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Superior Court of California,
County of Orange
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By Sarah Loose,Deputy Clerk

Attorneys for Defendants
BANK OF AMERICA, N.A.; BANK OF AMERICA CORPORATION; COUNTRYWIDE FINANCIAL CORPORATION (erroneously sued as "Countrywide Financial Corporation, a Delaware Corporation, dba BAC Home Loans Servicing");COUNTRYWIDE HOME LOANS, INC.; RECONTRUST COMPANY, N.A. (erroneously sued as "Recon Trust Company, a California entity form unknown"); CTC REAL ESTATE SERVICES; and LANDSAFE, INC.

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Attorney for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE, COMPLEX CIVIL DEPARTMENT

JOHN P. WRIGHT, an individual, et al.,

Plaintiffs,

v.

BANK OF AMERICA, N.A., a Delaware corporation; COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation, dba BAC HOME LOANS SERVICING; COUNTRYWIDE HOME LOANS, INC., a New York corporation; RECONTRUST COMPANY, N.A., a California entity form unknown; CTC REAL ESTATE SERVICES, a California corporation; LANDSAFE, INC.; and DOES 1 through 1000, inclusive,

Defendants.

Case No. 30-2011-00449059-CU-MT-CXC

Judge Gail Andler, Department CX101

STIPULATION FOR ORDER GRANTING LEAVE FOR PLAINTIFFS TO FILE FIFTH AMENDED COMPLAINT AND FIXING TIME FOR RESPONSE; ORDER

Complaint Filed: February 9, 2011
Trial Date: Not Assigned

Plaintiffs, through their attorneys of record, and Defendants BANK OF AMERICA, N.A.; BANK OF AMERICA CORPORATION; COUNTRYWIDE FINANCIAL CORPORATION (erroneously sued as "Countrywide Financial Corporation, a Delaware Corporation, dba BAC Home Loans Servicing"); COUNTRYWIDE HOME LOANS, INC.; RECONTRUST COMPANY, N.A. (erroneously sued as "Recon Trust Company, a California entity form unknown"); CTC REAL ESTATE SERVICES; and LANDSAFE, INC. (collectively "Defendants"), by and through their attorneys of record, submit this stipulation for an order granting Plaintiffs leave to file a fifth amended complaint.

RECITALS

On August 5, 2015, this Court held a case management conference. The Court ordered Plaintiffs to file a motion for leave to file an amended complaint or a stipulation for an order for such relief before the time of the next case management conference. The Court also ordered Plaintiffs to develop a trial management plan, and propose an order for the orderly disposition of the claims.

The Court set a case management conference for September 2, 2015 at 9:00 a.m., ordered the parties to file a joint report five court days before the hearing, and to attend the conference in person. The Court lifted the previously ordered stay on motion activity for the limited purpose of allowing Plaintiffs to file their motion for leave to file an amended complaint.

On August 24 and 25, 2015, the parties met and conferred by telephone. Plaintiffs asked Defendants to stipulate to a 30-day extension of time to file their motion or stipulation for leave to file an amended complaint. Plaintiffs also proposed Plaintiffs be divided into groups according to loan type (such as "negative amortization," "adjustable rate," "conventional," and so on). Plaintiffs proposed a further group of Plaintiffs claiming wrongful foreclosure claims. Plaintiffs acknowledged the claimants in the various loan groups and the plaintiffs in the wrongful foreclosure group would overlap.

On August 26, 2015, Defendants filed a stipulation and proposed order for a 30-day continuance of the September 2, 2015 case management conference, and accompanying deadlines.

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On August 28, 2015, the Court signed the order. The Court continued the case management conference and the date for Plaintiffs to file and serve their motion for leave to file an amended complaint, or stipulation for such leave, until September 30, 2015. The Court ordered the parties' joint report be filed no later than September 23, 2015.

On September 15, 2015, the parties met and conferred by telephone. Plaintiffs indicated they continued to work on the proposed amended complaint, and did not expect to have a draft until after the date the parties' joint report was due. Defendants expressed they would be unable to meet and confer concerning the categories proposed by Plaintiffs until after viewing the proposed amended complaint, and the parties agreed to a further stipulated continuance.

On September 23, 2015, Defendants filed a stipulation and proposed order continuing the September 30, 2015 case management conference to November 4, 2015, continuing the submission date of the parties' joint report until October 28, 2015, and allowing Plaintiffs to deliver their proposed amended complaint to Defendants by October 19, 2015.

On September 23, 2015, the Court signed the order. The Court ordered the parties' joint report to be filed no later than October 28, 2015, as well as Plaintiffs' motion for leave to file an amended complaint, or the parties' stipulation for such leave. The Court continued the case management conference to November 4, 2015.

On October 19, 2015, Plaintiffs emailed Defendants their proposed amended complaint, and its accompanying appendixes and exhibits. The proposed pleading divided Plaintiffs into four groups by loan type: (A) "negative amortization," (B) "interest only," (C) "adjustable rate," and (D) "conventional fixed rate." A further group, (E), encompassed "wrongful foreclosure" claims, whose members overlapped with the various loan groups.

On October 26, 2015, the parties met and conferred by telephone. After discussing a range of relevant issues, Defendants indicated they were unwilling to stipulate to the proposed amended complaint in its existing form. The parties agreed, subject to Court approval, to a further continuance of deadlines, to permit Plaintiffs time for further amendment.

On October 28, 2015, Defendants filed a stipulation and proposed order continuing the November 4, 2015 case management conference to December 9, 2015, continuing the submission

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date of the joint report until December 2, 2015, and requiring Plaintiffs deliver their proposed amended complaint to Defendants by November 23, 2015.

On November 2, 2015, the Court signed the order. As proposed by the parties, the Court ordered Plaintiffs to deliver their proposed amended complaint to Defendants by November 23, 2015, and that the parties' joint report and Plaintiffs' motion for leave to file an amended complaint, or stipulation for such leave, be filed no later than December 2, 2015. The Court continued the case management conference to January 5, 2016, instead of the December 9, 2015 date proposed by the parties.

On November 3, 2015, Defendants emailed Plaintiffs to schedule a meeting to discuss Plaintiffs' proposed groups. The parties agreed to meet and confer on November 9, 2015. On November 6, 2015, Defendants sent Plaintiffs a letter outlining their concerns with the groups proposed by plaintiffs, and proposing eight claims-based groupings.

On November 9, 2015, the parties met and conferred by telephone. Plaintiffs indicated a willingness to consider Defendants' suggested groupings, but required additional time to incorporate Defendants' suggestions into a further amended complaint. Plaintiffs suggested that, in light of the current Case Management Conference date scheduled by the Court, Plaintiffs deliver their amended complaint to Defendants for review by December 16, 2015, and the parties' joint report and Plaintiffs' motion for leave to file an amended complaint, or stipulation for such leave, be filed no later than December 28, 2015—five court days before the Case Management Conference. Defendants did not object to the proposed continuance.

On November 20, 2015, Plaintiffs filed a stipulation and proposed order continuing the submission date for the parties' joint report until December 28, 2015, and requiring Plaintiffs to deliver their proposed amended complaint to Defendants by December 16, 2015.

On December 1, 2015, the Court signed the order. The Court ordered the parties' joint report to be filed no later than December 28, 2015, as well as Plaintiffs' motion for leave to file an amended complaint, or the parties' stipulation for such leave.

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On December 16, 2015, Plaintiffs emailed Defendants a copy of their revised proposed amended complaint, and accompanying appendices and exhibits. The proposed pleading divided Plaintiffs into five groups: (1) Appraisal Plaintiffs—plaintiffs who relied upon Defendants' representations during the appraisal process, consisting of all plaintiffs; (2) Loan Type Plaintiffs, subgrouped according to prior categories: (A) "negative amortization," (B) "interest only," (C) "adjustable rate," and (D) "conventional fixed rate;" (3) Modification Plaintiffs—plaintiffs who suffered harm as a result of Defendants' acts in the loan modification process; and (4) Foreclosure Plaintiffs—plaintiffs who lost their homes to foreclosure. Plaintiffs in Groups 3 (Modification) and 4 (Foreclosure) were to be identified following after discovery.

On December 28, 2015, the parties met and conferred by telephone. Defendants agreed to stipulate to an order granting leave for Plaintiffs to file the proposed fourth amended complaint. The parties agreed the complaint would be deemed filed as of the date the Court signed the order, and that Defendants would have until March 15, 2016 to respond.

On January 5, 2016, the parties attended a Status Conference. Pursuant to the parties' stipulation, Plaintiffs' Fourth Amended Complaint was deemed filed as of that date, and Defendants were provided until March 15, 2016 to respond. The Court set a further status conference for April 12, 2016.

On January 11, 2016, the parties met and conferred by telephone about the sufficiency of Plaintiffs' fourth amended complaint, and Defendants' anticipated demurrer. In those discussions, Defendants agreed to deliver to Plaintiffs a draft demurrer by the end of January or shortly thereafter, to allow Plaintiffs the opportunity to review the arguments and make a decision about whether to stand on their existing complaint, or amend further.

On February 5, 2016, Defendants emailed Plaintiffs a draft memorandum of points and authorities in support of a demurrer to the fourth amended complaint. Defendants delivered a memorandum exceeding the statutory 15 page limit for such briefs, so that Plaintiffs would have the benefit of reviewing Defendants' arguments without page constraint.

