywide's predation whenever its analysts determine—using an undisclosed formula—that it can recoup more money through foreclosure than by modifying the loan.

356. Then, on June 4, 2009, the SEC charged former Countrywide CEO Mozilo and two other former Countrywide executives with fraud regarding "disturbing trends in Countrywide business practices," as announced by Robert Khuzami, Director of the SEC's Division of Enforcement at a news conference on June 4, 2009. Khuzami explained the deception and the scheme, and confirmed it was never disclosed to Plaintiffs. On the one hand, Mozilo and Countrywide portrayed Countrywide as a prudent, quality lender. "But the real Countrywide was very different. We allege it was a company: [t]hat underwrote loans in a manner that layered risk factor upon risk factor, such as reduced

documentation . . . Also concealed from investors were concerns voiced by Countrywide's own Chief Credit Risk Officer, who warned that this "supermarket" strategy reduced Countrywide's underwriting guidelines to a 'composite of the riskiest products being offered by all of their competitors combined."

357. The SEC's Complaint in *SEC v. Mozilo et al.,* Case No. CV09-83994 VBF AJWx ("*SEC Complaint*"), in the U.S. District Court for the Central District of California, alleges that from 2005 through 2007, Mozilo, along with David Sambol, chief operating officer and president, and Eric Sieracki, chief financial officer, held Countrywide out as primarily a maker of prime quality mortgage loans and to support this false characterization, they hid that Countrywide, in an effort to increase market share, engaged in an "unprecedented expansion of its underwriting guidelines from 2005 and into 2007. Specifically, Countrywide developed what was referred to as a "supermarket" strategy, where it attempted to offer any product that was offered by any competitor. By the end of 2006, Countrywide's underwriting guidelines were as wide as they had ever been, and Countrywide was writing riskier and riskier loans. Even these expansive underwriting guidelines were not sufficient to support Countrywide's desired growth, so Countrywide wrote an increasing number of loans as "exceptions" that failed to meet its already wide underwriting guidelines even though exception loans had a higher rate of default." SEC Complaint, ¶ 4.

358. As the SEC Complaint further makes clear, Countrywide was more dependent than many of its competitors on selling loans it originated into the secondary mortgage market. As the SEC Complaint explains: "In fact, the credit risk that Countrywide was taking was so alarming to Mozilo that he internally issued a series of increasingly dire assessments of various Countrywide loan products and the risks to Countrywide in continuing to offer or hold those loans, while at the same time he, Sambol, and Sieracki continued to make public statements obscuring Countrywide's risk profile and attempting to differentiate it from other lenders. In one internal email, Mozilo referred to a particularly profitable subprime product as "toxic," and in another he stated that the company was "flying blind," and had "no way" to predict the performance of its heralded product, the Pay-Option ARM loan." SEC Complaint ¶ 7.

359. The covert Countrywide scheme was, like all such schemes based on deception, ultimately unsustainable. As the SEC Complaint further explains:

> Countrywide depended on its sales of mortgages into the secondary market as an important source of revenue and liquidity. As a result, Countrywide was not only directly exposed to credit risk through the mortgage-related assets on its balance sheet, but also indirectly exposed to the risk that the increasingly poor quality of its loans would prevent their continued profitable sale into the secondary mortgage market and impair Countrywide's liquidity. Rather than disclosing this increasing risk, Mozilo, Sambol, and Sieracki gave false comfort, again touting Countrywide's loan quality. [¶ 31]
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> . . .
>
> Countrywide's increasingly wide underwriting guidelines materially increased the company's credit risk from 2004 through 2007, but this increased risk was not disclosed to investors. In 2007, as housing prices declined, Countrywide began to suffer extensive credit problems as the inherent credit risks manifested themselves. [¶ 32]
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> . . .
>
> The credit losses experienced by Countrywide in 2007 not only were **foreseeable** by the proposed defendants, they were in fact **foreseen** at least as early as September 2004. [¶ 33 (Emphasis in original)]
>
> . . .
>
> The credit risk described in the September 2004 warning **worsened** from September 2004 to August 2007. [¶ 35 (Emphasis in original)]
>
> . . .
>
> By no later than 2006, Mozilo and Sambol were on notice that Countrywide's exotic loan products might not continue to be saleable into the secondary market, yet this material risk was not disclosed in Countrywide's periodic filings. [¶ 45]
>
> . . .
>
> Mozilo and Sambol made affirmative misleading public statements in addition to those in the periodic filings that were designed to falsely reassure investors about the nature and quality of Countrywide's underwriting. [¶ 91]
>
> . . .
>
> Concurrent with its rising credit losses, Countrywide experienced a liquidity crisis in August 2007. [¶ 104]

360. Based upon the allegations of the SEC set forth in this Complaint, the Plaintiffs believe and thereon allege the same allegations therein.

361. According to an SEC press release issued on October 15, 2010, the SEC settled with Mozilo, Sambol and Sieracki for more than $70 million, with Mozilo's contribution described as "the largest ever [financial penalty] paid by a public company's senior executive in an SEC settlement. In addition to the financial penalties, Mozilo and Sambol consented to the entry of a final judgment that provides for a permanent injunction against violations of the antifraud provisions of the Securities Act

of 1933 and the Securities Exchange Act of 1934. Mozilo also consented to the entry of a permanent officer and director bar and Sambol consented to the imposition of a three-year bar.

362. The SEC release further stated:

> Mozilo's record penalty is the fitting outcome for a corporate executive who deliberately disregarded his duties to investors by concealing what he saw from inside the executive suite — a looming disaster in which Countrywide was buckling under the weight of increasing risky mortgage underwriting, mounting defaults and delinquencies, and a deteriorating business model.

363. Each of the foregoing misrepresentations was made in public documents or forums and were widely disseminated to the public, including Plaintiffs. Defendants continued to perpetuate their misrepresentation because this would expose their fraud to investors and trigger buy-bay provisions and could stop the flow of new borrowers taking out loans through Countrywide. This concealment from borrowers was absolutely essential because the Defendants knew they would soon be delivering Plaintiffs' notes and deeds of trust to investors and their representatives at intentionally inflated values as collateral for Defendants' fraudulent securitized pools.

364. By not disclosing the truth of their inflated appraisals, lax lending standards, deficient loan portfolio, shaky secondary market collateralized securities, and overall scheme to its borrowers, as set forth above, Countrywide not only made them unwitting accomplices, but put them into a no-win situation in which the price of taking a mortgage from Countrywide was, and continues to be, cascading defaults and foreclosures that have wiped out billions of dollars in equity value, including the equity Plaintiffs invested in their homes. The boom in foreclosures of entire cities and counties in California leads to unemployment and economic turmoil. All Plaintiffs have been damaged by the foregoing. Despite billions of dollars of taxpayer-funded relief programs, property values continue to fall.

365. As defaults increased, the Countrywide Defendants used it as an opportunity to increase their fees and to punish Plaintiffs and other borrowers. That is why on June 7, 2010, the FTC announced that two Countrywide mortgage servicing companies will pay $108 million to settle FTC charges that they collected excessive fees from cash-strapped borrowers who were struggling to keep their homes. The $108 million represents one of the largest judgments imposed in an FTC case, and the largest ever in a mortgage servicing case.

366. As FTC Chairman Jon Leibowitz explained in the FTCs press release announcing the settlement: "Life is hard enough for homeowners who are having trouble paying their mortgage. To have a major loan servicer like Countrywide piling on illegal and excessive fees is indefensible."

367. The FTC press release further explained:

> According to the complaint filed by the FTC, Countrywide's loan-servicing operation deceived homeowners who were behind on their mortgage payments into paying inflated fees – fees that could add up to hundreds or even thousands of dollars. Many of the homeowners had taken out loans originated or funded by Countrywide's lending arm, including subprime or "nontraditional" mortgages such as payment option adjustable rate mortgages, interest-only mortgages, and loans made with little or no income or asset documentation, the complaint states. Mortgage servicers are responsible for the day-to-day management of homeowners' mortgage loans, including collecting and crediting monthly loan payments. Homeowners cannot choose their mortgage servicer
> . . .
> When homeowners fell behind on their payments and were in default on their loans, Countrywide ordered property inspections, lawn mowing, and other services meant to protect the lender's interest in the property, according to the FTC complaint. But rather than simply hire third-party vendors to perform the services, Countrywide created subsidiaries to hire the vendors. The subsidiaries marked up the price of the services charged by the vendors – often by 100% or more – and Countrywide then charged the homeowners the marked-up fees. The complaint alleges that the company's strategy was to increase profits from default-related service fees in bad economic times. As a result, even as the mortgage market collapsed and more homeowners fell into delinquency, Countrywide earned substantial profits by funneling default-related services through subsidiaries that it created solely to generate revenue.
> . . .
> In addition, in servicing loans for borrowers trying to save their homes in Chapter 13 bankruptcy proceedings, ***the complaint charges that Countrywide made false or unsupported claims to borrowers about amounts owed or the status of their loans***. Countrywide also failed to tell borrowers in bankruptcy when new fees and escrow charges were being added to their loan accounts. The FTC alleges that after the bankruptcy case closed and borrowers no longer had bankruptcy court protection, Countrywide unfairly tried to collect those amounts, including in some cases via foreclosure. [Emphasis supplied]

368. Based upon the allegations of the FTC set forth in this Complaint, the Plaintiffs believe and thereon allege the same allegations therein.

369. Defendants' effective admission of wrongdoing worsened during 2010.

370. First, on or about October 2, 2010, BofA suspended its foreclosures in 23 states,

admitting that employees were falsely signing affidavits and that "robo-signers" were forging the signatures of its officers. Then, on October 9, BofA also suspended foreclosures in California. After purportedly reviewing its process, BofA resumed foreclosures approximately two weeks later.

371. Then, on January 3, 2011, BofA announced a $2.6 billion to $3 billion settlement with Fannie Mae and Freddie Mac. The settlement pertained to the investor side of Defendants' scheme and involved the payment in December 2010 of $2.6 billion and potential additional payments of up to approximately $400 million. The settlement left open Fannie Mae's right to seek additional relief and did not pertain to the potential $47 billion of repurchase claims raised in October 2010 by the Federal Reserve Bank of New York, Pacific Investment Management and BlackRock, or further claims made by MBIA Insurance, which alleges that BofA and Countrywide's scheme, described in this Complaint, defrauded them, as well, when they covered Defendants' losses from certain borrower defaults.

372. On April 13, 2011, the Comptroller of the Currency along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, The Office of Thrift Supervision and the Federal Housing Finance Agency executed a Stipulation and Consent to the Issuance of a Consent Order ("Order") which resulted in a Cease and Desist Order being issued by those agencies requiring that MERS and its corporate parent, MERSCORP, take "all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices" that were identified as findings by the respective agencies during a systematic and in-depth review that "present financial, operational, compliance, legal and reputational risks" to MERS and MERSCORP as well as to those members such as Defendants who use the MERS services.

373. Among the findings reported in the Cease and Desist Order were that MERS has "failed to exercise appropriate oversight, management supervision and corporate governance" in order to "ensure proper administration and delivery of services." Moreover, the Order reports that the review revealed that MERS has "failed to establish and maintain adequate internal controls, policies and procedures, compliance risk management, and internal audit and reporting" in connection with its services to Defendants.

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374. The 22-page Order sets out detailed action plans on a specified time-line with reporting requirements intended to ensure that "at a minimum" MERS is operated "in a safe and sound manner in accordance with applicable laws."

375. The Order is a strong validation of this Complaint. It reports failures of management; compliance; inadequate training, skills, abilities and experience of personnel; failures of supervision by the board of directors and senior management; and process deficiencies such as registration and tracking systems as well as data integrity. Recognizing the liability issues such as those raised by Plaintiffs herein, the Order also insists that MERS undertake a review and make regular reports on "outstanding legal issues and pending litigation that affect the interests of MERS, MERSCORP, and Examined Members with respect to MERSCORP and MERS, and provides analysis and recommendations concerning litigation contingency reserves."

376. Also on April 13, 2011, Defendant BofA entered into a Consent Cease and Desist Order with the Office of Comptroller of the Currency ("OCC Order"). The OCC Order recites that an examination of Bank of America, N.A., undertaken by the Board of Governors of the Federal Reserve System, FDIC, OCC, OTS and Federal Reserve found "unsafe or unsound practices" with respect to the manner in which the Bank handled various foreclosure and related activities, including that Defendant BofA:

> Filed or caused to be filed in state and federal courts numerous affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

377. Pursuant to the OCC Order, BofA agreed to submit a comprehensive plan within 60 days to encompass its residential mortgage loan servicing business. Audits will be undertaken to determine whether homeowners were improperly foreclosed upon.

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378. OCC ordered BofA to reimburse homeowners who had been improperly foreclosed upon within 45 days after submission of a required action plan.

379. Article VII of the OCC Order requires a plan, acceptable to the OCC to "remediate all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies identified" in the required action plan.

380. The OCC Order resulted from an extensive interagency examination undertaken by the Federal Reserve System, FDIC, OCC and OTS, dated April 2011 (the "Interagency Review"). The Interagency Review found many of the deficiencies alleged by Plaintiffs herein, including insufficient foreclosure governance processes, inadequate controls "covering all aspects of the foreclosure process," lack of sufficient audit trails "to show how information set out in … affidavits . . . was linked to the servicers' internal records" and, among other weaknesses, "inadequate quality control and audit reviews to ensure compliance with legal requirements."

381. Pursuant to Article IV of the OCC Order entitled Compliance Program, BofA agreed to immediately correct its procedures, including 17 specific remediations that speak directly to the issues herein, including:

> (b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of [BofA] are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the [BofA]'s books and records when the affidavit or declaration so states;
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> . . .
>
> (e) processes to ensure that [BofA] has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;
>
> . . .
>
> (i) processes to ensure that [BofA] has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and Loss Mitigation, or loan modification functions…

382. The OCC also found that BofA had "litigated foreclosure proceeding and initiated non-judicial foreclosure proceedings" without properly endorsed or assigned documents or in the "possession of the appropriate party at the appropriate time".

383. Echoing all of the claims and assertions of Plaintiffs herein, the OCC' concluded in the Consent Decree that Defendant BofA "engaged in unsafe or unsound banking practices."

384. In the Order, Defendant BofA has been made subject to over 20 pages of severe proscriptions and requirements by the OCC, including a requirement that within 45 days, Defendant BofA must:

> "[S]ubmit to the Regional Director an acceptable plan to remediate all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies identified in the Foreclosure Report, by:
>
> (a) reimbursing or otherwise appropriately remediating borrowers for impermissible or excessive penalties, fees or expenses, or for other financial injury identified in accordance with this Order; and
>
> (b) taking appropriate steps to remediate any foreclosure sale identified in the Foreclosure Report where the foreclosure was not authorized as described in this Order."

385. The MERS Order, OCC Order and Interagency Review underscore the grave weaknesses in BofA's processes and procedures, the regulators' serious concerns with the sworn statements of the employees of BofA and the employees of third party service providers and the regulators' belief that pervasive failures are leading to wrongful foreclosures.

386. Based upon the foregoing, Plaintiffs believe and thereon allege the same facts as set forth in the foregoing Orders and Interagency Review.

387. The enforcement actions against Bank of America continued to mount and finally on August 20, 2014, Bank of America Corporation, Bank of America, N.A., and Banc of America Mortgage Securities, as well as their current and former subsidiaries and affiliates signed a historic settlement with the U.S. Department of Justice, Attorney General of California, and 48 other states for $16.65 billion for claims related to their actions in selling mortgages to homeowners through the country. (hereinafter "DOJ Settlement") The various Defendants listed above, their current and former

subsidiaries and affiliates were referred to collectively as 'Bank of America."

388. Annex 1: Statement of Facts of the DOJ Settlement details the scheme Defendants, particularly Countrywide, employed to sell loan products and detailed the extent that Countrywide executives knew of the scheme and the harm they knew was occurring at the time and telling of the foreseeable harm in their actions. Littered throughout the Statement of Facts are communications between Countrywide executives, and even full presentations that detailed and outlined the risks and harms associated with Countrywide's business scheme, yet Countrywide not only continued the scheme, but in fact, expanded the scheme to sell more and more loans.

389. The Statement of Facts details the Countrywide Loan Origination Process, including the process whereby "branch underwriters whom received loan applications that did not meet the requirements of the Loan Program Guides (*e.g.*, credit score, LTV, loan amount)," could apply for the loan to be considered an exception and ultimately signed by a borrower. The Process had multiple layers and even had what was known as "Shadow Guidelines" for considering exception loans. And even if the loan application did not meet the "Shadow Guidelines," the loan could still be modified to ensure that the borrower could receive a loan. Ultimately, the determining factor was whether the loan could be priced and sold on the secondary market, not whether it met Countrywide's own standards and was considered a good enough loan to keep itself. (*DOJ Settlement, Statement of Facts* at 7).

390. The Statement of Facts notes that Countrywide was one of the largest residential mortgage originators in the United States between 2005 and 2007. In fact, in the early to mid-2000s Countrywide had a goal of obtaining 30% market share. However, the Statement of Facts also states "Countrywide's business model was to serve as an intermediary between borrowers seeking residential mortgages and investors seeking to purchase loans in the secondary market." (*DOJ Settlement, Statement of Facts* at 6 and 9.)

391. The Statement of Facts details the transition from a traditional mortgage lender to an entity that disregarded its own underwriting guidelines and moved into a company that sold mortgages to sell. "In a memo sent in October 2004, CFC's (Countrywide Financial Corporation) then Chief Credit Officer wrote: "my impression since arriving here is that the Company's standard for products and Guidelines has been: 'If we can price it, then we will offer it.'" In a May 13, 2007 internal

memorandum, the same executive wrote:

> "A core principal [*sic*] underlying product guidelines is salability. The only exception to this principle is specific 'Bank only' programs where loans are originated or purchased for the Bank portfolio."" (*DOJ Settlement, Statement of Facts* at 10.)

Furthermore, "in an email dated June 7, 2007, CFC's Chief Investment Officer wrote to CFC's President, "[W]hen credit was easily salable, SLD (Structured Loan Desk) was a way to take advantage of the 'salability' and do loans outside guidelines and not let our views of risk get in the way."" (*DOJ Settlement, Statement of Facts* at 10).

392. The number of nonconforming loans (loans that did not meet requirements for sale to Fannie Mae or Freddie Mac) Countrywide sold increased throughout the 2000s. Not all of the nonconforming loans that were sold were adjustable rate mortgages or Pay-Option ARMs, but many were fixed rate loans. In May 2006 alone, exception loans by dollar amount accounted for approximately 30% of funding for certain fixed loans and 40% for Pay-Option ARMs. (*DOJ Settlement, Statement of Facts* at 10).

393. Plaintiffs seek to incorporate the findings and/or determinations contained in the DOJ Settlement.

FUTURE AMENDMENTS

394. Plaintiffs will seek leave to amend this Complaint to add additional causes of action, allege additional facts, and/or add new parties, as information is developed and discovery proceeds, including but not limited to:

a. The filing of Notices of Default against the named Plaintiffs;

b. Any illegal activities concerning, or means of attempting to collect on the Plaintiffs' promissory notes or the associated deeds of trust;

c. Any foreclosure proceedings instituted after the filing of this Complaint, or any foreclosure sales consummated after the filing date of this Complaint;

d. Any attempts to coerce or threaten the Plaintiffs or any of them by Defendants or any of them regarding the activities upon which this Complaint is based or the assertions by Plaintiffs of their claims in this Complaint, or any further

disclosure or sale of Plaintiffs' private or confidential information;

e. Any disparaging comments or remarks by Defendants or any of them about Plaintiffs or their claims in this Complaint or as a result of Plaintiffs' assertion of their claims in this Complaint, or any retaliatory conduct by Defendants or any of them;

f. Any false or fraudulent promises of loan modification or other subsequent wrongful activities by Defendants or any of them;

g. Any attempts to evict or institute unlawful detainer actions or the filing of such actions against the Plaintiffs or any of them by any of the Defendants or their agents or representatives;

h. Any attempts by the Defendants or any of them to force any of the Plaintiffs into bankruptcy due to the real estate mortgages described herein, or to seek to lift any automatic stays if any of the Plaintiffs are forced into bankruptcy due to the real estate mortgages describe described herein.

FIRST CAUSE OF ACTION

INTENTIONAL MISREPRESENTATION

395. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

396. Defendants, their principals, agents, and/or employees, and each of them acted to deceive Plaintiffs in the manner and by the misrepresentations and statements identified and set forth herein.

397. Plaintiffs are informed and believe, and based thereon allege, that Defendants, their principals, agents, and/or employees made 1) representations of facts as true, 2) the representations were not true, 3) Defendants knew the statements were false, or made recklessly without regard for their truth, 4) with the intent that Plaintiffs rely on these representations, 5) that Plaintiffs were ignorant of the falsity of the Defendants' representations and reasonably relied on the material representations, 6) Plaintiffs were harmed, and 7) Plaintiffs' reliance on Defendants' representations was a substantial factor in causing Plaintiffs' harm.

398. Plaintiffs are informed and believe, and based thereon allege, that Defendants, their principals, agents, and/or employees made the misrepresentations orally, verbally, and/or by their nonverbal conduct, through among others, Defendants' securities filings, speeches, advertisements, public utterances, websites, brokers, loan consultants, branches, communications with clients, and other media calculated to deceive Plaintiffs and induce their reliance thereon.

399. Defendants operated with special knowledge and understanding, and expertise of the appraisal, loan, interest and qualification guidelines, securitization, and/or foreclosure process, among others, where the Plaintiffs may reasonably rely upon Defendants' superior knowledge.

400. Plaintiffs, in addition to other misrepresentations set forth in the preceding paragraphs, Plaintiffs specifically set forth the following material misrepresentations:

401. Defendants' concealed and/or misrepresented to Plaintiffs that they could "afford" loans merely because they "qualified."

402. Defendants represented the safety of the product by assuring and reassuring to Plaintiffs they could afford the payments and their equity was safe because the value of the home was true.

403. Defendants' representations that a Plaintiffs qualified for a loan, when in reality the borrower's qualification was only obtained through Defendants falsification of the borrower's income, asset and other documentation, done without the borrower's knowledge.

404. Defendants' misrepresented their underwriting guidelines by intentionally publishing and disseminated their guidelines intended to create the perception that Countrywide lent in conformity with those industry standards, their own guidelines, and therefore their lending practices were safe, reliable, and/or accurate, when in reality their own officers referred to their loans as "sacks of shit" and "garbage loans."

405. Defendants' represented that Defendants only entered into mortgages with qualified borrowers, when in reality Defendants were recklessly and intentionally ignoring their own underwriting standards, and offering mortgages to substantially under-qualified borrowers, including Plaintiffs herein who they knew could not afford their loans.

406. Plaintiffs are informed and believe, and based thereon allege, Plaintiffs believe these representations to be material, false, and that Defendants' knew these representations to be false.

407. Defendants knew the representations to be false as evidenced by internal communications, such as Defendants' admissions that the loans were "sacks of shit" and "garbage loans." A poignant 45-page chronicle of internal emails between Countrywide CEO, Angelo Mozilo, and other Countrywide top executives, makes it unequivocally clear that Countrywide continued to originate loans despite their internal knowledge that such loans were "toxic", "poisonous", "dangerous" (ad nauseum) to the borrowing public, and would result in inevitable default. ("Internal Emails," Exhibit 1).

408. Defendants represented Plaintiffs would be able to refinance their loans at a later date, but in reality Defendants knew Plaintiffs would not be able to refinance, and/or that Plaintiffs would be able to modify their loans when Defendants knew both of those options would not be offered and accepted. Also, Defendants' representations that Plaintiffs would be able to refinance their loans at a later date, when internally Defendants knew that Plaintiffs would not be able to refinance Plaintiffs as a result of the depressed real estate market created by Defendants, the overvaluation of Plaintiffs' property, the damage to Plaintiffs' credit score which defendants knew would ensue, and for the many reasons already set forth above.

409. Plaintiffs, relying on Defendants representations that Plaintiffs could modify or refinance their mortgage, accepted terms of Trial Payment Plans when Defendants had no intention of approving the modification or refinance and simply took Plaintiffs monies.

410. Defendants represented to Plaintiffs that in order to qualify for a modification, Plaintiffs needed to fall behind in their payments to qualify for the modification, and upon falling behind on payments, Defendants refused to modify Plaintiffs' mortgages.

411. Defendants intended that Plaintiffs rely on the misrepresentations with the purpose of inducing Plaintiffs to enter into loan contracts that relied on Defendants' superior knowledge, control of the appraisal and loan processes, inflated appraisal and/or home values, Defendants' loan qualification process and determinations, loans Plaintiffs "qualified" for, loans Plaintiffs could "afford," loan terms, loan values, loan types, underwriting standards, modification representations, and other misrepresentations.

412. Defendants intended that Plaintiffs reply on the misrepresentations so that Defendants

could sell as many loans as possible, regardless of quality in order to perpetuate their scheme and sell the "sacks of shit" to unknowing investors.

413. Plaintiffs reasonably relied on Defendants' material representations and would not have relied on the representations had they known the falsity of the representations. Plaintiffs would never have entered into the loans, relied on the appraisals, and/or attempted to obtain modifications, among other actions, had they known the truth.

414. Plaintiffs reasonably relied on Defendants' superior knowledge, expertise, Defendants' trusted positions as entities with a financial incentive to "qualify" and offer loan products to only individuals who could "afford" loans, Defendants' truthful inspection of financial documents to "qualify" Plaintiffs, and/or Defendants to only rely on valid, accurate documents and not to illegally falsify documents.

415. Naturally, a reasonable person would not know that the representations that a borrower qualified for a loan were obtained by altering borrowers' qualification through falsification of borrowers' income, asset and other documentation, done without the borrower's knowledge.

416. Plaintiffs were harmed as a result of the misrepresentations that induced them to enter in loan. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs' damages arising from the misrepresentations complained of include loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs

417. Because Plaintiffs relied on these misrepresentations and entered into these loans, Defendants' misrepresentations were material and a direct and proximate cause, or at the bare minimum a substantial factor, of Plaintiffs harm. Plaintiffs would never had entered into these agreements had it not been for these misrepresentations.

418. The intentional acts described herein and above by Defendants were oppressive, fraudulent, malicious, were committed willfully, or at the very least with reckless disregard for Plaintiffs' rights. Accordingly, Plaintiffs are entitled to punitive and exemplary damages from Defendants in an amount sufficient to punish them for the tortious conduct alleged herein and to

dissuade them and others similarly situated from engaging in such conduct in the future.

Intentional Misrepresentations: Appraisal Process

(Group 1 Appraisal Plaintiffs Against All Defendants)

419. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

420. Plaintiffs are informed and believe, and based thereon allege, that Defendants, their principals, agents, and/or employees, specifically Countrywide through LandSafe, and also affiliated "independent" appraisers misrepresented the true value of Plaintiffs' homes.

421. Defendants made the appraisal values as statements of fact, not merely opinions.

422. Defendants knew the appraisal values were false, or at the very least made them recklessly without any regard to the true value of the property as determined fairly according to licensed practices, without bias or intent to inflate the appraisal value.

423. Plaintiffs are informed and believe, and based thereon allege, Defendants owned the very appraisal company, LandSafe, which was supposed to render independent appraisals.

424. Defendants through its explicit (as well as unwritten) policies and procedures, intentionally allowed their own employees who made commission/money as a function of every funded loan (managers, loan consultants, etc.), to contact individual appraisers and bribe, exercise influence, call in favors, harass, and coerce appraisers into rendering the exact value they needed.

425. Defendants set up a fail-safe in the event they did not receive an appraisal value they wanted and instead created an internal policy which allowed for the hiring of "outside" appraisers who were particularly well known within the industry for being willing to "fudge" the numbers.

426. Defendants knew the appraisal values were inaccurate and would "adjust" the appraised values in order to qualify Plaintiffs for certain loans.

427. Defendants misrepresented the appraised values of properties by using different appraisal values for the same property for different purposes. The use of one appraisal value over the other was not standardized, but a scheme implemented by Defendants to maximize profits.

428. Defendants misrepresented the appraised values of the properties where best appropriate for their own business needs, not as a true, accurate appraisal value for the use of determining property

value and loan amount. Defendants used different values to deceive and induce Plaintiffs to enter into a specific loan, but then use a different appraisal value of the same property to third parties, such as investors, to maximize the profits and appear as if the loan ultimately appeared less risky.

429. Defendants inflated home values through a fraudulent scheme, acting in concert with one another, thereby forcing borrowings to take out larges loans to afford the same property.

430. Defendants represented to Plaintiffs that the value of their home was sufficient to justify taking out a loan of a certain size – or in other words, to assure Plaintiffs that their collateral was sound and/or assuring and reassuring Plaintiffs were paying what the home was worth. Based on these fraudulently inflated loan amounts, Defendants deceptively extracted excessive and unearned payments, points, fees, and interest from Plaintiffs.

431. Internal communication from a LandSafe employee to Countrywide's top executives makes it clear that not only were Defendants engaged in the wrongs described herein and throughout the complaint, but that they were also aware of these unlawful acts.

432. Plaintiffs reasonably relied on Defendants' material representations of appraisal values and would not have relied on the representations had they known the falsity of the representations.

433. Plaintiffs reasonably relied on Defendants' superior knowledge, expertise, and Defendants' trusted positions as entities responsible for determining appraisal values that are supposed to be accurate and unbiased and not determined based on Defendants use or need for a particular value.

434. Naturally, a reasonable person would not know that the appraised value representations were false and made by Defendants with bias and intent.

435. Defendants intentionally made the representations with their own interests in mind, with no regard to the accuracy of the appraised value and made the representations fraudulently, with malice, oppression, and were committed willfully or at the very least recklessly without regard to the truth of the actual property value.

436. Plaintiffs were harmed as a result of the misrepresentations in appraisal value that induced them to enter into loans at a higher amount than truly necessary due to the inflated appraisal value.

437. As a result of the inflated appraisals, Plaintiffs were forced to take out higher loan

amounts, resulting in higher monthly payments, higher interest payments, higher principal payments, increased down payments, increased interest rates and/or higher balloon payments.

438. The increased loan amounts, and therefore increased higher monthly payments, higher interest payments, higher principal payments, increased down payments, increased interest rates, and/or higher balloon payments were a substantial factor in the harm suffered by Plaintiffs.

439. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs' damages arising from the inflated appraisal values complained of herein include loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

440. The intentional acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard to the true appraisal value of the property. Accordingly, Plaintiffs are entitled to punitive and exemplary damages from Defendants in an amount sufficient to punish them for the tortious conduct alleged herein and to dissuade them and others similarly situated from engaging in such conduct in the future.

Intentional Misrepresentation: Loan Products

(By Group 2 Plaintiffs Against All Defendants)

441. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein and specifically reference paragraphs 379-407.

442. All Plaintiffs within Group 2 are Plaintiffs whom signed mortgages with Bank Defendants within the relevant time period, common known as "Negative Amortization" loans.

443. Unfortunately, Defendants preyed on individuals, including Plaintiffs, whom were often unqualified and therefore more likely to be required to sign negative amortization loans in order to receive a loan.

444. Defendants preferred unqualified individuals, had every incentive to sign mortgages with individuals, actually incentivizing its principals, agents, and/or employees to actually sign

individuals to these negative amortization loans because Defendants knew they were mathematically more likely to default and result in foreclosure.

445. Defendants made numerous misrepresentations in order to induce Plaintiffs to sign up for these negative amortization loans or pay-option ARMs, primarily related to the Plaintiff's financial circumstances that under normal underwriting guidelines would disqualify the individual for the loan (overvalued because of the inflated appraisal practices.) Defendants often artificially inflated Plaintiffs' stated income and even falsified documents in order to qualify Plaintiffs for the risky loans.

446. Defendants would assure Plaintiffs they could "afford" the loans because they "qualified" and induce them to sign loans Defendants knew they could not afford.

447. Defendants even devised a scheme that allowed Plaintiffs to make payments they could "afford," but truly knowing or recklessly disregarding the truth that the payments Plaintiffs would make would only put them into further debt and actually increase the likelihood Plaintiffs would default.

448. Defendants made representations that by making the minimum payment of an Option ARM loan, a party may defer interest (a.k.a. "negatively amortize"), when in reality by making the minimum payment a party was certain to defer interest. As the California Court of Appeals in *Boschma* put it, a disclosure of what may happen, is not a disclosure of what will happen.

449. The provision of an intentionally ambiguous Truth in Lending Disclosure ("TILDS") Payment Schedule which did not make it clear that borrowers could have avoided negative amortization (under an Option ARM loan) by making payments larger than those that were mandated by the payment schedule, in fact the payment schedule created the materially false impression that by following the recommended payment schedule, Plaintiff borrowers would not negatively amortize their loan.

450. Defendants represented that "during the initial interest rate period [of an Option ARM loan], Option 1 [the minimum payment] represents a full principal and interest payment" intentionally couched in ambiguous terms to obfuscate the length of the "initial interest rate period" and deceiving a borrower into believing that the Option 1 payment would pay principal and interest for a significant amount of time, when in reality, the Option 1 payment did not pay any principal, and in fact did not even pay interest – it paid less than interest resulting in negative amortization.

451. Defendants represented the interest rate rise after the initial interest rate period would be minimal and therefore Plaintiffs payments would increase minimally, when Defendants knew there was no way to predict future payments as the payments relied on a LIBOR index that was impossible to predict.

452. In order to induce Plaintiffs to sign the negative amortization loans, Defendants presented rate schedules that showed minimal or modest rate increases, knowing or recklessly disregarding the truth that Defendants had no idea what the rate may be.

453. Additionally, Defendants would represent to Plaintiffs when the initial interest rate period would expire that Defendants would modify the negative amortization loans in order to reduce the effects of the increases, knowing this would not occur, assuring Plaintiffs would be hit with significant increases in loan payments after the loans negatively amortized thereby increasing the principal actually owed.

454. Because of Defendants misrepresentations and the fact Defendants had superior knowledge, expertise, and control over the loan qualification process; Plaintiffs reasonably relied on the misrepresentations to their detriment and signed loans that Defendants knew would default.

455. Plaintiffs' reliance and harms are stated in and detailed above.

456. The intentional acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard for Group 2A Plaintiffs' rights. Accordingly, Plaintiffs are entitled to punitive and exemplary damages from Defendants in an amount sufficient to punish them for the tortious conduct alleged herein and to dissuade them and others similarly situated from engaging in such conduct in the future.

Intentional Misrepresentations: Modifications

(Group 3 Plaintiffs Against All Defendants)

457. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

458. Defendants had a fraudulent pattern of telling borrowers who requested a loan modification that modifications would only be granted to borrowers who were more than three months behind on their payments.