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Plaintiffs then indicated they planned to amend further rather than defend the existing pleading against Defendants' planned demurrer. Plaintiffs agreed to circulate a proposed Fifth Amended Complaint for consideration.

On March 1, 2016, Plaintiffs sent Defendants a proposed Fifth Amended Complaint, including appendices and exhibits. Defendants confirmed receipt and agreed to advise Plaintiffs whether they would stipulate to its filing.

Defendants then agreed to stipulate to the filing of the Fifth Amended Complaint, on the terms reflected in the stipulation below.

STIPULATION

The parties stipulate to an order granting Plaintiffs leave to file a fifth amended complaint, a true and correct copy of which is attached to this stipulation as Exhibit "A."

The parties further stipulate that Defendants shall have 30 days to respond, with the time running from the date the Court signs the concurrently filed Proposed Order.

In light of the length of the proposed complaint and its appendices, the parties further stipulate that Defendants' Memorandum of Points and Authorities in support of their anticipated demurrer may be up to 25 pages in length. The Memorandum of Points and Authorities submitted by Plaintiffs in opposition to any demurrer to the fifth amended complaint may be up to 25 pages in length. Defendants' reply brief in support of the demurrer may be up to 15 pages in length.

Dated: March 8, 2016

BRYAN CAVE LLP
Stuart W. Price
Sarah Burwick
By: ______________________
Sarah Burwick
Attorneys for All Defendants

Dated: March 8, 2016

BROOKSTONE LAW, PC
Jonathan Tarkowski
By: ______________________
Jonathan Tarkowski
Attorney for All Plaintiffs

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[PROPOSED] ORDER

The Court has read and considered the Stipulation submitted by the parties. Good cause appears for the requested relief.

IT IS ORDERED: Plaintiffs are granted leave to file the fifth amended complaint attached to the parties' stipulation as Exhibit "A."

The fifth amended complaint is deemed filed as of the date of this order.

Defendants shall have 30 days from the date of this order to respond to the fifth amended complaint.

The Memorandum of Points and Authorities submitted by Defendants in support of any demurrer to the fifth amended complaint may be up to 25 pages in length.

The Memorandum of Points and Authorities submitted by Plaintiffs in opposition to any demurrer to the fifth amended complaint may be up to 25 pages in length.

The Memorandum of Points and Authorities submitted by Defendants in reply to the opposition of Plaintiffs to any demurrer to the fifth amended complaint may be up to 15 pages in length.

IT IS SO ORDERED.

Date Judge Signed: March 25, 2016

HON JUDGE ANDLER

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CIVIL COMPLEX CENTER

JOHN P. WRIGHT, an individual; CHRISTINA I. PETERSEN, an individual; CHRISTINE ABRAHAM, an individual; GEORGE ACOSTA, an individual; MELINDA ACOSTA, an individual; ROSA ACOSTA, an individual; JASON ADAMS, an individual; MICHAEL ADDIMANDO, an individual; PATRICIA ADDIMANDO, an individual; ELEANOR AGUILAR, an individual; GEORGE AGUILAR, an individual; MARICELA AGUILAR, an individual; RAUL AGUILAR, an individual; KIMBERLEE AHINGER, an individual; CHARLES AHUMADA, an individual; ANAIT ALABYAN, an individual; ELAINE ALBERTO, an individual; KYLEN ALFORD, an individual; JOHN ALLMOND, an individual; LEOLA ALLMOND, an individual; SHARI ALTMARK, an individual; ALFREDO ALVAREZ, an individual; MARIA ALVAREZ, an individual; KAREN AMADIO, an individual; JOSEPH AMARAL, an individual; EUNICE ANDERSON, an individual; ORSON ANDERSON, an individual; JORGE ANDRADE, an individual; CONSTANCE ANDREWS, an individual; CHRISTOPHER ARAGON, an individual; SHERRI ARAGON, an individual; GUSTAVO ARAIZA, an individual;

Case No.: 30-2011-00449059-CU-MT-CXC

[Honorable Gail A. Andler, Dept. CX101]

FIFTH AMENDED 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]

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YVONNE ARAIZA, an individual; VICTORIA ARCADI, an individual; KENNEDY M. AREVALO, an individual; GENE ARGENTINE, an individual; RAMONA D GAYOBA-AREVALO, an individual; APOLONIO ARROYO, an individual; ELENA ARROYO, an individual; ALFONSO BARAJAS (DECEASED), an individual; PETER BARBRICK, an individual; MIA BARBRICK, an individual; LYNN BAROFF, an individual; JANICE BAROFF, an individual; RUDY BARTOLOME, an individual; CYNTHIA BARTOLOME, an individual; ARAM BONNI, an individual; TANYA MOHSENIAN, an individual; KAREN BRULLO, an individual; RAYMOND BRULLO, an individual; MANUEL BUSTAMANTE, an individual; CHERYL BUSTAMANTE, an individual; ANNA CALLIRGOS, an individual; MARIO CALLIRGOS, an individual; JAMES CAMPBELL, an individual; LUIS CAMPOS, an individual; JANNETTE CAMPOS, an individual; HERNANDO CARDONA, an individual; RUBIOLA CARDONA, an individual; LEANDRO CASAS JR, an individual; DON CHEN, an individual; MAY CHEN, an individual; FRANK CHUNG, an individual; TERRY CHUNG, an individual; VICKY CONERLY, an individual; GORDY CRUEL, an individual; TONY COSTADINI, an individual; RANDY COURTNEY, an individual; LEOLA DAVIS, an individual; JOSEPH DAVIS, an individual; MARIA DE LA CRUZ, an individual; LEONARDO DELGADO, an individual; GABE DESADI, an individual; MARC DESMAS, an individual; RUBEN DIAZ, an individual; LINDA DIAZ, an individual; JOSE DIAZ, an individual; DARYL DOTSON, an individual; KAREN DOTSON, an individual; DAVID EGANS, an individual; RICKIA HAMILTON, an individual; JACK EVANS, an individual; NOEL EZEKIEL, an individual; CECILIA EZEKIEL, an individual; AMY FAN, an individual; DAMON FLEISCHER, an

individual; LETICIA FLEISCHER, an individual; FEDERICO FRANCISCO, an individual; ERLINDA FRANCISCO, an individual; APRIL FUENTES, an individual; AUDREY MEADOWS, an individual; JANEATTE GANTER, an individual; GREGORY GANTER, an individual; ROLANDO GARCIA, an individual; JOHN GERMING, an individual; BRENDA LEE-GERMING, an individual; RICKEY GILLIAM, an individual; BARBARA GILLIAM, an individual; ROSE MARIE GONZALEZ, an individual; DAVID GONZALEZ, an individual; YVETTE GONZALEZ, an individual; STIRLING HALE, an individual; MICHELLE HALE, an individual; ROBERT HAROUTOONIAN, an individual; EUREKA HAROUTOONIAN, an individual; NORA HENG, an individual; SONYA HENRY, an individual; SHERRY HERNANDEZ, an individual; ALFREDO HERNANDEZ, an individual; DARRYL HILL, an individual; ELDON HINSON, an individual; JULIE HINSON, an individual; MICHAEL HOOVER, an individual; JOHN HOUSE, an individual; CHELSEA HOUSE, an individual; SHARON HOWELL, an individual; HAROLD HOWELL, an individual; FREDERICK JAMES, an individual; NANCY JAMES, an individual; CHRISTOPHER S. JEONG, an individual; HERMENEGILDO JIMENEZ, an individual; PETER ZHONGPING JIN, an individual; LIAN ZHANG, an individual; RICHARD JOHNSON, an individual; MICHELLE JOHNSON, an individual; STEPHEN JONES, an individual; ANDRINA C. PALADIN, an individual; FELIPE JUAREZ, an individual; MARIA JUAREZ, an individual; ANDREW JUNG, an individual; SUSAN JUNG, an individual; EDWIN KAMAE, an individual; JESSICA KAMAE, an individual; CHRISTIAN KASSEBAUM, an individual; PATRICIA KASSEBAUM, an individual; MADELINE KAYE, an individual; STEPHEN KERVER, an individual; CLIFTON

KINGSTON, an individual; JACQUELINE KINGSTON, an individual; BRIGETTE LABAR, an individual; NAZER LAGRIMAS, an individual; TERESITA LAGRIMAS, an individual; MORAD LALEZARIAN, an individual; ERIKA LARIOS, an individual; TODD LEGASPI, an individual; MARIA LETAMENDI, an individual; FRED HAFEZI, an individual; COLE LIGHT, an individual; LISA LIGHT, an individual; LUIS LIMON, an individual; YOLANDA LIMON, an individual; CARLOS LUNA, an individual; TERESA LUNA, an individual; JOSE MADRIGAL, an individual; MARTHA MADRIGAL, an individual; DAWN MAHURIAN, an individual; GEORGE MAHURIAN, an individual; MICHAEL MANTEL, an individual; GRACIELA MAROTTI, an individual; MARIO MAROTTI, an individual; JOSEPH MCKERNAN, an individual; THOMAS MECOM, an individual; ROXANN MECOM, an individual; MARTIN MENDOZA, an individual; NORMA MENDOZA, an individual; DRAZEN MERSNIK, an individual; AMY MONTANO-GORDON, an individual; GRANT GORDON, an individual; FELTON MONTLE, an individual; RHUENETTE MONTLE, an individual; ROBBY MOORE, an individual; TERRY MOORE, an individual; SANDRA MORAN, an individual; MARK C. MUELLER, an individual; BETH A. MUELLER, an individual; SHONDA MYERS, an individual; GREGORY MYERS, an individual; JIM NGO, an individual; ANOUSURIE NGO, an individual; JUAN NUNGARAY, an individual; GERALD OSWALT, an individual; LOIS OSWALT, an individual; MARY PADILLA, an individual; EMIRA PAJEVIC, an individual; MUSTAFA PAJEVIC, an individual; ELVIRA PALAC, an individual; EDMOND YATES, an individual; HOMERO PENA, an individual; JEANNETTE PENA, an individual; DAVID PINTO, an individual; CLAUDIA PINTO, an individual; MARY POWELL, an individual; JESSE