459. Defendants intentionally induced Plaintiffs to skip payments, fraudulently representing that the borrower would be granted a modification at that point. Relying on these representations, Plaintiffs fell behind on their loan payments, but were then denied their loan modification. In doing so, Plaintiffs' credit was substantially damaged; they suffered greatly-diminished access to credit and financing; and they were penalized with fees, penalties and charges in addition to their missed payments.

460. By recommending that Plaintiffs fall behind, Defendants effectively trapped Plaintiffs into keeping their loan with Defendants, because no other institution would help Plaintiffs after they became delinquent on their mortgage, or after their credit was destroyed.

461. After inducing Plaintiff-Borrowers into entering unaffordable loans Defendants refused to modify Plaintiff Borrowers' loans despite laws and court orders which required them to make good faith efforts to do.

462. Furthermore, each time the plaintiffs would reach out to the defendants for the modification process, defendants would intentionally direct plaintiffs to new representatives essentially restarting the process. This unfair practice caused a further roadblock for Plaintiffs to achieve a modification and caused to Plaintiffs loans to fall further into delinquency and inevitably foreclosure.

463. Plaintiffs were told that if they made three trial plan payments they would receive a modification. When the third payment was made Defendants stated to Plaintiffs that their file was still under review and told them to continue making their Trial Plan payments beyond the previously agreed schedule. At this point in this unfair and fraudulent scheme, no permanent loan modification was granted and none of those payments were applied to the Plaintiffs unpaid principle balance. After this extended Trial Plan Defendants would deny the client for a loan modification without reason and keep the clients funds and place the Plaintiffs home up for foreclosure.

464. Plaintiffs made calls to the Defendants about the foreclosure activity while they were in review for a modification. The Defendants in the Loss Mitigation Department would reassure the clients that they were not in foreclosure because of their loan being in review for a modification. However, Defendants simultaneously sent out foreclosure documentation stating the exact opposite. This was done to purposefully in order to trick the client into believing that their home was not in

danger while in the modification process while concurrently moving towards a foreclosure at the same time. The deceptive nature of the Defendants business practices are further evident in regards to Plaintiffs homes being foreclosed on while in active review for loan modifications.

465. That Defendants would modify Plaintiffs' loans when in fact Defendants did not modify Plaintiffs' loans, had no intentions to do so, and it was more profitable for Defendants to leave the loans unmodified.

466. Bank acted fraudulently because it had "no intention" of modifying plaintiffs' loan. Plaintiffs support this assertion by alleging foreclosure activity, such as the scheduling of the sale, was taking place while plaintiffs were seeking a loan modification.

467. Defendants had a fraudulent pattern of telling borrowers who requested a loan modification that modifications would only be granted to borrowers who were more than three months behind on their payments

468. Defendants represented Plaintiffs would be able to refinance their loans at a later date, but in reality Defendants knew Plaintiffs would not be able to refinance, and/or that Plaintiffs would be able to modify their loans when Defendants knew both of those options would not be offered and accepted. Also, Defendants' representations that Plaintiffs would be able to refinance their loans at a later date, when internally Defendants knew that Plaintiffs would not be able to refinance Plaintiffs as a result of the depressed real estate market created by Defendants.

469. At its most fundamental level, these sorts of unscrupulous and intentional business tactics, undermine notions of fair play and good faith in business dealings, and jeopardize the well-being of the consuming public. Defendants should be held accountable for the negative impact they have had on Plaintiff's lives due to the continuous intentional misrepresentations

Intentional Misrepresentation

(By Group 4 Plaintiffs (Wrongful Foreclosure) — Against All Defendants)

470. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein and specifically reference paragraphs 379-407.

471. Plaintiffs in Group 4 are already included in Group 1, are in Groups 2, and possibly in

Group 3. Group 4 Plaintiffs' claims prior to the foreclosure process are addressed in those Groups. Group 4 misrepresentation claims are only related to the foreclosure process as described in preceding paragraphs and herein.

472. Defendants have already foreclosed upon the properties owned by the Plaintiffs. Group 4 Plaintiffs will be fully listed at a later time due to changing circumstances of each individual plaintiff. Group 4 Plaintiffs will not include individuals whom have received a Notice of Default and/or Notice of Sale but have not lost their property at a foreclosure sale.

473. Defendants represented that they are the holders of the notes and deeds of trust and that they were operating under a valid power from the current holders of the notes and deeds of trust and therefore had the right to proceed with the foregoing foreclosures.

474. Defendants knew these representations were false as they knew they were no longer the note holders and/or made the representations recklessly without regard to the truth because they do not know who actually owns the notes and deeds and do not know who holds or held the valid power to foreclose on Plaintiffs. Defendants represented that they were the owners despite recording assignments and transfers in public records.

475. Not only did Defendants represent that they were the note holder, but Defendants then intentionally used that representation to foreclose on Plaintiffs' properties.

476. Plaintiffs had no choice but to rely on the misrepresentations as Defendants sold their properties at foreclosure sales.

477. Plaintiffs were harmed as a result of Defendants representations as they watched unknowingly and helplessly as Defendants sold their properties without valid authority. Plaintiffs lost their properties as a direct result of Defendants' representations and lost the value of their home, equity in the home, credit ratings and the subsequent harms associated with increased interest rates and lack of available credit, emotional stress as a result of the foreclosure process and loss of their property, as well as fines and fees including attorney's fees.

478. The intentional acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard for Group 4 Plaintiffs' rights. Accordingly, Plaintiffs are entitled to punitive and exemplary damages from

Defendants in an amount sufficient to punish them for the tortious conduct alleged herein and to dissuade them and others similarly situated from engaging in such conduct in the future.

SECOND CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

479. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

480. Although BofA, Countrywide Defendants, and members of the Granada Network may have reasonably believed some or all of the representations they made, described in this Complaint, were true, none of them had reasonable grounds for believing such representations to be true at the time: (1) the representations were instructed to be made, as to those Defendants instructing others to make representations, or (2) at the time the representations were made, as to those Defendants making representations and those Defendants instructing others to make the representations, or (3) at the time the representations were otherwise ratified by the Countrywide Defendants.

481. Such representations fully set forth in the Second Cause of Action and previous sections of this Complaint, specifically the First Cause of Action: Intentional Misrepresentations, were not true.

482. Because BofA, Countrywide Defendants and Granada Network had ceased acting in their capacity as traditional money lenders, as described above, they had a duty to disclose the truth to their borrowers, Plaintiffs herein. Their failure to disclose these truths constitutes a breach of their duty and resulted in damages to Plaintiffs.

483. BofA, the Countrywide Defendants and Granada Network intended that Plaintiffs rely upon those misrepresentations.

484. As described herein, Plaintiffs reasonably relied on those representations.

485. By reason of Countrywide's prominence and campaign of deception as to its business plans and the relationship of trust developed between each of the Defendants and Plaintiffs, Plaintiffs were justified in relying upon Defendants' representations.

486. As a result of relying upon the foregoing misrepresentations, each Plaintiff entered into a mortgage contract with Countrywide Defendant.

487. As a result of Countrywide's scheme described herein, Plaintiffs could not afford his or

her Countrywide mortgage when its variable rate features and/or balloon payments kicked in. Further, as a result of the Countrywide scheme, Plaintiffs could not refinance or sell his or her residence without suffering a loss of Plaintiff's equity.

488. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs damages as a result of the foregoing also include loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

489. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such further relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

490. The negligent acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard for Plaintiffs' rights, Groups 1-4, and each of them. Accordingly, Plaintiffs are entitled to punitive and exemplary damages from Defendants in an amount sufficient to punish them for the tortious conduct alleged herein and to dissuade them and others similarly situated from engaging in such conduct in the future

Negligent Misrepresentations: Appraisal Process

(Group 1 Appraisal Plaintiffs Against All Defendants)

491. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

492. Group 1 Plaintiffs incorporate and re-allege as though fully set forth herein, all allegations in the First Cause of Action for Intentional Misrepresentation Group 1 Appraisal Plaintiffs Against All Defendants, paragraphs 419-440.

Negligent Misrepresentations: Loan Products

(Group 2 Plaintiffs Against All Defendants)

493. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

494. Group 2A Plaintiffs incorporate and re-allege as though fully set forth herein, all

allegations in the First Cause of Action for Intentional Misrepresentation Group 2A Plaintiffs Against All Defendants, paragraphs 441-456.

Negligent Misrepresentations: Loan Products

(Group 3 Plaintiffs Against All Defendants)

495. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

496. Group 3 Modification Plaintiffs incorporate and re-allege as though fully set forth herein, all allegations in the First Cause of Action for Intentional Misrepresentation Group 3 Modification Plaintiffs Against All Defendants, paragraphs 457-469.

Negligent Misrepresentations: Loan Products

(Group 4 Plaintiffs Against All Defendants)

497. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

498. Group 4 Foreclosure Plaintiffs incorporate and re-allege as though fully set forth herein, all allegations in the First Cause of Action for Intentional Misrepresentation Group 4 Foreclosure Plaintiffs Against All Defendants, paragraphs 470-478.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET. SEQ.

UNFAIR COMPETITION LAW

499. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

500. California's Unfair Competition Law (UCL) prohibits any unfair competition defined as any "unlawful, unfair, or fraudulent business act or practice." Bus. & Prof. Code § 17200.

501. Defendants have engaged in **unlawful business practices** as described above and herein, by conducting business practices that are unlawful. *See Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 135 Cal. Rptr.2d 1 ("A business practice is unlawful 'if it is forbidden by any law...'").

502. As alleged herein, Defendants have violated numerous federal and state statutes and common law protections enacted for consumer protection, privacy, trade disclosure, and fair trade and

commerce, including the Truth in Lending Act (TILA).

503. As detailed above, TILA requires financial institutions to disclose credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C.A. § 1601. Defendants further violated TILA by failing to properly disclose or fraudulently hiding prepayment penalties, points, origination discounts, kickbacks, commissions, etc. to Plaintiffs oftentimes resulting in the Plaintiff being forced to incur or pay unnecessary or unfair charges which they were never aware of, and which they never had an opportunity to contest.

504. Defendants have violated numerous statutes resulting in numerous lawsuits and even a settlement with the U.S. Department of Justice and 49 states, including California, for $16.65 billion, with nearly $300 million devoted to the State of California for violations brought by the California Attorney General for their actions, just as alleged herein.

505. Plaintiffs are informed and believe, and based thereon allege Defendants have violated the Securities Exchange Act of 1933, the Patriot Act, Fair Credit Reporting Act, California Financial Information Privacy Act, Gramm-Leach-Bliley Act, among other violations as alleged herein.

506. Defendants have *clearly* violated the **unfair business practices** prong of the UCL as set forth in the Complaint and herein.

507. Courts have defined "unfair" as a practice that offends public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers or required courts to weigh the utility of the Defendant's conduct against the gravity of the harm to the alleged victim. *Graham v. Bank of America*, at 612. Plaintiffs alleging an unfair business practice must show the Defendant's conduct is tethered to an underlying constitutional, statutory, or regulatory provision or that it threatens an incipient violation of an antitrust law, or violates the policy or spirit of an antitrust law. *Id*. at 613.

508. Defendants continuously engaged in **fraudulent business practices** pursuant to Section 17200.

509. In order to show fraudulent business practices, Plaintiffs "need only show that members of the public are *likely* to be deceived." *Bank of the West v. Sup. Ct.*, (1992) 2 Cal.4th 1254, 1267, 10

Cal. Rptr. 2d 538.

510. Plaintiffs have repeatedly alleged herein that Defendants deceived Plaintiffs and the public. Nearly all of Defendants' actions from the appraisal process to loan origination process, securitization, and eventually foreclosure processing was fraudulent, especially considering "a violation can be shown even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage. Instead, it is only necessary to show that members of the public are *likely* to be deceived." *Podolsky v. First Healthcare Corp*. (1996) 50 Cal.App.4th 632, 647-648). Plaintiffs allege they actually relied on statements and materials given to them by Defendants to make (what they thought were) educated decisions in obtaining financing from Countrywide Defendants.

511. Defendants' unlawful, unfair, and fraudulent business practices are alleged throughout this complaint and more fully below and it is plainly clear that at the very least the public was likely to be deceived by Defendants' practices.

512. Bus. & Prof. Code §17204 provides a private right of action for a person who is injured and lost money or property as a result of the unfair competition.

513. Plaintiffs "may pursue representative claims or relief on behalf of others" according to Bus. & Prof. Code §17203.

514. Bus. & Prof. Code §17205 provides that "the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state."

515. Plaintiffs request this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing its "unlawful, unfair, and/or fraudulent business act or practices" and to restore Plaintiffs any money or property by which Defendants acquired by such unfair competition under Cal. Bus. & Prof. Code § 17200, et. seq.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition Law (Group 1 Plaintiffs Against All Defendants)

516. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

517. Defendants have engaged in unlawful business practices as set forth above regarding

Defendants' appraisal inflation scheme.

518. Defendants have clearly engaged in unfair business practices by inflating appraisal values to Plaintiffs', and other Californians, properties.

519. Defendants provided inflated appraisal values for their own self-interest in increasing profits. Defendants' conduct was immoral to provide appraisal values without reasonable grounds, inflating values to the detriment of the Plaintiffs.

520. Defendants' conduct was unethical, violating industry standards for appraisals to provide accurate appraisals. Instead, Defendants acted oppressively, unscrupulously, and substantially injurious to Plaintiffs, investors who eventually purchased the mortgages, and the general public.

521. Defendants not only provided inaccurate appraisal values, but Defendants' manipulated the appraisal values themselves, induced inaccurate appraisal values, and/or coerced "independent" appraisers to provide appraisal values for which Defendants could "work" the system, both their own underwriting systems, but also those of the federal government, and for eventual third party investors.

522. Defendants also inaccurately provided more than one appraisal. Instead of a uniform policy of how to utilize the information of the two appraisals, Defendants would use the different appraisals however they wanted depending on what fit their own profit needs most, not those of Plaintiffs. Defendants would use one inaccurate appraisal value to determine a Plaintiffs inflated loan amount, but then turn around and provide a different loan appraisal value when reporting to investors or other third parties. Defendants simply manipulated the already inflated appraisals for their own internal gain.

523. Defendants clearly acted fraudulently in providing inaccurate, inflated appraisal values. It goes without stating, that Plaintiffs, and the general public, would likely be deceived by the inaccurate appraisal values.

524. Plaintiffs relied on Defendants inaccurate appraisal values in determining whether to enter into a loan and relied on it to determine the amount and terms of the loan.

525. Defendants deceived Plaintiffs when they internally manipulated the appraisal values when determining the loans and adjusted the appraisals as they saw fit to justify loan terms.

526. Defendants deceived Plaintiffs, the public, and third party investors, when they used one

inaccurate appraisal value for one purpose, such as the Plaintiffs' loan terms, and another inaccurate appraisal value for the same property when selling the loan to a third party and/or reporting the value of the property to other entities. The use of two separate appraisal values for the same property is clearly meant to deceive.

527. Plaintiffs request this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing its unlawful, unfair, and/or fraudulent appraisal practices and to restore Plaintiffs any money or property by which Defendants acquired by such unfair competition under Cal. Bus. & Prof. Code § 17200, et. seq.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition (Group 2 Plaintiffs Against All Defendants)

528. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

529. Defendants' unlawful, unfair, and/or fraudulent business practices are most evident with Plaintiffs whom signed negative amortization mortgages.

530. The defining feature of an option adjustable rate mortgage loan ("Option ARM") with a discounted initial interest rate (i.e., a "teaser" rate) is, for a limited number of years, the borrower may (by paying the minimum amount required to avoid default on the loan) make a monthly payment that is insufficient to pay off the interest accruing on the loan principal. Rather than amortizing the loan with each minimum monthly payment (as occurs with a standard mortgage loan), "negative amortization" occurs where a borrower who elects to make only the scheduled payment during the initial years of the Option ARM owes more to the lender than he or she did on the date the loan was made. After an initial period of several years in which negative amortization can occur, a borrower's payment schedule then recasts to require a minimum monthly payment that amortizes the loan.

531. Plaintiffs who entered into Option ARMs with Defendants allege defendant's loan documents failed to adequately and accurately disclose the essential terms of the loans, namely that if plaintiffs made their minimum monthly payments "during the initial interest rate period, the minimum payment represents a full principal and interest payment." In this case, some Plaintiffs received a disclosure titled "Option Adjustable Rate Mortgage." At first glance, it seems to be a standard

disclosure pamphlet that describes in detail what a Pay Option ARM really is and what options you have as far as monthly mortgage payments are concerned. Upon further review, several fraudulent omissions and misrepresentations were found which are direct violations of Business and Professions Code §17200 et. seq. (Section 17200). Plaintiffs and individual borrowers who relied on the information provided in this pamphlet were deceived and damaged beyond belief. Defendants' loan documents failed to adequately and accurately disclose the essential terms of the loans, namely that if Plaintiffs made their minimum monthly payments "during the initial interest rate period, the minimum payment represents a full principal and interest payment."

532. Defendants' violations of TILA alone are sufficient to show unlawful business practices, let alone unfair and/or fraudulent business practices in respect to Plaintiffs whom signed negative amortization loans. Under TILA, a plaintiff is entitled to statutory damages, attorney fees and costs for a lender's failure to comply with its provisions, including the material disclosures. See 15 U.S.C. § 1640 (e). Disclosures must be "Clear and Conspicuous" and accurately reflect the legal obligation on the loan. 12 C.F.R. § 226.17 (c)(1). The Payment Schedule should reflect all components of the finance charge…and in a variable rate transaction with …a discounted or premium rate, *disclosure should not be based on the initial terms*." 12 C.F.R. § pt. 226, Supp. I, ¶¶ 17 (c)(1)-8, 18(g) -1.

533. "A Payment Schedule which bases several years of payments on the initial low interest rate, does not reflect clearly the legal obligation evidenced by the Note". *See Amparan v. Plaza Home Mortgage, Inc.*, 2008 WL 5245497. **The average borrower reasonably believed that the teaser rate was a fixed rate and that negative amortization was only a possibility rather that a certainty**. *See Monoco v. Bear Stearns*, 554 F. Supp. 2d 1034 (C.D. Cal. 2008). The initial "Teaser Rate" is usually only applicable for one month, yet the entire Payment Schedule in the TILDS is typically calculated based on the teaser rate. "Where negative amortization is a certainty, TILA requires disclosure of that fact." See *Mincey v. World Savings Bank, FSB* (DSC Aug. 15, 2008).

534. A lender is required to disclose "[a]ny rules relating to changes in the index, Interest rate, payment limitations, negative amortization, and interest rate carryover." 12 C.F.R. §226.19(b)(2)(viii). A note with only one reference to negative amortization as a possibility has been found to state a claim for a TILA violation. *See, Amparan*. Disclosing the possibility of negative

amortization is misleading when the reality is that it will occur. *Placentia v. Lending 1st Mortgage*, 2008 WL 1902698.

535. Defendants' actions above are clearly likely to deceive the public, and it was likely that Defendants intended to deceive the public to perpetuate their fraudulent business scheme as a whole.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition

(Group 3 Plaintiffs Against All Defendants)

536. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

537. Defendants had a fraudulent pattern of telling borrowers who requested a loan modification that modifications would only be granted to borrowers who were more than three months behind on their payments. Defendants induced Plaintiffs to skip payments, fraudulently representing that the borrower would be granted a modification at that point. Relying on these representations, Plaintiffs fell behind on their loan payments, but were then denied their loan modification.

538. After inducing Plaintiff-Borrowers into entering unaffordable loans Defendants refused to modify Plaintiff Borrowers' loans despite laws and court orders which required them to make good faith efforts to do.

539. That Defendants would modify Plaintiffs' loans when in fact Defendants did not modify Plaintiffs' loans, had no intentions to do so, and it was more profitable for Defendants to leave the loans unmodified.

540. In doing so, Plaintiffs' credit was substantially damaged; they suffered greatly-diminished access to credit and financing; and they were penalized with fees, penalties and charges in addition to their missed payments.

541. By recommending that Plaintiffs fall behind, Defendants effectively trapped Plaintiffs into keeping their loan because no other institution would help Plaintiffs after they became delinquent on their mortgage or after their credit was destroyed.

542. Even after the loan origination process, as a result of Defendants fraudulent scheme, the Plaintiffs fell behind on mortgage payments with the promise that by doing so Plaintiffs would become eligible for a loan modification, a promise that never came to fruition. For those who appeared to have

loan modification offers, Defendants put Plaintiffs through a Trial Payment Plan, which was just another fraudulently scheme by Defendants where Defendants never intended on modifying Plaintiffs loan and instead took Plaintiffs money and never gave a permanent modification or even applied the trial payments to the principal and/or interest on the actual loan.

543. Furthermore, each time the plaintiffs would reach out to the defendants for the modification process, defendants would intentionally direct plaintiffs to new representatives essentially restarting the process. This unfair practice caused a further roadblock for Plaintiffs to achieve a modification and caused to Plaintiffs loans to fall further into delinquency and inevitably foreclosure.

544. Plaintiffs were told that if they made three trial plan payments they would receive a modification. When the third payment was made Defendants stated to Plaintiffs that their file was still under review and told them to continue making their Trial Plan payments beyond the previously agreed schedule. At this point in this unfair and fraudulent scheme, no permanent loan modification was granted and none of those payments were applied to the Plaintiffs unpaid principle balance. After this extended Trial Plan Defendants would deny the client for a loan modification without reason and keep the clients funds and place the Plaintiffs home up for foreclosure.

545. Plaintiffs made calls to the Defendants about the foreclosure activity while they were in review for a modification. The Defendants in the Loss Mitigation Department would reassure the clients that they were not in foreclosure because of their loan being in review for a modification. However, Defendants simultaneously sent out foreclosure documentation stating the exact opposite. This was done to purposefully in order to trick the client into believing that their home was not in danger while in the modification process while concurrently moving towards a foreclosure at the same time. The deceptive nature of the Defendants business practices is further evident in regards to Plaintiffs homes being foreclosed on while in active review for loan modifications.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition Law (Group 4 Plaintiffs Against All Defendants)

546. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

547. Group 4 Plaintiffs only bring UCL claims herein in regards to the foreclosure process

beginning with the Notice of Default through and after the actual foreclosure sale of Plaintiffs' properties. As noted above, Group 4 Plaintiffs only include those whom have lost their home at foreclosure sale. Group 4 UCL claims prior to the Notice of Default are addressed in the previous Groups.

548. Defendants violated various state and federal laws, including but not limited to providing false or misleading information in response to Plaintiffs' complaints, providing false or misleading information, failing to honor proper state law mandated foreclosure proceedings, and Plaintiffs' loss of homes due to improper, unlawful, or undocumented foreclosures and thus committed unlawful business acts or practices.

549. Defendants acted fraudulently in a manner that was likely to deceive the public, including but not limited to making material misrepresentations or omissions, knowingly filing false instruments, knowingly filing false instruments without required declarations, failing to properly notify Plaintiffs of their right to dispute alleged defaults, and wrongful foreclosures in a manner that constitutes fraudulent business acts and practices as prohibited by Cal. Bus. & Prof. Code § 17200, et. seq.

550. Defendants' failures to properly notify Plaintiffs of their right to dispute an alleged default per the signed Deed of Trust, California law, and California public policy, cure the alleged default in a timely manner, notify and allow Plaintiffs to seek legally permissible alternatives to foreclosure, and wrongful foreclosure ensured Defendants' fraudulently scheme would not be challenged. Instead, Plaintiffs were forced to watch as Defendants claimed rights to issue Notices of Default and wrongfully foreclose on Plaintiffs. Plaintiffs were deceived, as would the general public, as the Defendants claimed authority to sell Plaintiffs' properties.

551. Defendants' unlawfully filed public documents including Notices of Default without the authority to do so as the Defendants were not owners of the note at the time of filing and/or at the time of the Plaintiffs' foreclosure sale.

552. Defendants' unfairly held themselves out as having proper authority to fill publicly recorded documents and foreclose on Plaintiffs' properties. Although Plaintiffs relied on this apparent authority, Plaintiffs were ignorant of the fact that Defendants did not own the notes and thus

unfortunately relied on this improper authority.

553. Defendants fraudulently continued this scheme of filing false documents and selling Plaintiffs' properties in order to line their pockets, knowing their actions were illegal, unfair, and fraudulent but acting with complete disregard to Plaintiffs and numerous homeowners throughout California.

FOURTH CAUSE OF ACTION

WRONGFUL FORECLOSURE, VIOLATION OF CAL. CIVIL CODE § 2924

(Group 4 Plaintiffs Against All Defendants)

554. Plaintiffs incorporate all preceding paragraphs of the Complaint and the paragraphs of the subsequent causes of action as though fully set forth herein.

555. Because Defendants are not the holders of the notes and deeds of trust and are not operating under a valid power from the current holders of the notes and deeds of trust, Defendants did not have the right to proceed with the foregoing foreclosures.

556. The burden of proving an assignment falls upon the party asserting rights thereunder. In an action by an assignee to enforce an assigned right the evidence must not only be sufficient to establish the fact of assignment when that fact is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and positive to protect an obligor from any further claim by the primary obligee. *See Cockerell v. Title Ins. & Trust Co.*, 42 Cal. 2d 284, 292, 267 P.2d 16, 21 (1954).

557. Under the California Uniform Commercial Code, a negotiable instrument, such as a promissory note secured by a mortgage, may only be enforced by the holder or a person with the rights of a holder. Com. Code §3-301. For instruments payable to an identified person, such as a lender, a holder is generally recognized as the payee or one to whom the negotiable instrument has been negotiated. This requires transfer of possession and endorsement by the prior holder. Com. Code §3-201. Unless the parties otherwise provide, the mortgage follows the note. Civ. Code §2936.

558. Though in California, the assignment of a note generally carries with it an assignment of the mortgage (Civ. Code § 2936), it is still required in California that the holder of the note or a person operating with authority from that holder be the foreclosing party and that the mortgage not have been assigned away from that note.

559. Defendants no longer own the notes it originated and there is just no way of knowing who now owns the Plaintiffs' mortgages because the Defendants do not know who owns these mortgages. Indeed, the Defendants do not know where it is that they obtained their alleged rights to collect money from Plaintiffs thereunder.

560. Once separated from the note, the trust deed is unenforceable and of no legal value. For negotiable instruments payable to an identified person, such as a lender, a holder is generally recognized as the payee or one to whom the negotiable instrument has been negotiated. This requires transfer of possession and endorsement by the prior holder. (Com. Code §3-201). Unless the parties otherwise provide, the mortgage follows the note. (Civ. Code §2936; *see also Carpenter v. Longan* (1872) 83 U.S. 271, 275).

561. Civil Code §2936 provides: "the assignment of a debt secured by mortgage carries with it the security." Defendants have no evidence that they own the notes or have any power to enforce them from the rightful owners.

562. As described above, there is compelling evidence that Defendants are violating TILA and the Patriot Act by failing to provide required information as to the owners of the notes and deeds of trust and the sources of funds used to provide their mortgages and/or acquire their mortgages.

563. Foreclosure was wrongful for each of the following reasons, independent of any of the other following reasons: (1) because Plaintiff's mortgage was obtained through concealment and/or misrepresentation; (2) because Defendants do not own the note and do not have a power of attorney with respect to the note; (3) because the note and deed of trust have become separated; (4) because Defendants do not own the deed of trust and do not have a power of attorney with respect to the deed of trust; (5) because Defendants cannot surmount their burden of demonstrating they own the note or have a power of attorney with respect thereto; and (6) because Defendants cannot surmount their burden of demonstrating they own the deed of trust or have a power of attorney with respect thereto.

564. Plaintiffs need not furnish tender for each of the following reasons:

a. Plaintiff borrowers attack the validity of the underlying debt to Defendants. Plaintiffs can owe no money to a party that doesn't own the debt. To require tender in such a situation would constitute an affirmation of the very debt they contest.

b. Plaintiffs have asserted numerous claims against Defendants which act as "set-off" or "off-set" against the beneficiary. In such cases, it is deemed that the tender and the counter claim offset one another. Here, the Plaintiffs have brought claims for fraudulent misrepresentation, negligent misrepresentation, and unfair competition (under a multitude of predicate violations). For these claims Plaintiffs has requested compensatory damages, restitution, as well as punitive damages, as well as costs of suit and attorney fees, all of which act as set-off against any amounts owed by Plaintiff. Therefore, tender is not required.

c. Tender is not required whereas here it would be inequitable to do so. The allegations are rife with inequity and fraud which has placed Plaintiffs in the very perilous position they now seek to desperately avoid. Defendants **intentionally** placed borrowers into loans they knew and intended would fail, by misrepresenting highly material facts surrounding their loans, so that they could turn profit by collecting foreclosure fees, and steal what equity Plaintiffs had left in their property, if any.

d. Finally, tender is not required whereas here the sale is void. The sales at issue are void for numerous reasons. First because the loans and deed of trusts themselves were obtained through fraud – this is true as to each and every Plaintiff in the First cause of action for Intentional Misrepresentation. Second a foreclosure sale conducted by an unauthorized trustee is void as a matter of law, as is the case for numerous Plaintiffs in this cause of action. Third, under California Law, a Notice of Default (NOD) initiating foreclosure on behalf of a party who is not a <u>true beneficiary at the time of filing the NOD,</u> *as here*, is **void ab initio**, rendering any subsequent foreclosure based on that NOD void as well. As to virtually every Plaintiff in this Cause of Action, the party who executed the NOD was not the true beneficiary at the time the NOD was recorded. A litany of cases affirm this rule. Fourth and finally, in many cases the ultimate foreclosing party (at the foreclosure sale) was not even the party listed on the NOD. The NOD did not authorize such party to foreclose, and the foreclosure of a property by an unauthorized party is void

as a matter of law. California law requires that any foreclosure sale based on a void notice of default is also void. For each of the aforementioned reasons Defendants foreclosure is void and thus no tender is required.

565. Furthermore, the deeds upon sale at issue fail to include the conclusive presumption language.

566. As a result of the foreclosures, Plaintiff was dispossessed of Plaintiff's property and put to the expense of relocating and securing alternative properties. Plaintiffs were further dispossessed of the value of Plaintiff's home and the potential appreciation thereof.

567. Defendants acted outrageously and persistently with actual malice in performing the acts alleged in this cause of action. Accordingly, Plaintiffs are entitled to exemplary and punitive damages in a sum according to proof and to such other relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

568. Plaintiffs request relief in the form of having the wrongful foreclosure sales set aside, or in the alternative for monetary damages resulting from Defendants' wrongs including among other things, damages for relocation, and the lost equity wrongfully taken from them by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as follows:

1. General, special, punitive exemplary damages according to proof under the First, Second, Third, and Fourth Causes of Action;

2. Statutory relief according to proof under the Third Cause of Action;

3. Restitution according to proof under the Third Cause of Action;

4. Temporary, preliminary, and permanent injunctive relief under the Third and Fourth Causes of Action;

5. The unwinding of Defendant's wrongful foreclosure sales, and return of title to Plaintiffs under the Fourth Cause of Action;

6. On all causes of action, for costs of suit herein;

7. On all causes of action, for pre- and post-judgment interest;

8. On all causes of action for which attorney's fees may be awarded pursuant to the governing contract, by statute or otherwise, reasonable attorney's fees;

9. On all causes of action, for such other and further relief as this Court may deem just and proper.

Dated: April 6, 2016

Respectfully submitted,

BROOKSTONE LAW, PC

By: _____
Jonathan Tarkowski
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

Plaintiffs hereby demand a jury trial in the above-entitled action.

Dated: April 6, 2016

Respectfully submitted,

BROOKSTONE LAW, PC

By: _____
Jonathan Tarkowski
Attorneys for Plaintiffs

APPENDIX A

APPENDIX A

1. Plaintiff Morgan C. Lawley ("Lawley") discussed obtaining a mortgage for the real property located at 1325 Saginaw Street Los Angeles, CA with a loan consultant (the "Loan Consultant"), and representative and authorized agent of Defendants herein (the "Defendants"). According to the deed of trust, Plaintiff was the "borrower," and Countrywide was the "lender," MERS was named the "beneficiary," and California Recontrust Company was the "trustee." (*Id*. at 2) The loan was to be negatively amortized over a 30-year period. Plaintiff was approved in the amount of $1,125,000.

Defendants and Loan Consultant explicitly represented to Lawley that he could afford his loan; and further represented that he could shoulder the additional financial burden of repaying his loan in consideration of his other existing debts. Loan Consultant and Defendants further represented to Lawley that he could rely on the assessment that he was "qualified" to mean that he could afford the loan. Because of Lawley's lack of familiarity with how much debt a person can and should reasonably take on compared to his/her monthly income, and because Lawley reasonably relied on Defendants' and Loan Consultant's expertise that any payment he was "qualified" for would take into account what the maximum debt a person such as Lawley should be shouldering was, Lawley reasonably believed Defendants' and Loan Consultant's representations that he could afford his loan and its payments.

In addition, Defendants and Loan Consultant represented that appraisals conducted by or on behalf of Defendants were accurate and made in good faith. An appraisal company under the direct control and supervision of Defendants, conducted an appraisal on Lawley's home, which was fraudulently inflated to an intentionally overstated value. Lawley alleges that the appraisal was artificially inflated, and that he has suffered due to a substantial loss of equity in his home as a result of Defendants' fraudulent inflation and other acts described herein.

Loan Consultant and Defendants also represented to Lawley that he would be able to refinance his loan at a later time. Lawley relied on this assurance in deciding to enter into the mortgage contract. However, Lawley has not been able to refinance his loan. Loan Consultant and Defendants also represented that it would modify Lawley's loan, and Lawley relied on this representation in deciding to enter into the loan. In addition, Lawley was advised by a representative and authorized agent of Defendants to stop making payments in order to be eligible for a modification. Lawley relied on Defendants' and the Defendants representative and authorized agent's advice and stopped making his

monthly payments causing him to fall even further behind. However, Lawley was unable to modify his loan.

Furthermore, Loan Consultant and Defendants represented that: (1) Defendants was reputable and complied with industry standard underwriting guidelines and was engaged in lending of the highest caliber; (2) property appraisals done by Defendants were accurate and made in good faith; (3) Lawley could afford the loan; (4) He was "qualified" for his loan; (5) "qualified" meant that he could afford his loan; (6) He would be able to modify his loan in the future; and (7) He would be able to refinance his loan in the future.

Moreover, Loan Consultant and Defendants withheld or incompletely, inaccurately or otherwise improperly disclosed to Lawley that: (1) Loan Consultant and Defendants knew that he could not and would not be able to afford his loan and that there was a very high probability that he would default and/or be foreclosed upon; (2) Defendants had an incentive to sell his loan, and did sell his loan at fraudulently inflated prices; (3) Loan Consultant's and Defendants' "qualification" process was for Defendants' own protection and not hiss; (4) That Loan Consultant's and Defendants' representations that he was "qualified" to pay his loan was not intended to communicate that he could actually "afford" the loan which he was being given; (5) Defendants had abandoned its conventional lending business, prudent lending standards, and industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value Lawley's home to require him to borrow more money with the knowledge that the true value of Lawley's home was insufficient to justify the amount of Lawley's loan; or (7) Defendants knew that due to its scheme of fraudulently manipulating and inflating property values throughout the State of California that the real estate market would crash and Lawley would lose substantial equity in his home.