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PRUITT, an individual; TONYA PRUITT, an individual; ALEJANDRO RAMIREZ, an individual; MARTHA RAMIREZ, an individual; ROBERT RAVEN, an individual; ARLENE RAVEN, an individual; MICHAEL RIDDLE, an individual; LONNIE RODRIGUE, an individual; ROSA RODRIGUEZ, an individual; IGNACIO RODRIGUEZ, an individual; WANDA ROGERS, an individual; MANSEL ROGERS, an individual; LOUISE ROSE, an individual; JOHN ROSE, an individual; DIANA LYNN ROSS, an individual; MARIA SANCHEZ, an individual; ELSIE SANCHEZ, an individual; FERNANDO SANCHEZ, an individual; HANNELORE SEBAGH, an individual; AARON SEBGAH, an individual; ALICE SHIOTSUGU, an individual; ROMEL SIERRA DUENAS, an individual; PAUL SIGUENZA, an individual; CHRISTINE SIGUENZA, an individual; STEVE SLEAD, an individual; TRACEY SLEAD, an individual; BRETT SMITH, an individual; ANNELIESE SMITH, an individual; NOLAN SMITH JR., an individual; DEBRA SNYDER, an individual; JAVIER SOLIS, an individual; SANDRA SOLIS, an individual; JOSEPH SPADAFORE, an individual; PAM SPADAFORE, an individual; LOUIS SPAMPINATO, an individual; TAMARA SPAMPINATO, an individual; LUZ SPEARS, an individual; CINDY STENBECK, an individual; KENNETH GALSTER, an individual; STUART STEPHENS, an individual; CHRISTY STEPHENS, an individual; ROBERT STREET, an individual; ARTHUR TAYLOR SMITH, an individual; GLORIA TERRAZAS, an individual; NATIVIDAD TERRAZAS, an individual; BRUCE TETER, an individual; DANNY THAI, an individual; LISA THOMAS, an individual; PHILIP THOMAS, an individual; TINA TRUONG, an individual; RICHARD TUSSING, an individual; CAROL VAIL, an individual; LEONORA VALERA, an individual; MICHAEL VALERA, an

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individual; NGHIA VAN BREEMEN, an individual; KURT VAN BREEMEN, an individual; CRISSOSTOMOS VILLAREAL, an individual; LORELI WAHL, an individual; HARJINDER WARAICH, an individual; GURMEET WARAICH, an individual; MICHAEL WATTENBARGER, an individual; OLIMPIA GARABET, an individual; STEFANIE WELLER-SONNENBURG, an individual; SHAUN SONNENBURG, an individual; JEFF WELLS, an individual; GILBERT WENCK, an individual; IAN WETHINGTON, an individual; RACHEL WETHINGTON, an individual; TAREN WHITE, an individual; NIKKI WHITE, an individual; ANNUZIATE WHITNEY, an individual; LINDA WILLIAMS, an individual; NATALIE YAGHMOURIAN, an individual; SALVADOR NIETO, an individual; ALFRED AYALA, an individual; ADELA AYALA, an individual; JOSEPH F. BARTLETT, an individual; FABIAN BITANGA, an individual; TERESITA BITANGA, an individual; APRIL BOWERS, an individual; JOHN BOWERS, an individual; HARRY BROWN, an individual; PATRICIA BROWN, an individual; ALFRED CARROZZO, an individual; JILL CARROZZO, an individual; GEORGE CISLER, an individual; BRENT CLARK, an individual; MONICA CLARK, an individual; MERRIL COLLINS, an individual; ERIN COLLINS, an individual; LISA COURTO, an individual; ROWLAND DAY, an individual; FADI DIAZ, an individual; MARTHA DIAZ, an individual; CAROLYN DOCTOR, an individual; RUSHEL FERRER, an individual; FEDERICO FERRER, an individual; FRANCISCO FLORES, an individual; JUDITH FLORES, an individual; DEO FLORES, an individual; NILDA FLORES, an individual; ANNA (PATRICIA) FUSILIER, an individual; BARBARA GAUTHIER, an individual; MICHAEL GAUTHIER, an individual; MARK GENNARO, an individual; XIAO-YAN GONG, an individual;

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BARBARA HARADA, an individual; YUKIO K. HARADA, an individual; VINCE HARPER, an individual; MARGARET HARPER, an individual; RONNIE HARWOOD, an individual; CHARLES HILL, an individual; RUTHANN HILL, an individual; ALIREZA KHOOBYARI, an individual; STEVEN LAYTON, an individual; SEM LENH, an individual; SHAUNMARY LLEWELLYN, an individual; CHRISTOPHER LLEWELLYN, an individual; KATHLEEN MAHONEY, an individual; EDMUND MARTINEZ, an individual; VIRGINIA BREWER-MARTINEZ, an individual; CAROYN H. MARTINO, an individual; AMANDA MORRIS, an individual; LISA M. MUSCOLO, an individual; STEPHEN NADASDY, an individual; KIM NGUYEN, an individual; FRANK NGUYEN, an individual; YOLANDA NUNIEZ, an individual; MARTIN NUNEZ, an individual; TERI OROURKE, an individual; GERAL SZILINSKY, an individual; GERALDO OSEGUERA, an individual; KERYN OSEGUERA, an individual; RAQUEL PAGADUAN, an individual; JOHN PASCARELLA, an individual; STACY SIMPSON, an individual; CASSANDRA PASH, an individual; JEFFREY PASH, an individual; NHAN PECH, an individual; MIGUEL PENA, an individual; WILLIAM R. MIMIAGA, an individual; VINCENT PREE, an individual; ROBERT RAMIREZ, an individual; HELEN RAMIREZ, an individual; JOHN RAMOS, an individual; JENNY RAMOS, an individual; LEE RARICK, an individual; MARY RARICK, an individual; DARLEEN REDDY, an individual; MARCO ROJAS, an individual; RODELIO RUTGER, an individual; GARRY SAGE, an individual; JUDY SAGE, an individual; JUAN SALCEDO, an individual; CARMELINA SALCEDO, an individual; PERRY SCOTTI, an individual; CYNTHIA SCOTTI, an individual; BOB SHELDON, an individual;

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TANYA SHELDON, an individual; RODNEY SHRECKENGOST, an individual; ANNIE SHRECKENGOST, an individual; PAUL H. SIBEK, an individual; LINDA C. OWENS, an individual; JACLYN SILVESTRI, an individual; RICHARD SOLIVEN, an individual; LALAINE SOLIVEN, an individual; DEBRA SPICE, an individual; WILLIAM STOLL, an individual; MARTIN SWAN, an individual; JASON THOMAS, an individual; CHERRI THOMAS, an individual; ZHAOPO TIAN, an individual; ZHIXING ZHOU, an individual; BRIAN TILLOTSON, an individual; DEANNA TILLOTSON, an individual; NOEL TORREFLORES, an individual; CHITA TORREFLORES, an individual; BRAD VALENTINE, an individual; KRISTINE VALENTINE, an individual; PAUL VEROSTEK, an individual; RICHARD WALTZ, an individual; BRENDA WALTZ, an individual; DANIEL WILBY, an individual; CONNIE WILBY, an individual; MARK WILSON, an individual; ZENAIDA WILSON, an individual; IVONNE ARMENDARIZ, an individual; ADRIANA CARBAJAL, an individual; RENE CARBAJAL, an individual; JUAN MAGANA, an individual; LINDA ATTALLA, an individual; BRENDA AUSTIN, an individual; JAMES AUSTIN, an individual; RUDOLPH BARRIOS, an individual; JAY BARUA, an individual; ANIKA BARUA, an individual; TOM BENNER, an individual; STEPHANIE BENNER, an individual; DEBRA BOURDOUKLIS, an individual; ROBIN PHOENIX, an individual; SHARON BROWN, an individual; KARL BURCH, an individual; DON CALLOWAY, an individual; KENWIN CHARLES, an individual; DESIREE CHARLES, an individual; JOE CHAVEZ, an individual; PAMELA CHIARAMONTE, an individual; JOHN CHICCA, an individual; MARSHALO CHICCA, an individual; ELMER CLARKE, an individual; PEARLE CLARKE, an individual; LEROY COFIELD, an individual; LEAH COFIELD, an individual;

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WILLIAM COSTA, an individual; JOYCE COSTA, an individual; MARIA CRUZ, an individual; PATRICIA CRUZ, an individual; EVA D'AVELLA, an individual; COYE DECUIR, an individual; AURORA DIAZ, an individual; JAMES DIGIOVANNI, an individual; JUDITH ANN PERKINS, an individual; LORNA DOMINGO, an individual; ROMULO DOMINGO, an individual; EARLIE C. EDMOND, an individual; JACQUELINE ELAM, an individual; KOFI ELAM, an individual; RICH ERNST, an individual; LEDY ESPINOSA, an individual; RAFAEL ESPINOSA, an individual; SANTOS ESPINOZA, an individual; ETELVINA ESPINOZA, an individual; ELVIA ESQUIVIAS, an individual; JORGE ESQUIVAS, an individual; BLANCA FESSLER, an individual; TIM FESSLER, an individual; ARTHUR FITCHTENBERG, an individual; ROBERT FLORES, an individual; JACKIE FLORES, an individual; AMADA FLORES, an individual; JOSE SALAZAR, an individual; DWIGHT FORD, an individual; RENE GALINDO, an individual; GUADALUPE GALINDO, an individual; RAIVIE GALURA, an individual; RUFFEL GALURA, an individual; CLARITO GANDIA, an individual; CLARITA GANDIA, an individual; ELENO PEINADO GARCIA, an individual; RICARDO GARDOCE, an individual; JOSEPHINE GARDOCE, an individual; FIDEL GOMEZ, an individual; MANUEL GONZALES, an individual; NEIL GORDON, an individual; JOHN GOSSE, an individual; CAROLYN GRABER, an individual; SALVADOR GUERRA PENA, an individual; MANVEL GYULOGLYAN, an individual; SANDRA HALL, an individual; JEMINEZ HARRINTON, an individual; ANGELO HATZAKIS, an individual; DEBRA HATZAKIS, an individual; RUSSELL HERBERT JR., an individual; SCOTT HEYERMANN, an individual; CHARLES HUTCHISON, an individual; TANYA HUTCHISON, an individual; JOSE IBARRA,

an individual; CELIA JIMENEZ-IBARRA, an individual; ROSA M. ISLAS, an individual; FIDEL JAUREGUI, an individual; PABLO JIMENEZ, an individual; MICHAEL KING, an individual; KAMRON KOOPAREH, an individual; JUNG LEE, an individual; BYUNG NAM LEE, an individual; BRIAN LIDDICOTE, an individual; HEATHER LIDDICOTE, an individual; MARITA LIEBESMAN, an individual; AMPARO LIWANAG, an individual; LORETO LIWANAG, an individual; RAYMOND LOPEZ, an individual; ANA LOPEZ, an individual; JOSELITO LOPEZ, an individual; BELLAFE LOPEZ, an individual; EMILLO LOPEZ, an individual; WILLIAM LOSEE, an individual; KENNETH LUKES, an individual; LYNN LUKES, an individual; WILLIAM LYNUM-YOUNG, an individual; JAMI LYNUM-YOUNG, an individual; ISAIAH LYONS, an individual; ROBERT LYSSE, an individual; MADY LYSSE, an individual; JOSE MACIAS, an individual; REFUGIO MACIAS, an individual; VICTOR MADRID, an individual; CARLOS MAGALLON, an individual; NICHOLAS MAGLIO, an individual; LYHNNE MAGLIO, an individual; TEMENOUJKA MARINOV, an individual; MILEN MARINOV, an individual; ENOCH MARRON, an individual; SUSAN MARRON, an individual; IRENE MARROQUIN, an individual; RONNIE MARROQUIN, an individual; MARIA MARTINEZ, an individual; BERTHA MATA, an individual; CESAR MATA, an individual; CARLOS MENDEZ, an individual; DARLENE MENDEZ, an individual; JANETTE MINER, an individual; DAVID MINER, an individual; GUSTAVO MIRANDA, an individual; MAHESH MODY, an individual; NEELI MODY, an individual; SHRUTI MODY, an individual; BHARTI MODY, an individual; EVELYN MOLINA, an individual; ANGEL MONARREZ, an individual; PABLO MONROY, an individual; ARGELIA MONROY, an individual; CARLOS

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MORALES, an individual; MARIA MORALES, an individual; MARK MORGAN, an individual; ROLAND MURPHY, an individual; RENEE MURPHY, an individual; AURORA MURRILLO, an individual; GILBERT URESTI, an individual; DIEN QUANG NGUYEN, an individual; HIEN NGUYEN, an individual; TUAN NGUYEN, an individual; MARCUS NYKAN, an individual; JOHN O'BRIEN, an individual; MARK K. O'BRIEN, an individual; CURTIS OHL, an individual; ADRIAN OLIVEIRA, an individual; MARYANN OLIVIERA, an individual; SARA OROZCO, an individual; FELIX ORTIZ, an individual; ALEJANDRO PADILLA, an individual; ELVIRA PADILLA, an individual; FERDINAND PARAGAS, an individual; JOSEPHINE PARAGAS, an individual; JAMES W. PARIZA, an individual; DOROTHY A. PARIZA, an individual; NANDANL INDRA PERERA, an individual; DHAKSHINA PERERA, an individual; VICTOR PEREZ, an individual; SANDRA PEREZ, an individual; MARIAM PETROSYAN, an individual; ROBERT POWELL, an individual; JANET POWELL, an individual; RENAN PULECIO, an individual; CARIE RAYBURN, an individual; ELISEO RIVAS, an individual; CARMEN RIVERA, an individual; OSCAR RIVERA, an individual; JERRY ROGGE, an individual; LUCY RUIZ, an individual; RONALD RUIZ, an individual; SANDRA LIERA-RUIZ, an individual; SANDRA RUIZ-BENAVIDES, an individual; SERGIO BENAVIDES, an individual; HENRIETTA SAID, an individual; RODRIGO SANCHEZ, an individual; GENEROSA SANCHEZ, an individual; PETER SCHMIDT, an individual; MARGARET SHMIDT, an individual; JOSPEPH SHURANCE, an individual; CHRISTIAN SILVER, an individual; MATHEW SILVERMAN, an individual; FRANK SMITH, an individual; MICHELLE SMITH, an individual; DANIEL SPATACEAN, an individual; COSMINA

SPTACEAN, an individual; MARY SUTTON, an individual; AMANDA TANG, an individual; ANGEL PELAYO, an individual; LAURA PELAYO, an individual; MIHN TANG, an individual; STEVE TARBET, an individual; ANNETTE TARBET, an individual; CHARLES TARPLEY, an individual; RODNEY TAYLOR, an individual; CHRISTINE THOMAS, an individual; MAHMOOD TIMBO, an individual; ADRIAN TRUJILLO, an individual; LYDIA TRUJILLO, an individual; NANCY TSAI, an individual; JOAN UHL, an individual; LUIS VALLE, an individual; JUANA DAVILA, an individual; GABRIEL VASQUEZ, an individual; PATRICIA VILLALON GARCIA, an individual; PHIL WALSH, an individual; WANDA WALSH, an individual; WLADIMIR WASJUTIN, an individual; SYLVIA WASJUTIN, an individual; JOHN T. WELCH, an individual; RICHARD WEST, an individual; NANCY ARMSTRONG, an individual; GWENDOLYN WILSON, an individual; EARLIE WINDHAM, an individual; ROBERT J. WOLF JR., an individual; GODFREY YOUNG, an individual; RENITA YOUNG, an individual; GERMAN ZAMORA, an individual; AMY ZAMORA, an individual; GRACE ZARAGOZA, an individual; MARIA TERESA ARNOLD, an individual; MICHAEL ASHER, an individual; SHIRLEY ASHER, an individual; JOSE AYALA, an individual; CONRADO BANAGA, an individual; LETICIA TUNGOL, an individual; CONNIE BARGERON, an individual; JAMES BARGERON, an individual; EDWARD BARRERA, an individual; KAREN BARTLETT, an individual; DONACIANO BAUTISTA, an individual; JOSE W. BENITEZ, an individual; DONNA BERNBROCK, an individual; RANDY BRITO, an individual; KATIA BRITO, an individual; CLAUDIA BUEZO, an individual; JANET BUQUET, an individual; WILLIAM BUQUET, an individual; SANDRA

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BURINGTON, an individual; WARREN BURRINGTON, an individual; LINDA BURROLA, an individual; JOHN BUTCHER, an individual; SUSAN BUTCHER BORGES, an individual; BERNADO CALDERON, an individual; VIRGINIA MARTINEZ, an individual; JUDITH CALDWELL, an individual; LINO CAMBALIZA, an individual; TERESA CAMBALIZA, an individual; JOSE CARMONA, an individual; ALEX CARRILLO, an individual; GUADALUPE CERVANTES, an individual; HOSEA COBB, an individual; SCOTT COFFEY, an individual; EVAN F. COLE, an individual; MARTHA CORONEL, an individual; DAVID CORRALES, an individual; RAYMOND CURRY, an individual; LORETTA CURRY, an individual; LEO CUSTODIO, an individual; MARIA CUSTODIO, an individual; SATYA DANDAMUDI, an individual; M.D., an individual; ARUNA DANDAMUDI, an individual; GONZALO DE LA ROSA, an individual; WILLIAM DEBNAM, an individual; LOUISE DEBMAN, an individual; LILLIAN DELOS SANTOS, an individual; DOMIELE DELOS SANTOS, an individual; ELIZABETH DELOSREYES, an individual; ELBIA DIAZ, an individual; FRANCISCO DIAZ, an individual; MARIO DIAZ, an individual; MAGDALENA DIAZ, an individual; JOSE DONIS, an individual; MARTHA FALCON, an individual; JON ESPINOZA, an individual; RHONDA ESPINOZA, an individual; HARVEY EVANS, an individual; SHERLY EVANS, an individual; TAULAFOGA FAALAVE, an individual; KORETI FAALAVE, an individual; JUDIT FORD, an individual; CHARLES FORD, an individual; DONACIANO GAETA, an individual; ELIDA GAETA, an individual; EFRAIN GALLARDO, an individual; ANNIE GALLARDO, an individual; ROSA E. GARAICOA, an individual; RENEE GARCIA, an individual; ROBERT GARCIA,