Based on these misrepresentations and omissions, the material facts concerning Lawley's loan was concealed from him, and he decided to move forward with his loan. Had he known the truth however, Lawley would not have accepted the loan. As a result of the Defendants' fraudulent acts described throughout this complaint Lawley has lost substantial equity in his home, has damaged or destroyed credit, and at the time Lawley entered into the loan his home was worth substantially more than its current fair market value. Lawley did not discover any of these misrepresentations or

omissions until after a consultation with legal counsel at Brookstone Law, and through a complete and thorough investigation of the loan documentation, and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint, were brought to light.

2. Plaintiff Larry Bluford ("Bluford") discussed obtaining a mortgage for the real property located at 894 Appian Way, Fairfield, CA 94534 with a loan consultant (the "Loan Consultant"), and representative and authorized agent of Defendants herein (the "Defendants"). According to the deed of trust, Plaintiff was the "borrower," Countrywide Bank, N.A. was the "lender," MERS was named as the "beneficiary," and California Recontrust Company was the "trustee." (*Id*. at 2) The loan was to be negatively amortized over a 40-year period. Plaintiff was approved in the amount of $656,250.

Defendants and Loan Consultant explicitly represented to Bluford that he could afford his loan; and further represented that he could shoulder the additional financial burden of repaying his loan in consideration of his other existing debts. Loan Consultant and Defendants further represented to Bluford that he could rely on the assessment that he was "qualified" to mean that he could afford the loan. Because of Bluford's lack of familiarity with how much debt a person can and should reasonably take on compared to his/her monthly income, and because Bluford reasonably relied on Defendants' and Loan Consultant's expertise that any payment he was "qualified" for would take into account what the maximum debt a person such as Bluford should be shouldering was, Bluford reasonably believed Defendants' and Loan Consultant's representations that he could afford his loan and its payments.

In addition, Defendants and Loan Consultant represented that appraisals conducted by or on behalf of Defendants were accurate and made in good faith. An appraisal company under the direct control and supervision of Defendants, conducted an appraisal on Bluford's home, which was fraudulently inflated to an intentionally overstated value. Bluford alleges that the appraisal was artificially inflated, and that he has suffered due to a substantial loss of equity in his home as a result of Defendants' fraudulent inflation and other acts described herein.

Loan Consultant and Defendants also represented to Bluford that he would be able to refinance his loan at a later time. Bluford relied on this assurance in deciding to enter into the mortgage contract. However, Bluford has not been able to refinance his loan. Loan Consultant and Defendants also represented that it would modify Bluford's loan, and Bluford relied on this representation in deciding to

enter into the loan. In addition, Bluford was advised by a representative and authorized agent of Defendants to stop making payments in order to be eligible for a modification. Bluford relied on Defendants' and the Defendants representative and authorized agent's advice and stopped making his monthly payments causing him to fall even further behind. However, Bluford was unable to modify his loan.

Furthermore, Loan Consultant and Defendants represented that: (1) Defendants was reputable and complied with industry standard underwriting guidelines and was engaged in lending of the highest caliber; (2) property appraisals done by Defendants were accurate and made in good faith; (3) Bluford could afford the loan; (4) He was "qualified" for his loan; (5) "qualified" meant that he could afford his loan; (6) He would be able to modify his loan in the future; and (7) He would be able to refinance his loan in the future.

Moreover, Loan Consultant and Defendants withheld or incompletely, inaccurately or otherwise improperly disclosed to Bluford that: (1) Loan Consultant and Defendants knew that he could not and would not be able to afford his loan and that there was a very high probability that he would default and/or be foreclosed upon; (2) Defendants had an incentive to sell his loan, and did sell his loan at fraudulently inflated prices; (3) Loan Consultant's and Defendants' "qualification" process was for Defendants' own protection and not hiss; (4) That Loan Consultant's and Defendants' representations that he was "qualified" to pay his loan was not intended to communicate that he could actually "afford" the loan which he was being given; (5) Defendants had abandoned its conventional lending business, prudent lending standards, and industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value Bluford's home to require him to borrow more money with the knowledge that the true value of Bluford's home was insufficient to justify the amount of Bluford's loan; or (7) Defendants knew that due to its scheme of fraudulently manipulating and inflating property values throughout the State of California that the real estate market would crash and Bluford would lose substantial equity in his home.

Based on these misrepresentations and omissions, the material facts concerning Bluford's loan was concealed from him, and he decided to move forward with his loan. Had he known the truth however, Bluford would not have accepted the loan. As a result of the Defendants' fraudulent acts

described throughout this complaint Bluford has lost substantial equity in his home, has damaged or destroyed credit, and at the time Bluford entered into the loan his home was worth substantially more than its current fair market value. Bluford did not discover any of these misrepresentations or omissions until after a consultation with legal counsel at Brookstone Law, and through a complete and thorough investigation of the loan documentation, and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint, were brought to light.

3. Plaintiff Alex and Nina Udarbe ("Udarbe") discussed obtaining a mortgage for the real property located at 803 Trailhead Place Chula Vista, CA 91914 with a loan consultant (the "Loan Consultant"), and representative and authorized agent of Defendants herein (the "Defendants"). According to the deed of trust, Plaintiffs were the "borrowers," SCME Mortgage Bankers was the "lender," MERS was named the "beneficiary," and Stewart Title Company of San Diego Company was the "trustee." (*Id*. at 2) The loan was to be negatively amortized over a 30-year period. Plaintiffs were approved in the amount of $710.000.

Defendants and Loan Consultant explicitly represented to Udarbe that they could afford the loan; and further represented that they could shoulder the additional financial burden of repaying the loan in consideration of other existing debts. Loan Consultant and Defendants further represented to Udarbe that they could rely on the assessment that they were "qualified" to mean that they could afford the loan. Because of Udarbe's lack of familiarity with how much debt a person can and should reasonably take on compared to his/her monthly income, and because the Udarbes reasonably relied on Defendants' and Loan Consultant's expertise that any payment they were "qualified" for would take into account what the maximum debt a person such as the Udarbes should be shouldering was, the Udarbes reasonably believed Defendants' and Loan Consultant's representations that they could afford the loan and its payments.

In addition, Defendants and Loan Consultant represented that appraisals conducted by or on behalf of Defendants were accurate and made in good faith. An appraisal company under the direct control and supervision of Defendants, conducted an appraisal on Udarbe's home, which was fraudulently inflated to an intentionally overstated value. The Udarbes allege that the appraisal was

artificially inflated, and that he has suffered due to a substantial loss of equity in his home as a result of Defendants' fraudulent inflation and other acts described herein.

Loan Consultant and Defendants also represented to the Udarbes that he would be able to refinance his loan at a later time. Udarbes relied on this assurance in deciding to enter into the mortgage contract. However, Udarbes has not been able to refinance his loan. Loan Consultant and Defendants also represented that it would modify Udarbe's loan, and Udarbes relied on this representation in deciding to enter into the loan. In addition, Udarbes were advised by a representative and authorized agent of Defendants to stop making payments in order to be eligible for a modification. The Udarbes relied on Defendants' and the Defendants representative and authorized agent's advice and stopped making his monthly payments causing him to fall even further behind. However, the Udarbes were unable to modify their loan.

Furthermore, Loan Consultant and Defendants represented that: (1) Defendants was reputable and complied with industry standard underwriting guidelines and was engaged in lending of the highest caliber; (2) property appraisals done by Defendants were accurate and made in good faith; (3) the Udarbes could afford the loan; (4) they were "qualified" for their loan; (5) "qualified" meant that they could afford their loan; (6) they would be able to modify their loan in the future; and (7) they would be able to refinance thier loan in the future.

Moreover, Loan Consultant and Defendants withheld or incompletely, inaccurately or otherwise improperly disclosed to the Udarbes that: (1) Loan Consultant and Defendants knew that they could not and would not be able to afford their loan and that there was a very high probability that they would default and/or be foreclosed upon; (2) Defendants had an incentive to sell their loan, and did sell the loan at fraudulently inflated prices; (3) Loan Consultant's and Defendants' "qualification" process was for Defendants' own protection and not hiss; (4) That Loan Consultant's and Defendants' representations that the Udarbes were "qualified" to pay the loan was not intended to communicate that they could actually "afford" the loan which was being given; (5) Defendants had abandoned its conventional lending business, prudent lending standards, and industry standard underwriting guidelines; (6) Defendants influenced the appraiser to over-value Udarbe's home to require they to borrow more money with the knowledge that the true value of Udarbe's home was insufficient to

justify the amount of Udarbe's loan; or (7) Defendants knew that due to its scheme of fraudulently manipulating and inflating property values throughout the State of California that the real estate market would crash and Udarbe would lose substantial equity in the home.

Based on these misrepresentations and omissions, the material facts concerning Udarbe's loan was concealed from him, and they decided to move forward with the loan. Had they known the truth however, Udarbe would not have accepted the loan. As a result of the Defendants' fraudulent acts described throughout this complaint Udarbe has lost substantial equity in the home, has damaged or destroyed credit, and at the time Udarbe entered into the loan their home was worth substantially more than its current fair market value. Udarbe did not discover any of these misrepresentations or omissions until after a consultation with legal counsel at Brookstone Law, and through a complete and thorough investigation of the loan documentation, and a discussion of the surrounding facts, the fraudulent acts of the Defendants, as described throughout this complaint, were brought to light.

4. Othello and Erlinda Abata are residents of the state of California. On July 18, 2006, Othello Abata signed and executed a deed of trust for the real property located at 2503 Castle Rock Lane, Santa Maria, CA 93455.

5. Refugio and Leonardo Alarcon are residents of the state of California. On December 22, 2005, Refugio Alarcon signed and executed a deed of trust for the real property located at 24480 Myers Ave, Moreno Valley, CA 92553.

6. Burt Alexander is a resident of the state of California. On June 28, 2007, Burt Alexander signed and executed a deed of trust for the real property located at 4316 Marina City Dr., Marina Del Rey, CA 90802.

7. Anthony Altieri is a resident of the state of California. On February 16, 2007, Anthony Altieri signed and executed a deed of trust for the real property located at 839 North Evergreen Street, Burbank, CA 91505.

8. Juan and Patricia Alvarez are residents of the state of California. On October 30, 2006, Juan Alvarez signed and executed a deed of trust for the real property located at 5 West Alta Dena Dr., Alta Dena, CA 91009.

APPENDIX A

9. Manuel and Ana Julia Amaya are residents of the state of California. On November 1, 2005, Manuel Amaya signed and executed a deed of trust for the real property located at 1852, 1854, 1854 1/2 West 22nd Street, Los Angeles, CA 90018.

10. Rebecca and Micheal Artmore are residents of the state of California. On January 26, 2007, Rebecca Artmore signed and executed a deed of trust for the real property located at 1965 Killarney Ct., Gilroy, CA 95020.

11. Kevin Badiei is a resident of the state of California. On April 12, 2006, Kevin Badiei signed and executed a deed of trust for the real property located at 14087 Caminito Vistana, San Diego, CA 92130-372.

12. Rue Barrow is a resident of the state of California. On November 11, 2005, Rue Barrow signed and executed a deed of trust for the real property located at 78594 San Marino Ct., La Quinta, CA 92253.

13. Oscar Bobadilla is a resident of the state of California. On June 16, 2006, Oscar Bobadilla signed and executed a deed of trust for the real property located at 1437 Lomita Blvd. #217, Harbor City, CA 90710.

14. Brent Bon is a resident of the state of California. On September 27, 2005, Brent Bon signed and executed a deed of trust for the real property located at 29626 Canyon Spring Rd, Highland, CA 92346.

15. Alfonso and Avelina Borja are residents of the state of California. On September 27, 2005, Alfonso Borja signed and executed a deed of trust for the real property located at 8931 San Pasqual Way, Stockton, CA 95210.

16. Cornelio Bosques is a resident of the state of California. On August 16, 2006, Cornelio Bosques signed and executed a deed of trust for the real property located at 14295 Agave St, Moreno Valley, CA 92553.

17. Manuel Brito is a resident of the state of California. On August 17, 2006, Manuel Brito signed and executed a deed of trust for the real property located at 14211 Raleigh Place, Tustin, CA 92780.

18. Sonia Canas is a resident of the state of California. On July 6, 2007, Sonia Canas signed and executed a deed of trust for the real property located at 43928 44th St., Lancaster, CA 93536.

APPENDIX A

19. Elizabeth Carter is a resident of the state of California. On June 16, 2006, Elizabeth Carter signed and executed a deed of trust for the real property located at 765 Highland, Upland, CA 91786.

20. Fetuao Desmond is a resident of the state of California. On September 20, 2005, Fetuao Desmond signed and executed a deed of trust for the real property located at 243 Oxford St., Chula Vista, CA 91911.

21. Millicent Dickinson is a resident of the state of California. On June 22, 2006, Millicent Dickinson signed and executed a deed of trust for the real property located at 21422 Rossford Street, Lakewood, CA 90715.

22. Isidro Duarte is a resident of the state of California. On April 19, 2008, Isidro Duarte signed and executed a deed of trust for the real property located at 7451 San Bergamo Dr., Goleta, CA 93117.

23. Sergio Faurrieta is a resident of the state of California. On October 26, 2005, Sergio Faurrieta signed and executed a deed of trust for the real property located at 15428 Canyon Stone Dr, Moreno Valley, CA 92551.

24. Rudesindo Fernandez is a resident of the state of California. On October 26, 2006, Rudesindo Fernandez signed and executed a deed of trust for the real property located at 5621 Via Cervano, Bakersfield, CA 93315.

25. Christopher and Delicia Florendo are residents of the state of California. On September 23, 2005, Christopher Florendo signed and executed a deed of trust for the real property located at 5548 Joneboro Way, Sacramento, CA 95835.

26. Guillermo Flores is a resident of the state of California. On August 4, 2005, Guillermo Flores signed and executed a deed of trust for the real property located at 1635 Falcon Peak St., Chula Vista, CA 91913.

27. Wilbur Fukui is a resident of the state of California. On July 21, 2006, Wilbur Fukui signed and executed a deed of trust for the real property located at 8116 Pershing Drive, Playa Del Rey, CA 90293.

28. Ruben Garcia is a resident of the state of California. On July 24, 2006, Ruben Garcia signed and executed a deed of trust for the real property located at 11829 Barmwall Street, Norwalk, CA 90650.

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29. Hermilo Robles Gomez is a resident of the state of California. On July 24, 2006, Hermilo Robles Gomez signed and executed a deed of trust for the real property located at 551 S Fashion Park St, Orange, CA 92866.

30. Gustavo Gonzales is a resident of the state of California. On August 19, 2005, Gustavo Gonzales signed and executed a deed of trust for the real property located at 2114 Eicher Ave, Modesto, CA 95350.

31. Benito Gonzalez is a resident of the state of California. On October 4, 2005, Benito Gonzalez signed and executed a deed of trust for the real property located at 25907 Annette Ave, Moreno Valley, CA 92551.

32. Graciela and Rafael Guadiana are residents of the state of California. On September 1, 2006, Graciela Guadiana signed and executed a deed of trust for the real property located at 7905 Lincoln Street, Lemon Grove, CA 91945.

33. Jesus Guevara is a resident of the state of California. On November 7, 2006, Jesus Guevara signed and executed a deed of trust for the real property located at 718 E 106th St, Los Angeles, CA 90002.

34. Janet and James Hagen are residents of the state of California. On June 26, 2007, Janet Hagen signed and executed a deed of trust for the real property located at 639 Laurel Ln., Calipatria, CA 92233.

35. Stephen Harris is a resident of the state of California. On November 17, 2006, Stephen Harris signed and executed a deed of trust for the real property located at 1601 N. Grandee, Compton, CA 90222.

36. Dung Ho is a resident of the state of California. On December 21, 2005, Dung Ho signed and executed a deed of trust for the real property located at 3184 Shrike Ln, Perris, CA 92571.

37. Matthew Hofer is a resident of the state of California. On January 11, 2005, Matthew Hofer signed and executed a deed of trust for the real property located at 7774 Nightinggale Way, San Diego, CA 92123.

38. Grace Hong is a resident of the state of California. On October 8, 2004, Grace Hong signed and executed a deed of trust for the real property located at 1490 Banchley St, Fullerton, CA 92883.

39. Linda K. Huneke is a resident of the state of California. On May 17, 2007, Linda K. Huneke signed and executed a deed of trust for the real property located at 5261 Chelsey Ct., Riverside, CA 92505.

40. Tony and Eileen Keusseyan are residents of the state of California. On December 24, 2002, Tony Keusseyan signed and executed a deed of trust for the real property located at 3711 Winford Drive, Tarzana, CA 91356.

41. Ronald Kolodziej is a resident of the state of California. On February 28, 2007, Ronald Kolodziej signed and executed a deed of trust for the real property located at 424 Ocean Park Blvd, Santa Monica, CA 90405.

42. Steve Layton is a resident of the state of California. On September 23, 2005, Steve Layton signed and executed a deed of trust for the real property located at 6893 E Horizon Dr., Orange, CA 92867.

43. George Lucas is a resident of the state of California. On February 23, 2007, George Lucas signed and executed a deed of trust for the real property located at 38520 Harris Trail, Fallbrook, CA 92028.

44. Walter Lusk is a resident of the state of California. On March 4, 2005, Walter Lusk signed and executed a deed of trust for the real property located at 10428 Somerset Blvd., Bellflower, CA 90706.

45. David and Leah Manaoat are residents of the state of California. On January 31, 2006, David Manaoat signed and executed a deed of trust for the real property located at 102 Sonora Crt, Oakley, CA 94561.

46. Rebecca Marine is a resident of the state of California. On June 14, 2007, Rebecca Marine signed and executed a deed of trust for the real property located at 2600 E 20th St Unit 202, Signall Hill, CA 90755.

47. Salvador and Rolando Martinez are residents of the state of California. On August 16, 2006, Salvador Martinez signed and executed a deed of trust for the real property located at 2906 West Cubbon, Santa Ana, CA 92704.

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48. Freddie Mccullough is a resident of the state of California. On April 24, 2007, Freddie Mccullough signed and executed a deed of trust for the real property located at 232 E 21st St., Long Beach, CA 90806.

49. Donald Miller is a resident of the state of California. On March 2, 2006, Donald Miller signed and executed a deed of trust for the real property located at 1142 Norcrest St., Corona, CA 92880.

50. Franco Miranda is a resident of the state of California. On December 20, 2006, Franco Miranda signed and executed a deed of trust for the real property located at 4562 West 165th St., Lawndale, CA 90260.

51. Ramon Montano is a resident of the state of California. On February 1, 2007, Ramon Montano signed and executed a deed of trust for the real property located at 1467 Garcia Place, Placentia, CA 92870.

52. Fernando Morales is a resident of the state of California. On April 26, 2006, Fernando Morales signed and executed a deed of trust for the real property located at 7590 Juniper Ave, Fontana, CA 92336.

53. Eduardo "Eddie" Munoz is a resident of the state of California. On July 16, 2007, Eduardo "Eddie" Munoz signed and executed a deed of trust for the real property located at 10684 Daisy Field Ln, Moreno Valley, CA 92557.

54. Aurora Murillo is a resident of the state of California. On March 27, 2007, Aurora Murillo signed and executed a deed of trust for the real property located at 110 St James, Irvine, CA 92606.

55. Hector Nieto is a resident of the state of California. On March 16, 2007, Hector Nieto signed and executed a deed of trust for the real property located at 10421 Beckworth Court, Riverside, CA 92503.

56. Thomas Politz is a resident of the state of California. On September 29, 2006, Thomas Politz signed and executed a deed of trust for the real property located at 11575 Countryside Dr, Fontana, CA 92337.

57. Francisco and Maria Ramirez are residents of the state of California. On March 7, 2007, Francisco Ramirez signed and executed a deed of trust for the real property located at 4615 E. 56 St, Maywood, CA 90270.

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58. Marcelino Roman is a resident of the state of California. On March 28, 2007, Marcelino Roman signed and executed a deed of trust for the real property located at 8729 7th St., Downey, CA 90241.

59. Daniel Salinas and Yvette Salinas is a resident of the state of California. On November 10 2005 and June 16, 2006, Daniel Salinas signed and executed deeds of trust for the real property located at 5802 Daisy Cir, La Palma, CA 90623.

60. Julio Santa Cruz is a resident of the state of California. On April 23, 2007, Julio Santa Cruz signed and executed a deed of trust for the real property located at 18802 E Galleano St, La Puente, CA 91744.

61. Michael Scott is a resident of the state of California. On April 24, 2006, Michael Scott signed and executed a deed of trust for the real property located at 2052 Shadow Grove Way, Encinitas, CA 92024.

62. Baldev Singh is a resident of the state of California. On February 3, 2006, Baldev Singh signed and executed a deed of trust for the real property located at 5500 Kodiak Mountain, Yorba Linda, CA 92887.

63. Kenneth Skaife is a resident of the state of California. On May 25, 2006, Kenneth Skaife signed and executed a deed of trust for the real property located at 1321 Stillman Ave, Redlands, CA 92374.

64. Levita and William Taylor are residents of the state of California. On December 12, 2006, Levita Taylor signed and executed a deed of trust for the real property located at 1691 Harmony Way, Pittsburgh, CA 94565.

65. Marjeanne and Arthur Tendler are residents of the state of California. On December 19, 2005, Marjeanne Tendler signed and executed a deed of trust for the real property located at 22354 San Joaquin Dr., Canoyn Lake, CA 92587.

66. Joan and Harold Tucker are residents of the state of California. On August 7, 2007, Joan Tucker signed and executed a deed of trust for the real property located at 3846 Lesage St, Lynwood, A 90262.

67. Mercy Umeokafor is a resident of the state of California. On October 27, 2006, Mercy Umeokafor signed and executed a deed of trust for the real property located at 810 East 87th St, Los Angeles, CA 90002.

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APPENDIX A

68. Analilia Wade is a resident of the state of California. On August 15, 2005, Analilia Wade signed and executed a deed of trust for the real property located at 44350 Tortuga Rd, Temecula, CA 92590.

69. James Walker is a resident of the state of California. On October 20, 2006, James Walker signed and executed a deed of trust for the real property located at 26492 Bluewater Rd, Helendale, CA 92342.

70. Allen and Sharon Wilson are residents of the state of California. On December 17, 2004, Allen Wilson signed and executed a deed of trust for the real property located at 6373 Iris Court, Corona, CA 92880.

71. Wilmer Yabar is a resident of the state of California. On July 18, 2006, Wilmer Yabar signed and executed a deed of trust for the real property located at 18465 Berry Rd, Riverside, CA 92508.

72. Rick Ernst is a resident of the state of California. On November 7, 2005, Rick Ernst signed and executed a deed of trust for the real property located at 2020 Paseo Cresta, Vista, CA 92084.

EXHIBIT 1

This Settlement Agreement ("Agreement") is entered into between the United States acting through the United States Department of Justice ("Department of Justice"), along with the States of California, Delaware, Illinois, Maryland, and New York, and the Commonwealth of Kentucky, acting through their respective Attorneys General (collectively, "the States"), and Bank of America Corporation, Bank of America, N.A., and Banc of America Mortgage Securities, as well as their current and former subsidiaries and affiliates (collectively, "Bank of America"). The United States, the States, and Bank of America are collectively referred to herein as "the Parties."

RECITALS

A. The United States Attorney's Offices for the District of New Jersey, the Western District of North Carolina, the Northern District of Georgia, and the Central District of California conducted investigations of the packaging, origination, marketing, sale, structuring, arrangement, and issuance of residential mortgage-backed securities ("RMBS") and collateralized debt obligations ("CDOs") by Bank of America; Countrywide Financial Corporation, Countrywide Home Loans, Inc., and Countrywide Securities Corporation, as well as their current and former subsidiaries and affiliates (collectively, "Countrywide"); Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch Mortgage Investors, Inc., as well as their current and former subsidiaries and affiliates (collectively, "Merrill Lynch"); and First Franklin Financial Corporation, as well as its current and former subsidiaries and affiliates ("First Franklin"). Based on these investigations, the United States believes that there are potential legal claims by the United States against Bank of America, Countrywide, Merrill Lynch and First Franklin for violations of federal law. Furthermore, based on its investigation, the United States Attorney's Office for the Western District of North Carolina filed a civil action,

United States v. Bank of America Corp., et al., No. 13-cv-446-MOC (W.D.N.C.), against Bank of America seeking a civil monetary penalty pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1833a.

B. The States, based on their independent investigations of the same conduct, believe that there are potential legal claims by California, Delaware, Illinois, Maryland, Kentucky, and New York against Bank of America, Countrywide, Merrill Lynch, and First Franklin for state law violations in connection with the packaging, origination, marketing, sale, structuring, arrangement, and issuance of RMBS and CDOs.

C. The United States Attorney's Office for the Southern District of New York has conducted investigations of Countrywide and Bank of America's origination and sale of defective residential mortgage loans to the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, "government-sponsored enterprises" or "GSEs"), including investigating allegations asserted by:

i. Relator, who filed a complaint on or about June 21, 2011, under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729, *et seq.*, against Bank of America, three of its subsidiaries (Countrywide Financial Corporation, Landsafe Appraisal Services, Inc. and U.S. Trust), and another defendant, asserting *inter alia*, that, from 2004 to 2011, Bank of America and its subsidiaries originated residential mortgage loans using inflated appraisals and fraudulently sold those loans to the GSEs with misrepresentations as to the loans' quality;

ii. Relator, who filed a complaint on or about June 4, 2014, under the *qui tam* provisions of the False Claims Act against Countrywide and Bank of America, alleging, *inter alia*, that, from 2009 to 2014, these entities fraudulently sold

defective residential mortgage loans originated by Countrywide's Consumer Markets Division and later Bank of America to the GSEs with misrepresentations as to the loans' quality; and

iii. Relator, who filed a complaint on or about January 14, 2014, under the *qui tam* provisions of the False Claims Act against Defendants Countrywide, Bank of America, Merrill Lynch, and First Franklin, alleging, *inter alia*, that, from 2008 to 2013, those entities breached representations and warranties by failing to report thousands of defective loans to the GSEs.

Based on these investigations, the United States believes that there are potential legal claims by the United States against Bank of America for violations of federal law.

D. The United States Attorney's Office for the Western District of North Carolina has also conducted an investigation of Bank of America and Countrywide submitting false claims to the Federal Housing Administration ("FHA"), an agency within the United States Department of Housing and Urban Development, including investigating allegations asserted by Mortgage Now, Inc., which filed a complaint on or about June 7, 2012, under the *qui tam* provisions of the False Claims Act against Bank of America alleging *inter alia*, that Bank of America and Countrywide submitted claims to FHA for reimbursement of amounts Bank of America and Countrywide already had recovered from third-party correspondent lenders. As part of this investigation, the United States Attorney's Office for the Western District of North Carolina examined whether Bank of America settled repurchase claims with Freddie Mac and Fannie Mae concerning residential mortgages for which Bank of America or Countrywide received compensation from third party correspondent lenders that Bank of America did not disclose to Freddie Mac and Fannie Mae.

E. The United States Attorney's Office for the Eastern District of New York has conducted an investigation of Bank of America's origination of loans insured by the FHA from May 1, 2009 through March 31, 2012.

F. The United States Department of Housing and Urban Development has conducted an investigation of Bank of America's performance as Master Subservicer under Contract Number C-OPC-23289 with the Government National Mortgage Association ("Ginnie Mae").

G. Bank of America, Countrywide, Merrill Lynch, and/or certain affiliates thereof have resolved claims filed by the Federal Deposit Insurance Corporation ("FDIC") as Receiver for 1st Pacific Bank of California, the FDIC as Receiver for Affinity Bank, the FDIC as Receiver for CF Bancorp, the FDIC as Receiver for Citizens National Bank, the FDIC as Receiver for Colonial Bank, the FDIC as Receiver for Eurobank, the FDIC as Receiver for First Banking Center, the FDIC as Receiver for First Dupage Bank, the FDIC as Receiver for Franklin Bank, S.S.B., the FDIC as Receiver for Guaranty Bank, the FDIC as Receiver for Horizon Bank, the FDIC as Receiver for Imperial Capital Bank, the FDIC as Receiver for Independent Bankers Bank, the FDIC as Receiver for Los Padres Bank, the FDIC as Receiver for Palos Bank & Trust Co., the FDIC as Receiver for Prosperan Bank, the FDIC as Receiver for SCB Bank, the FDIC as Receiver for Security Savings Bank, the FDIC as Receiver for ShoreBank, the FDIC as Receiver for Statewide Bank, the FDIC as Receiver for Strategic Capital Bank, the FDIC as Receiver for United Western Bank, F.S.B., the FDIC as Receiver for USA Bank, the FDIC as Receiver for Venture Bank, and the FDIC as Receiver for Warren Bank (the FDIC in its capacity as receiver for each of the Failed Banks referred to as "FDIC-R"), and claims filed by Bank of America, N.A. The terms of the resolution of those claims are memorialized in a separate agreement, attached hereto as Exhibit A.

H. Bank of America and Merrill Lynch have reached an agreement in principle to resolve claims by the United States Securities and Exchange Commission ("SEC"). The terms of the resolution of those claims are reflected in separate documents, attached hereto as Exhibit B.

I. Bank of America acknowledges the facts set out in the Statement of Facts set forth in Annex 1, attached hereto and hereby incorporated.

J. In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. **Payment.** Bank of America shall pay a total amount of $9,650,000,000.00 to resolve pending and potential legal claims in connection with the Covered Conduct, as defined below (the "Settlement Amount"), of which $5,020,000,000.00 shall be paid as a civil monetary penalty. As set out in Paragraph 1(A)(i), $5,000,000,000.00 of the Settlement Amount will be paid as a penalty recovered pursuant to FIRREA, 12 U.S.C. § 1833a. The remainder will be paid as set out in Paragraphs 1(A)(ii) to 1(A)(ix) and Paragraphs 1(B) to 1(G) and the Total Tax Relief Payment Amount as set out in Paragraph 2. As set out in the settlement documents attached hereto as Exhibit B, $20,000,000.00 of the Settlement Amount will be paid as a penalty in connection with the claims referenced in Recital Paragraph H.

A. Within sixty (60) days of receiving written payment processing instructions from the Department of Justice, Office of the Associate Attorney General, Bank of America shall pay $8,216,840,000.00 of the Settlement Amount by electronic funds transfer to the Department of Justice.

i. $5,000,000,000.00, and no other amount, is a civil monetary penalty recovered pursuant to FIRREA, 12 U.S.C. § 1833a. It will be deposited in the General Fund of the United States Treasury.

ii. $350,000,000.00, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph C and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.

iii. $350,000,000.00, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph C and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.

iv. $50,000,000.00, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph D and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.

v. $300,000,000.00, and no other amount, is in settlement of the claims of the United States identified in Recital Paragraph C and *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America.

vi. $800,000,000.00, and no other amount, is in settlement of Bank of America's submission of claims through December 31, 2013 for FHA loans originated by Bank of America or Countrywide on or after May 1, 2009. Any amount that FHA receives will be deposited into the Federal Housing Administration's Capital Reserve Account.

vii. $200,000,000.00, and no other amount, is in settlement of potential contractual claims related to Bank of America's and Countrywide's performance as Master Subservicer under Contract Number C-OPC-23289

with Ginnie Mae. Any amount that Ginnie Mae receives will be deposited into the Government National Mortgage Association's Financing Account.

viii. $1,031,000,000.00, is paid by Bank of America in settlement of the claims of the FDIC identified in Recital Paragraph G, pursuant to the settlement agreement attached hereto as Exhibit A, the terms of which are not altered or affected by this Agreement.

ix. $135,840,000.00, and no other amount, is paid by Bank of America in settlement of the claims of the SEC identified in Recital Paragraph H, pursuant to the settlement documents attached hereto as Exhibit B, the terms of which are not altered or affected by this Agreement.

B. $300,000,000.00, and no other amount, will be paid by Bank of America to the State of California pursuant to Paragraph 8, below, and the terms of written payment instructions from the State of California, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of California, Office of the Attorney General.

C. $45,000,000.00, and no other amount, will be paid by Bank of America to the State of Delaware pursuant to Paragraph 9, below, and the terms of written payment instructions from the State of Delaware, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of Delaware, Office of the Attorney General.

D. $200,000,000.00, and no other amount, will be paid by Bank of America to the State of Illinois pursuant to Paragraph 10, below, and the terms of written payment instructions from the State of Illinois, Office of the Attorney General. Payment shall be made by electronic

funds transfer within sixty (60) days of receiving written payment processing instructions from the State of Illinois, Office of the Attorney General.

E. $23,000,000.00, and no other amount, will be paid by Bank of America to the Commonwealth of Kentucky pursuant to Paragraph 11, below, and the terms of written payment instructions from the Commonwealth of Kentucky, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the Commonwealth of Kentucky, Office of the Attorney General.

F. $75,000,000.00, and no other amount, will be paid by Bank of America to the State of Maryland pursuant to Paragraph 12, below, and the terms of written payment instructions from the State of Maryland, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of Maryland, Office of the Attorney General.

G. $300,000,000.00, and no other amount, will be paid by Bank of America to the State of New York pursuant to Paragraph 13, below, and the terms of written payment instructions from the State of New York, Office of the Attorney General. Payment shall be made by electronic funds transfer within sixty (60) days of receiving written payment processing instructions from the State of New York, Office of the Attorney General.

2. **Consumer Relief.** In addition, Bank of America shall provide $7,000,000,000.00 worth of consumer relief as set forth in Annex 2, attached hereto and hereby incorporated as a term of this Agreement, to remediate harms resulting from the alleged unlawful conduct of Bank of America. The value of consumer relief provided shall be calculated and enforced pursuant to the terms of Annex 2. An independent monitor will determine whether Bank of America has satisfied the obligations contained in Annex 2 (such monitor to be Eric Green), and Bank of

America will provide the Monitor with all documentation the Monitor needs to do so, excluding all privileged information. All costs associated with said Monitor shall be borne solely by Bank of America; notwithstanding the fact that Bank of America bears the costs associated with the Monitor, the Monitor shall be fully independent of Bank of America. Bank of America will refrain from retaining the Monitor to represent Bank of America in any capacity prior to two years after the date upon which Bank of America satisfies the Consumer Relief obligations set forth in Annex 2. Bank of America will also refrain from engaging the Monitor as a mediator in any matter to which Bank of America is a party until Bank of America satisfies the Consumer Relief obligations set forth in Annex 2. Bank of America shall also pay $490,160,000.00 (such amount to be referred to as the "Total Tax Relief Payment Amount") of the Settlement Amount, in addition to the $7,000,000,000.00 worth of consumer relief, for the payment of consumer tax liability as a result of consumer relief as set forth in Annex 3, attached hereto and incorporated as a term of this Agreement. Such $490,160,000.00 will be deposited into an escrow account (such account to be referred to as the "Tax Relief Payment Account") that is a Qualified Settlement Fund in accordance with Treasury Regulation 1.468B-1(a), and all aspects of the payments therefrom shall be handled by the Monitor provided for herein and shall not be the responsibility of Bank of America.

3. **Covered Conduct.** "Covered Conduct" as used herein is defined as:

A. The creation, origination, pooling, structuring, arranging, formation, packaging, marketing, underwriting, sale, or issuance prior to January 1, 2009 by the Released Entities (as defined further below) of the RMBS and CDOs identified in Annex 4, attached hereto and hereby incorporated. Covered Conduct includes representations, disclosures, or non-disclosures to RMBS investors about, or made in connection with, the underlying residential mortgage loans,

where the representation, disclosure, or non-disclosure involves information about or obtained during the process of originating, acquiring, securitizing, underwriting, or servicing residential mortgage loans in the RMBS identified in Annex 4. Covered Conduct also includes representations, disclosures, or non-disclosures made in connection with the activities set forth above about the CDOs identified in Annex 4, attached hereto and hereby incorporated. Covered Conduct as set forth in this Paragraph 3(A) does not include: (i) representations or non-disclosures made in connection with the trading of RMBS or CDOs, except to the extent that the representations, disclosures, or non-disclosures are in the offering materials for the underlying RMBS or CDOs listed in Annex 4, attached hereto and hereby incorporated; (ii) any conduct where Bank of America, Countrywide, Merrill Lynch, and First Franklin acted only in the role of trustee; or (iii) the servicing of residential mortgage loans, except representations or non-disclosures to investors in the RMBS listed in Annex 4 about servicing, or information obtained in the course of servicing, such loans.

B. Covered Conduct includes the administration of RMBS and CDOs identified in Annex 4, attached hereto and hereby incorporated, as of the Execution Date, to the extent such administration relates to any actions or inactions with respect to representation and warranties or the cure, substitution, or repurchase (or failure to do or seek any of the same) of residential mortgage loans. Covered Conduct includes representations, disclosures, or non-disclosures to trustees made in connection with the activities set forth above about the residential mortgage loans included in the RMBS identified in Annex 4, attached hereto and hereby incorporated.

C. The underwriting and origination of residential mortgage loans by Bank of America and Countrywide that were sold by Bank of America and Countrywide prior to December 31, 2013 to the GSEs, including the appraisal of properties in connection with the

origination of such residential mortgage loans, and representations by Bank of America and Countrywide made prior to December 31, 2013 to the GSEs regarding the underwriting, origination, and quality control with respect to those residential mortgage loans.

D. The repurchase, investigation, and reporting obligations of Bank of America, Countrywide, and First Franklin from January 1, 2006 to December 31, 2013, under the representations and warranties contained in the GSE Seller/Servicer Guide with respect to concurrent residential mortgage loans.

E. The origination, including the appraisal of properties in connection with the origination of such residential mortgage loans, underwriting, quality control, and endorsement of single-family residential mortgage loans by Bank of America and Countrywide, as set forth more fully in Annex 1, originated on or after May 1, 2009, on which claims were submitted on or before December 31, 2013 to the FHA.

F. All claims as alleged in the following actions relating to the Covered Conduct described in Paragraphs 3(A)-3(E), *supra*:

i. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America

ii. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

iii. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America; and

iv. *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America, relating to the submission of claims by Bank of America or Countrywide on or before December 31, 2013 to FHA for residential mortgages that: (i) Bank of America or Countrywide acquired from third

party correspondent lenders and (ii) Bank of America or Countrywide received any form of compensation from third party correspondent lenders that was not disclosed to FHA. Covered Conduct relating to this matter also includes Bank of America settling repurchase claims with Freddie Mac and Fannie Mae concerning residential mortgages for which Bank of America or Countrywide received compensation from third party correspondent lenders in connection with actual or anticipated losses on those mortgages that Bank of America did not disclose to Freddie Mac and Fannie Mae. Notwithstanding anything to the contrary, all conduct described in this Paragraph 3(F)(iv) shall be deemed Covered Conduct under this Agreement.

G. Bank of America's and Countrywide's performance as Master Subservicer under Contract Number C-OPC-23289, with Ginnie Mae for the period March 1, 2009 through August 31, 2014.

H. The underwriting and origination of residential mortgage loans, including the appraisal of properties in connection with the origination of such residential mortgage loans, by Bank of America, Countrywide, Merrill Lynch, and First Franklin that were securitized by non-governmental entities in private label securitizations prior to January 1, 2009.

4. **Cooperation.** Until the date upon which all investigations and any prosecution arising out of the Covered Conduct are concluded by the Department of Justice, whether or not they are concluded within the term of this Agreement, Bank of America shall, subject to applicable laws or regulations: (a) cooperate fully with the Department of Justice (including the Federal Bureau of Investigation) and any other law enforcement agency designated by the Department of Justice

regarding matters arising out of the Covered Conduct; (b) assist the Department of Justice in any investigation or prosecution arising out of the Covered Conduct by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts to secure the attendance and truthful statements or testimony of any officer, director, agent, or employee of any of the entities released in Paragraph 5 at any meeting or interview or before the grand jury or at any trial or other court proceeding regarding matters arising out of the Covered Conduct; and (d) provide the Department of Justice, upon request, all non-privileged information, documents, records, or other tangible evidence regarding matters arising out of the Covered Conduct about which the Department or any designated law enforcement agency inquires.

5. **Releases by the United States.** Subject to the exceptions in Paragraph 15 ("Excluded Claims"), and conditioned upon Bank of America's full payment of the Settlement Amount and Bank of America's agreement, by executing this Agreement, to satisfy the terms in Paragraph 2 ("Consumer Relief") and Paragraph 4 ("Cooperation"), the United States fully and finally releases Bank of America, Countrywide, Merrill Lynch, and First Franklin, ("Released Entities") and each of their respective successors and assigns:

a. For the Covered Conduct contained in Paragraphs 3(A), 3(B), 3(C), 3(D), 3(E), and 3(F) from any civil claims the United States has for the Covered Conduct arising under FIRREA, 12 U.S.C. § l833a; the False Claims Act, 31 U.S.C. §§ 3729, *et seq*.; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, *et seq*.; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq*.; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, gross negligence, indemnification, payment by mistake, unjust enrichment, money had and

received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; or that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45.

b. For the Covered Conduct contained in Paragraph 3(H) from any civil claims the United States has for the Covered Conduct arising under FIRREA, 12 U.S.C. § 1833a.

6. **Releases by the FHA.** Subject to the exceptions in Paragraph 15 ("Excluded Claims"), and conditioned upon Bank of America's full payment of the Settlement Amount relating to the submission of claims to the FHA ($800,000,000.00) and Bank of America's agreement, by executing this Agreement, to satisfy the terms in Paragraph 2 ("Consumer Relief") and Paragraph 4 ("Cooperation"), the United States Department of Housing and Urban Development, acting on behalf of FHA, fully and finally releases the Released Entities and their successors and assigns from any monetary administrative claim the FHA has for the Covered Conduct described in Paragraphs 3(E) and 3(F), *supra*.

7. **Releases by the Ginnie Mae.** Subject to the exceptions in Paragraph 15 ("Excluded Claims"), and conditioned upon: (i) Bank of America's full payment of the Settlement Amount relating to Ginnie Mae ($200,000,000.00) and (ii) Bank of America's agreement, by executing this Agreement, to satisfy the terms in Paragraph 2 ("Consumer Relief") and Paragraph 4 ("Cooperation), the United States Department of Housing and Urban Development, acting on behalf of Ginnie Mae, fully and finally releases the Released Entities and their successors and assigns from any civil or administrative monetary claim Ginnie Mae has against Bank of

America for the Covered Conduct contained in Paragraph 3(G) under the common law theory of breach of contract.

8. **Releases by the California Attorney General.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned upon Bank of America's full payment of the Settlement Amount (of which $300,000,000.00 will be paid to the Office of the California Attorney General, in accordance with written payment instructions from the California Attorney General, to remediate harms to the State, pursuant to California Government Code §§ 12650-12656 and 12658, allegedly resulting from unlawful conduct of the Released Entities), the California Attorney General fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that the California Attorney General has authority to bring, including but not limited to: California Corporate Securities Law of 1968, Cal. Corporations Code § 25000 *et seq.*, California Government Code §§ 12658 and 12660 and California Government Code §§ 12650-12656, common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The California Attorney General executes this release in her official capacity and releases only claims that the California Attorney General has the authority to release for the Covered Conduct contained in Paragraph 3(A). The California Attorney General agrees that no portion of the funds in this paragraph is received as a civil penalty or fine, including, but not limited to any civil penalty or fine imposed under California Government Code § 12651. The California Attorney General and Bank of America acknowledge that they have been advised by their attorneys of the contents and effect of Section 1542 of the California

Civil Code ("Section 1542") and hereby expressly waive with respect to this Agreement any and all provisions, rights, and benefits conferred by Section 1542.

9. **Releases by the State of Delaware.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which $45,000,000.00 will be paid to the State of Delaware, in accordance with written payment instructions from the State of Delaware, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the Delaware Department of Justice fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has authority to bring, including but not limited to: 6 Del. C. Chapter 12 (the Delaware False Claims and Reporting Act), 6 Del. C. §§ 2511 *et seq*. (the Delaware Consumer Fraud Act), 6 Del. C. Chapter 73 (the Delaware Securities Act), and common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The payment to the State of Delaware shall be used, to the maximum extent possible, for purposes of providing restitution and remediating harms to the State and its communities allegedly resulting from unlawful conduct of the Released Entities, including efforts to address the mortgage and foreclosure crisis, financial fraud and deception, and housing-related issues. The State of Delaware agrees that no portion of the funds in this paragraph is received as a civil penalty or fine, including, but not limited to any civil penalty or fine imposed under 6 Del. C. § 1201 or § 2522.

10. **Releases by the State of Illinois.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount

(of which $200,000,000.00 will be paid to the State of Illinois, Office of the Attorney General, in accordance with the written payment instructions from the State of Illinois, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the Illinois Attorney General of the State of Illinois fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has authority to bring or compromise, including but not limited to: Illinois Securities Law of 1953, 815 Ill. Comp. Stat. 5/1 *et seq*., and common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The State of Illinois agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

11. **Releases of the Commonwealth of Kentucky.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which $23,000,000.00 will be paid to the Commonwealth of Kentucky, in accordance with written payment instructions from the Commonwealth of Kentucky, Office of the Attorney General, to remediate harms to the State allegedly resulting from allegedly unlawful conduct of the Released Entities), the Attorney General of the Commonwealth of Kentucky fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has the authority to bring or compromise, including but not limited to under: KRS 292.310-292.480 (Kentucky Securities Act), 367.110-367.300 (Kentucky Consumer Protection Act), and common law theories of negligence, gross negligence, recklessness, willful misconduct, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of

contract, misrepresentation, deceit, fraud, gross negligence, recklessness, willful misconduct, and aiding and abetting or conspiracy regarding any of the foregoing, as well as claims of unfair, abusive, or deceptive practices. The Commonwealth of Kentucky agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

12. **Releases of the State of Maryland.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which $75,000,000.00 will be paid to the State of Maryland, in accordance with written payment instructions from the State of Maryland, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the Attorney General of the State of Maryland ("Maryland Attorney General") fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that the Maryland Attorney General has authority to bring, including but not limited to: Maryland Securities Act, Md. Code Ann., Corps. & Assn's, §§ 11-101 *et seq.*, Maryland Consumer Protection Act, Com. Law §§ 13-101 *et seq*., statutes and regulations in the nature of the False Claims Act or similar Laws, and common law theories of negligence, gross negligence, recklessness, willful misconduct, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, indemnification, contribution, restitution, rescission, and aiding and abetting or conspiracy claims regarding any of the foregoing, as well as claims of unfair, abusive, or deceptive practices, but excluding any liability arising under the tax provisions of the Maryland Code and any claims that may arise in any non-enforcement legal action related to any Maryland governmental entity in its capacity as an investor. The Maryland Attorney General executes this release in his official capacity and releases only claims that the Maryland Attorney

General has the authority to release for the Covered Conduct. The payment to the State of Maryland shall be made to the Maryland Attorney General, which shall hold the monies and distribute them as directed by the Maryland Attorney General for restitution to certain investors, including state and local governmental entities, and for costs incurred in connection with restitution, with any remaining funds to be credited to the Mortgage Loan Servicing Practices Settlement Fund to be used in accordance with Maryland law. The State of Maryland agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

13. **Releases by the State of New York.** Subject to the exceptions in Paragraph 15 (Excluded Claims), and conditioned solely upon Bank of America's full payment of the Settlement Amount (of which $300,000,000.00 will be paid to the State of New York, in accordance with written payment instructions from the State of New York, Office of the Attorney General, to remediate harms to the State allegedly resulting from unlawful conduct of the Released Entities), the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York, fully and finally releases the Released Entities from any civil or administrative claim for the Covered Conduct contained in Paragraph 3(A) only that it has authority to bring, including but not limited to any such claim under: New York General Business Law Article 23A, New York Executive Law § 63(12), and common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The payment to the State of New York shall be used, to the maximum extent possible, for purposes of redeveloping and revitalizing housing and home ownership and rebuilding communities in the State, and for programs intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to provide funding for housing

counselors and legal assistance, housing remediation and anti-blight projects, to enhance housing code compliance efforts aimed at addressing blight and disinvestment, and to enhance efforts to remediate the effects of financial fraud or unfair or deceptive acts or practices. The State of New York agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

14. **Releases by the FDIC and the SEC.** The release of claims by the FDIC and the SEC are contained in separate settlement documents with Bank of America, attached as Exhibits A and B. Any release of claims by the FDIC and the SEC are governed solely by those separate settlement documents.

15. **Excluded Claims.** Notwithstanding the releases in Paragraphs 5-14 of this Agreement, or any other term(s) of this Agreement, the following claims are specifically reserved and not released by this Agreement:

a. Any criminal liability;

b. Any liability of any individual;

c. Any liability of any person or entity other than the Released Entities and their successors and assigns;

d. Any liability arising under Title 26 of the United States Code (the Internal Revenue Code);

e. Any liability arising under Title XI of the Kentucky Revised Statutes.

f. Any liability to or claims of the FDIC (in its capacity as a corporation, receiver, or conservator) and the SEC, except as expressly set forth in the separate agreements with those entities;

g. Any claim related to compliance with the National Mortgage Settlement ("NMS"), or to compliance with the related agreements reached between the settling banks and individual states;

h. Any liability to, or claims brought by, the Federal Reserve Board and its member institutions, and/or by the United States Department of the Treasury;

i. Any liability to, or claims brought by, the Department of Veterans Affairs relating to whole loans insured, guaranteed, or purchased by the Department of Veterans Affairs;

j. Any liability to, or claims brought by, Fannie Mae or Freddie Mac relating to whole loans insured, guaranteed, or purchased by Fannie Mae or Freddie Mac;

k. Any administrative liability, including the suspension and debarment rights of any federal agency, except to the extent expressly released in Paragraphs 6 and 7;

l. Any liability based upon obligations created by this Settlement Agreement;

m. Any liability for the claims or conduct alleged in the following *qui tam* actions, and no setoff related to amounts paid under this Agreement shall be applied to any recovery in connection with any of these actions:

(i) *United States ex rel. O'Donnell* v. *Bank of America Corp. et al.*, No. 12-cv-1422 (S.D.N.Y.);

(ii) *United States ex rel. Adams, et al. v. Aurora Loan Servs. LLC et al*., No. 11-cv-00535 (D. Nev.) & 14-15031 (9th Cir.);

(iii) *United States, et al. ex rel. Szymoniak v. American Home Mortgage Servicing, Inc., et al.*, No. 10-cv-01465-JFA (D.S.C.), *and United States ex*

rel. Szymoniak v. ACE Securities Corp., et al., No. 13-cv-464-JFA (D.S.C.), to the extent any claims survive dismissal;

(iv) *United States ex rel. Fisher v. Bank of America, N.A.*, No. 13-cv-01913-TPG (S.D.N.Y.);

(v) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

(vi) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

(vii) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

(viii) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

(ix) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

(x) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America;

(xi) *In re* [CONFIDENTIAL];

(xii) *United States ex rel. Armendariz v. Wiles, et al.*, No. 14-cv-00551 (D.D.C.); and

(xiii) *United States ex rel. [Sealed] v. [Sealed]*, as disclosed to Bank of America, to the extent it alleges any false or fraudulent statements, claims, and/or certifications to United States Department of Housing and Urban Development and/or the GSEs in connection with the reimbursement of costs or expenses incurred in connection with foreclosure-related proceedings anywhere in the United States (including foreclosure proceedings or other proceedings, such as bankruptcy or eviction proceedings, involving claims or issues relating to foreclosure), any failure to comply with, or any false or fraudulent statements, claims, and/or certifications to United States Department of Housing and Urban

Development and/or the GSEs concerning compliance with, quality control and/or monitoring requirements applicable to such costs or expenses.

n. Any dispute, claim, or defense which may arise between any Relator and Bank of America in the matters identified in Paragraph 3(F) regarding attorneys' fees, expenses and costs of the Relator under 31 U.S.C. § 3730(d).

o. Any liability arising under: the Fair Housing Act; the Equal Credit Opportunity Act; the Home Mortgage Disclosure Act; or any other statute or law that prohibits discrimination because of race, color, national origin, gender, disability, or any other protected status.

p. Any claims related to the alleged manipulation of the London Interbank Offered Rate or other currency benchmarks.

16. **Releases by Bank of America.** Bank of America and any current or former affiliated entity and any of its respective successors and assigns fully and finally releases the United States and the States, and their officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Bank of America has asserted, could have asserted, or may assert in the future against the United States and the States, and their officers, agents, employees, and servants, related to the Covered Conduct to the extent released hereunder and the investigation and civil prosecution to date thereof.

17. **Waiver of Potential FDIC Indemnification Claims by Bank of America.** Bank of America hereby irrevocably waives any right that it otherwise might have to seek (and in any event agrees that it shall not seek) any form of indemnification, reimbursement or contribution from the FDIC in any capacity, including the FDIC in its Corporate Capacity or the FDIC in its

Receiver Capacity for any payment that is a portion of the Settlement Amount set forth in Paragraph 1 of this Agreement or of the Consumer Relief set forth in Paragraph 2 of this Agreement, including payments to the United States, the States, and the SEC made pursuant to Paragraphs 1 and 2 of this Agreement.

18. **Waiver of Potential Defenses by Bank of America.** Bank of America and any current or former affiliated entity (to the extent that Bank of America retains liability for the Covered Conduct associated with such affiliated entity) and any of their respective successors and assigns waive and shall not assert any defenses Bank of America may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

19. **Unallowable Costs Defined.** All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Bank of America, and its present or former officers, directors, employees, shareholders, and agents in connection with:

a. the matters covered by this Agreement;

b. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

c. Bank of America's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

d. the negotiation and performance of this Agreement; and

e. the payment Bank of America makes to the United States pursuant to this Agreement, are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

20. **Future Treatment of Unallowable Costs.** Unallowable Costs will be separately determined and accounted for by Bank of America, and Bank of America shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

21. **Miscellaneous.**

a. This Agreement is intended to be for the benefit of the Parties only and does not create any third-party rights.

b. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey.

c. The Parties acknowledge that this Agreement is made without any trial or adjudication or finding of any issue of fact or law, and is not a final order of any court or governmental authority.

d. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

e. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

f. Nothing in this Agreement in any way alters the terms of the NMS, or Bank of America's obligations under the NMS.

g. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for the purposes of the Internal Revenue laws, Title 26 of the United States Code.

h. For the purposes of construing the Agreement, this Agreement shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute.

i. This Agreement, including all Annexes and Exhibits attached hereto, shall not apply to, or be used in, *United States ex rel. O'Donnell v. Bank of America Corp., et al.*, No. 12-cv-1422 (S.D.N.Y.).

j. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

k. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

l. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

m. This Agreement is binding on Bank of America's successors, transferees, heirs, and assigns.

n. All parties consent to the disclosure to the public of this Agreement by Bank of America, the United States, the States, the FDIC, and the SEC whose separate settlement agreements are referenced herein and attached as exhibits to this Agreement.

o. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

For the United States:

TONY WEST
Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Phone: (202) 514-9500

Dated: 8.20.2014

For the Department of Housing and Urban Development

Carol J. Galante
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Commissioner
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For the Department of Housing and Urban Development

Theodore W. Tozer
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Government National Mortgage Association
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BANK OF AMERICA CORPORATION

By: JANA J. LITSEY

Title: DEPUTY GENERAL COUNSEL

Date: 8/20/2014

BANK OF AMERICA, N.A.

By: JANA J. LITSEY

Title: DEPUTY GENERAL COUNSEL

Date: 8/20/2014

[Signature Page to Settlement Agreement]

BANC OF AMERICA MORTGAGE SECURITIES, INC.

By: Cheryl Glory

Title: President and CEO

Date: 8/20/2014

[Signature Page to Settlement Agreement]

For the California Department of Justice:

KAMALA D. HARRIS
California Attorney General
California Department of Justice
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San Francisco, CA 94102
Phone: (415) 703-5500

Dated: August 20, 2014

For the State of Delaware:

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Dated: 8/18/14

For the State of Illinois:

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Dated: August 18, 2014

For the Commonwealth of Kentucky:

JACK CONWAY
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Phone: (502) 696-5643

Dated: 8-18-2014

For the State of Maryland:

Melanie Senter Lubin
Securities Commissioner
Office of the Attorney General of Maryland, Securities Division
200 St. Paul Place
Baltimore, Maryland 21202

Dated: August 18, 2014

Douglas F. Gansler
Attorney General
Office of the Attorney General of Maryland
200 St. Paul Place
Baltimore, Maryland 21202

Dated: August 18, 2014

For the State of New York:

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271
Phone: (212) 416-8000

Dated: 8/19/14

EXHIBIT 2

ANNEX 1

Bank of America Corporation

Statement of Facts

BANK OF AMERICA - RMBS

In late 2007 and early 2008, Bank of America structured, offered and sold over $850 million in residential mortgage-backed security ("RMBS") certificates in a securitization trust known as the BOAMS 2008-A securitization to investors, including federally insured financial institutions. Bank of America marketed these RMBS as backed by Bank-originated, prime mortgages. Bank of America issued these RMBS certificates using a shelf registration statement and other offering documents filed with the U.S. Securities and Exchange Commission ("SEC") by a Bank of America affiliate, Banc of America Mortgage Securities, Inc. ("BOAMS").

In the BOAMS 2008-A offering documents, Bank of America represented that "each mortgage [backing the securitization] . . . is underwritten in accordance with guidelines established in Bank of America's Product and Policy Guides." It further represented that "[a] loan is considered to be underwritten in accordance with a given set of guidelines if, based on an overall qualitative evaluation, the loan is in substantial compliance with such underwriting guidelines." Bank of America also represented that it "permits [a loan applicant's debt-to-income ratio] to exceed guidelines when the applicant has documented compensating factors for exceeding ratio guidelines . . . ."

At the time Bank of America made these representations, its internal reporting showed that "wholesale" mortgages—that is, loans originated through third-party mortgage brokers—had decreased in performance and were experiencing an increase in underwriting exceptions. Additionally, a report that Bank of America prepared for qualified institutional buyers showed that wholesale loans from an industry lender, on average, experienced a higher Conditional Prepayment Rate ("CPR") than retail mortgages. These reports were received by Bank of America employees involved in the BOAMS 2008-A securitization prior to its marketing and sale. Bank of America did not disclose this information in the BOAMS 2008-A offering documents.

Bank of America also did not disclose in the BOAMS 2008-A offering documents the percentage of wholesale mortgage loans collateralizing the securitization. Over 70 percent of the mortgage loans collateralizing the BOAMS 2008-A securitization consisted of mortgages Bank of America originated through its wholesale channel. Approximately six weeks before the transaction closed, Bank of America disclosed preliminary data relating to the percentage of wholesale mortgage loans collateralizing the BOAMS 2008-A RMBS to certain investors but it did not disclose the percentage to all buyers of the BOAMS 2008-A offering.

The preliminary loan tapes containing the information about the wholesale loan percentage that Bank of America provided to certain investors were "ABS informational and computational material" because they were "factual information regarding the pool assets underlying the asset-backed securities, including origination . . . and other factual information concerning the parameters of the asset pool appropriate to the nature of the underlying assets, such as . . . the programs under which the loans were originated." Bank of America did not

publicly file the preliminary loan tapes containing this information with the SEC and only disclosed it to the aforementioned investors, who ultimately invested.

Bank of America did not have third-party, loan-level due diligence conducted on the specific mortgage loans collateralizing the BOAMS 2008-A securitization. This was contrary to its past practice. Third-party, loan level due diligence had been conducted on previous BOAMS securitizations that closed in March, April, and August 2007; these diligence reviews revealed that some of the mortgages reviewed did not conform to Bank of America underwriting standards. Third-party due diligence also had revealed data errors in the preliminary loan tapes that Bank of America had provided to investors. Bank of America did not disclose in the BOAMS 2008-A offering documents that third-party, loan-level due diligence was not conducted on the loans collateralizing BOAMS 2008-A.

MERRILL LYNCH - RMBS

Throughout 2006 and 2007, Merrill Lynch issued approximately 72 RMBS consisting of thousands of subprime mortgage loans. Merrill Lynch acquired some of these loans from third-party originators in whole loan transactions. Merrill Lynch also securitized loans from two originators in which Merrill Lynch had an ownership interest: Ownit Mortgage Solutions, Inc. ("Ownit") and First Franklin Financial Corporation ("First Franklin").

Merrill Lynch made certain representations in the offering documents it filed with the SEC concerning the loans securitized in these RMBS. Merrill Lynch also submitted information about these RMBS to the ratings agencies. Prior to making these representations, Merrill Lynch received information as part of its due diligence process showing that, for certain loan pools, significant numbers of the loans it was considering for securitization did not conform to the representations made in the offering documents it filed with the SEC.

In particular, the offering documents for Merrill Lynch subprime RMBS regularly included representations that "[a]ll of the Mortgage Loans were originated generally in accordance with the [originator's] Underwriting Guidelines." The offering documents also regularly represented that exceptions were made to these guidelines on a "case-by-case basis" based on the presence of "compensating factors." (According to offering documents filed with the SEC, the underwriting guidelines were "primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan.") The offering documents also represented that the loans securitized by Merrill Lynch conformed to applicable federal, state, and local laws.

Prior to making these representations, employees at Merrill Lynch's Whole Loan Trading Desk conducted due diligence on the loans to be purchased. This due diligence process typically included a review of the files for a sample of the loans from each pool. This review was conducted by a third-party vendor and overseen by Merrill Lynch. The sample would contain randomly selected loans, as well as loans selected using "adverse sampling" techniques designed to identify loans that had particular characteristics that Merrill Lynch believed warranted further review. This loan file review included an evaluation of the loans' compliance with the

originators' underwriting guidelines (the "credit review"), as well as an evaluation of whether the origination of the loans complied with federal, state, and local laws, rules, and regulations (the "compliance review").

The third-party vendors that performed the credit and compliance reviews assigned grades to each of the loans they reviewed. The vendor graded a loan an "Event Grade 1" loan, or EV1, if it determined that the loan was underwritten according to the originator's underwriting guidelines and in compliance with relevant rules and regulations. Loans that the vendor determined did not strictly comply with applicable underwriting guidelines, but that had sufficient compensating factors, were rated as an EV2. Vendors graded a loan an EV3 when the loan was not originated in compliance with applicable laws and regulations, the loan did not comply with applicable underwriting guidelines and lacked the sufficient offsetting compensating factors, or the loan file was missing a key piece of documentation.

The underwriting and compliance attributes considered by the vendors in grading loans as EV3 included, among other things, loans to borrowers who had recently declared bankruptcy in certain lending programs where bankrupt borrowers were not permitted; "high cost" loans that appeared to violate state lending laws; debt-to-income ratios that did not comply with applicable product guidelines; inadequate or missing documentation of income, assets, and rental or mortgage history for the relevant loan program; and stated incomes the vendors concluded were unreasonable.

Merrill Lynch's subprime due diligence manager received the vendors' reports and the results of the due diligence reviews throughout the whole loan acquisition process. The vendors' reports were also available to others in Merrill Lynch's RMBS business, including those on the trading desk and in the securitization group. These reports showed that some due diligence samples had an EV3 rate as high as 50% of the loans sampled. Merrill Lynch typically did not review the unsampled portion of the loan pools to determine whether they also included loans with material credit or compliance defects.

In addition, due diligence personnel and, in certain instances, traders on Merrill Lynch's Whole Loan Trading Desk, reevaluated certain loans graded EV3 by the vendor and, in certain circumstances, overruled the vendor's grade and "waived" particular loans into the purchased pool. Merrill Lynch's contemporaneous records did not in all cases document Merrill Lynch's reasons for directing the due diligence vendors to re-grade loans.

In an internal email that discussed due diligence on one particular pool of loans, a consultant in Merrill Lynch's due diligence department wrote: "[h]ow much time do you want me to spend looking at these [loans] if [the co-head of Merrill Lynch's RMBS business] is going to keep them regardless of issues? . . . Makes you wonder why we have due diligence performed other than making sure the loan closed."

In 2006 and 2007, Merrill Lynch's due diligence vendors provided Merrill Lynch with reports reflecting that the vendors graded certain of the sampled loans as EV3. For some pools, the reports showed that the vendors had graded more than 20 percent of the sampled loans as EV3. The following examples provide the approximate percentages of EV3 loans that were

present in the samples taken from particular pools and the approximate percentage of those EV3 loans that were waived in by Merrill Lynch for acquisition:

- Sampled loans from five pools of loans originated by ResMAE Mortgage Corporation fed into four securitizations issued by Merrill Lynch Mortgage Investors Trust in 2006: MLMI 2006-RM1, MLMI 2006-RM2, MLMI 2006-RM3 and MLMI 2006-RM5. For one pool, the vendor graded 24% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 16% of these loans. For a second pool, the vendor graded 32% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 14% of these loans. For a third pool, the vendor graded 22% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 27% of these loans. For a fourth pool, the vendor graded 57% of the due diligence sample EV3. Finally, for a fifth pool, the vendor graded 40% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 50% of these loans.

- Sampled loans from two pools of loans originated by Mortgage Lenders Network USA, Inc. fed into MLMI 2006-MLN1, a securitization issued by Merrill Lynch Mortgage Investors Trust in 2006. Vendors graded 22% and 23% of the due diligence sample EV3 for these two pools. For the latter sample, Merrill Lynch waived into the purchase pool 22% of the loans that had received an EV3 rating.

- Sampled loans from two pools of loans originated by WMC Mortgage Corporation fed into two securitizations issued by Merrill Lynch Mortgage Investors Trust in 2006: MLMI 2006-WMC1 and MLMI 2006-WMC2. For these two pools, the vendors graded 22% and 45% of the loans in the due diligence sample EV3. For the latter sample, Merrill Lynch waived into the purchase pool 26% of the loans that had received an EV3 rating.

- Sampled loans from a pool of loans originated by Accredited Home Lenders, Inc. fed into MLMI 2006-AHL1, a securitization issued by Merrill Lynch Mortgage Investors Trust in 2006. For this pool, vendors graded 55% of the due diligence sample EV3. Merrill Lynch waived into the purchase pool 31% of the loans that had received an EV3 rating.

Merrill Lynch securitized most of the EV3 loans it waived in and acquired in this fashion, typically within a matter of months.

These due diligence results are consistent with a “trending report” prepared for client marketing purposes by one of Merrill Lynch’s due diligence vendors (later described by the vendor to be a “beta” or test report) that tracked EV3 and waiver rates in the samples from the Merrill Lynch loan pools that the vendor reviewed from the first quarter of 2006 through the second quarter of 2007. During those six quarters, the vendor reported that it reviewed 55,529 loans for Merrill Lynch. The vendor reported that 12,888 of the loans reviewed, or 23%, received an initial grade of EV3. The report notes that 4,099 loans, or 31.8% of the loans that received an initial EV3 grade, were “waived” into the purchase pools by Merrill Lynch.

Through the due diligence process in 2005 and 2006, Merrill Lynch also learned that certain originators were loosening their underwriting guidelines, resulting in Merrill Lynch's identifying, for example, an increasing number of loans with unreasonable stated incomes. Merrill Lynch's due diligence manager brought this to the attention of Merrill Lynch's head of whole loan trading in a memorandum written in November 2005. Merrill Lynch, however, continued to acquire and securitize loans from some of these originators without substantially altering its disclosures to investors. A year later, in December 2006, Merrill Lynch's due diligence manager again brought the loosening of originator guidelines to the attention of the head of whole loan trading in another memorandum. Merrill Lynch still continued to acquire and securitize loans from some of those originators without substantially altering its disclosures to investors.

With its acquisition of originator First Franklin in December 2006, Merrill Lynch vertically integrated all significant aspects of its RMBS business, from origination through securitization. This integration gave Merrill Lynch greater visibility into First Franklin's loan origination practices. Following its acquisition of First Franklin, Merrill Lynch sometimes reviewed a smaller due diligence sample when securitizing First Franklin loans than it had when acquiring and securitizing loans from First Franklin prior to the acquisition. In an email, one Merrill Lynch employee stated that certain post-acquisition First Franklin loans were being securitized "without the equivalent of a whole loan due diligence" and as a result "valuation and other credit kickouts will not occur" to the same extent as prior to the First Franklin acquisition. Moreover, for a period of time in 2007, Merrill Lynch gave its wholly owned subsidiary First Franklin the authority in certain circumstances to make the final decision about what First Franklin loans should be waived in and securitized. For example, according to a May 2007 report, the due diligence vendor graded 7% of the loans in one sample of First Franklin loans EV3 and 58% of those loans were waived into the purchase pool. Most of these loans were ultimately securitized by Merrill Lynch.

The offering documents for Merrill Lynch subprime RMBS also made representations concerning the value of the properties that secured the mortgage loans it securitized. In particular, the offering documents made representations to investors concerning the loan to value ("LTV") and combined loan to value ("CLTV") ratios of the securitized loans. Originators generally made their LTV and CLTV determinations by comparing the appraised value of the property at the time of origination or the purchase price of the property (whichever was lower) to the amount of the loan or loans secured by the property.