1 an individual; ANA GARICA, an individual;
WILLIE GILMORE JR., an individual;
2 PHYLLIS GILMORE, an individual; DAN
GLAZIER, an individual; JULIET GLAZIER,
3 an individual; BLANCA GOMEZ, an
4 individual; ALBERT GOMEZ, an individual;
LORNA GRANDMAISON, an individual;
5 JOSE ANTONION GUITRON, an individual;
SARAH GUZMAN, an individual; VICTOR
6 GUZMAN, an individual; RICHARD
7 HARRISON, an individual; SHARON E.
HEALEY, an individual; KENDALL
8 KOWALSKY, an individual; SILVIA
9 HERNANDEZ, an individual; IRMA
HERNANDEZ, an individual; JUAN
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HERNANDEZ, an individual; ROCIO
11 HERNANDEZ, an individual; GARY HILL,
12 an individual; DEAN JOHNSON, an
individual; ANJA CHRISTINE-JOHNSON, an
13 individual; SANDRA JONES, an individual;
WESLEY JONES, an individual; RENEE
14 JONES, an individual; RAYMOND JONES
15 JR., an individual; ANKA JOVANOVIC, an
individual; MIKE A. JUNG, an individual;
16 HYE KIONG JUNG, an individual;
YASMINE KABUYA, an individual; KARI
17 KLIMAN, an individual; VELIDA KREMIC,
18 an individual; SCOTT LEE, an individual;
RICHARD LOPEZ, an individual; DOLORES
19 LOPEZ, an individual; ALEX LOPEZ, an
20 individual; ROBERT LOZIER, an individual;
MADISON HOPERT, an individual;
21 FELICISIMO MAGSINO, an individual;
MARJOREENA MGASINO, an individual;
22 JUAN MANZO, an individual; LUZ MANZO,
23 an individual; ASJA MAROUF, an individual;
GAMAL H. MAROUF, an individual;
24 ROLANDO MARTINEZ, an individual;
DENISE MASSEY, an individual; JOHN
25 MASSEY, an individual; ASHAA MASUD, an
26 individual; JEFF MASUD, an individual;
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28 individual; VIRGINIA MENDEZ, an

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individual; FAITH MENDOZA, an individual; RICHARD MICKELSON, an individual; LOVELLE RIVERA, an individual; ALLEN MITCHELL, an individual; MARY MITCHELL, an individual; SALLY MOLIDOR, an individual; TORRENCE MOLIDOR, an individual; JOEL MOSS, an individual; LISA MOSS, an individual; MARI MOTEN-BAILEY, an individual; STEVEN MULLDORFER, an individual; JUAN MUNOZ, an individual; CARLOS NAVA, an individual; TERRI NAVA, an individual; SUSANA NEGRETE, an individual; ERIC NELSON, an individual; BAO KHANH DIANA NGUYEN, an individual; LONNY PACE, an individual; LOUISE PADILLA, an individual; ANGELIZA PALMA, an individual; HARRY PAPPO, an individual; CHERYL PAPPO, an individual; ALVARO PARADA, an individual; BONITA PARKER, an individual; ANNA PATTON, an individual; ANDRE PATTON, an individual; AMY PENALOZA, an individual; RIGOBERTO PENALOZA, an individual; DARRELL PENDLEY, an individual; KATHLEEN PENDLEY, an individual; SAM PERCHIK, an individual; ANNA FRIEDA TAKSAR, an individual; A FRANK PEREZ, an individual; EFTHALIA PEREZ, an individual; ROBERT PERKINS, an individual; DON PINEDA, an individual; WENDY PINEDA, an individual; ANTONIO PONCE, an individual; IMELDA PONCE, an individual; MARIA DEL REFUGIO, an individual; JOSE PRECIADO, an individual; ROOSEVELT ROBINSON, an individual; LORENZO RODRIGUEZ, an individual; GREGORIA RODRIGUEZ, an individual; AURELIO RUIZ, an individual; ANEESA SAMAAN, an individual; HANNA MIKHAIL, an individual; DAVID SANDERS, an individual; SIMFROSO SANTOS, an individual; FELIZA SANTOS, an individual; TEDDY SANTOS, an individual; CAROLYN SANTOS, an individual; GOTTFRIED SCHMIDT, an individual; MARITZA SCHMIDT, an individual; ROBERT SEMEL,

an individual; ERIN SEMEL, an individual; ENRIQUE SEVENLLO, an individual; VICTORIA SILLER-SUAREZ, an individual; CATHERINE SIMPSON, an individual; NIGEL SKYERS, an individual; JUSTIN SLEDGE, an individual; WILLIAM SORENSEN, an individual; BENJAMIN SOTO, an individual; MINERVA SOTO, an individual; DEBORAH SPRINGER, an individual; TOM SPRINGER, an individual; RONALD STORTS, an individual; ANDREW SUMMERS, an individual; ROSE SUMMERS, an individual; MAGDALENA TAVASCI, an individual; DAVID THOMAS, an individual; THOMAS TODD, an individual; CONSTANTINA TODD, an individual; LILIANE TRAN, an individual; HON TRONG, an individual; RODOLFO VELASCO JIMENEZ, an individual; PAULA VELASCO, an individual; MARGARET VELEZ, an individual; STANLEY VOROBA, an individual; SHARI VOROBA, an individual; TAMARA VOSS, an individual; JAMES WALKER, an individual; POLLY WALKER, an individual; DEBRA WARD, an individual; DOUGLAS WITKINS, an individual; ZACHARY WELCH, an individual; KATHRYN WILLIAMS, an individual; JANET WILSON, an individual; JOANNE WINFREY, an individual; JAMES WINFREY, an individual; RUBEN WRIGHT, an individual; MARIA CORALIA WRIGHT, an individual,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., a Delaware corporation; COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation, dba BAC HOME LOANS SERVICING; COUNTRYWIDE HOME LOANS, INC., a New York corporation; RECONTRUST COMPANY, N.A., a California entity form unknown; CTC REAL ESTATE SERVICES, a California corporation; LANDSAFE, INC., a

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Delaware Corporation, 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,

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

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

16 7. The law must not allow corporate demand for greater profits to exceed the extant and
17 imperative public need for informed disclosure. This Court must recognize Defendants' duty to
18 disclose. Without such duties, Banks are effectively granted immunity for their continued future
19 wrongs against the borrowing public which has a right to depend on the fundamental notion of good
20 faith and fair dealing in contractual relationships. No business, particularly one as centrally-important
21 to the American economy as banking, should be allowed to so egregiously deceive its consumers. A
22 fair reading of this Complaint, including reasonable inferences from the facts alleged herein, is that the
23 fraudulently concealed *not only* to the commission of torts and crimes involving third parties, but also
24 to, among other things: (1) the possession of internal reports concluding that if a Plaintiff took a loan
25 from Defendants that Plaintiff would suffer material losses; (2) contrary to its advertising and other
26 broadly disseminated public statements, (i) Defendants had abandoned their conventional lending
27 business, appraisal, underwriting and lending standards and was now granting credit as part of an
28 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

1 trading – pumping for as long as they could and then dumping before the truth came out and Plaintiffs'
2 losses were locked in.
3 17. As Mozilo and Defendants knew from no later than 2004, these loans were
4 unsustainable for Countrywide and the borrowers and to a certainty would result in a crash that would
5 destroy the equity invested by Plaintiffs and other Countrywide borrowers.
6 18. However, because Defendants were no longer holding these loans, but rather selling
7 them off into the secondary market, and moreover because their loans were insured, Defendants stood
8 to profit regardless of whether their loans performed or not. Defendants couldn't lose. Only their
9 victims – Plaintiffs and other borrowers, as well as investors - stood to pay the price for Defendants'
10 pervasive fraud, or so it seemed. As it turns out, Defendants fraud was so pervasive, that its crushing
11 effects have devastated more than just its borrowers and investors, but has permeated the global
12 economy. This Complaint, however, seeks redress as it pertains to only one prong of Defendants'
13 pervasive fraud – the wrongs perpetrated on their borrowers: Plaintiffs herein.
14 19. These acts are now subject of numerous complaints and very large scale settlements.
15 The largest recently announced settlement exceeds an amount of $8.5 billion to settle Claims regarding
16 representations and warranties. The settlement represents over 530 REMIC's (Real Estate Mortgage
17 Investment Conduits) with an original balance of $424 Billion dollars. The majority of Plaintiffs loans
18 seeking relief in this complaint are part of these REMIC's.
19 20. At the very least, at the time of entering into the notes and deeds of trust referenced
20 herein with respect to each of the Countrywide Defendants was bound and obligated to fully and
21 accurately disclose to each borrower, including each Plaintiff herein, that the mortgage being offered to
22 the Plaintiff was, in fact, part of a massive fraud that Countrywide knew would result in the loss of the
23 equity invested by Plaintiff in his home and in severe impairment to Plaintiff's credit rating.[1]
24 21. It is now all too clear that this was the ultimate high-stakes fraudulent investment
25 scheme of the last decade. Couched in banking and securities jargon, the deceptive gamble with
26 consumers' primary assets – their homes – was nothing more than a financial fraud perpetrated by
27
28