Merrill Lynch hired third-party valuation firms to test the reasonableness of the appraised values of mortgaged properties. These checks were performed through a variety of methods that generated valuation estimates, including (i) "automated valuation models," or "AVMs," (ii) desk reviews of the appraisals by licensed appraisers, and (iii) broker price opinions. After reviewing the relevant data, the valuation firm would provide its results to Merrill Lynch. Merrill Lynch had an internal "tolerance" of 10 to 15%. As a result of this practice, Merrill Lynch accepted certain loans for purchase and securitization where the reported appraised value at the time of origination was as much as 10 to 15% higher than the valuation firm's estimated value of the property. In addition, some of the RMBS issued by Merrill Lynch potentially contained loans

with an LTV in excess of 100%, based on valuations obtained from AVMs. The offering documents did not disclose facts about Merrill Lynch's "tolerance" levels.

The conduct described above with respect to Merrill Lynch all occurred prior to Bank of America's acquisition of Merrill Lynch in January 2009.

COUNTRYWIDE - RMBS

Between 2005 and 2007, Countrywide Financial Corporation ("CFC") was the parent corporation of Countrywide Home Loans ("CHL"), Countrywide Bank, FSB ("CB"), and Countrywide Securities Corporation ("CSC"). CHL originated and acquired residential mortgage loans. CB was a federally chartered savings bank, the deposits of which were federally insured. CSC was a registered broker-dealer that was engaged in underwriting RMBS, which were often backed by "pools" of loans originated by CHL. CFC, CHL, CB, and CSC are referred to herein collectively as "Countrywide."

As discussed below, from 2005 to 2007, Countrywide originated an increasing number of loans as exceptions to its Loan Program Guides. At the same time, employees of Countrywide received information indicating that there was an increased risk of poor performance for certain mortgage programs and products that were being included in RMBS. Despite having access to this information, Countrywide's RMBS offering documents generally did not disclose the extent to which underlying loans were originated as exceptions to its Loan Program Guides. Nor did Countrywide disclose in its RMBS offering documents the results of certain reviews and internal reports related to loan performance.

I. Countrywide Business Model

Between 2005 and 2007, Countrywide was a diversified financial services company engaged in mortgage lending, banking, mortgage loan servicing, mortgage warehouse lending, securities, and insurance. At this time, Countrywide was among the largest originators of residential mortgage loans in the United States. Countrywide's SEC filings show that it originated $229 billion in residential mortgage loans in 2005, $243 billion in 2006, and $205 billion in 2007.

Countrywide's business model was to serve as an intermediary between borrowers seeking residential mortgages and investors seeking to purchase loans in the secondary market. As disclosed in Countrywide's Form 10-K for 2005, most of the mortgage loans Countrywide produced were sold into the secondary mortgage market, primarily in the form of RMBS. From 2005 to 2007, Countrywide sponsored and sold approximately $332 billion of prime, Alt-A, second lien, home equity line of credit, and subprime RMBS backed by loans originated by, among others, CHL.

Countrywide employed, among others, a corporate strategy sometimes referred to as the "Supermarket Strategy." The Supermarket Strategy was developed to create a one-stop shopping experience for borrowers. In addition to offering its own products, Countrywide strove to offer to

borrowers every kind of mortgage product that was available from legitimate competing lenders. A component of the Supermarket Strategy, which has sometimes been referred to as the "matching strategy," was a process by which Countrywide would learn about and evaluate loan product offerings from its competitors and expand its product offering to match or exceed its competitors' product offerings.

II. Countrywide Loan Origination Process

CHL originated and acquired residential mortgage loans through a variety of channels, including its own retail branches, mortgage brokers, and a network of third-party correspondent lenders. Countrywide's retail branches were referred to as the Consumer Markets Division ("CMD") and the Full Spectrum Lending Division ("FSL"). Countrywide provided its CMD and FSL branch underwriters with sets of lending guidelines, including Loan Program Guides, that listed borrower and loan characteristics, including credit scores and debt-to-income ("DTI") and LTV ratios, that branch underwriters were to consider when underwriting a potential loan. Branch underwriters had authority to approve loans that fit within the parameters outlined in the Loan Program Guides.

When branch underwriters received loan applications that did not meet the program parameters in the Loan Program Guides (*e.g.*, credit score, LTV, loan amount), the branch underwriters were authorized to refer the applications to more experienced underwriters at the relevant divisional "Structured Loan Desk" ("SLD") for consideration of an "exception." Underwriters at the SLD were authorized to approve requests to make an "exception" to the Loan Program Guides if the proposed loan and borrower complied with the characteristics described in another set of guidelines, referred to as so-called "Shadow Guidelines," and the loan contained compensating factors supporting the exception request. The Shadow Guidelines generally permitted loans to be made to borrowers with lower credit scores and allowed for higher LTV ratios than the Loan Program Guides. If the SLD underwriter did not believe that an exception was appropriate as presented, the SLD underwriter either could deny the exception request or could propose a counter-offer to the branch underwriter. A counter-offer was a rejection of the exception request accompanied by a proposal that the loan could be originated under a different set of terms from those originally proposed by the branch underwriter. For example, a counter-offer might propose a different loan product or program or request that the borrower increase the size of a down payment. Countrywide's policies indicated that after an exception approval or counter-offer was delivered to the branch underwriter, the branch underwriter would then be responsible for deciding whether to approve the loan.

If a loan application did not meet the credit standards of the Shadow Guidelines, Structured Loan Desk underwriters were authorized to submit a request to Countrywide's Secondary Marketing Structured Loan Desk ("SMSLD"), which would then determine whether the requested loan, if originated, could be priced and sold in the secondary market. If a loan could be priced and sold, SMSLD would provide a price for the loan and ultimately it would be returned to the branch underwriter.

III. RMBS Securitization Process

Countrywide sold the majority of the loans that it originated. Many such loans were sold in the form of RMBS underwritten by CSC. The CHL loans that CSC underwrote in these securitizations were sourced in a variety of ways, including through third-party correspondent lenders. Countrywide structured and securitized these CHL or third-party mortgage loans under its own shelf registrations, such as Countrywide Alternative Loan Trust.

Due Diligence

When Countrywide securitized loans into RMBS, it would typically engage a third-party due diligence provider to perform due diligence on a sample of the loans. During this process, third-party due diligence providers generally reviewed a sample of the loans to be securitized against underwriting guidelines provided by Countrywide. In certain instances, Countrywide provided the due diligence providers with what were known as "Seller Loan Program Guides," which were guidelines based on the characteristics of loans that Countrywide had been able to make and sell in the past. Seller Loan Program Guides reflected the credit attributes of the loans that Countrywide had previously made and sold, and as a result they frequently listed lower credit scores or higher DTI and LTV ratios than the applicable Loan Program Guides or the applicable Shadow Guidelines. For example, certain of the Seller Loan Program Guides stated that they allowed DTIs of up to 55% for certain loans. The due diligence providers would then report the results of their review of the loans that were contained in the selected samples, including whether they complied with the underwriting guidelines provided by Countrywide and/or whether exceptions to those guidelines were supported by compensating factors.

Offering Document Representations and Disclosures

Countrywide prepared and filed with the SEC certain documents in connection with offering RMBS. Those documents included Prospectuses and Prospectus Supplements (together, "Offering Documents"), as well as Pooling and Servicing Agreements that memorialized agreements among Countrywide entities that offered or serviced the RMBS and the trustee for the RMBS once they were issued. Portions of the Pooling and Servicing Agreements were described and/or incorporated by reference in the Offering Documents.

In certain of the Offering Documents that were provided to investors in RMBS, Countrywide represented that it maintained an underwriting system that was intended to evaluate residential borrowers' credit standing and repayment ability. Although the Offering Documents were not uniform, Countrywide typically represented in them that it originated loans substantially in accordance with its credit, appraisal and underwriting standards. For example, Countrywide typically represented that it applied its underwriting standards "to evaluate the borrower's credit standing and repayment ability" and that "a determination generally is made as to whether the prospective borrower has sufficient monthly income available to meet monthly housing expenses and other financial obligations and to meet the borrower's monthly obligations on the proposed mortgage loan." For certain RMBS, Countrywide also generally stated that "exceptions" to CHL's "underwriting guidelines may be made if compensating factors are demonstrated by a prospective borrower."

In certain of the Offering Documents, Countrywide stated that it originated loans under "Standard Underwriting Guidelines" and "Expanded Underwriting Guidelines." Countrywide stated that certain Standard Underwriting Guidelines generally permitted DTI ratios based on monthly housing expenses up to 33% and, when based on total debt, up to 38%.

Certain Offering Documents disclosed that under Countrywide's Standard Underwriting Guidelines, loans could be originated pursuant to the "Full," "Alt," "Reduced," "CLUES Plus," and "Streamlined" documentation programs, and that under certain of these programs, "some underwriting documentation concerning income, employment and asset verification is waived," that "information relating to a prospective borrower's income and employment is not verified," and that therefore DTI for those loans was calculated "based on the information provided by the borrower in the mortgage loan application."

Certain Offering Documents also disclosed that under Countrywide's Expanded Underwriting Guidelines, loans could be originated under additional documentation programs, namely "Stated Income/Stated Assets," "No Income/No Assets," and "No Ratio." Under the "Stated Income/Stated Asset" program, borrowers stated their incomes on a loan application without providing supporting documentation that could then be verified. The Offering Documents disclosed that in connection with the Stated Income/Stated Assets program, the loan application was reviewed to determine whether the income as stated by the borrower was reasonable for the borrower's stated employment. The description of the Expanded Underwriting Guidelines also stated that they generally permitted DTI ratios up to 36% on the basis of housing debt and up to 40% on the basis of total debt.

Countrywide entities made representations to securitization trustees in Pooling and Servicing Agreements. For example, CHL typically represented that each CHL mortgage loan supporting the subject RMBS was underwritten in all material respects in accordance with CHL's underwriting guidelines. In certain Pooling and Servicing Agreements, CHL also represented that the mortgage loan pools backing the subject RMBS were "selected from among the . . . portfolios of the Sellers at the Closing Date as to which the representations and warranties [set forth in the Pooling & Servicing Agreement] can be made" and were not "selected in a manner intended to adversely affect the interests of the Certificateholders." CHL also represented in certain Pooling and Servicing Agreements that, to the best of its knowledge, "there is no material event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration" as to any mortgage loan serving as collateral for the RMBS.

IV. Countrywide Expanded Its Loan Offerings Based on Salability

In the early to mid-2000s, mortgage originators across the mortgage lending industry began to offer more types of mortgage products. In furtherance of its goal to obtain a 30% market share and its "Supermarket Strategy," Countrywide began to offer products that featured more permissive lending criteria. Examples of these more permissive lending criteria included loans with higher combined-loan-to-value ratios or with lower credit scores. Countrywide also began to offer products that required less documentation from borrowers or offered flexible payment options. Examples of these mortgage products included "Stated Income" loans and Pay-Option Adjustable Rate Mortgages ("ARMs"). Stated Income loans did not require borrowers to

substantiate their claimed incomes with tax forms or other documentary proof. Pay-Option ARMs featured variable interest rates and flexible repayment options, including the ability to pay only the interest due for a certain period of time.

In a memo sent in October 2004, CFC's then Chief Credit Officer wrote: "my impression since arriving here is that the Company's standard for products and Guidelines has been: 'If we can price it, then we will offer it.'" In a May 13, 2007 internal memorandum, the same executive wrote:

> A core principal [*sic*] underlying product guidelines is salability. The only exception to this principle is specific 'Bank only' programs where loans are originated or purchased for the Bank portfolio.

Similarly, in an email dated June 7, 2007, CFC's Chief Investment Officer wrote to CFC's President, "[W]hen credit was easily salable, SLD was a way to take advantage of the 'salability' and do loans outside guidelines and not let our views of risk get in the way."

Increase in Exception Loans

Countrywide originated an increasing number of loans as exceptions to its Loan Program Guides. A June 28, 2005, a Countrywide Financial Corporate Credit Risk Committee presentation noted that approximately 15% of nonconforming loans[1] that Countrywide was originating through CMD were exception loans.

On July 28, 2005, a Countrywide executive sent an email informing the SLD that it could begin to expand the programs for which it could approve "exception" loans to programs other than the 30 year fixed and 5/1 ARM loan products. He wrote:

> [T]o the widest extent possible, we are going to start allowing exceptions on all requests, regardless of program, for all loans less than $3 million, effective immediately.
>
> * * * *
>
> The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. We will assume securitization in all cases.

By June 7, 2006, less than a year later, an internal Countrywide email indicated that during May 2006, for prime loans, exceptions constituted by dollar amount approximately 30% of fundings for certain fixed loans, 40% for Pay-Option ARMs, and 50% for expanded criteria hybrid loans.

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[1] Loans that did not meet requirements for sale to Fannie Mae or Freddie Mac.

Extreme Alt-A Program

In late 2006, Countrywide, after analyzing the mortgage products offered by certain of its competitors, implemented an expansion of its underwriting guidelines used by SLD underwriters, internally referred to as "Extreme Alt-A." The Extreme Alt-A initiative resulted in underwriting guidelines that, among other things, permitted higher LTV ratios and allowed for lower FICO scores from prospective borrowers. Extreme Alt-A loans were originated with the intent that they would be sold and that no credit risk would be retained by Countrywide. Some loans with Extreme Alt-A characteristics were sold in RMBS securitizations.

In connection with approving the Extreme Alt-A guideline expansion, Countrywide conducted various stress tests to model the loans' expected performance. Under certain adverse economic assumptions, Countrywide's models predicted that certain bands of Extreme Alt-A loans could perform more like subprime loans than like Alt-A loans.

In or around late March 2006, the Extreme Alt-A program was presented to Countrywide's Responsible Conduct Committee ("RCC") for consideration. The presentation included Model Foreclosure Frequency Estimates which projected that, under stressed economic conditions, certain bands of the loans originated under Extreme Alt-A guidelines could exceed a 21.62% foreclosure frequency. The model described in the presentation predicted that a number of categories of loans within the Extreme Alt-A program could experience default percentages into the high 30's or low 40's, and even a few in the 50's. The presentation indicated that "poor performance should be expected."

On April 5, 2006, a Countrywide executive sent an email regarding the Extreme Alt-A program that read, "[b]ecause this is a 'hazardous product' (direct quote from [another Countrywide executive]), ... [that Countrywide executive] wants to see a detailed implementation plan which addresses the process for originating and selling these loans such that we are not left with credit risk." Countrywide began offering the Extreme Alt-A program in 2006 and began originating and selling loans under its expanded underwriting guidelines. As with most exception loans, the Extreme Alt-A guidelines called for Extreme Alt-A loans to be processed at the SLD level, but the Extreme Alt-A guidelines did not require SLD underwriters to identify compensating factors in connection with underwriting the loans.

V. Countrywide Received Information Concerning Risks and Quality of Its Mortgage Loans

During the period from August 2005 to 2007, Countrywide received information regarding the performance and characteristics of loans that it originated under various products and programs and securitized into RMBS. That information suggested that certain products had the potential to perform poorly, particularly in a challenging economic environment.

Exception Loan Performance

Using its SLD and SMSLD processes, Countrywide originated a substantial number of loans as exceptions to its Loan Program Guides. Internal reporting indicated that certain categories of exception loans performed poorly compared to loans originated within the parameters set out in Loan Program Guides. For example, a June 28, 2005 CFC Credit Risk

Committee report indicated that certain exception loans greater than $650,000 were "performing 2.8x worse overall" than non-exception loans.

Pay-Option ARM Loans

Countrywide began issuing Pay-Option ARM loans around 2000, and by 2004 they were a large part of Countrywide's loan originations. In some instances, Pay-Option ARM borrowers were able to make payments that were less than the interest that accrued on the principal balance each month. The difference between the amount of interest that accrued on the loan and that lower payment is called "negative amortization" and was added to the principal balance of the loan. If the loan's principal balance reached a certain amount, frequently 110% or 115% of the original loan amount, the loan payment "reset" to the amount necessary to amortize the principal balance. This "reset" could result in substantially higher payments for borrowers, resulting in a form of what became known in the industry as "payment shock."

Starting in mid-2005, Countrywide received information indicating, among other things, that a majority of Pay-Option ARM borrowers were opting to make the minimum payment on their loans. In response to certain information, CFC and CB decided to limit the types of Pay-Option ARM loans that CB held for investment. On August 1, 2005, CFC's Chairman sent an email to CHL's President and head of loan production and CB's President stating:

> I am becoming increasingly concerned about the environment surrounding the borrowers who are utilizing the pay option loan and the price level of real estate in general but particularly relative to condos and specifically condos being purchased by speculators (non owner occupants). I have been in contact with developers who have told me that they are anticipating a collapse in the condo market very shortly simply related to the fact that in Dade County alone 70% of the condos being sold are being purchased by speculators. The situation being reported in Broward County, Las Vegas as well as other so called "hot" areas of the Country.
>
> We must therefore re-think what assets [we] should be putting in the bank. For example you should never put a non-owner occupied pay option Arm on the balance sheet. I know you have already done this but it is unacceptable. Secondly only 660 fico's and above, owner occupied should be accepted and only on a limited basis. The focus should be on 700 and above (owner occupied) for this product. The simple reason is that when the loan resets in five years there will be enormous payment shock and the borrower is not sufficiently sophisticated to truly understand the consequences then the bank will be dealing with foreclosure in potentially a deflated real estate market. This would be both a financial and reputational catastrophe.

On August 2, 2005, CHL's president responded to this email, writing that this approach had "securitization implications":

> We need to analyze what remains if the bank is only cherry picking and what remains to be securitized/sold is overly concentrated with higher risk loans. The concern and issue gets magnified as we put a bigger percentage of our pay option production into the Bank because the remaining production then increasingly looks like an adversely selected pool.

On August 2, 2005, CFC's Chairman responded to this email:

> I absolutely understand your position however there is a price no matter what we do. The difference being that by placing less attractive loans in the secondary market we will know exactly the economic price we will pay when the sales settle.

In accordance with the direction of CFC's Chairman, CB later limited the Pay-Option ARM loans that it held for its own investment to loans with relatively higher credit characteristics.

Beginning in October 2005, Countrywide tracked its Pay-Option ARM portfolio through monthly "Flash Reports." Countrywide's analysis showed that the percentage of borrowers who chose to make the minimum mortgage payment each month was trending higher than predicted and, thus, certain loans were at risk of "resetting" earlier than anticipated. This "resetting," which was an inherent risk of the Pay-Option ARM product, could result in higher payments and, thus, could cause "payment shock" for borrowers.

On February 3, 2006, an article in Inside Mortgage Finance Publications reported on a study that Countrywide presented at the American Securitization Forum Conference. The article reported that a Countrywide executive had stated that "Pay Option Arms were found to be the riskiest product on the market."

On April 3, 2006, CFC's Chairman sent to CHL's President and head of loan origination an email observing that there was:

> important data that could portend serious problems with [Pay-Option ARMs]. Since over 70% have opted to make the lower payments it appears that it is just a matter of time that we will be faced with a substantial amount of resets and therefore much higher delinquencies. We must limit [CB's retained investment in] this product to high ficos otherwise we could face both financial and regulatory consequences.

On May 18, 2006, CFC's Chairman sent to CFC's CFO, CHL's President, and others an email in which he warned: "As for pay options the Bank faces potential unexpected losses because higher rates will cause these loans to reset much earlier than anticipated and as [a] result caus[e] mortgagors to default due to the substantial increase in their payments."

On June 7, 2006, a Countrywide executive sent an email, observing that "exceptions" constituted 40% of prime Pay-Option ARM loans by dollar amount.

On September 13, 2006, CFC's Chairman spoke at a Countrywide Fixed Income Investor Forum and disclosed that, with respect to Pay-Option ARMs, "in the first year 78% of the borrowers employ the lower payment."

On September 26, 2006, CFC's Chairman sent an internal email in which he described Pay-Option ARM loans as "the lightening [*sic*] rod of 'exotic loans'" and then described his concern with how the product would perform in stressed market conditions:

> The bottom line is that we are flying blind on how these loans will perform in a stressed environment of higher unemployment, reduced value and slowing home sales . . . It [sic] therefore I [sic] believe the timing is right for us to sell all newly originated pay options and begin rolling off the bank balance sheet, in an orderly manner, pay options currently on their port[folio].

Throughout 2006 and 2007, Countrywide continued to originate Pay-Option ARMs, including as exceptions to its Loan Program Guides, and to securitize these Pay-Option ARMs into RMBS. As disclosed in Offering Documents, in certain RMBS backed by Pay-Option ARMs, as many as 90% of the loans that backed the certificates were originated under reduced documentation programs.

Stated Income Loans

Countrywide also received information indicating that some borrowers who applied for loans in which they stated their incomes without providing verification may have been overstating their incomes on their loan applications. In a May 26, 2006, CB Credit Risk Committee Report, CB presented the results of a review of the tax returns of a sample of borrowers who had filled out IRS Form 4506-Ts in connection with their mortgage applications. A form 4506-T allows a mortgage lender to request a borrower's previous year's income tax return from the IRS. The audit described in the CB Credit Risk Committee Report compared the income a borrower provided in connection with a mortgage application to the income reported on the borrower's income tax return in the prior tax year. The presentation, assuming that borrowers correctly reported (and did not understate) their income on their tax returns, suggested:

> that approximately 40% of the Bank's reduced documentation loans in the portfolio could potentially have income overstated by more than 10% and a significant percent of those loans would have income overstated by 50% or more.

The study further suggested that, among the group of borrowers who may have overstated their income by more than 10%, 68% had a variance of greater than 50%, 25% had a variance between 25% and 50%, and 7% had a variance between 10% and 25%. For Pay-Option ARM loans, the overwhelming majority of which were stated income loans, the study indicated that 72% of the Pay-Option ARM loans that showed greater than 10% variance showed greater than 50% variance.

In a June 2, 2006, email drafted in response to this presentation, CFC's Chief Risk Officer wrote:

> These results are basically identical to what I've seen other times (both here and other places) this type of analysis has been done. You will observe similar results for other types of consumer loans (e.g., credit cards, installment loans) where income is not documented. While I'm no fan of reduced doc, we should also keep in mind:
>
> 1) Any income growth since the last tax return won't be reflected in this type of analysis ....
>
> 2) Borrowers are not underwriters. Some of what we would not count as income (e.g., support from relatives) would be considered by most borrowers. Most borrowers are not going to knowingly take on an obligation they don't believe they can afford.
>
> 3) Many (most?) borrowers seek to report as little income as possible on their tax return.
>
> 4) Unlike many loan programs, the reduced doc is not differentially priced for most PayOption loans. So we may not have as much adverse selection here as other programs.
>
> We need to be careful painting all of this as a "misrep." Although that is obviously the case in some (perhaps many) instances, it won't be the case in all cases.

If a borrower overstated his or her income, it would affect the accuracy of DTI calculations, and also could affect an underwriter's ability to evaluate a borrower's repayment ability.

VI. Disclosures in Offering Documents Did Not Reflect Certain Information That Countrywide Received

Although Countrywide originated an increasing number of mortgage loans as exceptions to its Loan Program Guides from 2005 to 2007, Countrywide generally did not disclose in its RMBS Offering Documents the scope of the exceptions to its Loan program Guides. Throughout this time period, Countrywide received information on risks associated with certain mortgage products and programs. Countrywide did not disclose in its RMBS Offering Documents the results of certain reviews and internal reports that analyzed this information.

Countrywide's Offering Documents did not include a description of its Supermarket Strategy, whereby Countrywide sought to achieve more market share and growth by creating a one-stop shopping experience for borrowers by offering a complete suite of mortgage products that were available in the industry from legitimate competing lenders.

Countrywide did not disclose in its Offering Documents that according to the June 28, 2005 CFC Credit Risk Committee report, non-conforming loans greater than $650,000 that were originated since 2004 via the retail branch network or mortgage brokers through the exception

process were “performing 2.8x worse” than loans originated without exceptions. Nor did Countrywide’s Offering Documents identify the percentage of loans backing an offering that were originated as exceptions to Countrywide’s Loan Program Guides.

The Offering Documents also did not disclose certain information concerning specific mortgage products that served as collateral for certain of Countrywide’s RMBS offerings. For example, the Offering Documents did not disclose historical information on the percentage of Pay-Option ARM borrowers who chose to make the minimum payments. Although Countrywide disclosed in certain of its SEC filings (i) the attributes of Pay-Option ARMs that were held by CB and (ii) the increasing volume and dollar amount of loans that were experiencing negative amortization, the Offering Documents did not disclose that certain Pay-Option ARM loans included as collateral were loans that CB had elected not to hold for its own investment portfolio because they had risk characteristics that CFC management had identified as inappropriate for CB.

With respect to stated income loans, Countrywide did not describe in its Offering Documents the results of the tax return study described in the May 26, 2006 CB Credit Risk Committee Report. Nor did the Offering Documents describe the impact that an overstatement of income could have had on DTI calculations.

Although the Offering Documents included detailed loan-level statistics about the pool of loans serving as collateral for the RMBS, the Offering Documents were not revised to describe the Extreme Alt-A program. In particular, the Offering Documents did not disclose that under the Phase 1 (roll-out) of the Extreme Alt-A program Countrywide originated CMD and Wholesale Lending Division loans whose characteristics fell outside of the Loan Program Guides, and that documents drafted in connection with implementing the program indicated that in Phase 1“loans [would] be treated as exceptions and routed to SLD for guideline and price determination” without requiring compensating factors as a basis for approval. The Offering Documents also did not disclose whether Extreme Alt-A loans were included in the collateral for a given RMBS. Nor did the Offering Documents describe the default rates predicted by the model used to generate the March 2006 RCC presentation on Extreme Alt-A performance.

VII. Bank of America’s Acquisition of Countrywide

On July 1, 2008, after the events described herein, Countrywide was acquired by Bank of America Corporation.

FHA UNDERWRITING

Bank of America is a mortgage lender that participates in a federal program sponsored by the Department of Housing and Urban Development (“HUD”) called the “Direct Endorsement Program.” Subject to the requirements of the program, Bank of America is authorized to “originate” - i.e., make - and to underwrite mortgage loans to first-time and low-income home buyers and to low-income home owners refinancing mortgages, that are insured by the Federal Housing Administration (“FHA”), an agency within HUD. In exchange for having the authority to originate and underwrite FHA-insured loans, Bank of America is obligated to determine

whether prospective borrowers meet minimal credit-worthiness criteria and to certify to HUD that borrowers who received loans met the criteria. In the event that an FHA-insured loan originated by Bank of America goes into default, the FHA guarantees payment of the outstanding portion of the mortgage principal, accrued interest, and costs owed by the borrower.

During the period May 1, 2009 through March 31, 2012, Bank of America underwrote and insured for FHA insurance loans to borrowers who did not qualify for loans under the criteria set by HUD. In certain cases, Bank of America, inter alia, did not properly verify borrowers' income, did not adequately verify the source of gift funds borrowers used to make the statutory minimum down payment, and approved borrowers that may have lacked the ability to make monthly mortgage payments.

Many of Bank of America's borrowers have defaulted on their mortgage loans and have either lost or are in the process of losing their homes to foreclosure. As a result of Bank of America's conduct, HUD-FHA insured loans that were not eligible for FHA mortgage insurance and that HUD-FHA would not otherwise have insured. HUD consequently incurred hundreds of millions of dollars of losses when it paid insurance claims on those Bank of America-endorsed loans.

I. FHA MORTGAGE INSURANCE AND THE DIRECT ENDORSEMENT PROGRAM

The National Housing Act of 1934 authorizes the FHA to insure home mortgages for first-time and low-income home buyers. 12 U.S.C. § 1709. The FHA only insures mortgage loans issued by approved mortgage lenders or "mortgagees" to qualified borrowers.

Under the Direct Endorsement Program, approved mortgage lenders ("Direct Endorsers") determine whether loan applicants are eligible for FHA mortgage insurance. See 24 C.F.R. §203.5(a). A Direct Endorser must submit a mortgage insurance application for each borrower to HUD, with documentation of the borrower's income, assets and credit-worthiness, and of the Direct Endorser's review and analysis of the loan.

HUD authorizes some Direct Endorsers to endorse mortgage loans for FHA mortgage insurance on an expedited basis, after the company's own pre-endorsement review of the file. This endorsement occurs without a required pre-endorsement review of the mortgage insurance application file by HUD. This is known as the Lender Insurance Program. Under this program, Direct Endorsers are still required to comply with all HUD regulations concerning the origination of FHA-insured mortgages. Additionally, there is no reduction in the documents required, and the mortgage lender is required to retain all loan origination documents. Further, Direct Endorsers are required to submit the full mortgage loan file to HUD upon HUD's request. During the relevant time period, Bank of America participated in the Lender Insurance program.

Bank of America originated mortgages nationally through its direct lending branch. Direct lending branches of FHA-approved mortgage lenders contact consumers and originate mortgages through the internet, or through a call center.

A. Underwriting and Eligibility Requirements for FHA Mortgage Insurance

In determining whether a loan applicant qualifies for an FHA-insured mortgage loan, a Direct Endorser must comply with HUD underwriting requirements which establish the minimum standard of due diligence in underwriting mortgage loans. 24 C.F.R. § 203.5(c). Among other things, a Direct Endorser is required by law to "exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the [Direct Endorser] would be entirely dependent on the property as security to protect its investment." Id. Put another way, a Direct Endorser may not underwrite an FHA-insured mortgage loan less carefully than it would if the mortgage loan was not insured by the FHA.

1. Income, Credit History and Ability to Make Mortgage Payments

Specifically, HUD requires a Direct Endorser to be responsible for evaluating a borrower's credit characteristics, including past credit history and demonstrated willingness to pay debts. Additionally, a Direct Endorser must assess the adequacy of a borrower's income, including the adequacy and stability of income to meet periodic mortgage payments and any other recurring debt payments and the adequacy of a borrower's available assets to cover the statutory minimum down payment. 24 C.F.R. § 203.5(d).

For each FHA-insured loan, a Direct Endorser must establish that the borrower has the ability and willingness to repay the loan. A Direct Endorser's determination must be predicated on sound underwriting principles consistent with HUD's requirements and must be supported by requisite documentation. See HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance, One to Four Family Properties, May 10, 2009 ("Credit Analysis Handbook"),. A Direct Endorser must therefore pay specific attention to a borrower's rent or mortgage payment history, and any collection actions, judgments, foreclosures or bankruptcies. Id.

HUD requires a Direct Endorser to submit documentation that the borrower has the ability to responsibly manage his or her financial affairs. See Credit Analysis Handbook,. For example, if a borrower has gone through a bankruptcy, the Direct Endorser must document that the borrower's current situation indicates that the events that led to the bankruptcy are not likely to recur.

HUD regulations further require that a Direct Endorser calculate a borrower's verifiable income and determine the likelihood that the income will continue through at least the first three years of the mortgage. See Credit Analysis Handbook. In particular, a Direct Endorser must review:

a. salaries, wages, and other regular payments such as social security or retirement benefits;

b. alimony, child support or maintenance income; and

c. net rental income from property owned by the borrower.

A Direct Endorser may include rental income from properties owned by borrowers in its analysis, if the lender can document that the rental income is stable through a lease, an agreement to lease, or a rental over the past twenty-four months free of unexplained gaps.

A Direct Endorser must further verify and document a borrower's minimum required cash investment in the property by obtaining a Verification of Deposit form from the borrower's bank to verify its current bank deposits, along with the most recent bank statement. See Credit Analysis Handbook,. A Direct Endorser must also list a borrower's recurring obligations, including installment loans, charge accounts, and real estate loans, and consider their impact on the borrower's ability to pay the mortgage. Id.

2. Debt, Qualifying Ratios and Overall Merit of Loan Application

Additionally, a Direct Endorser must compute two "Qualifying Ratios" to determine whether the borrower can reasonably be expected to meet the expenses involved in home ownership, and otherwise provide for the borrower's family:

a. Mortgage Payment to Effective Income: the mortgage payment, including payments into an escrow account for taxes, insurance and any other assessments, should not exceed 31% of a borrower's effective income. See Credit Analysis Handbook; Mortgagee-Letter 2005-16, April 13, 2005.

b. Total Fixed Payment to Effective Income: the borrower's mortgage payments and all other recurring payment obligations should not exceed 43% of effective income. See Credit Analysis Handbook; Mortgagee-Letter 2005-16, April 13, 2005.

Where a borrower exceeds either Qualifying Ratio, a Direct Endorser must determine whether there are "Compensating Factors" that justify the making of the loan. See Credit Analysis Handbook. Compensating Factors include whether:

a. Housing Expense Payments: The borrower has successfully demonstrated the ability to pay housing expenses greater than or equal to the proposed monthly housing expenses for the new mortgage over the past 12-24 months;

b. Down Payment: The borrower makes a large down payment of 10 percent or higher toward the purchase of the property;

c. Accumulated Savings: The borrower has demonstrated:
• an ability to accumulate savings, and
• a conservative attitude toward using credit;

d. Previous Credit History: A borrower's previous credit history shows that he/she has the ability to devote a greater portion of income to housing expenses;

e. Compensation or Income Not Reflected in Effective Income: The borrower receives documented compensation or income that is not reflected in effective income, but directly affects his/her ability to pay the mortgage. This type of income includes food stamps, and similar public benefits;

f. Minimal Housing Expense Increase: There is only a minimal increase in the borrower's housing expense;

g. Substantial Cash Reserves: The borrower has substantial documented cash reserves (at least three month's worth) after closing. The lender must judge if the substantial cash reserve asset is liquid or readily convertible to cash, and can be done so absent retirement or job termination, when determining if the asset can be included as cash reserves, or cash to close. Funds and/or "assets" that are not to be considered as cash reserves include equity in other properties, and proceeds from a cash-out refinance.

   Lenders may use a portion of a borrower's retirement account, subject to the conditions stated below. To account for withdrawal penalties and taxes, only 60% of the vested amount of the account may be used. The lender must document the existence of the account with the most recent depository or brokerage account statement. In addition, evidence must be provided that the retirement account allows for withdrawals for conditions other than in connection with the borrower's employment termination, retirement, or death. If withdrawals can only be made under these circumstances, the retirement account may not be included as cash reserves. If any of these funds are also to be used for loan settlement, that amount must be subtracted from the amount included as cash reserves. Similarly, any gift funds that remain in the borrower's account following loan closing, subject to proper documentation, may be considered as cash;

h. Substantial Non-Taxable Income: The borrower has substantial non-taxable income;

i. Potential for Increased Earnings: The borrower has a potential for increased earnings, as indicated by job training or education in his/her profession; and

j. Primary Wage-Earner Relocation: The home is being purchased because the primary wage-earner is relocating, and the secondary wage-earner

   • has an established employment history

   • is expected to return to work, and

   • has reasonable prospects for securing employment in a similar occupation in the new area

HUD further requires that a Direct Endorser judge the overall merit of a borrower's loan application. Simply establishing that a loan transaction meets minimal standards does not necessarily constitute prudent underwriting. See Credit Analysis Handbook. A Direct Endorser must therefore analyze the probability that a borrower will repay the mortgage obligation. Id. .

A Direct Endorser must document each loan submitted for mortgage insurance. See Credit Analysis Handbook. A Direct Endorser must ask questions that will elicit a complete picture of the borrower's financial situation.

When a borrower's credit history reveals delinquent accounts, the Direct Endorser must document its analysis of whether the late payments were based on a disregard for, or inability to pay or manage debts. See Credit Analysis Handbook

3. Supporting Documents Must Come From Disinterested Parties

A Direct Endorser may receive Verification of Employment forms from a borrower's employer by fax, if the borrower's employer is clearly identified as the source of the fax. The lender is accountable for ascertaining the authenticity of employment verification documents, by examining information in its header and footer. See Credit Analysis Handbook.

Mortgage lenders may not accept or use documents relating to the employment, income or credit of borrowers that are handled or transmitted from or through interested third parties, including real estate agents, or by using their equipment. See Credit Analysis Handbook

B. Specific Due Diligence Required of Direct Endorsement Lenders

HUD relies on Direct Endorsement Lenders to conduct due diligence on Direct Endorsement loans. The purposes of due diligence include (a) determining a borrower's ability and willingness to repay a mortgage debt, thus limiting the probability of default and collection difficulties, see 24 C.F.R. § 203.5(d), and (b) examining a property offered as security for the loan to determine if it provides sufficient collateral, see 24 C.F.R. § 203.5(e)(3). Due diligence thus requires an evaluation of, among other things, a borrower's credit history, capacity to pay, cash to close, and collateral.

HUD has set specific rules for due diligence predicated on sound underwriting principles. In particular, HUD requires Direct Endorsement Lenders to be familiar with, and to comply with, governing HUD Handbooks and Mortgagee Letters, which provide detailed processing instructions to Direct Endorsement Lenders. These materials specify the minimum due diligence with which Direct Endorsement Lenders must comply.

With respect to ensuring that borrowers have sufficient credit, a Direct Endorsement Lender must comply with governing HUD Handbooks, such as HUD 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Family Properties, to evaluate a borrower's credit. The rules set forth in HUD 4155.1 exist to ensure that a Direct Endorsement Letter sufficiently evaluates whether a borrower has the ability and willingness to repay the mortgage debt. HUD has informed Direct Endorsement Lenders that past credit performance serves as an essential guide in determining a borrower's attitude toward credit obligations and in predicting a borrower's future actions.

To properly evaluate a borrower's credit history, a Direct Endorsement Lender must, at a minimum, obtain and review credit histories; analyze debt obligations; reject documentation transmitted by unknown or interested parties; inspect documents for proof of authenticity; obtain adequate explanations for collections, judgments, recent debts and recent credit inquiries; establish income stability and make income projections; obtain explanations for any gaps in employment; document any gift funds; calculate debt and income ratios and compare those ratios to the fixed ratios set by HUD rules; and consider and document any compensating factors permitting deviations from those fixed ratios.

With respect to appraising the mortgaged property (i.e., collateral for the loan), a Direct Endorsement Lender must ensure that an appraisal and its related documentation satisfy the requirements in governing HUD Handbooks, such as HUD 4150.2, Valuation Analysis for Home Mortgage Insurance. The rules set forth in HUD 4150.2 exist to ensure that a Direct Endorsement Lender obtains an accurate appraisal that properly determines the value of the property for HUD's mortgage insurance purposes.

C. Direct Endorser Certifications To HUD

1. Annual Certifications

As a condition for maintaining its participation in the Direct Endorsement Program, a Direct Endorser, by its President or Vice-President, must certify to HUD annually that the Direct Endorser conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval. See Title II Yearly Verification Report, Home Office. The officer must further certify that the Direct Endorser is responsible for all its employees' actions. Id.

The Direct Endorsement Lender must make the following annual certification, in sum and substance:

> I know or am in the position to know, whether the operations of the above named mortgage conform to HUD-FHA regulations, handbooks, and policies. I certify that to the best of my knowledge, the above named mortgagee conforms to all HUD-FHA approval, and that the above named mortgagee is fully responsible for all actions of its employees including those of its HUD-FHA approved branch offices.

The annual certification requires compliance with the basic eligibility requirements for Direct Endorsement Lenders, which includes compliance with HUD rules concerning lender's quality control.

2. Loan Application Certifications

For each mortgage loan insured by FHA under the Direct Endorsement Program, a Direct Endorser and its Underwriter must make a number of certifications required by HUD. See Direct Endorsement Approval for a HUD/FHA Insured Mortgage form; HUD Handbook 4000.4 Rev-1, Single Family Direct Endorsement Program, 9/2/88 ("Direct Endorsement Handbook").

Specifically, a Direct Endorser and/or the Direct Endorsement Underwriter must make a series of certifications in the HUD 1003 Addendum, also known as the HUD/VA Addendum to Uniform Residential Loan Application and the Direct Endorsement Approval for a HUD/FHA Insured Mortgage, including:

a. The loan terms furnished in the Uniform Residential Loan Application and the Addendum are true, accurate and complete.

b. The information contained in the Uniform Residential Loan Application and the Addendum was obtained directly from the borrower by an employee of the undersigned lender or its duly authorized agent and is true to the best of the lender's knowledge and belief.

c. The verification of employment was requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief.

d. The verification of deposit was requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief.

e. The proposed loan to the borrower meets the income and credit requirements of the governing law in the lender's judgment.

f. That the statements made in its application for insurance and the Lender's Certificate as part of the Direct Endorsement Approval for a HUD/FHA Insured Mortgage are true and correct.

g. That complete disbursement of the loan has been made to the borrower, or to his/her creditors for his/her account and with his/her consent.

h. No charge has been made to or paid by the borrower except as permitted under HUD regulations.

i. The Lender has not paid any kickbacks, fee or consideration of any type, directly or indirectly, to any party in connection with the transaction except as permitted under HUD regulations and administrative instructions.

j. The Lender's officer has personally reviewed the mortgage loan documents, closing statements, application for insurance endorsement, and all accompanying documents.

k. All certifications required for the mortgage by the Direct Endorsement Handbook.

D. Submission To HUD

A Direct Endorser must submit a mortgage insurance application for each borrower to HUD, together with documentation of the borrower's assets and credit-worthiness, and documentation of the Direct Endorser's review and analysis of the loan, including:

a. The Uniform Residential Loan Application and Addendum signed and dated by all borrowers and the Direct Endorser. See Credit Analysis Handbook;

b. Mortgage Credit Analysis Worksheet where the Direct Endorser must truthfully and accurately break out and review the borrower's available assets and income, versus the expected costs of both the mortgage and other fixed payments owed by the borrower. The Direct Endorser further must truthfully apply HUD-mandated ratios and ratings of the borrower's credit as well as their current and future ability to pay their debts;

c. Credit Report for all borrowers;

d. Verification of employment;

e. Verification of available funds from borrower's bank, and the borrower's most recent bank statements;

f. Verification of Rent or Payment History of Present/Previous Mortgages; and

g. Settlement Statement (also known as the "HUD-1").

Direct Endorsers also electronically submit information for mortgage insurance applications to HUD, including the borrower's name and social security number, the property address, the appraiser's name, and the borrower's Qualifying Ratios.

After HUD receives a Direct Endorser's mortgage insurance application, HUD will issue a mortgage insurance certificate for the mortgage if several criteria are met, including that the application contains all the required documentation and that the Direct Endorser and its Underwriter have made their certifications. 24 C.F.R. § 203.255(c)(1)-(7). As noted above, at all times relevant to this action Bank of America participated in the Lender Insurance program, which permitted it to endorse mortgage loans for FHA mortgage insurance.

HUD monitors Direct Endorsers' compliance with HUD regulations. HUD tracks the delinquency and default rates (delinquencies of greater than ninety days) of borrowers from each approved branch office of a Direct Endorsement mortgage lender for the first two years of each

loan, to detect whether the mortgage lenders may be violating HUD standards in originating insured mortgage loans.

HUD's primary means to monitor compliance with its underwriting regulations is through the Neighborhood Watch system. HUD monitors compliance with its underwriting regulations by mortgagees, like Bank of America, through its Neighborhood Watch system ("Neighborhood Watch"). Neighborhood Watch is a tool which identifies lenders, loan types, and locations by zip code that have a high incidence of single family insured mortgages going into default (90 days delinquent) within the first two years after loan origination ("Early Default Loans").

The system is designed to highlight exceptions, so that potential problems are readily identifiable. Neighborhood Watch is designed as an Early Warning System and is intended, inter alia, to aid HUD/FHA staff in monitoring lenders and our programs.

E. Automated Underwriting Systems

A Direct Endorsement Lender may use an FHA-approved automated underwriting system to review loan applications. The automated underwriting system processes information entered by the Direct Endorsement Lender and rates loans as either an "accept"/"approve" or a "refer"/"caution."

In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as an "accept" or "approve", the Direct Endorsement Lender must make the following certification:

> This mortgage was rated an "accept" or "approve" by a FHA-approved automated underwriting system. As such, the undersigned representative of the mortgagee certifies to the integrity of the data supplied by the lender used to determine the quality of the loan, that a Direct Endorsement Underwriter reviewed the appraisal (if applicable) and further certifies that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program. I hereby make all certifications required by this mortgage as set forth in HUD Handbook 4000.4.

In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as "refer" or "caution," or in cases where a Direct Endorsement lender does not use an FHA-approved automated underwriting system, the underwriter must make the following certification:

> This mortgage was rated as a "refer" or "caution" by a FHA-approved automated underwriting system, and/or was manually underwritten by a Direct Endorsement underwriter. As such, the undersigned Direct Endorsement Underwriter certifies that I have personally reviewed the appraisal report (if applicable), credit application, and all associated documents and have used due diligence in underwriting this mortgage. I find that this mortgage is

> eligible for HUD mortgage insurance under the Direct Endorsement program and I hereby make all certifications required by this mortgage as set forth in HUD Handbook 4000.4.

The certifications in HUD Handbook 4000.4, incorporated by reference in the certifications above, include the certification that the mortgage complies with HUD underwriting requirements contained in all outstanding HUD Handbooks and Mortgagee Letters.

Bank of America used an automated underwriting system referred to as the Countrywide Loan Underwriting Expert System ("CLUES"). Bank of America used CLUES to underwrite loans for FHA-insurance. CLUES interfaced with FHA's Technology Open to Approved Lenders ("TOTAL"), an automated tool that evaluates many of the new loans insured by the FHA. Lenders certify they are in compliance with requirements applicable to the use of TOTAL, including that they "not disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code or algorithm in TOTAL."

Absent a truthful mortgage eligibility certification, a Direct Endorsement Lender may not endorse a mortgage for FHA insurance.

II. BANK OF AMERICA'S NON-COMPLIANCE RELATED TO FHA-INSURED LOANS

As of December 31, 2013, Bank of America had submitted for payment claims for loans that were originated by the Bank of America and insured by the FHA on or after May 1, 2009, or for which the terms and conditions of the mortgage loan were approved by an FHA direct endorsement underwriter on or after May 1, 2009. Review of Bank of America's early default loans indicates that for many loans, Bank of America did not always meet FHA requirements. The deficiencies include non-compliance with the applicable regulations. Bank of America engaged in the following types of conduct: (a) it did not establish income stability; (b) it did not verify income; (c) it inaccurately evaluated borrower's previous mortgage or rental payment history; (d) it did not account for a major derogatory on a borrower's credit; (e) it did not verify and document earnest money; (f) it did not verify and document checking and savings account information; (g) it did not document gift fund monies and verify wire transfers of same; (h) it did not document and verify the borrower's investment in the property; (i) it under-reported borrower liabilities; (j) it did not always present adequate compensating factors when the borrower exceeded HUD-established income-to-debt ratios; and (k) it sometimes incorrectly calculated income for purposes of such ratios.

Review of samples of FHA loans originated by Bank of America showed unacceptable rates of material underwriting defects.

For example, in one instance, Bank of America refinanced a Countrywide-held non-FHA loan into a government-backed FHA loan. The loan, which was in the amount of $156,491 for a 24-year-old mobile home, contained numerous unresolved income discrepancies. The borrower was also delinquent on his initial loan at the time of closing. In addition, the borrower was improperly permitted to roll $12,623 of credit card and auto debt into the new FHA loan. The borrower made only two payments before defaulting on the new FHA loan.

In another example, Bank of America allowed a borrower to roll $65,356 of credit card debt into a new, larger refinanced loan insured by the FHA. Bank of America also failed to verify the borrower's employment and omitted the borrower's debts from the credit analysis. The original mortgage was $140,000 but Bank of America refinanced the loan for $207,824 in a declining market. With respect to another loan, Bank of America endorsed a loan for FHA insurance even though the borrower lived with a relative rent-free and, thus, had no history of paying rent or other housing expense. Bank of America also did not verify the borrower's income, and the borrower was on a leave of absence from employment eight days prior to closing. Despite the requirement that the borrower show two months' complete bank statements, the borrower's bank account was opened a mere twelve days prior to closing. The borrower made only four payments before defaulting on the $314,204 FHA loan.

When using the CLUES system, Bank of America sometimes changed an applicant's financial information and then re-submitted the loan multiple times in an effort to get a CLUES "accept". For example, in at least one instance, Bank of America's underwriter attempted to get a CLUES accept rating more than forty times and in other cases underwriters regularly changed the relevant data and re-submitted the loans through CLUES more than twenty times. In a case note, one underwriter characterized what she was doing as trying to "trick" the CLUES system into giving an "accept" rating.

COUNTRYWIDE AND BANK OF AMERICA - ORIGINATIONS SOLD TO GSEs

From at least 2004 through 2008, Countrywide Home Loans, Inc. and Countrywide Bank, FSB (collectively, "Countrywide") originated residential mortgage loans and sold certain of those loans to the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, "government-sponsored enterprises" or "GSEs"). After acquiring Countrywide in 2008, Bank of America, N.A. ("Bank of America") continued to originate residential mortgage loans and sell certain of those loans to the GSEs.

In selling residential mortgage loans to the GSEs, Countrywide and Bank of America made representations and warranties to the GSEs that the loans complied in all respects with the standards outlined in the Single Family Selling Guide (the "Fannie Guide"), Single-Family Seller/Servicer Guide (the "Freddie Guide"), and the applicable purchase contracts, including in the case of Fannie Mae, the Strategic Alliance Agreements entered into between Fannie Mae and Countrywide, which collectively set forth underwriting, documentation, quality control, and self-reporting requirements.

Countrywide and Bank of America made representations and warranties to Fannie Mae concerning each residential mortgage loan that they originated and sold to Fannie Mae, including but not limited to, the following:

a. The mortgage conformed to all the applicable requirements in the Fannie Guide and the purchase contracts;

b. The mortgage was an "acceptable investment";

c. All required loan data was true, correct, and complete;

d. Automated underwriting conditions were met for loans processed through an automated underwriting system; and

e. No fraud or material misrepresentation was committed by any party, including the borrower.

Countrywide and Bank of America made similar representations and warranties to Freddie Mac concerning each residential mortgage loan they originated and sold to Freddie Mac, including, but not limited to, the following:

a. The terms, conditions, and requirements stated in the Freddie Guide and purchase contracts were fully satisfied;

b. All warranties and representations of Countrywide and Bank of America were true and correct;

c. The loan was "investment quality"; and

d. Countrywide and Bank of America had not misstated or omitted any material fact about the mortgage.

Countrywide and Bank of America were also generally required to self-report to Fannie Mae and Freddie Mac any loans they identified as defective and/or otherwise ineligible for sale to the GSEs.

A significant percentage of the loans that Countrywide sold to the GSEs during 2004 to 2008 were originated by Countrywide's prime retail division, known as the Consumer Markets Division ("CMD"). During this time, Countrywide was aware that many of the residential mortgage loans originated through CMD were defective and/or otherwise ineligible for sale to the GSEs. After acquiring Countrywide Bank in 2008, Bank of America continued to originate mortgage loans for sale to the GSEs through its retail lending channel that were defective and/or otherwise ineligible for sale to the GSEs.

Thus, Countrywide and Bank of America sold residential mortgage loans that they originated to the GSEs with representations and warranties that the loans conformed to the Fannie Guide, Freddie Guide and/or applicable purchase contracts; that the loans were acceptable investments or investment quality; that all required loan data was true, correct, and complete; that automated underwriting conditions had been met; that no material misrepresentations were committed in connection with the loans; and that they had not misstated or omitted any material fact about the loans; when, in fact, many of those representations or warranties were not accurate, as many of the loans were defective and/or otherwise ineligible for sale to the GSEs.

Countrywide and Bank of America also did not self-report to the GSEs mortgage loans originated through CMD and Bank of America's retail lending channel that were internally identified as defective and/or otherwise ineligible for sale to the GSEs.

COUNTRYWIDE AND BANK OF AMERICA – "PIGGYBACK LOANS"

From at least 2006 through 2013, Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Bank, FSB, First Franklin Financial Corp., and Bank of America, N.A. (collectively, "Bank of America") originated residential mortgage loans and sold certain of them to Fannie Mae and Freddie Mac. Among the loans that were originated were "Piggyback Loans," *i.e.*, multiple residential mortgage loans made to the same borrower at the same time on the same property and which are subject to the same or similar representations and warranties. Given the nature of the representations and warranties made with respect to each loan, if one of the two Piggyback Loans is found to be defective or otherwise subject to repurchase, the other frequently will be as well.

Bank of America sold first lien loans from piggyback transactions to Fannie Mae and Freddie Mac and sold such first and second lien loans to RMBS trusts. In selling residential mortgage loans to the GSEs, representations and warranties were made to the GSEs that the loans complied in all respects with the standards outlined in the GSE selling guides and sales contracts, which set forth underwriting, documentation, quality control, and self-reporting requirements. Specifically, loans sold to Fannie Mae are sold with the representations and warranties contained in its Single Family Selling Guide (the "Fannie Guide") and the applicable purchase contracts, including in the case of Countrywide the Strategic Alliance Agreements entered into between Fannie Mae and Countrywide. Loans sold to Freddie Mac are sold with the representations and warranties contained in its Single-Family Seller/Servicer Guide (the "Freddie Guide") and purchase contracts.

Bank of America made representations and warranties to Fannie Mae concerning each residential mortgage loan that they originated and sold to Fannie Mae, including but not limited to, the following:

a. The mortgage conformed to all the applicable requirements in the Fannie Guide and the purchase contracts;

b. The mortgage was an "acceptable investment";

c. All required loan data was true, correct, and complete;

d. Automated underwriting conditions were met for loans processed through an automated underwriting system; and

e. No fraud or material misrepresentation was committed by any party, including the borrower.

Bank of America likewise made representations and warranties to Freddie Mac concerning each residential mortgage loan sold to Freddie Mac, including but not limited to, the following:

a. The terms, conditions, and requirements stated in the Freddie Guide and purchase contracts were fully satisfied;

b. All warranties and representations of the seller were true and correct;

c. The loan was "investment quality;" and

d. Bank of America had not misstated or omitted any material fact about the mortgage.

Bank of America was also generally required to self-report to Fannie Mae and Freddie Mac any loans it identified as defective and/or otherwise ineligible for sale to the GSEs. When purchasing or providing reimbursement for a second lien mortgage that violated its representations and warranties, Bank of America did not regularly review the corresponding first lien mortgage loan that had been sold to Fannie Mae and Freddie Mac to determine whether it was required to self-report that loan, and typically did not self-report the related first lien mortgage loan.

EXHIBIT 3

Angelo Mozilo/Managing Directors/CF/CCI

08/02/2005 01:08:44 PM

To Dave Sambol/Managing Directors/CF/CCI
cc Stan Kurland/Managing Directors/CF/CCI;Carlos Garcia/Managing Directors/CF/CCI
bcc
Subject Re: Fw: Bank Assets

I absolutely understand your position however there is a price we will pay no matter what we do. The difference being that by placing less attractive loans in the secondary market we will know exactly the economic price we will pay when the sales settle. By placing, even at 50%, into the Bank we have no idea what economic and reputational losses we will suffer not to say anything about restrictions placed upon us by the regulators.

Dave Sambol/Managing Directors/CF/CCI
08/02/2005 08:46 AM

To Carlos Garcia/Managing Directors/CF/CCI@COUNTRYWIDE
cc Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE, stan_kurland@countrywide.com
bcc
Subject Re: Fw: Bank Assets

While it makes sense for us to be selective as to the loans which the Bank retains, we need to analyze the securitization implications on what remains if the bank is only cherry picking and what remains to be securitized/sold is overly concentrated with higher risk loans. This concern and issue gets magnified as we put a bigger percentage of our pay option production into the Bank because the remaining production then increasingly looks like an adversly selected pool.

Carlos Garcia/Managing Directors/CF/CCI
08/02/2005 07:31 AM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc Stan Kurland, Dave Sambol
bcc
Subject Re: Fw: Bank Assets

No lending to investors in any market is the direction we are following/implementing immediately without waiting on analyses or deliberation. When we complete analyses if it supports any diifferent action we will share and get concurrence for any adjustment to your guidance. I do agree with your cocern particularly given the fact that credit availability is going to tighten or atleast get a lot more expensive due to the growing concerns over payoption and io loans, rising rates, housing bubbles and ensuing regulatory and lender actions.

From: Angelo Mozilo
Sent: 08/02/2005 06:48 AM
To: Carlos Garcia
Cc: Stan Kurland
Subject: Re: Fw: Bank Assets

I appreciate your response however we should not be making any pay options to investors anywhere. This is not the business that a fledgeling bank of our size should be involved with. Pay option loans being

used by investors is a pure commercial spec loan and not the traditional home loan that we have successfully managed throughout our history. When investors want to arbitrage with a loan of this nature they should go to Chase or Wells not to us.

It is also important for you and your team to understand from my point of view that there is nothing intrinsically wrong with pay option loans themselves, the problem is the quality of borrowers who are being offered the product and the abuse by third party originators. There are other more traditional products in the marketplace that you can fund to meet your needs and as I said in my previous memo, if you are unable to find sufficient product then slow down the growth of the Bank for the time being..

Carlos Garcia/Managing Directors/CF/CCI
08/02/2005 01:00 AM

To Mike Muir, Clifford Rossi, Dave Walker, Timothy Wennes, Marito Domingo
cc Jim Furash, Stan Kurland, Angelo Mozilo
bcc
Subject Fw: Bank Assets

Pursuant to Angelos direction, please make every effort to further accelerate the assessment of low fico borrowers and appropriate action on payoptions. Also are there additional markets besides south florida and vegas that merit discontinuation of lending to investors or condo borrowers? We still have south florida and vegas lending shut down for all products, right? I want to get with stan and back to angelo this week. In the meantime pending the completion of analyses and deliberations we should now stop investing in payoption loans less than 660 fico unless the cltv is 70 percent or lower or they have mi. Likewise stop lending on helocs with underlying payoptions unless the cltv is under 70 and the fico is over 660 unless we can buy mi economically. Also discontinue investor properties in all markets pending completion of analysis. Also please take steps to sell high risk payoption loans in the portfolio such as 80 ltv loans with ficos less than 660. Please also propose any additional steps you deem appropriate. Again we need to move fast to cut risk and not be paralyzed by analyses that can follow.

From: Angelo Mozilo
Sent: 08/01/2005 10:13 PM
To: Carlos Garcia
Cc: Stan Kurland
Subject: Bank Assets

I am becoming increasingly concerned about the environment surrounding the borrowers who are utilizing the pay option loan and the price level of real estate in general but particularly relative to condos and specifically condos being purchased by speculators (non owner occupants). I have been in contact with developers who have told me that they are anticipating a collapse in the condo market very shortly simply related to the fact that in Dade County alone 70% of the condos being sold are being purchased by speculators. This situation is being repeated in Broward County, Las Vegas as well as other so called "hot" areas of the Country.

We must therefore re-think what assets should be putting into the bank. For example you should never put a non owner occupied pay option ARM on the balance sheet. I know you have already done this but it is unacceptable. Secondly only 660 fico's and above, owner occupied pay options should be accepted and only on a limited basis. The focus should be 700 and above (owner occupied) for this product. The simple reason is that when the loan resets in five years there will be an enormous payment shock and if the borrower is not sufficiently sophisticated to truly understand this consequence then the bank will be dealing with foreclosure in potentially a deflated real estate market. This would be both a financial and

reputational catastrophe.

Frankly I am no longer concerned about the pace of growth of the bank. In fact if there was little to no growth over the next six months until we can assure ourselves of high quality performing assets I would be the supporter of little to no growth. Since we own the assets of the bank and responsible for the long term performance of those assets we must focus on quality and not quantity if that's the choice we have to make. I feel strongly that over the next twelve months we are going to be facing one ot the most difficult and challenging real estate and mortgage markets in decades and I want to take steps now to mitigate and hopefully avoid any damage to our Bank.

On Sunday I met a mortgage broker from a town near Troy, Michigan who told me that he does all of his business with Countrywide. First I was pleased with the news until he told me why. He said that the area he serves is severely economically depressed and that the only way he can qualify his borrowers is the via the pay option ARM. I have heard this story many times over from mortgage brokers who utilize the pay option for very marginal borrowers for the sole purpose of creating volumes and commissions. We simply cannot and will not allow our Company to be victimized by this pervasive behavior and since we can't control the behavior of others it is essential that we control our own actions.

I therefore want you to meet with Stan and I to review the actions that you are putting in place to secure the financial integrity of the Bank.

Angelo Mozilo/Managing Directors/CF/CCI

08/03/2005 08:47:23 AM

To Dan Tarman/Managing Directors/CF/CCI@Countrywide
cc "Andy Bielanski Pager" <3815762@Skyreply>@Countrywide
bcc
Subject Re: Today's American Banker: Pay Options

You should know that we have made major changes in the Bank this week relative to placing substantial restrictions for pay option loans. For example we will not accept pay option loans for speculators or on second homes. Pay option loans will be offered at the Bank only on owner occupied properties where the borrowers Fico is 660 or above.

You should speak to Carlos Garcia to fully understand all of the major changes that we have made this week. In my opinion there is nothing intrinsically wrong with pay option loans however there is something very wrong as to whom the product is being sold. Third party originators such as mortgage brokers are utilizing the loan to squeeze borrowers into homes without regard to the future consequences to that borrower, and speculators are using it as an arbitrage product. These events could lead to catastrophic consequences which would be exacerbated if real estate values begin to decline. The moves we have made should substantially mitigate any damage to the bank irrespective of future events. More importantly this change in policy is positive for your shareholders as well as to borrowers who, most likely, are being set up for foreclosure.

Dan Tarman/Managing Directors/CF/CCI
08/03/2005 07:59 AM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE, Stan Kurland/Managing Directors/CF/CCI@COUNTRYWIDE, Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE, Eric Sieracki/Managing Directors/CF/CCI@COUNTRYWIDE, Sandy Samuels/Managing Directors/CF/CCI@COUNTRYWIDE
cc
bcc
Subject

A quick note to bring to your attention a piece in today's American Banker regarding the pay option issue. The article focuses on the emerging trend toward greater transaparency around this issue and references both CFC as well as some of our competitors. I believe we are positioned relatively well in terms of our posture vis a vis disclosure. Three particular things in the piece to note: 1) once again, Herb Sandler is out there reinforcing similar messaging to what we saw from him in the WSJ piece; 2) a reference to some concerns among ratings agencies around this issue; 3) our discussion of this topic during the Q&A on the earnings call is positioned in a relatively positive light in the article.

This article is yet another example of how the media herd is moving on this issue. It also states as fact the notion that pay option products are inherently risky.

Our cross-functional team is developing a recommended strategy, messaging and set of actions that we expect to be able to present to you shortly for your review and consideration.

Dan

Executives Giving More Details on Option ARMs

From: American Banker

Wednesday, August 3, 2005

By Jody Shenn

Swirling questions sparked by the growth in adjustable-rate mortgages that allow for negative amortization met with much more detailed responses from lenders during their second-quarter earnings discussions.

Washington Mutual Inc., Golden West Financial Corp., IndyMac Bancorp Inc., and FirstFed Financial Corp. all volunteered details on aspects of their originations and portfolios of "option" or "MTA" ARMs that they had never before disclosed, previously tucked into securities filings, or revealed only sporadically.

In Wamu's case, last month's disclosures included completely new data on the level of its option ARM activity in the supplementary information with its quarterly earnings press releases.

The Seattle thrift company, not exactly a newcomer to the product, explicitly broke out the exact amount of option ARMs among its mortgage originations (37%) and in its loan portfolio (35%). It had previously only hinted at such details in securities filings, or given them out occasionally during presentation Q&A sessions.

During the second-quarter call chief executive officer Kerry Killinger indicated that concerns about housing prices motivated its sales of about three-quarters of its option ARM originations - another increase in the percentage. Chief financial officer Thomas Casey followed up by talking about its portfolio. He said only 8% of its option ARMs started with loan-to-value ratios above 80%, and he stressed that none were made to subprime borrowers.

For Golden West, IndyMac, and FirstFed, the new level of candidness also included the amount of negative amortization their borrowers are actually using.

Whether the round of disclosures will satisfy calls for more information, or last beyond the quarter, is uncertain. What's clear is that more and tougher questions about option ARMs are being lobbed at lenders, even those on the West Coast that have regularly made the loans as far back as the early 1980s.

Many of the traditional players find the new interest somewhat perplexing, but some have clearly decided they cannot ignore it.

"It seems to us if everybody is talking about something, you ought to be giving them the information they need," said Herb Sandler, the co-chief executive at Golden West, an option ARM pioneer that began to disclose the negative amortization in its portfolio only this year.

A main reason for the attention to such loans is the danger posed by the combination of growing loan balances and frothy home prices in some markets, as well as what is widely seen as generally looser mortgage underwriting. Another reason is the increased recent use of the negative amortization feature by borrowers.

Still another reason has to do with the increased pessimism by Standard & Poor's Corp. and Fitch Inc., which has cut into the profitability of securitizations. There is also competitive pressure, which until recently was not impacting the loans' sales margins as much as those for other loan types.

On their conference calls, executives at both IndyMac and Wamu talked about the product in their prepared statements. Even so, they then spent a good deal of time answering questions about it.
"No closing remarks - I'm worn out here," Michael W. Perry, IndyMac's chairman and CEO, said at the end of his call, after he had discussed its option-ARM origination metrics, insurance and underwriting policies, and borrowers' payment choices, among other things.
"As you can see, we are trying our very best to be fully transparent and address the key issues," he said. "We came a long way toward addressing people's concerns, so they can understand this option ARM product a little better."
In their quarterly releases, Golden West and FirstFed included information on what some analysts call one of the loans' key data points: the amount of deferred interest created by borrowers' use of negative amortization. This number shows both how much of a lender's interest income was noncash and how much of its loan growth came from partial payments, not new loans.
FirstFed, of Santa Monica, Calif., previously offered the information in its annual reports, but not in other releases or filings. Golden West, the Oakland parent of World Savings Bank, began disclosing the figure in the 10-K it filed in March for last year. In an interview, Mr. Sandler said it was responding to questions stemming from what he agrees is the lax underwriting of some new entrants, and their extremely low teaser rates.
IndyMac also provided a glimpse into the issue by describing the deferred interest on the loans it services. (A spokeswoman said its own loan portfolio has behaved similarly. Considering the level of questioning, it expects to break out extra details on the ARMs "for a while," she said.)
Wamu, on the other hand, offered no details on its deferred interest during the quarter, though Mr. Casey did say only 4 basis points of its option ARM balances was above the principal amount of the loans when they were made.
Responding to a question, he defended the decision not to disclose deferred interest. Wamu would "continue to look at that and see if it's relevant, but we think the more appropriate assessment of the risk is the amount above the original loan value," he said.
A spokesman said last week that it received no follow-up questions and presented a "fair and meaningful picture" of its book.
Paul Miller, an analyst with Friedman, Billings, Ramsey & Co., said he cares less about seeing the amount of negative amortization than he does about making sure the loans' underwriting is sound, and that they can be sold. Where such disclosures are lacking, "we'll just keep on asking," he said.
The earnings call for Countrywide Financial Corp. of Calabasas, Calif., whose entry into the market a few years ago helped make the option ARM a standard product, was a case in point. Countrywide, the nation's top home lender, again disclosed no specific information on the loans in its release or any other prepared remarks, but executives were peppered with questions, and they were obviously ready with quantitative answers.
Among other things, they talked about the amount of the loans it holds in its bank, the use of negative amortization, and how much of the demand for the loans came from California. Angelo Mozilo, Countrywide's CEO, volunteered that the average FICO score of its option ARM borrowers was above 700. Stanford Kurland, its president, said the delinquency rate on the option ARMs in its portfolio was just over 1%.
For years Downey Financial Corp. of Newport Beach, Calif., has provided more details in its filings than others: the amount of its ARMs with the negative amortization option, the percentage of loans that cap negative amortization at 110% or 125% of the original principal, and the net amount of deferred interest.

Thomas E. Prince, its chief operating officer and CFO, said he is definitely getting more questions about the loans, which he attributed to a widespread lack of understanding of them - in particular among analysts and investors based on the East Coast.
Downey may or may not say anything more in future quarters, Mr. Prince said in an interview. "We haven't hidden it or anything, but whether we do it in the earnings release remains to be seen."

Angelo Mozilo/Managing Directors/CF/CCI	To	Stan Kurland/Managing Directors/CF/CCI@COUNTRYWIDE;Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE;Eric Sieracki/Managing Directors/CF/CCI@COUNTRYWIDE;David Spector/Managing Directors/CF/CCI@COUNTRYWIDE;John McMurray/Managing Directors/CF/CCI@Countrywide
	cc	
03/27/2006 08:53:31 PM	bcc	
	Subject	HSBC

Based upon our meeting of today we agreed to the following:

1. Stan will oversee all of the corrective processes that will be put into effect to permanently avoid the errors of both judgement and protocol that have led to the issues that we face today caused by the buybacks mandated by HSBC.

2. Sambol will make certain that the people responsible for the origination process understand the necessity for adhering to the guidelines for 100% LTV sub-prime product. This is the most dangerous product in existence and there can be nothing more toxic and therefore requires that no deviation from guidelines be permitted irrespective of the circumstances.

3. In addition Sambol, Spector and McMurray will coordinate with Bailey to assure that the loans originated are immediately put in the hands of our best sub prime collectors in order to avoid the EPD issue that we are currently facing.

4. Spector is to review the buybacks and to take every step possible to correct the deficiencies and look for another secondary sale opportunity in order to reduce the loans of this type on our balance sheet.

5. McMurray is to assure that the process of assessing risk is re-examined to make certain that there are absolutely no holes in the assembly line of risk assessment and contractual obligations which could cause this situation to repeat itself.

6. Spector is to take a fresh look at all of our contractual obligations relative to secondary market requirements to assure that we don't commit ourselves to subordinate the balance sheet of the Company to a third party. That is what we have done relative to our commitments to HSBC. We simply cannot tolerate trailing indemnifications which are infinite in time and nature. Again, this was a juvenile mistake that can never be repeated.

7. Sieracki is to keep me apprised of the ultimate financial impact on the Company including reserves, write offs, etc. relative to the HSBC project.