[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 and sub-grouped based on Defendants' actions and resulting harms suffered by Plaintiffs. The Groups are as follows:

a. Group 1 Appraisal Plaintiffs: All Plaintiffs in this action.

b. Group 2 Loan Type Plaintiffs. Plaintiffs are sub-grouped by loan product as follows:

i. Group 2A: Plaintiffs who signed "Negative Amortization" mortgages.[2]

[2] Group 2A: Negative Amortization Mortgages: Charles Ahumada, Karen Amadio, Joseph Amaral, Jorge Andrade, Gene Argentine, Maria Arnold, Apolonio Arroyo, Elena Arroyo, Michael Asher, Shirley Asher, Linda Attalla, Brenda Austin, James Austin, Janice Baroff, Lynn Baroff, Anika Barua, Jay Barua, Sandra Benavides, Sergio Benavides, Harry Brown, Patricia Brown, Karen Brullo, Raymond Brullo, John Butcher, Susan Butcher- Borges, Don Calloway, Hernando Cardona, Rubiola Cardona, Jose Carmona, Alex Carrillo, Pamela Chiaramonte, Anja Christine-Johnson, Hosea Cobb, Evan Cole, David Corrales, Domiele De Los Santos, Lillian De Los Santos, James Digiovanni, Rich Ernst, Ledy Espinosa, Rafael Espinosa, Jon Espinoza, Rhonda Espinoza, Cecilia Ezekiel, Noel Ezekiel, Amy Fan, Federico Ferrer, Rushel Ferrer, Damon Fleischer, Leticia Fleischer, Francisco Flores, Judith Flores, Annie Gallardo, Efrain Gallardo, Gregory Ganter, Janeatte Ganter, Rosa Garaicoa, Eleno Garcia, Barbara Gauthier, Michael Gauthier, Daniel Glazier, Juliet Glazier, Blanca Gomez, Albert Gomez, Manuel Gonzales, David Gonzalez, Yvette Gonzalez, Lorna Grandmaison, Richard Harrison, Silvia Hernandez, Gary Hill, Michael Hoover, Madison Hopert, Charles Hutchison, Tanya Hutchison, Rosa Islas, Dean Johnson, Sandra Jones, Anka Jovanovic, Nazer Lagrimas, Teresita Lagrimas, Steven Layton, Byung Lee, Todd Legaspi, Maria Letamendi, Brian Liddicote, Heather Liddicote, Mady Lysse, Robert Lysse, Carlos Magallon, Lyhnne Maglio, Nicholas Maglio, Michael Mantel, Maria Martinez, Rolando Martinez, Douglas Maxwell, Brenda Maxwell, Faith Mendoza, Bharti

ii. Group 2B: Plaintiffs who signed "Interest Only" mortgages.[3]

Mody, Mahesh Mody, Neeli Mody, Shruti Mody, Torrence Molidor, Sally Molidor, Evelyn Molina, Felton Montle, Rhuenette Montle, Carlos Morales, Maria Morales, Mark Morgan, Aurora Murrillo, Lisa Muscolo, Carlos Nava, Terri Nava, Kim Nguyen, Hien Nguyen, Tuan Nguyen, Salvador Nieto, John O'Brien, Mark O'Brien, Adrian Oliveira, MaryAnn Oliviera, Teri O'Rourke, Sara Orozco, Geraldo Oseguera, Keryn Oseguera, Elvira Palac, Miguel Pena, Salvador Pena, Amy Penaloza, Rigoberto Penaloza, Sam Perchik, Judith Perkins, Claudia Pinto, David Pinto, Mary Powell, Vincent Pree, Jenny Ramos, John Ramos, Carmen Rivera, Oscar Rivera, Ignacio Rodriguez, Rosa Rodriguez, Diana Ross, Henrietta Said, Generosa Sanchez, Rodrigo Sanchez, Feliza Santos, Simfroso Santos, Carolyn Santos, Teddy Santos, Hannelore Sebagh, Aaron Sebagh, Alice Shiotsugu, Joseph Shurance, Matthew Silverman, Catherine Simpson, Arthur Smith, Frank Smith, Michelle Smith, Luz Spears, Christy Stephens, Stuart Stephens, William Stoll, Ronald Storts, Robert Street, Mary Sutton, Gerald Szilinsky, Anna Taksar, Charles Tarpley, Magdalena Tavasci, Gloria Terrazas, Natividad Terrazas, Mahmood Timbo, Constantina Todd, Thomas Todd, Liliane Tran, Hon Tran, Tina Truong, Nancy Tsai, Brad Valentine, Kristine Valentine, Leonora Valera, Michael Valera, Margaret Velez, Shari Voroba, Stanley Voroba, James Walker, Polly Walker, Wladimir Wasjutin, Sylvia Wasjutin, Zachary Welch, Jeff Wells, Gilbert Wenck, Connie Wilby, Daniel Wilby, Robert Wolf, Natalie Yaghmourian, Edmond Yates, Amy Zamora, German Zamora.

[3] Group 2B: Interest Only Mortgages: Rosa Acosta, Maricela Aguilar, Raul Aguilar, Eleanor Aguilar, George Aguilar, Anait Alabyan, Elaine Alberto, Constance Andrews, Christopher Aragon, Sherri Aragon, Gustavo Araiza, Yvonne Araiza, Victoria Arcadi, Kennedy Arevalo, Ivonne Armendariz, Nancy Armstrong, Adela Ayala, Alfred Ayala, Alfonso Barajas, Edward Barrera, Joseph Bartlett, Karen Bartlett, Donna Bernbrock, Fabian Bitanga, Teresita Bitanga, April Bowers, John Bowers, Virginia Brewer-Martinez, Katia Brito, Randy Brito, Sharon Brown, Claudia Buezo, Karl Burch, Linda Burrola, Bernado Calderon, Luis Campos, Jannette Campos, Adriana Carbajal, Rene Carbajal, Desiree Charles, Kenwin Charles, Joe Chavez, Don Chen , May Chen , George Cisler, Elmer Clarke, Pearle Clarke, Scott Coffey, Leah Cofield, Leroy Cofield, Erin Collins, Merril Collins, Vicky Conerly, Tony Costadini, Randy Courtney, Gordy Cruel, Eva D'avella, Aruna Dandamudi, Satya Dandamudi, Rowland Day, Maria De La Cruz, Gonzalo De La Rosa, William Debnam, Louise Debnam, Coye Decuir, Marc Desmas, Linda Diaz, Ruben Diaz, Fadi Diaz, Martha Diaz, Magdalena Diaz, Mario Diaz, Aurora Diaz, Lorna Domingo, Romulo Domingo, Jose Donis, Romel Duenas, Jacqueline Elam, Kofi Elam, Harvey Evans, Shirley Evans, Koreti Faalave, Taulafoga Faalave, Martha Falcon, Dwight Ford, April Fuentes, Clarita Gandia, Clarito Gandia, Olimpia Garabet, Renee Garcia, Robert Garcia, Ana Garcia, Rolando Garcia, Patricia Garcia, Josephine Gardoce, Ricardo Gardoce, Ramona Gayoba-Arevalo, Mark Gennaro, Fidel Gomez, Grant Gordon, Amy Gordon, Carolyn Graber, Jose Guitron, Manvel Gyuloglyan, Fred Hafezi, Sandra Hall, Ronnie Harwood, Sharon Healey, Russell Herbert, Pedro Hernandez, Rocio Hernandez, Charles Hill, Ruthann Hill, Frederick James, Nancy James, Hermenegildo Jimenez, Wesley Jones, Stephen Jones, Renee Jones, Raymond Jones, Andrew Jung, Susan Jung, Hye Jung, Mike Jung, Edwin Kamae, Jessica Kamae, Madeline Kaye, Michael King, Clifton Kingston, Jacqueline Kingston, Kari Kliman, Kendall Kowalsky, Velida Kremic, Brigette Labar, Jung Lee, Luis Limon, Yolanda Limon, Amparo Liwanag, Loreto Liwanag, Ana Lopez, Raymond Lopez, Bellafe Lopez, Joselito Lopez, Emilio Lopez, Alex Lopez, Robert Lozier, Kenneth Lukes, Lynn Lukes, Victor Madrid, Jose Madrigal, Martha Madrigal, Juan Magana, Kathleen Mahoney, Milen Marinov, Temenoujka Marinov, Asja Marouf, Gamal Marouf, Irene Marroquin, Ronnie Marroquin, Virginia Martinez, Carolyn Martino, Denise Massey, John Massey, Audrey Meadows, Drazen Mersnik, Richard Mickelson, Gustavo Miranda, Allen Mitchell, Mary Mitchell, Argelia Monroy, Pablo Monroy, Amy Montano-Gordon, Steven Mulldorfer, Gregory Myers, Shonda Myers, Stephen Nadasdy, Bao Khanh Nguyen, Yolanda Nuniez, Marcus Nykan, Curtis Ohl, Lonny Pace, Alejandro/Elvira Padilla, Louise Padilla, Raquel Pagaduan, Audrina Paladin, Angeliza Palma, Alvaro Parada, Ferdinand Paragas, Josephine Paragas, Bonita Parker, John Pascarella, Angel Pelayo, Laura Pelayo, Homero Pena, Jeannette Pena, Dhakshina Perera, Nandanl Perera, Sandra Perez, Victor Perez, A. Perez, Efthalia Perez, Robert Perkins, Mariam Petrosyan, Antonio Ponce, Imelda Ponce, Janet Powell, Robert Powell, Renan Pulecio, Alejandro Ramirez, Martha Ramirez, Lee Rarick, Mary Rarick, Arlene Raven, Robert Raven, Carie Rayburn, Eliseo Rivas, Lovelle Rivera, Roosevelt Robinson, Mansel Rogers, Wanda Rogers, Jerry Rogge, John Rose, Louise Rose, Lucy Ruiz, Rodelio Rutger, Carmelina Salcedo, Juan Salcedo, Maria Sanchez, Elsie Sanchez, Fernando Sanchez, David Sanders, Peter Schmidt, Margaret Schmidt, Cynthia Scotti, Perry Scotti, Erin Semel, Robert Semel, Bob Sheldon, Tanya Sheldon, Christine Siguenza, Paul Siguenza, Victoria Siller-Suarez, Christian Silver, Stacy Simpson, Nigel Skyers, Steve Slead, Tracey Slead, Justin Sledge, Debra Snyder, Lalaine Soliven, Richard Soliven, Shaun Sonnenburg, Benjamin Soto, Minerva Soto, Joseph Spadafore, Pam Spadafore, Louis Spampinato, Tamara Spampinato, Cosmina Spatacean, Daniel Spatacean, Deborah Springer, Tom Springer, Andrew Summers, Rose Summers, Martin Swan, Amanda Tang, Mihn Tang, Annette Tarbet, Steve Tarbet, Cherri Thomas, Jason Thomas, Brian Tillotson, Deanna Tillotson, Chita