Again it is important that we take all of the corrective measures to resolve the outstanding issues with this product but more important is establish all of the necessary protocols to assure that we are originating these loans in a manner which takes us out of harms way and that the loans are sold in a manner to avoid further and unnecessary exposure to the Company.

Let me know if you have any questions concerning any aspect of this e-mail.

Angelo Mozilo/Managing Directors/CF/CCI

04/03/2006 09:13:57 PM

To: Stan Kurland/Managing Directors/CF/CCI@COUNTRYWIDE;Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE
cc: Steve Bailey/Managing Directors/CF/CCI@Countrywide
bcc:
Subject: Fw: PayOption Arm Information You Requested

This is important data that could portend serious problems with this product. Since over 70% have opted to make the lower payment it appears that it is just a matter of time that we will be faced with a substantial amount of resets and therefore much higher delinquencies. We must limit this product to high ficos otherwise we could face both financial and regulatory consequences.

---- Forwarded by Angelo Mozilo/Managing Directors/CF/CCI on 04/03/2006 09:11 PM ----

Steve Bailey/Managing Directors/CF/CCI
04/03/2006 05:27 PM

To: Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc:
bcc:
Subject: Fw: PayOption Arm Information You Requested

Angelo,
Here is the information on PayOption Arms as we discussed. Please let me know if you have any questions.

---- Forwarded by Steve Bailey/Managing Directors/CF/CCI on 04/03/2006 05:24 PM ----

Bill Endicott/Loan Admin/CF/CCI
04/03/2006 05:20 PM

To: Steve Bailey/Managing Directors/CF/CCI@Countrywide
cc: Craig Baingo/Loan Admin/CF/CCI@COUNTRYWIDE, Kevin Meyers/Loan Admin/CF/CCI@Countrywide, Lisa Afsharian/Loan Admin/CF/CCI@COUNTRYWIDE, Svetlana Keslin/Loan Admin/CF/CCI@Countrywide
bcc:
Subject: PayOption Arm Delinquencies

The following is a quick re-cap on the PayOption ARM portfolio as of February 06:

PayOption ARMs make up 341,841 loans or $118 billion UPB representing 4.5% and 10.4% in total CHL volume and dollars respectively.

Concentration of loans with negative amortization is currently at 62%. The negative amortized balances are in the early stage of ramping up and are still relatively low. Please note that once a balance reaches 115%, the loan resets to a full amortization term. See the stratification of balances below.

Loan Bal.	62% Portion	Mix
101	146,209	68.97%
102	62,899	29.67%
103	2,857	1.35%
104	12	0.01%
105	4	0.00%
105-109	12	0.01%
110-115	1	0.00%

72% of customers chose Minimum Payment selection in February 06, up from 60% in August '05.

The delinquency rate has increased in the last six months from 1.19% in August '05 to 2.21% in February '06. The rise in delinquency is mostly attributed natural seasoning of the portfolio. The PayOption ARM delinquency is relatively low when comparing to Conventional, Government, and Subprime portfolios with 2.75%, 14.04% and 16.45% delinquency rates respectively.

CLD and WLD origination channels account for 39% and 38% of the PayOption ARM portfolio volume, respectively; California represents 45%.

When comparing PayOption Arm performance to Interest Only, 3/1 and 5/1 ARM products, it consistently outperformed 3/1 product. Over the past 6 months, PayOption ARMs under-performed both 5/1 and Interest Only loans with the exception of February when PayOption ARMs outperformed the Interest Only product.

Angelo Mozilo/Managing Directors/CF/CCI

04/13/2006 07:42:35 PM

To eric sieracki
cc stan kurland;dave sambol;David Spector/Managing Directors/CF/CCI;John McMurray/Managing Directors/CF/CCI@Countrywide
bcc
Subject Re: 1Q2006 Earnings

As per our conversation of this morning it appears to me that there are several important issues which must be addressed relative to our 100% sub prime seconds business. In that regard I would like you to analyze the losses incurred to date specifically from the HSBC transaction and equally important what are our future expectations as to losses.

Not necessarily in the order of importance here are my key concerns about the product itself and about how we conducted ourselves in the origination and delivery of the product to HSBC:

1. The negotiations with HSBC was very flawed and as I stated in my memo several weeks ago extraordinarily juvenile. Specifically we gave every option possible to HSBC to kick back to us all losses while they maintained all of the gains. At this stage of our corporate lives we should know better.
2. The loans were originated through our channels with serious disregard for process, compliance with guidelines and irresponsible behavior relative to meeting timelines. As a result we delivered loans with deficient documentation, did not respond timely in correcting those deficiencies which resulted in extreme time delays thereby permitting loans to have a greater chance for early payment default.
3. The field people and everyone involved in the origination chain received substantial compensation for the origination of this product but have yet to suffer the consequences of unnacceptable conduct relative to every aspect of originating, documenting and delivering the product to HSBC.

Frankly I don't want to hear how much we made on the premium that we were paid by HSBC because I believe (Sieracki is doing the analysis) that the net of this transaction when you consider all of the executive, managerial and administrative time that we have expended in putting out the fires, is negative to the Company. This quarter alone we have had to take a .19 write down because of the hits we have taken to date.

Bottom line, from the negotiation of the deal with HSBC through the delivery of the product we have compounded one error after another. Therefore I want Sambol to take all steps necessary to assure that our origination operation "follows guidelines" for every product that we originate. I have personally observed a serious lack of compliance within our origination system as it relates to documentation and generally a deteriation in the quality of loans originated versus the pricing of those loan. In my conversations with Sambol he calls the 100% sub prime seconds as the "milk" of the business. Frankly I consider that product line to be the poison of ours. Obviously as CEO I cannot continue the sanctioning of the origination of this product until such time I can get concrete assurances that we are not facing a continuous catastrophe. Therefore I want a plan of action not only from Sambol but equally from McMurray as to how we can manage this risk going forward.

Eric Sieracki/Managing Directors/CF/CCI
04/13/2006 03:26 PM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE, stan_kurland@countrywide.com, Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE
cc

bcc
Subject 1Q2006 Earnings

This note is primarily for the benefit of Angelo and Dave since you're both out of town. Stan, you already know most of this. The 1Q2006 forecast on April 3 indicated $1.08. The final earnings number will be $1.10.

Significant differences were observed from the April 3 forecast to the preliminary flash. March prime margins came in $0.16 better than expected. The $0.16 was comprised of $0.08 from final servicing values being higher than secondary marketing original values, $0.06 from a hedge gain (pipe hedge was a net short during a selloff), and $0.02 from secondary executions better than expected on late March deals. While the April 3 forecast already included $0.08 of provision for loss reserves, an additional $0.08 was charged to earnings after the preliminary flash. More on reserves later. CCM came in $0.03 higher than expected, Insurance was $0.01 better than expected and there were $0.02 of other. That math all comes out to $1.22 for the preliminary flash.

ALCO met Tuesday and concluded that certain OAS and discount rate changes were required for MSRs and other retained interests based on pertinent data. Identical to last quarter, ALCO repeated the elimination of the "muter" technique in determining OAS (cuts indicated OAS changes in half to reduce volatility). The elimination of the muter increased MSR OAS in 1Q2006, the opposite of 4Q2005. Discount rates on nonprime, NIMs and fixed rate seconds were also adjusted. The net effect of these changes was to decrease EPS by $0.09.

Further review of credit loss reserves also indicated an additional provision of $0.03 was required. The preliminary flash of $1.22 was reduced by the $0.09 and $0.03 to $1.10, which is the final number.

The bottom line is that prime margins for the month of March far outperformed expectations by $0.16. Major offsets were additional loss provisions of $0.11 and OAS/discount rate adjustments of $0.09.

On the topic of reserves, the total credit loss provision for 1Q2006 was $0.19, which compares to $0.02 in 1Q2005. The dollar amount is $192MM. According to John McMurry, $95MM was from a mark to market of HSBC loans and loans acquired through clean-up calls, $37MM was from loans never sold that became further delinquent, $27MM was from the bank, $21MM was for reps & warrants loss provision (new whole loan reserve & overall port growth) and $12MM was for servicing advances in the ordinary course of business.

Angelo Mozilo/Managing Directors/CF/CCI
04/17/2006 05:55:49 PM

To dave sambol
cc stan kurland;John Mcmurray
bcc
Subject Sub-prime seconds

I have asked Stan to conduct a thorough review of our sub-prime second business. I have asked him to look at the following:

1. On a cumulative basis have we made any money in this business and if we did, were the rewards related to both the financial and reputational risks that we have taken.

2. On a going forward basis what are we facing relative to margins, reserves and overall financial performance of this business.

3. Where were the breakdowns in our system that caused the HSBC debacle including the creation of the contract all the way through the massive disregard for guidelines set forth by both the contract and corporate.

4. To review the compensation to the sales force in light of the overwhelmig hits taken by the Company on this product.

In all of my years in the business I have never seen a more toxic prduct. It's not only suboordinated to the first but the first is sub-prime. In addition the fico's are below 600, below 500 and some below 400 compounded by the fact these are 100% loans which must always be written off in the event of foreclosure..

With real estate values coming down and interest rates rising this product will become increasingly worse.

There has to be major changes in the program including substantial increases in the minimum fico. No margin, no matter how high, could ever cover the inevitable losses on loans with ficos uner 600.

Whether you consider this business milk or not I am prepared to go without milk irrespective of the consequences to our production. Our financial and reputational integrity is too important to me and should be to all of us..

Please feel free to participate with Stan on his efforts to get to the truth on this matter.

Angelo Mozilo/Managing Directors/CF/CCI

05/19/2006 07:45:27 AM

To Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE
cc Kevin Bartlett/Managing Directors/CF/CCI@Countrywide;Eric Sieracki/Managing Directors/CF/CCI@COUNTRYWIDE
bcc
Subject Re: Reducing Risk, Reducing Costs

This market is unbelievable with rates coming down sharply today. Irrespective of the volitiliy I believe that the payoptions continue to present a longer term problem unless rates are reduced dramatically from this level and there are no indications, absent another terrorist attack, that this will happen. Your continued feedback to me would be most helpful.

Dave Sambol/Managing Directors/CF/CCI
05/18/2006 08:39 PM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc
bcc
Subject Re: Reducing Risk, Reducing Costs

I'll keep you informed of steps taken.

From: Angelo Mozilo
Sent: 05/18/2006 08:29 PM
To: Dave Sambol; Kevin Bartlett; Eric Sieracki
Cc: Stan Kurland
Subject: Reducing Risk, Reducing Costs

As we are all aware Stan has begun a major undertaking to assure that we reduce midline expenses as rapidly as possible and to be reduced at least in concert with expected revenue reductions from our production divisions.

In addition, per our conversations of this week, I want you to examine our risk profile as it relates to the assets of the balance sheets of both CFC and the Bank. Although all asset should be reviewed including exposure on our residuals and excess servicing we must pay special attention to helocs and pay options. With interest rates continuing to rise unabated helocs will become increasingly toxic in that mortgagors will be and are facing substantially higher payments then when the loan was originated. We should attempt to efficiently off loan this product even if it means a much slower growth for the Bank. From many perspective this might be an opportune time to take a breather and slow down the Bank. As for pay options the Bank faces potential unexpected losses because higher rates will cause these loans to reset much earlier than anticipated and as result causing mortgagors to default due to the substantial increase in their payments:

Per some of the suggestions offered during our meeting we should take every step possible to reduce balance sheet risk by:

1. Taking steps to encourage pay option mortgagors to refinance into IO's.
2. Where deemed appropriate the Bank should forgive the prepayment penalty if it appears obvious that the borrower will potentially default upon reset.
3. Through our payment coupon we should alert all payoption borrowers what could happen upon reset.

Obviously there is much more that we can do to manage risk much more carefully during this period of uncertainty both as to the rate environment and untested behavior of payoptions. Work closely with Carlos and Stan on the execution of the strategies that we pursue.

The combination of effectively managing our expenses finessing off potential risks should keep us in good shape until the storm clears.

By the way we must continue to grow our sales force and all other businesses that keep the top line increasing particularly in the origination channels.

Keep me apprised of actions that you take or any other suggestions that you might have.

From: Angelo_Mozilo@Countrywide.com
Date: 06/01/2006 10:38:21 PM
To: Carlos_Garcia@countrywide.com; Jim_Furash@Countrywide.Com
CC: Stan_Kurland@countrywide.com; Dave_Sambol@countrywide.com
Subject: Bank assets

In a discussion with both Stan and Dave it came to my attention that the majority of pay options being originated by us, both wholesale and retail, are based upon stated income. There is also some evidence that the information that the borrower is providing us relative to their income does not match up with IRS records.

As rates continue to climb it is evident that two things are going to happen relative to the loans on the Bank's balance sheet:

1. That the time of reset is going to accelerate because the 115% of the original loan amount will be reached must sooner that scheduled.

2. That the reset payments are going to be substantially higher than the buyer expects and what was used in the initial qualification.

We have at least 20% or more of the Bank's pay option loans at a fico of 700 or less. It is clear that the lower fico borrowers are going to experience a payment shock which is going to be difficult if not impossible for them to manage.

Since we know or can reliably predict what's going to happen in the next couple of years it is imperative that we address the issue now. First and foremost the Bank should not be accumulating any loans below 680 unless the LTV is 75% or lower. Secondly we should comb the assets to assess the risks that we face on Fico's under 700 and determine if we can sell them out of the Bank and replace them with higher quality paper. Thirdly we should take a careful look at our reserves and begin to assume the worst.

Please let me know how you intend to handle this matter.

From: CN=Angelo Mozilo/OU=Managing Directors/OU=CF/O=CCI
Date: 08/10/2006 02:16:18 PM
To: "cclark" <cclark@chapelmortgage.com>
Subject: Re: Po Arms

We have to continuously educate those mortgagors who already have this type of loan and those who are applying for one as to the potential consequences. This product should only be offered to high fico sophisticated borrowers. We cannot control or be accountable for buyer behavior. ----- Original Message ----- **From:** "Clayton Clark" [cclark@chapelmortgage.com] **Sent:** 08/10/2006 11:00 AM **To:** Angelo Mozilo **Subject:** Po ArmsI was reading your comments on the performance of the Pay Option Arms and couldn't agree more. As one of your Mortgage Correspondents for many years I discouraged many of my brokers from selling this product. Brokers are selling this product to borrowers that are not financially savvy and do not understand the repercussions of going into a negative amortization situation. I am glad to see that even at the top level of management this is being witnessed. What can we do is the question. Clayton M. ClarkVPChapel Mortgage Corporation593 Rancocas Road,PO Box 550Rancocas, NJ08073-0550Phone: 800-242-7351 ext. 168Fax: 609-265-0750E-Fax 866-257-1021Cell 609-220-6324

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Angelo Mozilo/Managing Directors/CF/CCI
08/11/2006 03:54:11 PM

To john mcmurray
cc dave sambol;kevin bartlett;eric sieracki
bcc
Subject Pay Options

Members of the CFC Board are raising questions about how we intend to manage the issues surrounding our pay option loans in the Bank and in our Servicing Port as well as new originations. As a result of these and other inquiries relative to this product I want you to prepare a memo, under my name, to the Board, covering the following:1. The steps we are taking in informing pay option Bank customers of the potential consequences of the reset and encouraging them to either refi out of the product or make principal curtailments to reduce or eliminate neg am. I had instructed both Steve Bailey and Carlos to send these notices out with the monthly coupons to continuously remind all of our pay option customers of the consequences of their behavior. Please check this out to make certain that my mandate in this regard is being carried out.2. That we have a policy in effect to provide a clear and bold notice upon the origination of a payoption loan of the consequences of negative amort and reset. Again I instructed Sambol to put this in effect in CMD and on third party transactions that a notice with the first payment coupon contain the issues surrounding negative amort. and reset. Please make certain that this mandate is being executed.3. That you prepare a write up included in this notice to the Board incorporating everything that you, Carlos and Kevin are doing to mitigate the potential risks to the Bank and to our reputation relative to surrounding our credit risk. I would like you to get this done by the middle of next week so that I will have a working document to discuss with the Board.Please send a copy of this e-mail to Carlos Garcia because we have another Carlos Garcia in the Company and CWinsider cannot distinguish whose who and therefore I cannot send it to him directly.Let me know if you have any questions relative to this request.

From: Angelo_Mozilo@countrywide.com
Date: 09/26/2006 02:14:18 PM
To: dave sambol; CN=Carlos Garcia/OU=Managing Directors/OU=CF/O=CCI@COUNTRYWIDE; CN=Kevin Bartlett/OU=Managing Directors/OU=CF/O=CCI@Countrywide; CN=Jeff Speakes/OU=Portfolio Mgmt/OU=CF/O=CCI@COUNTRYWIDE; jim furash
Subject: Fw: The Bank

In addition, with respect to this matter, I want the bank to stop all third party bidding for this product by the Bank to cease effective immediately.
—— Forwarded by Angelo Mozilo/Managing Directors/CF/CCI on 09/26/2006 11:12 AM ——

John McMurray/Managing Directors/CF/CCI

09/26/2006 10:45 AM

To
Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc
Subject
Re: The Bank

I was very happy to see your email because I personally share the same sentiment (that we should be shedding rather than adding Pay Option credit risk to the portfolio). Here is a verbatim excerpt from an email I sent last week on this topic (in blue italics) where I argue against adding more Pay Option risk (either from retaining loans we originate or buying closed loans from other institutions).

1. Tight Credit Spreads. Despite deteriorating fundamentals, credit spreads remain very tight. We're not getting paid as much to take on the escalating risk associated with the deteriorating credit environment.

2. Financial Constraints. We forgo earnings to divert loans to the Bank portfolio. Given the difficult production environment, it seems likely that the near-term ability to forgo earnings will be limited.

3. Deteriorating Credit Environment. The extremely favorable environment we've had for credit seems to have peaked and is now deteriorating. It's plausible that the impending down cycle could be more severe than previous downturns.

A. The industry has expanded credit guidelines aggressively during the favorable environment. There are a lot more loans with very high CLTVs, stated or reduced documentation, ARMs, interest-only or payment option features, high levels of investor properties, etc., etc.

B. The recent housing environment has been extraordinarily favorable -- it's been "long, strong and wide." An adjustment back to the "mean" could suggest a fairly adverse housing market.

C. The recent weakening we've seen in housing was not triggered by adverse economic conditions. Interest rates, unemployment and other relevant economic factors are still favorable by historical standards.

Would it make more sense to follow a balance sheet strategy where we're taking advantage of market conditions (both spreads and environment)? We appear to be following a strategy that's exactly opposite of this approach.

Angelo Mozilo/Managing Directors/CF/CCI

09/26/2006 10:15 AM

To
dave sambol
cc
Carlos Garcia/Managing Directors/CF/CCI@COUNTRYWIDE, eric sieracki
Subject
The Bank

As per our discussion yesterday morning I would like you, Carlos and Eric to seriously consider the following:

1. Pay Options have become the lightening rod in the arena of "exotic loans". It is getting the attention of rating agencies, regulators and the press.

2. We have no way, with any reasonable certainty, to assess the real risk of holding these loans on our balance sheet. The only history we can look to is that of World Savings however their portfolio was fundamentally different than ours in that their focus was equity and our focus is fico. In my judgement, as a long time lender, I would always trade off fico for equity. The bottom line is that we are flying blind on how these loans will perform in a stressed environment of higher unemployment, reduced values and slowing home sales.

3. It appears to me that pay options are currently mispriced in the secondary market and that spread could disappear quickly if there is an foreseen headline event such as another lender getting into deep trouble with this product or because of a negative investor occurance.

It therefore I believe the timing is right for us to sell all newly originated pay options and begin rolling off the bank balance sheet, in an orderly manner, pay options currently in their port. This move will send a message to the world that we are listening to the concerns of regulators and others about this product, that we are a responsive and diligent manager of credit risk, will ease the angst currently expressed by the regulators, will make it easier to transition from the Fed to the OTS and more importantly will capture gains on sale that might not be available to us in the near future.

I would appreciate your thoughts.

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From: Angelo_Mozilo@countrywide.com
Date: 02/27/2007 10:49:24 AM
To: Dan_Tarman@Countrywide.Com
Subject: Re: 2 WSJ stories today and Press Release RE: Freddie

---

Remember what I said almost six months ago. "In my 53 years in the business I have never seen a soft landing". This one is going to be as hard as they come.

Dan Tarman/Managing Directors/CF/CCI
02/27/2007 07:16 AM

To
Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE, Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE, Andrew Gissinger/Managing Directors/CF/CCI@Countrywide, Kevin Bartlett/Managing Directors/CF/CCI@Countrywide, Eric Sieracki/Managing Directors/CF/CCI@COUNTRYWIDE, Ron Kripalani/Managing Directors/CCM/CCI@Countrywide, Jack Schakett/Managing Directors/CF/CCI@Countrywide, Carlos Garcia/Managing Directors/CF/CCI@COUNTRYWIDE, Sandy Samuels/Managing Directors/CF/CCI@COUNTRYWIDE, John McMurray/Managing Directors/CF/CCI@Countrywide, Mark E Elbaum/Corporate Admin/CF/CCI@Countrywide, David Bigelow/Managing Directors/CF/CCI@COUNTRYWIDE, Andy Bielanski/Managing Directors/CF/CCI@COUNTRYWIDE

cc

Subject
2 WSJ stories today and Press Release RE: Freddie

Heard on the Street: Subprime Game's Reckoning Day — Risky Lending Fallout Threatens to Spread; Uncertain ARM Strength
Deals & Deal Makers: Does Subprime Index Amplify Risk? — ABX Bond Tracker, Depending on View, Is On Mark, Off Base

Heard on the Street: Subprime Game's Reckoning Day — Risky Lending Fallout Threatens to Spread; Uncertain ARM Strength — By Karen Richardson and Gregory Zuckerman

The worst may be yet to come for mortgage lenders. And that could add to investor nervousness.

Shares of companies that specialize in lending to riskier borrowers or offer unconventional loans have tumbled because of concerns over how rapidly these mortgages are going sour.

If these so-called subprime borrowers continue to have problems paying their debts, the lenders that target them likely will have to boost how much money they set aside for bad loans, cutting into their bottom lines. That could mean even lower stock prices.

There also is a concern that if the real-estate market remains cool, some borrowers with better credit histories might also begin struggling to make payments on certain popular, but unorthodox, mortgages. These types of loans allow borrowers to skip monthly payments, carry low short-term teaser rates or don't require detailed financial documentation. If that happens, companies such as BankUnited Financial Corp. and Countrywide Financial Corp. could suffer.

When a company keeps its reserve low, it makes its earnings look better because it continues to increase its assets from loans it originates and sells off. That holds down expenses.

But when a company beefs up those reserves and the change hits its earnings,

that can impair its ability to borrow the short-term funds needed to write new mortgages. Lenders need to set aside reserves to cover any possible losses when borrowers fail to make payments.

Subprime-mortgage lenders generally sell most of their loans to investors, but many keep some loans as investments. These portfolios have grown as the number of new mortgages has risen.

New Century Financial Corp. and NovaStar Financial Inc. hold billions of dollars of loans for investment. While they have been increasing their loan-loss provisions, delinquencies have been coming faster than anticipated.

NovaStar's reserves were 1.05% of its $2.1 billion in loans held for investment in the fourth quarter, up from 0.75% in the third quarter, but still ranked among the lowest in the industry, according to Zach Gast, an analyst at the Center for Financial Research and Analysis. New Century's ratio was 1.4% as of the third quarter. CFRA doesn't assign ratings on stocks.

Scott Hartman, chief executive of NovaStar, says the lender made a "substantial increase to our loan-loss reserve" in the past quarter, and that about half of those loans "tend to be of higher quality and generally performing very well."

New Century, which has said it will restate earnings for the first three quarters of 2006 to correct accounting errors regarding repurchased loans, declined to comment.

Subprime-mortgage lenders are likely to start reporting significant shortfalls in their loss reserves "as soon as the next several quarters," predicts David Honold, an analyst at Turner Investment Partners, which manages $23 billion and has avoided shares of subprime lenders. That is partly because some of the lenders could place into their investment-loan portfolio some poorly performing mortgages that they have bought back under terms of their sale agreement. That would required them to boost loan-loss reserves.

Subprime lenders already have seen their shares tumble -- NovaStar is off 50% and New Century is down 12% in the past 10 days -- and they could fall further if their credit-lines dry up because of poor loan-loss provisioning. NovaStar shares are trading at about 12 times estimated per-share earnings, but that valuation is likely to change as analysts adjust their projections to account for the company's steep fourth-quarter loss and poor earnings outlook. New Century shares also are trading at about 12 times estimated earnings for 2007.

Some investors urge caution about lenders that cater to borrowers with better credit but focus on mortgages that may suffer if weakness in housing continues, such as option adjustable-rate mortgages, or ARMs. These loans give borrowers multiple payment options, including a minimum payment that might not cover all of the monthly interest cost. The remainder of the interest payment is tacked onto the outstanding balance, causing it to rise.

About 59% of BankUnited's approximately $11.5 billion loan portfolio is made up of these loans and the bank is making more of them as it expands.

Countrywide has been cutting back on pay-option mortgages, funding just $2.7 billion in January out of a total $37 billion in new mortgages. Still, it has

"significant exposure" to these risky loans, CFRA's Mr. Gast says. Countrywide declined to comment.

BankUnited acknowledges that borrowers are paying less of their monthly interest payments as interest rates have moved higher, and about 50% of the bank's loans have been made to residents of Florida, a weak real-estate market. And since BankUnited keeps about 70% of these loans in its own portfolio, if the borrowers run into problems it could hurt the company's earnings.

BankUnited shares, which fell 83 cents, or 3.2%, to $25.06 in 4 p.m. composite trading yesterday on the Nasdaq Stock Market, are trading at almost nine times its expected per-share earnings over the next year.

Under accounting rules, BankUnited counts the unpaid interest payments as revenue, however. So if a borrower pays the contractual minimum of $500 a month, rather than the $1,000 interest-only amount, the bank can count the remaining $500 as revenue. That is because it is assumed it will be repaid down the road. This revenue is a rising slice of its earnings, according to an analysis by Keefe, Bruyette & Woods.

Humberto Lopez, BankUnited's chief financial officer, says the bank focuses on borrowers with high credit scores who generally put down at least 20% of the purchase price on a home. "Our borrowers have the financial wherewithal, and they've earned the right to have options of payments," Mr. Lopez says. "We haven't seen any weakness in their ability to pay."

Deals & Deal Makers: Does Subprime Index Amplify Risk? — ABX Bond Tracker, Depending on View, Is On Mark, Off Base — By Serena Ng and James R. Hagerty

The cost of insuring risky mortgage bonds as measured by a closely watched index has soared in recent weeks on fears of increasing defaults, rattling some investors while prompting a debate on whether the index is exaggerating the market's woes.

At issue is an index that tracks how much it costs to insure a group of BBB-minus-rated bonds backed by mortgages to borrowers with weak credit histories, the so-called subprime market. The index, part of the ABX family of bond indexes, is a derivative that falls in value when the cost of insurance rises, so it is seen as a proxy for the value of the underlying bonds.

The index has sunk nearly 30% since the start of this year, with most of the decline in February. That drop suggests the market believes riskier mortgage bonds stand to lose a large chunk of their value as defaults rise in the loans backing them.

"It reflects a disaster in the making in subprime, and I think it's just going to get worse," says Nouriel Roubini, chairman of economics research Web site Roubini Global Economics and a professor at New York University.

More than 20 subprime lenders have closed shop after repurchasing bad loans, as required by the terms under which they sold them. Some large lenders, including HSBC Holdings PLC and New Century Financial Corp., have reported big losses on their subprime mortgages.

"The risk the ABX is implying is way too pessimistic," argues Mark Adelson, a managing director at Nomura Securities International in New York. "There's a huge difference between the slow hissing that deflates a bubble and a bubble bursting."

The index, administered by Markit Group of London, was launched a little more than a year ago to give investors a way to bet on default trends and to hedge their risks by buying protection against a decline in the value of the underlying mortgage-backed bonds. Investors in the index can profit when they buy such protection cheaply and sell it at a higher rate. The index is one of only a few visible indicators of market sentiment for subprime mortgages, and Wall Street has become fixated with it.

The problem: "It's very, very widely followed, but more people look at the ABX than trade in it," says Peter Nolan, a bond-investment manager at Smith Breeden Associates, a fixed-income asset-management firm in Chapel Hill, N.C. When there are few buyers and sellers in a market, prices can jump around a lot, as has happened with this month's fall.

The ABX index reflects the cost of credit-default swaps -- essentially insurance policies that pay off when bonds drop in value -- on 20 subprime bonds that are selected by a group of Wall Street dealers.

In dollar terms, Wall Street firms charge investors approximately $1.6 million annually to insure the value of $10 million in BBB-minus-rated subprime bonds issued in 2006, up from $240,000 six months ago.

Critics say the ABX's 20 bond issues have performed more weakly than the overall market for subprime-mortgage securities.

Chris Flanagan, a mortgage researcher at J.P. Morgan Chase & Co., says the measure isn't perfect but is "a good reflection of long-overdue repricing of risk" of defaults.

Moody's Investors Service, a subsidiary of Moody's Corp., has lowered ratings on nine bonds from two subprime residential-mortgage-backed securities deals that were issued in 2006. It is reviewing 30 ratings on another 10 deals for possible downgrades. Together, these comprise less than 1% of the total number of subprime bonds Moody's rated last year. Fitch Ratings, a unit of Fimalac SA of Paris, and Standard & Poor's Ratings Services, a unit of McGraw-Hill Cos., have downgraded a small number of bonds.

The ABX's decline means that investors willing to sell protection against defaults can potentially reap gains if the problems in the subprime-mortgage market don't escalate.

For those with a bullish view on the housing market and U.S. borrowers' ability to pay off their mortgages, selling insurance at the current level is "probably a good bet but not necessarily a slam dunk," says Daniel Ivascyn, a portfolio manager at Pacific Investment Management Co., or Pimco, in Newport Beach, Calif. Making that bet at this time would take guts, though, he says, because lately the ABX index has been moving like "a one-way train."

Christian Stracke, an analyst at debt-research firm CreditSights in New York, says, "I think the ABX is accurately reflecting the panic being felt by some of

the big mortgage players, and the hedge funds shorting it have increased the panic. But investors in the broader financial markets shouldn't be overly concerned."

Freddie Mac Announces Tougher Subprime Lending Standards to Help Reduce the Risk of Future Borrower Default

Company Also to Develop Model Subprime Mortgages

MCLEAN, Va., Feb. 27 /PRNewswire-FirstCall/ -- Freddie Mac (NYSE: FRE) today announced that it will cease buying subprime mortgages that have a high likelihood of excessive payment shock and possible foreclosure. First, Freddie Mac will only buy subprime adjustable-rate mortgages (ARMs) -- and mortgage-related securities backed by these subprime loans -- that qualify borrowers at the fully-indexed and fully-amortizing rate. The goal is to protect future borrowers from the payment shock that could occur when their adjustable rate mortgages increase.

Second, the company will limit the use of low-documentation underwriting for these types of mortgages to help ensure that future borrowers have the income necessary to afford their homes. In addition, Freddie Mac will strongly recommend that mortgage lenders collect escrow accounts for borrowers' taxes and insurance payments.

In keeping with its statutory responsibility to provide stability to the mortgage market, Freddie Mac will implement the new investment requirements for mortgages originated on or after September 1, 2007, to avoid market disruptions.

To help lenders better serve borrowers with impaired credit, Freddie Mac is also developing fixed-rate and hybrid ARM products that will provide lenders with more choices to offer subprime borrowers. For example, in contrast to the payment structures of many of today's "2/28" ARMs, Freddie Mac's new hybrid ARMs will limit payment shock by offering reduced adjustable rate margins; longer fixed-rate terms; and longer reset periods. Freddie Mac will require originators to underwrite these products at the fully indexed and amortizing rate. The company plans to commit significant capital to purchasing these loans into its retained portfolio.

"Freddie Mac has long played a leading role in combating predatory lending and putting families into homes they can afford and keep," said Richard F. Syron, chairman and CEO of Freddie Mac. "The steps we are taking today will provide more protection to consumers and enhance the level of underwriting standards in the market."

Freddie Mac's new requirements cover what are commonly referred to as 2/28 and 3/27 hybrid ARMs, which currently comprise roughly three-quarters of the subprime market. Specifically, the company is requiring that borrowers applying for these products be underwritten at the fully-indexed and amortizing rate, as opposed to the initial "teaser" rate. The company also will limit the use of low-documentation products in combination with these loans. For example, the company will no longer purchase "No Income, No Asset"

documentation loans and will limit "Stated Income, Stated Assets" products to borrowers whose incomes derive from hard-to-verify sources, such as the self-employed and those in the "cash economy." There will be a reasonableness standard for stated incomes.

In addition, Freddie Mac will require that loans be underwritten to include taxes and insurance and will strongly recommend that the subprime industry collect escrows for taxes and insurance, as is the norm in the prime sector. Because the maintenance of escrow accounts requires significant infrastructure and is not widely used in the subprime sector, Freddie Mac does not believe it is practical to unilaterally mandate it as a purchase requirement at this time.

"Escrowing for taxes and insurance clearly provides an added layer of consumer protection," Syron said. "It is our hope that this universal practice in prime lending today becomes the universal practice in subprime lending tomorrow."

As a secondary mortgage market investor, Freddie Mac works closely with its customers in the primary market to combat predatory lending and promote foreclosure prevention. The higher underwriting standards and model subprime products announced today build on Freddie Mac's long-term leadership in this arena. The company's previously implemented anti-predatory lending practices include:

- refusing to do business with institutions that engage in predatory lending practices;
- not investing in mortgages that require mandatory arbitration;
- refusing to invest in high-rate or high-fee mortgages as defined by the Home Ownership and Equity Protection Act of 1994 (HOEPA), as well as mortgages with single-premium credit insurance or subprime mortgages with prepayment penalty terms of more than three years; and,
- requiring that lenders provide complete credit information about borrowers to all the credit bureaus and reporting agencies.

Freddie Mac also promotes consumer education through programs such as CreditSmart(R), its award-winning financial education curriculum, Don't Borrow Trouble, an anti-predatory lending campaign, as well as its many foreclosure prevention initiatives. These programs help borrowers understand the mortgage origination process, their housing finance options, and how to avoid abusive lending practices.

Freddie Mac is a stockholder-owned company established by Congress in 1970 to support homeownership and rental housing. Freddie Mac fulfills its mission by purchasing residential mortgages and mortgage-related securities, which it finances primarily by issuing mortgage-related securities and debt instruments in the capital markets. Over the years, Freddie Mac has made home possible for more than 50 million families. http://www.FreddieMac.com

SOURCE Freddie Mac

CONTACT: Sharon McHale of Freddie Mac, +1-703-903-2438

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Angelo Mozilo/Managing Directors/CF/CCI
03/22/2007 09:05:24 AM

To dave sambol
cc
bcc
Subject Fw: Board Agenda 3./22/07

This is the background info that I will be sharing with the Board this morning as well as dealing with your contract. It is of utmost importance that you mobilize Schakett, Gissinger, Bailey, Sieracki, Sandefur, Kripalani, Bartlett, Hale and all other senior executives to assure that they leave no stone unturned in minimizing losses and maximizing returns to our shareholders.

---- Forwarded by Angelo Mozilo/Managing Directors/CF/CCI on 03/22/2007 10:01 AM ----

Angelo Mozilo/Managing Directors/CF/CCI
03/22/2007 06:39 AM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc
bcc
Subject Board Agenda 3./22/07

Page 1.

1. Current events such as sub prime, liquidity, profitability, etc. that are impacting our Company.

2. Issues surrounding Countrywide Bank

3. David's proposed contract

4. Any questions that you might have relative to any of the issues discussed.

1. **Current situations faced by the Company-**

a. **Assault by the media has been relentless** and for whatever reason we have been lumped in with the monoline subprime lenders but also have been linked with GE and HSBC. In this regard we are appearing before Senator Dodd's committee (Sandy and Lloyd Seargant) to testify. We have a great story to tell but my guess is that this will be mean spirited political theater in which we will be painted as the bad guy. In fact one of the advocates is bringing in a 77 year old woman who is claiming the she has been duped and abused by Countrywide. We will attempt to bring our the fact that his woman was in foreclosure with another lender and we saved her from foreclosure, consolidated her massive delinquent credit card debt and lowered her overall debt payment by approximately $300 per month. She went ahead and defaulted on our loan and is claiming foul. This is a loan we would make today under the tightest of guidelines and we will do everything possible to get that story out. We will continue to tell our entire story which demonstrates Countrywide's desire to always do the right thing represented by our 40 year commitment to lower the barriers to homeownership to African Americans, Hispanics and lower income families. We have mountains of evidence to support our long history relative to this commitment.

b. **The genesis of this next subject is the irrational exuberance that existed over the past five years relative to the seemingly unending housing bubble-** Basically three segments of our population entered the arena to seek homeownership during the bubble and that was families who felt that they had

to do everything possible to qualify for a home of their choice because the affordablility index was falling rapidly or speculators looking for a quick buck or individual or syndicated crooks who looked for holes in the system. This all worked o.k. as long as values were rising and the appreciation in real estate covered all the sins of those who were gaming the system. As values began to recede then all the sins of the past were exposed and then some. What has clearly exacerbated the problems that we face today but is not totally responsible for all of the consequences are:

1. The 17 consecutive increases in the fed funds rate which materially impacted ARM loan.
2. The actions by the Fed to virtually cut off the use of pay option and interest only loans by laying out draconian guidelines
3. The proposed action of the Congress to cut off traditional liquidity to first time home buyers.

All of these factors and others have lead to a substantial slowdown in homebuying and refinance activity (liquidity), increase in delinquencies and potential substantial increases in foreclosures and REO's. Delinquencies,foreclosures and REO's are currently not at unprecedented levels but a case can be made that absent some positive event that we will reach historic highs.

In this regard we have taken several important steps:

1. Substantially **tightened** underwriting guidelines in order to stop the flow of additional problematic loans.
2. During the past five years there has been a **substantial amount of fraud of various types that was undetectable under our present protocols** and this fraud was perpetrated upon the entire industry. The primary reason for the fraud staying under the radar screen was because of the ever increasing real estate values which permitted the perpetrators to dump the property at a profit and pay off the loan. Once values began to recede the fraud became clearly evident. In this regard we have now employed state of the art fraud detection methodology's which will substantially limit the flow of fraud loans into the Company. You will never completely eliminated fraud because, unfortunately, some crooks are smarter than the smartest lenders. In addition fraud will be reduced by the natural forces of the market because there is no longer the pot to gold at the end of the rainbow to steal.

3. In addition we have substantially **beefed up loan administration in all of their functional responsibilities** such as delinquency call centers, loss mitigation in order to modify loans, where possible, in order to make payments more affordable as well as making certain that our foreclosure and REO departments are operating under both best practices and best of class methodology's..

4. There are substantial problems in **modifying loans** in today's environment because most of the loans originated in the past decade are contained in mortgage backed securities which for the most part are immutable under current law and regulation. We could obviously reduce mortgagor's payments but the cash difference between the deficient payment and what we owe the security holder would eventually eat up our cash reserves. Lew Renieri, Dave and I are working on ideas that could potentially cause legislative changes to render it possible to modify loans within securitizations. I will keep you apprised of any progress but don't hold out much hope.

5. **Residuals and liquidity-**

a. There appears to be no liquidity issues for prime product in the secondary market nor is there spread widening at this time. There is also sufficient liquidity for ALT-A but spreads are widening slightly because of the perceived risk of contagion from sub prime.

b. BBB including the residuals that we hold on the balance sheet have always experience a narrow and shallow market and that liquidity has worsened as a result of the real and perceived problems with sub prime. So the market for sub prime residuals is now both shallow and heavily discounted.. Therefore under the most extreme of circumstances, which is possible in this environment, which totals

approximately $400 million could be wiped out. If this happens it most likely would take place over a protracted period of time such as a year or more.

6. As for general corporate liquidity there appears to be no issues at this time. We have deep markets for our commercial paper as well as for our MTN's. In fact Moody has not only recently upgraded the Bank but has put the Company on watch for an upgrade.

6. **Competition-** There is massive consolidation taking place resulting in a substantial increase in our application flow of both purchase and refinance business, dominated by refinances. The current application flow would indicate monthly funding volumes of $40 to $45 billion per month for at least the next several months. These loans, for the reasons noted above are of higher quality and at healthier margins than in the past couple of years.

Bottom line:

1. We have much work to do, which we are currently doing, to defend ourselves against the bad guys, particularly mortgage brokers.

2. We have to continue to refine, which we are doing, all of our servicing activities to deal with the force majeure of delinquencies, foreclosures and REO's

3. We must explore every means possible, which we are doing, to keep legitimate mortgagors and their families in their homes.

4. We must work diligently on the PR side of our business to protect and preserve our reputation.

5. We must stay on our course of carrying out our mission of lowering the barriers of entry towards homeownership for African Americans, Hispanics and lower income borrowers. and

6. We must employ every loss mitigation technique known or yet to be invented in the industry. These are the essence of our mandates in this current environment.

7. **The Bank**

a. Jim Furash, Mike Muir replaced by Tim Winnes, Alan Boyce and Paul Deitz.
b. Reserves are being aggressively set aside within the restrictions of GAAP and regulatory guidelines.
c. Delinquencies are increasing but overall delinquencies remain low based upon historical standards.
d. Reorganization is taking place relative to the recent departures and because of the merging of the bank and the mortgage bank as well as the merging of the investment regime.

Situation-

I must alert you that the situation remains very fluid and everything that we have discussed could change minimally or materially. I will keep you apprised of any material changes if and when the occur however Dave Sambol will be making a complete report at our next Board meeting because at that time we will have financial results from the first quarter as well as the other issues I have mentioned will be further developed.

Angelo Mozilo/Managing Directors/CF/CCI
08/11/2007 05:41:58 AM

To CapBob1225@aol.com@CWEXTERNAL
cc
bcc
Subject Re: (no subject)

We are now approaching our most difficult time in this liquidity crisis. This week will dictate the structure of the Company going forward. The team is in with Goldman and Citi all weekend. I have personal business today but will be in the office all day on Sunday.

CapBob1225@aol.com
08/11/2007 03:34 AM

To angelo_mozilo@countrywide.com
cc
bcc
Subject (no subject)

We made front page of WSJ Online addition. You are alldoing a fantastic job! Call you later.

Carlos Garcia/Managing Directors/CF/CCI

08/17/2007 01:17:09 AM

To Tim Wennes/Administration/Bank/CCI@Countrywide
cc Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE;Dan Tarman/Managing Directors/CF/CCI@Countrywide;angelo mozilo
bcc
Subject Re: The Bank

I agree with paying higher rates. We need to put out the deposit run that ignited the last few days with an all out assault and restart growth. Ideas that I feel will be helpful include the following:

1. Pay higher rate. Implement carefully to avoid perception of desparation.
2. Call customers to personally reassure them and to explain fdic rules related to coverage of deposit balances greater than $100K.
3. Place newspaper ads like MATEL did to reassure customers and the public the Bank is strong.
4. Launch a broad marketing campaign supported by a high/competitive deposit rate. The capaign should be multi dimensional to maximize awareness and reinforce our message. Use PR, ads, local area marketing, etc. We need national and regional focus. I feel we can tell a great story and inspire confidencce. My feeling is the first message is the size, safety and soundness of institution coupled with fdic insurance and clarifying that issues in the press about countrywide are exagerated, pertain to affiliates, not the bank, and are not applicable to the bank as it has its own source of liquidity thru the banking system. The second message is competitive rate. The third message is conveying the image of a unique, viiable and powerful value proposition evidenced by one of the most remarkable stories of successful bank. For example and prompt: countrywide, the bank that provides a high and safe return to depositors made possible by a unique low operating cost model on both the deposit and lending fronts. Accordinly the bank can afford to extend high yields to depositors while investing in high quality reliable return assets. I think angelo can tell a great unique success story that promises to to become even more sucessfull because our model is so efficient and meets the social need of providing retired seniors living on fixed income the highest safe return available.

From: Angelo Mozilo
Sent: 08/16/2007 09:40 PM PDT
To: Tim Wennes; Carlos Garcia
Cc: Dave Sambol; Dan Tarman
Subject: Fw: The Bank

The greatest advertisement is paying higher interest rates then your competition. Whatever promotions that you do you must incorporate extraordinarily high returns to depositors. Many years ago one of the federal government agencies asked me to serve on the Board of Beverly Hills Savins which was in receivership. We had no problem getting deposits because we were aggressive in our marketing of our higher rates on CD's and money markets. The combination of effective and comforting ads combined with very competitive rates will bring depositors back into the bank. Advertisements alone will not accomplish our objectives. We need a full court press.
---- Forwarded by Angelo Mozilo/Managing Directors/CF/CCI on 08/16/2007 09:32 PM ----

Dan Tarman/Managing Directors/CF/CCI
08/16/2007 06:54 PM

To Angelo Mozilo/Managing Directors/CF/CCI
cc dave sambol, Carlos Garcia/Managing Directors/CF/CCI
bcc
Subject Re: The Bank

We should consider a multi-prong approach: PR is obviously one. The other, however, is the use of paid advertising

to help prompt new deposits. As a company, we have always shied away from this, particularly "brand" advertising. Given the challenges we are facing, perhaps the time has come to elevate the Countrywide Bank brand through this medium.

Advertising is the best way to shout above the noise and control the message. A "campaign" that has the appropriately crafted message and execution can have, in my opinion, a very meaningful impact.

While incurring costs for this type of activity is not optimal right now, the cost of seeing the deposit franchise is greater in my opinion.

I'd welcome having sr management discussion on this topic.

Angelo Mozilo/Managing Directors/CF/CCI wrote:

Date: 08/16/2007 06:50:20 PM
From: Angelo Mozilo/Managing Directors/CF/CCI
To:
cc: dave sambol, Carlos Garcia/Managing Directors/CF/CCI
Subject: The Bank

We have to put forth a full court press on turning the reputation of the Bank around. If you feel we should bring in world class outside help just go ahead and do it. I will have Tim Wennes and Carlos work on more attractive rates for depositors for a short period of time to stem the tide.

Angelo Mozilo/Managing Directors/CF/CCI	To	dave Sambol/Managing Directors/CF/CCI
	cc	eric Sieracki/Managing Directors/CF/CCI;kevin Bartlett/Managing Directors/CF/CCI
08/24/2007 12:46:21 PM	bcc	
	Subject	Ceasing programs that are problematic for the Bank and/or are at high risk.

1. I want you to take the necessary steps to wind down the builder program as soon as humanly possible. This is a business neither the Bank or the mortgage bank should be engage in during this crisis or at any time. I realize that we have some term commitments to builders and we will honor them as long as they perform however I don't want any new business under any circumstances because we would be digging a greater hole for the Company.

2. I want to cease doing any subprime business that is not saleable or that cannot be securitized by Fannie and/or Freddie.

Our balance sheet, liquidity and capital are under stress and therefore it is not prudent to take any further risk of originating assets which cannot be sold easily into the secondary market or would in any way cause regulators concern at the Bank level.

Therefore as you go through the exercise of downsizing please keep these initiatives in mind.

On another matter, I had a conversation with Russell Ried, the CIO at Calpers, and I included Kevin and Eric on the call. Calpers has an interest in buying existing and new production jumbos, AAA and potentially an equity infusion of some kind. Both Eric and Kevin will be contacting their counterparts at Calpers to continue the discussions. Calpers want to come out shortly to do a one day due diligence on our underwriting practices, which should be no problem, and then come back to us with their proposal. This could be a major breakthrough for us. Please stay close to Kevin and Eric so that you can coordinate the activities in the event that Calpers chooses to take a serious interest in us. Let me know if you have any questions.

Angelo Mozilo/Managing Directors/CF/CCI
08/30/2007 11:31:53 AM

To CapBob1225@aol.com@CWEXTERNAL
cc
bcc dave Sambol/Managing Directors/CF/CCI
Subject Re: (no subject)

Thanks for your expression of concern for my well-being. I very much appreciate it. We are working on a backup facility for our $5 billion in AAA's to avoid the dangers of daily rolls. That facility is going to cost $25 million for a 6 month commitment from Lehman. It's clearly a flagrant exploitation by Lehman but we have few if any other options at this time. As far as Citigroup's deal is concerned we simply could not accept the proposal because it required a payment of $100 million for a $5 billion repo facility. The problems with this proposal is that if we accepted it we would signal to Moody's and the other rating agencies that we are being treated as a junk credit and that we are willing to trade as a non investment grade borrower. We believe that this would lead to an immediate downgrade by Moody's which means that we would have to close down our operations. We have to be careful as to how we negotiate these transactions because we must remain transparent to the rating agencies and at the same time not put ourselves in a position of being the architect of our own demise. Hopefully this explains our position in the matter that you raised.

CapBob1225@aol.com
08/30/2007 03:48 AM

To angelo_mozilo@countrywide.com
cc
bcc
Subject (no subject)

Dear Ange:

It is very important that you don't let these attacks by the press and the politicians affect your ability to focus on the critical issues. I realize these vicious attacks are aimed at you and your integrity.....and therefore very hurtful and debilitative .

Your ability to lead the "baby" through this difficult time will be determined by you maintaining your stamina and termination. Having said that you MUST force your self to get some REST and nourishment! You are not super human and if you don't pace yourself you will not achieve your goals. You and your team need to remain healthy and clear minded. You have performed at an extraordinary level and I am proud of you! Even Derek Jeter has to take a rest during this pennant race!

I think you should reconsider whether or not we should pay the fee's to the banks to assure the day to day liquidity we need. It may be worth it to give you and your team the respite you need to get through these next two months. I believe the terms could be structured properly so as not to cause more problems. Think about the cost as an insurance policy as well as the positive impact on the regulators ,employees and the markets. After all at the end of the day, the cost will be justified by the calming affect it will have on everyone. Just might be the bst money we spend.

In light of the potential write downs we ,the industry and the investment banks et al will have to take in the 3rd quarter, the banks fee for a repo line will just be another cost to absorb.

Never for a moment doubt your ability to get through this crisis and come out stronger. But you must pace yourself and your team!

Whatever the future is I am with you all the way!

PLEASE TAKE CARE OF YOURSLF!

Love you!

Bob

Bob

Angelo Mozilo/Managing Directors/CF/CCI

10/31/2007 03:35:19 PM

To Carlos Garcia/Managing Directors/CF/CCI@COUNTRYWIDE
cc dave sambol
bcc
Subject Pay-Options

In reviewing our servicing port with Steve Bailey the issue of pay-options was discussed. Steve informed me that we have 350,000 pay option loans on the books. He also pointed out that in his opinion the pay option loans were the ones most vulnerable to foreclosure because of the neg am component and because the borrower has been paying at an interest rate on average of 3%. Obviously these loans cannot stay at this rate once the 15% threshold has been reached because the average rate is far below the cost of funds.

Here are my questions relative to the Bank's portfolio:

1. How many pay option loans do we have on the balance sheet?
2. How many have a heloc behind them?
3. What is the delinquency rate?
4. How many are in foreclosure?
5. What is the rate of prepayment on these loans?
6. What are the prospects for future delinquencies and foreclosures?
7. Are we still putting these loans on our balance sheet, and if so, why?

Angelo Mozilo/Managing Directors/CF/CCI

11/04/2007 08:25:52 AM

To Carlos Garcia/Managing Directors/CF/CCI@COUNTRYWIDE
cc Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE
bcc
Subject Re: Questions on POAs

Pay options have hurt the Company and the Bank badly despite your belief that it is a viable product. World Savings culture permits them to make these loans in a sound manner and our culture does not. You and Dave should sit down with Steve Bailey to fully understand the problems with pay options and the fact that fico scores are no indication of how these loans will perform. The only way these loans can work out is with stable to ever increasing real estate values. I do not like this product because they are not fixable in the event of serious default and also because they promote the worst behavior from the mortgagors who opt for this product irrespective of the fact that they are prime and super prime borrowers.

Carlos Garcia/Managing Directors/CF/CCI
11/04/2007 06:05 AM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE
bcc
Subject Re: Questions on POAs

In August we implemented deep guideline cuts that eliminated close to 90% of POA production (i.e. 90% of the portfolio became ineligible under the new guides). In Q4 CHL expects to originate appx $25 million per month of POAs. CHL also expects to originate appx $110 million per month in Payment Advantage loans (a fixed rate loan for 5 years similar to a hybrid but with payment options similar to a POA). We will send you a comparison of the delinquency performance of POAs in general, POAs meeting the new guidelines and POAs meeting your delineation of sound loans. This comparison will show you that the delinquency performance of POAs meeting the new guides has been very acceptable.

If we cut out the remaining POA guides from the Bank, CHL will need to stop offering the product. This will hurt the mortgage franchise and the Bank.

Keep in mind the Bank has generated over $3 billion pretax income since inception, while giving back only $400 million this QTR, and that was after recording a provision for losses of nearly $800 million and building reserves over $1Billion, most of which covers performing loans. This reserve was calculated assumming delinquency keeps increasing at a faster pace than we saw in Q3 for six more QTRs. In addition, 71% of the POA portfolio is covered by MI.

From: Angelo Mozilo
Sent: 11/03/2007 05:33 PM PDT
To: Carlos Garcia
Cc: Dave Sambol
Subject: FW: Questions on POAs

I don't want any more Pay Options originated for the Bank. I also question whether we should touch this product going forward because of our inability to properly underwrite these combined with the fact that these loans are inherently unsound unless they are full doc, no more than 75% LTV and no piggys.
—— Forwarded by Angelo Mozilo/Managing Directors/CF/CCI on 11/03/2007 05:32 PM ——

Jess Lederman/Managing Directors/CF/CCI
11/02/2007 04:51 PM

To Angelo Mozilo/Managing Directors/CF/CCI@COUNTRYWIDE
cc Carlos Garcia/Managing Directors/CF/CCI@COUNTRYWIDE, Adan Farinas/Bank/CF/CCI@Countrywide, Mark Fireman/Bank/CF/CCI@Countrywide, Brian Kuelbs/Managing Directors/CF/CCI@Countrywide, Dave Sambol/Managing Directors/CF/CCI@COUNTRYWIDE, Amit Munjal/Bank/CF/CCI@Countrywide
bcc
Subject Questions on POAs

Memo_Angelo_Questions_for_Carlos.doc

Countrywide®

MEMORANDUM

TO: Angelo Mozilo

FROM: Jess Lederman

SUBJECT: To address POA questions posed to Carlos

DATE: November 2, 2007

CC: Carlos Garcia, Brian Kuelbs, Adan Farinas, Amit Munjal, Mark Fireman, Dave Sambol

In response to the questions you posed to Carlos, I've provided a summary followed by more detailed answers to each question.

Summary

Loans 90+ delinquent as a percentage of the Bank's $28 billion portfolio of POAs increased nearly ten-fold over the past year, from .3% to 2.91%. Since significant recast activity will not begin until 2009, payment shock has not been the issue. The primary drivers of the increase were loans in areas that experienced the greatest declines in home values since origination, as well as low-doc loans with CLTV's in excess of 80% (typically involving a piggyback HELOC rather than mortgage insurance). For example, 90+ delinquencies in California increased 12-fold over the past year, 14-fold in Florida (which accounts for 9% of the POA portfolio), and 12-fold for all low-doc high-CLTV. On the surface, delinquencies on non-owner-occupied properties appear to be substantially lower than on owner-occupied loans. However, it is my opinion that would-be

flippers misrepresented occupancy and income in order to obtain maximum leverage on speculative transactions, and that their defaults are a meaningful component of the delinquency spike during the past year.

While defaults are far higher than originally predicted, the decision to acquire mortgage pool insurance on nearly two-thirds of the POA portfolio has substantially reduced the Bank's exposure to loss. The recent rally in rates will result in meaningful declines in the MTA index and slow the rate of negative amortization, and has in fact pushed the majority of recasts out to 2010 and beyond. While the timing of recognition of credit losses has had a volatile impact on the income statement, the high margins priced into the product suggest that the lifetime return on the 2004-2007 POA book will still come in above 15% pre-tax. Guidelines have been cut back to increase minimum FICOs and eliminate high-CLTV low-doc lending. New originations (almost entirely hybrid POAs), though modest in volume, are projected to generate a 25% return on capital.

1. How many POA (PayOption) loans do we have on the balance sheet?

Since the inception, the bank has invested in $51 billion of POA loans including the $2.06 billion transfer from HFS to HFI as of Sept-07.

The Bank HFI portfolio has a total UPB of $28.2 billion in POAs as of Sept-2007; this represents a 22.5% YOY decline from $36.4 billion as of Sept-2006.

California loans comprise 56% or $15.8 billion of the $28.2 billion portfolio.

2. How many have HELOCs behind them?

10% ($2.6 billion) of the $28.2 billion POA portfolio has a Bank owned 2nd lien behind it. 12% ($3.5 billion) of the $28.2 billion POA portfolio has a CHL 2nd lien behind it. So, in total 22% or $6.1 billion of the $28.2 billion POA portfolio has a Countrywide 2nd lien behind it.

The total drawn amount on the 2nd liens is $605 million as of Sept-2007 (Line amount totals $852 Million).

3. What is the delinquency rate?

As of Sept. 30th 2007, 90+ day delinquencies total 2.91%, or $821 million. This represents a 261 basis point increase in the 90+ day delinquency rate from Sept. 30th 2006, and 123 basis points increase from June- 07. As the portfolio balance declines, the effects of seasoning and the housing market have amplified the impact of deteriorating portfolio performance on the delinquency rate.

California 90+ day delinquencies total 3.10% or $492 million as of Sept. 30th 2007. This is approximately 1.5 times the non-California 90+ day delinquency rate of approximately 2.67%.

All Bank vintages are performing better than similar vintage CHL-serviced PayOption ARMs. Bank Ever 60 DLQ rates have run at approximately half of CHL's level.

4. How many are in foreclosure?

0.19% ($52 million) of the $28.2 billion POA portfolio is in foreclosure as of Sept. 30th 2007. (182 loans). Bank POA lifetime charge offs total $52 million (Includes Charge-offs on Loans that were put-back from Bank to CHL). Bank POA lifetime net charge offs excluding the ones on putback loans total $40.7 Million.

5. What is the rate of prepayment on these loans?

The September 2007 prepayment rate for Bank PayOptions was a 24% CPR, down from a 34% CPR in 2Q07. Bank 3-year prepayment penalty POA have prepaid at 25% CPR from Sept 2006 to April 2007. They have declined to 12% CPR in Sept. 2007. The reduction in prepayment speed is attributable to a decline in HPA, increased cost of non-agency refinancing, and a market contraction of underwriting guidelines.

6. What are the prospects for future delinquencies and foreclosures?

Current forecasts call for the rate of new 90-day delinquencies on the Bank POA portfolio to continue to increase for the next four quarters, and to stay above the Q3 rate until the second half of 2009. This forecast for worsening delinquencies is consistent with Moody's HPA projections, which call for home prices to continue to decline during that time period.

Estimates of potential future delinquencies and foreclosures do not consider the firm's resources focused on loss mitigation in the form of loan modifications and refinances. Loss mitigation efforts may partially mute expected delinquency and foreclosure estimates.

Although we have not factored this possibility into the Bank's POA loss reserve projections, there is a possibility that the current spike in delinquencies could be related to a "flame out" in would-be flip transactions. Approximately 30% of the 2005 / 2006 POA book consists of 90% CLTV low-doc loans, with a 90+ delinquency rate of about 5%. Many of these delinquent loans may be speculators who misrepresented occupancy to obtain maximum leverage and likely mis-represented income as well. When it became apparent that no quick flip would be possible, default ensued.

7. How are we mitigating the risks posed by housing market and POA performance?

63% of the portfolio has first loss or mezzanine credit support in the form of mortgage insurance. 38% or $10.7 billion has first loss coverage to a 3% cap. 13% or $3.8 billion has mezzanine coverage from 1.75% to 4.75%. 12% or $3.3 billion has mezzanine coverage from 1.00% to 4.00%.

8. Relative contribution of delinquency growth due to HPA and other factors.

Declining house prices have had a significant impact on the performance of the most recent POA Vintages. The projected lifetime ever-90 delinquency rate for 2004 vintage is 2.85% versus 31.88% for the 2006 vintage (11x multiple). After adjusting for the greater seasoning of the 2004 vintage and less favorable borrower attributes in the 2006 vintage, the ever-90 rate for 2006 vintage is still 9.5 times that of the 2004 vintage. This variance is attributable to declining HPA and deteriorating credit environment.

9. Are we still putting these loans on our balance sheet, and if so, why?

Yes, the bank continues to retain POA loans for investment on balance sheet. The risk-return profile of these loans has been materially improved due to underwriting changes made in Q3 2007. Production of POAs has substantially declined due to borrower preference for hybrid negative amortization loan programs. The bank projection for Q4 originations of Payment Advantage loans for portfolio totals $427 Million compared with $71 Million in POA. The Payment Advantage portfolio is $1.4 Billion as of Sept-07.

10. Relative credit performance of POA versus Hybrid ARMs?

For 2004 POA Vintage, Bank Ever-90 delinquency rate is 0.85%.
For 2004 Hybrid Vintage, Bank Ever-90 delinquency rate is 0.74%.

For 2006 POA Vintage, Bank Ever-90 delinquency rate is 3.94%.
For 2006 Hybrid Vintage, Bank Ever-90 delinquency rate is 5.25%.

For the 2006 vintage, Hybrid ARMs layered risk is greater than POA's resulting in greater Ever-90 rates. (One Borrower % is 70% for Hybrids compared to 66% for POA; the combination of CLTV>95 and LOW Doc % is 12% for Hybrids compared to 1% for POAs). POA delinquency rates run lower early in the life of the loan due to the minimum payment option (80% of POA customers currently choose the minimum payment option).

11. Bank POA Cumulative Loss Assumptions and Resulting Returns

Cumulative losses assumed in pricing POAs from 2004 through 2007 vintages average 0.64%. The 0.64% cumulative loss estimate produced an expected return on capital of 21%. Retrospective cumulative loss estimates for the same POA vintages average 2.66%. These estimates produce a 15.8% return on capital expectation. The 2004-2007 book is anticipated to generate approximately $1.98 billion in pre-tax earnings net of losses from its inception through the remaining life of the portfolio.

Current guidelines produce a cumulative loss estimate of 0.90%, which is used to price new production. Current guidelines cumulative loss estimates generate a 25% return on capital expectation.

Jess Lederman

SMD & Chief Risk Officer

Sec Mktg - Credit Risk Mgmt

818-225-3038 Office
92-594-3038 Internal
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4500 Park Granada
Mail Stop: CH20C
Calabasas, CA 91302

EXHIBIT 4

What are the benefits of an Option Adjustable Rate Mortgage?

Option Adjustable Rate Mortgage

At last, a mortgage that puts **you** in control of your monthly payments...

The Option ARM

Here's how it works. Each month, you'll receive an easy-to-read loan statement that lets you choose the payment amount that best suits your current financial needs. Pay the minimum amount to free up funds for other uses, or make larger payments for faster equity build-up. It's ideal if your income fluctuates or steadily increases over the years.

Attractive loan features

- A **fixed interest rate for an initial period**; thereafter the interest rate may change monthly.
- A **minimum payment** amount that adjusts on an annual basis (after the first 5 years on the Fixed-Pay 60 and after the first 10 years on the Fixed-Pay 120), subject to a 7.5% payment change cap.
- A **7.5% payment change cap** limits how much the minimum monthly payment can increase or decrease from the previous minimum payment, except on the 5th year (10th year for the Fixed-Pay 120) of your loan and every five years thereafter.*
- A **lifetime interest rate cap** that protects you by limiting how high your interest rate can increase.

* Payment change caps are not effective when the principal balance exceeds 125% (110% in NY) of the original loan amount, and payments may adjust more frequently than annually in such situations. Payment adjustments are calculated based on the remaining loan term and current interest rate.

What is the **benefit** of an Option Adjustable Rate Mortgage?

Flexibility

It's **your choice** every month...

To make the decision that's right for you, you'll need to understand the features and benefits of each payment option. On the next five pages, you'll see an illustration of a monthly loan statement along with a brief description of the available options, including:

- Minimum monthly payment
- Interest-only payment
- Fully amortizing payment
- 15-year amortizing payment

Loan Statement

Statement Date:	July 16, 1999
Activity Since:	June 3, 1999
Loan Number:	0123456789

STEVEN M SAMPLE
GRACE H SAMPLE
ANY STREET
CITY STATE ZIP CODE

Current Loan Information

Property Address:	Any Street City State Zip Code	Principal Balance	$161,441.93
		Escrow Balance	$598.16
		Interest Rate	7.03300%

Payment Summary		Payment Due Information	
Principal	280.86-	Next Payment Due Date	08/01/99
Interest	951.12	Current Payment	880.03
Escrow	209.77	Total Amount Due	$880.03
Total Amount Received	$880.03		

To avoid late charges of $33.51, we must receive your payment by 08/16/99 during our business hours.

Escrow/Other Activity		Year-to-Date Information	
Property Taxes Paid	$0.00	Interest Paid	$ 6,187.72
Insurance Paid	$0.00	Principal Paid	$ 1,441.93-
		Real Estate Taxes Paid	$ 915.88
		Insurance Paid	$ 479.00
		Unpaid Deferred Int. (Loan-to-Date)	$ 1,752.85

Messages

* Adjustable Rate Loan Information

Index	4.78300
Margin	2.25000
For Payment Due	August 1, 1999
Interest Rate	7.03300%

This loan qualifies for PAYMENT OPTIONS. Each PAYMENT OPTION includes an escrow payment, late charge(s), and other fee(s) if applicable.

1. Minimum payment due:	$ 880.03
2. Interest only payment:	$1,155.95
3. Full principal and interest payment: (based on the remaining term of your loan)	$1,293.72
4. Full principal and interest payment: (based on 15-year term)	$1,697.17

Check the following pages for detailed information on your Payment Options:

Option 1: Manageable payments
Option 2: Pays all the interest
Option 3: Pays principal too
Option 4: Builds quick equity

FDIC

option 1

Manageable payments

The **minimum monthly payment**, Option 1, gives you more cash now and keeps your monthly payments manageable. Generally, this payment changes annually and is calculated using the initial interest rate for the first 12 months.* The minimum monthly payment is usually recalculated annually thereafter, based on the outstanding principal balance, remaining loan term and prevailing interest rate. Your loan consultant will provide you with complete details for your specific loan.

The Option ARM's 7.5% payment change cap limits how much the Option 1 payment can increase or decrease each year.

(During the initial interest rate period, Option 1 represents a full principal and interest payment; therefore, Options 2 and 3 are not applicable.)

* 60 months on the Fixed-Pay 60 and 120 months on the Fixed-Pay 120. Payments can change more frequently due to certain deferred interest situations.

option 2

Pays all the interest

At those times when the minimum monthly payment is not sufficient to pay the monthly interest due, you can avoid deferred interest by paying the minimum monthly payment plus any additional interest accrued during the month (same as **interest-only payment**). Your payments remain manageable, with no change in your principal balance for that month.

(Option 2 will not be offered if the interest-only payment is less than the minimum payment due.)

option 3

Pays principal too

This is the **fully-amortized payment**. It is calculated each month based on the prior month's interest rate, loan balance and remaining loan term. With this option, you pay all the interest due, reduce the principal and pay off your loan on schedule.

(Option 3 will not be offered if the full principal and interest payment is less than the minimum payment due.)

option 4

Builds quick equity

For faster equity build-up, quicker payoff and substantial interest savings, choose the largest monthly payment option. Option 4 is calculated to amortize your loan based on a **15-year term** from the first payment due date.

(Option 4 will only be offered on the 30- or 40-year term and will cease to be an option when the loan has been paid down to its 16th year.)

Maintain a **low mortgage** payment

Having up to four payment options allows you to manage your cash flow and overall financial picture on a monthly basis.

If rates increase, you can pay the minimum amount (Option 1), in which case some of your interest would be deferred. Deferred interest, also known as negative amortization, occurs when the monthly payment is not sufficient to cover the interest accrued during the prior month.

The unpaid interest is added to the balance of the loan, rather than increasing the current monthly payment.

You can avoid deferred interest and take advantage of the maximum tax benefit in the current year by paying Option 2 or 3.

Rate decreases may result in accelerated amortization, reducing principal or any unpaid interest more rapidly.

Select your payment option... **It's entirely up to you**

After considering your monthly financial objectives, choose the available option that best suits your needs. Just enter the amount of the option selected in the payment coupon section of the loan statement. In addition to the four payment options, your monthly statement will show, if applicable, the total amount of unpaid deferred interest on your loan. You may pay all or part of this deferred interest at any time.

No options will be offered if the loan is delinquent; then the total amount due will be required.

The loan statement is based on a 1-Month Option ARM loan closed on 11/09/98, for an original amount of $160,000, using the interest rates detailed in the payment example below. This periodic statement reflects payment options available for the 8th month of the loan.

Payment example for a $160,000 loan: For a 30-year loan, you would have 12 monthly payments of $670.26 followed by 348 payments ranging from $720.53 to $1,208.94; for a 15-year loan, you would have 12 monthly payments of $1,101.09 followed by 168 payments ranging from $1,183.68 to $1,573.33. These payment examples are based on an APR of 7.071% for a 30-year loan and 7.114% for a 15-year loan, each as of 8/16/99. Your APR and corresponding payments may be different, and the actual APR may vary after closing.

Certain restrictions and conditions apply. Programs and terms subject to change.

17592 (04/02)