iii. Group 2C: Plaintiffs who signed "Adjustable Rate Mortgages."[4]

iv. Group 2D: Plaintiffs who signed "Conventional Fixed Mortgages."[5]

Torreflores, Noel Torreflores, Richard Tussing, Carol Vail, Luis Valle, Paul Verostek, Phil Walsh, Wanda Walsh, Brenda Waltz, Richard Waltz, Gurmeet Waraich, Harjinder Waraich, Debra Ward, Michael Wattenbarger, John Welch, Steffanie Weller-Sonnenburg, Richard West, Annuziate Whitney, Mark Wilson, Zenaida Wilson, Gwendolyn Wilson, Janet Wilson, Earlie Windham, John Wright.

[4] Group 2C: Adjustable Rate Mortgages: Christine Abraham, Jason Adams, Mia Barbrick, Peter Barbrick, Connie Bargeron, James Bargeron, Stephanie Benner, Tom Benner, Aram Bonni, Debra Bourdouklis, Janet Buquet, William Buquet, Sandra Burington, Warren Burrington, Lino Cambaliza, Teresa Cambaliza, James Campbell, Alfred Carrozzo, Jill Carrozzo, Leandro Casas, Loretta Curry, Raymond Curry, Gabe Desadi, Jose Diaz, David Egans, Etelvina Espinoza, Santos Espinoza, Arthur Fichtenberg, Jackie Flores, Robert Flores, Charles Ford, Judit Ford, Federico Francisco, Anna Fusilier, Donaciano Gaeta, Elida Gaeta, Guadalupe Galindo, Rene Galindo, John Germing, Barbara Gilliam, Rickey Gilliam, Phyllis Gilmore, Willie Gilmore, Xiao-Yan Gong, Rose Gonzalez, John Gosse, Stirling Hale, Michelle Hale, Rickia Hamilton, Barbara Harada, Yukio Harada, Eureka Haroutoonian, Robert Haroutoonian, Angelo Hatzakis, Debra Hatzakis, Alfredo Hernandez, Sherry Hernandez, Darryl Hill, Eldon Hinson, Julie Hinson, Harold Howell, Sharon Howell, Michelle Johnson, Richard Johnson, Felipe Juarez, Maria Juarez, Yasmine Kabuya, Christian Kassebaum, Patricia Kassebaum, Stephen Kerver, Alireza Khoobyari, Kamron Koopareh, Brenda Lee-Germing, Marita Liebesman, Cole Light, Lisa Light, Carlos Luna, Teresa Luna, Isaiah Lyons, Edmund Martinez, Ashaa Masud, Jeff Masud, Joseph Mckernan, Carlos Mendez, Darlene Mendez, William Mimiaga, Tanya Mohsenian, Angel Monarrez, Martin Nunez, Emira Pajevic, Mustafa Pajevic, Dorothy Pariza, James Pariza, Christina Petersen, Robin Phoenix, Gottfried Schmidt, Maritza Schmidt, Enrique Sevenllo, Jaclyn Silvestri, Javier Solis, Sandra Solis, Zhaopo Tian, Joan Uhl, Ian Wethington, Rachel Wethington, Taren White, Kathryn Williams, Zhixing Zhou.

[5] Group 2D: Conventional Fixed Rate Mortgages: George Acosta , Melinda Acosta, Michael Addimando, Patricia Addimando, Kimberlee Ahinger, Kylen Alford, John Allmond, Leola Allmond, Shari Altmark, Alfredo Alvarez, Maria Alvarez, Eunice Anderson, Orson Anderson, Jose Ayala, Conrado Banaga, Rudolph Barrios, Cynthia Bartolome, Rudy Bartolome, Donaciano Bautista, Jose Benitez, Cheryl Bustamante, Manuel Bustamante, Judith Caldwell, Anna Callirgos, Mario Callirgos, Guadalupe Cervantes, John Chicca, Marshalo Chicca, Frank Chung, Terry Chung, Brent Clark, Monica Clark, Martha Coronel, Joyce Costa, William Costa, Lisa Courto, Linda Cowens, Maria Cruz, Patricia Cruz, Leo Custodio, Maria Custodio, Juana Davila, Joseph Davis, Leola Davis, Elizabeth De Los Reyes, Maria Del Refugio, Leonardo Delgado, Elbia Diaz, Francisco Diaz, Carolyn Doctor, Daryl Dotson, Karen Dotson, Alyson Edmond, Jorge Esquivas, Elvia Esquivias, Jack Evans, Blanca Fessler, Tim Fessler, Deo Flores, Nilda Flores, Amada Flores, Erlinda Francisco, Kenneth Galster, Raivie Galura, Ruffel Galura, Neil Gordon, Sarah Guzman, Victor Guzman, Margaret Harper, Vince Harper, Nora Heng, Sonya Henry, Irma Hernandez, Juan Hernandez, Scott Heyermann, Chelsea House, John House, Jose Ibarra, Fidel Jauregui, Christopher Jeong, Pablo Jimenez, Celia Jimenez-Ibarra, Peter Jin, Morad Lalezarian, Erika Larios, Scott Lee, Sem Lenh, Sandra Liera-Ruiz, Christopher Llewellyn, Shaunmary Llewellyn, Dolores Lopez, Richard Lopez, William Losee, Jami Lynum-Young, William Lynum-young, Jose Macias, Refugio Macias, Felicisimo Magsino, Marjoreena Magsino, Dawn Mahurian, George Mahurian, Juan Manzo, Luz Manzo, Graciela Marotti, Mario Marotti, Enoch Marron, Susan Marron, Bertha Mata, Cesar Mata, Roxann Mecom, Thomas Mecom, Jose Mena, Lucia Mena, Virginia Mendez, Martin Mendoza, Norma Mendoza, Marjoreena Mgasino, Hanna Mikhail, David Miner, Janette Miner, Robby Moore, Terry Moore, Sandra Moran, Amanda Morris, Joel Moss, Lisa Moss, Mari Moten-Bailey, Beth Mueller, Mark Mueller, Juan Munoz, Renee Murphy, Roland Murphy, Susana Negrete, Eric Nelson, Jim Ngo, Anousurie Ngo, Frank Nguyen, Dien Nguyen, Juan Nungaray, Felix Ortiz, Gerald Oswalt, Lois Oswalt, Mary Padilla, Cheryl Pappo, Harry Pappo, Cassandra Pash, Jeffrey Pash, Andre Patton, Anna Patton, Nhan Pech, Darrell Pendley, Kathleen Pendley, Don Pineda, Wendy Pineda, Jose Preciado, Jesse Pruitt, Tonya Pruitt, Helen Ramirez, Robert Ramirez, Darleen Reddy, Michael Riddle, Lonnie Rodriguez, Gregoria Rodriguez, Lorenzo Rodriguez, Marco Rojas, Aurelio Ruiz, Ronald Ruiz, Sandra Ruiz-Benaides, Garry Sage, Judy Sage, Aneesa Samaan, Annie Shreckengost, Rodney Shreckengost, Paul Sibek, Anneliese Smith, Brett Smith, Nolan Smith, William Sorensen, Debra Spice, Cindy Stenbeck, Rodney Taylor, Bruce Teter, Danny Thai, Lisa Thomas, Philip Thomas, Christine Thomas, David Thomas, Adrian Trujillo, Lydia Trujillo, Leticia Tungol, Gilbert Uresti,

c. Group 3: Modification Plaintiffs.[6]

d. Group 4: Foreclosure Plaintiffs.[7]

35. The harms suffered by Group 1 Plaintiffs are directly linked to Defendants actions in the appraisal process. 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. The harms suffered by Group 2 Loan Type Plaintiffs are directly linked to the type of mortgage they signed in the mortgage origination process and therefore the Plaintiffs are sub-grouped by the type of loan product that they signed. All Plaintiffs in this action signed a loan. Therefore, all Plaintiffs in this action are in one of the four (4) subgroups of Group 2.

37. The harms suffered by Group 3 Modification Plaintiffs are harms suffered as a result of Defendants' action in relation to promising to offer, offering a modification, accepting a modification application, and/or denying modification application by Plaintiffs.

38. The harms suffered by Group 4 Foreclosure Plaintiffs are Plaintiffs whom have lost their home due to foreclosure.

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 in this complaint in an Appendix. Each Plaintiff has a declaration in Appendix A-D, which are divided by the Group 2 loan types as follows: Group 2A in Appendix A, Group 2B in Appendix B, Group 2C in Appendix C, Group 2D in Appendix D. Group 4 Plaintiffs have an additional declaration in Appendix E specifically for the Wrongful Foreclosure cause of action.

//

Kurt Van Breemen, Nghia Van Breemen, Gabriel Vasquez, Paula Velasco, Rodolfo Velasco- Jimenez, Crissostomos Villareal, Tamara Voss, Loreli Wahl, Douglas Watkins, Nikki White, Linda Williams, James Winfrey, Joanne Winfrey, Maria Wright, Ruben Wright, Godfrey Young, Renita Young, Grace Zaragoza, Lian Zhang.

[6] Group 3: Modification Plaintiffs are to be fully listed after discovery.

[7] Group 4: Foreclosure Plaintiffs are to be fully listed after discovery.

42. In addition to the Plaintiff groupings by loan type, Group 3 Plaintiffs consist of Plaintiffs who have claims against Defendants in regard to modification issues, including but not limited to representations Defendants would offer and grant modifications, , delays in processing modification applications, and/or modification application denials.

43. Finally, Group 4 consists of Plaintiffs who were wrongfully foreclosed upon. Group 4 Plaintiffs have all causes of action available but only as they relate to the foreclosure process. Therefore, all Plaintiffs in Group 4 are also in Group 1, one of the Groups 2A-D, and possibly Group 3 for the causes of action as they relate to non-foreclosure process claims.

44. 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).

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 Orange.

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 Orange. 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 Orange.

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 Orange. 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 DBA BAC Home Loans Servicing, and Countrywide Home Loans, Inc. shall be collectively referred to as **"Bank Defendants"**

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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 (emphasis supplied).

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.

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

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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

1 broker dealers in Japan and the United Kingdom, an introducing broker dealer of futures contracts, an
2 asset manager and a broker of mortgage servicing rights. With the exception of its commercial
3 mortgage activities, the company transacts only with institutional customers, such as banks, other
4 depository institutions, insurance companies, asset managers, mutual funds, pension plans, other broker
5 dealers and governmental agencies. Customers of its commercial real estate finance business are the
6 owners or sponsors of commercial properties, who can be individuals or institutions. Countrywide
7 Asset Management Corporation manages the acquisition and disposition of loans from third parties, as
8 well as loans originated by Countrywide Home Loans, on behalf of Countrywide Home Loans. These
9 are typically delinquent or otherwise illiquid residential mortgage loans, which have primarily been
10 originated under Federal Housing Administration (FHA) and Veterans Administration (VA) programs.
11 The Company attempts to rehabilitate the loans, using the servicing operations of Countrywide Home
12 Loans, with the intent to securitize those loans that become eligible for securitization. The remaining
13 loans are serviced through foreclosure and liquidation, which includes the collection of government
14 insurance and guarantee proceeds relating to defaulted FHA and VA program loans. Securities trading
15 activities include the trading of debt securities in the secondary market after the original issuance of the
16 security. Underwriting activities encompass the assumption of the risk of buying a new issue of
17 securities from the issuer and reselling the securities to investors, either directly or through dealers.
18 Capital Markets primarily underwrites mortgage-related debt securities.
19 75. Founder Angelo Mozilo and David S. Loeb set out to corner the market and gain market
20 share at all cost. By diversifying their mortgage holdings and creating all of the above mentioned
21 entities they can keep all segments of a mortgage transaction in house. They successfully cut out all
22 middlemen and became market-makers and market-manipulators all at the same time. In order to fuel
23 the growth of the company they had to aggregate loans and had to lower their standards in order to
24 meet their quotas. For a securitization machine to function properly, it must churn out as many loans as
25 possible and take them to market. In the case of Countrywide they were wildly successful in cornering
26 the market to the tune of 20% of all originations in the United States.
27 76. In order to continue its unprecedented growth and return equity to shareholders,
28 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."

77. 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.

78. 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.

79. 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.

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

80. 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.

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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 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. (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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88. 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.

89. 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.

90. 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.

91. 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.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

102. 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

103. 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%)

104. 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.

105. 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

106. 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.

107. 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.

108. 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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109. 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.

110. 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.

111. 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.

112. 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*.

113. 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

114. 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."

115. 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

116. 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."

117. 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.

118. 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.

119. 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.

120. 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.

121. 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.

122. 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.

123. 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.

124. 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.

125. 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

126. 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")

127. 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.

128. 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.

129. 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.

130. 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.

131. 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>

132. 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.

133. 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.

134. 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.

135. 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.

136. 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.

137. 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.

138. 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.

139. 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.

140. 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

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

The Difference Between Being "Qualified" for a Loan and Being able to "Afford" a Loan

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

147. 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.

148. 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.

149. 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.

150. 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%.

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151. 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).

152. 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.

153. 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.

154. 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.

155. 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.

156. 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.

157. 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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158. 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.

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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.

165. 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.

166. 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.

167. 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%.

168. 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).

169. 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).

170. 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.

171. 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

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

173. 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.

174. 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.

175. 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.

176. 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.

177. 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"

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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.

178. 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

179. 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.

180. 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.

181. 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.

182. 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.

183. 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.

184. 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.

185. 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.

186. 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

187. 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.

188. 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.

189. 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."

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

191. 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.

192. 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.

193. 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.

194. 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.

195. 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.

196. 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.

197. 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."

198. 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."

199. 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."

200. 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."

201. 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."

202. 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."

203. 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.

204. 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."

205. 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.

206. 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.

<u>Defendants Were Well Aware Of Their Fraud</u>

207. 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 A**, and hereby incorporated into this Complaint by reference.

208. 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.

209. 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)

210. 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, why?"

A: [by Jess Lederman] "Yes, the bank continues to retain [pay option ARM] loans for investment on balance sheet."

211. 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)

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

a. Carlos Garcia directs Countrywide's Managing Directors to: "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. Carlos Garcia directs Countrywide's Managing Directors to: "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)

213. 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.

214. 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.

215. 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…

216. 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."

217. 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.

218. 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."

219. 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.

220. 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.

221. 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.

222. 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

223. 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.

224. 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.

225. 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.

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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%.

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

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

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

229. 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.

230. 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.

231. 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.

232. 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.

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

234. 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.

235. 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.

236. 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.

237. 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.

238. 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.

239. 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.

240. 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 would have been unable to reasonably discover said frauds any earlier.

241. 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,

1 Plaintiff borrowers would not negatively amortize their loan;
2 i. Representations that ""During the initial interest rate period [of an Option ARM
3 loan], Option 1 [the minimum payment] represents a *full principal* ***and*** *interest*
4 *payment*" intentionally couched in ambiguous terms to obfuscate the length of the
5 'initial interest rate period" and deceiving a borrower into believing that the Option
6 1 payment would pay principal and interest for a significant amount of time, when in
7 reality, the Option 1 payment did not pay any principal, and in fact did not even pay
8 interest – it paid less than interest resulting in negative amortization. (See **Exhibit**
9 **B**, which is hereby incorporated into this Complaint by reference);
10 j. Other partial misrepresentations and half-truths calculated to induce the borrower to
11 fundamentally misunderstand the nature of their loan, such that Plaintiff-borrowers
12 would agree to a loan they would not have otherwise agreed to, such as the meaning
13 of a pre-payment penalty, or whether they had a pre-payment penalty.
14 242. Defendants, working in conjunction with one another, **intentionally and affirmatively**
15 **misrepresented**:
16 a. The true terms of the borrowers' loans, including their interest rate, the terms of their
17 loans, whether the loan was variable or fixed, the duration of any fixed period, and
18 the inclusion of a prepayment penalty;
19 b. That Plaintiffs would be able to *afford* the loans they were being given;
20 c. That Defendants' calculations confirmed that Plaintiffs will be able to afford the
21 loans they were being given;
22 d. That Defendants calculations confirmed that Plaintiffs would be able to afford the
23 additional financial obligation resulting from Defendant's loans, taking into account
24 Plaintiffs' other debts and expenses;
25 e. That the term "qualify" was synonymous with being able to "afford" a loan.
26 f. That by paying the minimum payment on the Option ARM loan they would not be
27 deferring interest (aka "negatively amortizing"), when in reality, they would be
28 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

243. 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.

244. 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.

245. 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.

246. 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.

247. 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*.**

248. 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.

249. 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.

250. 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

251. 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.

252. 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.

253. 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.

254. 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

255. 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.

256. Defendants never had any intent of modifying their loans, despite Plaintiffs' full compliance with the terms of the offer.

257. 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.

An Example of Defendants' Wrongs

258. 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.

259. 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.

260. 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.

261. 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.

262. 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.

263. 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.

264. 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

265. 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.

266. 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

267. "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.

268. 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.

269. 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

270. 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.

271. 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.

272. 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.

273. 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.

274. 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.

275. 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.

276. 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.

277. 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.

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

279. 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.

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

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

282. 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.

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

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

285. 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.

286. 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.

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

288. 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").

289. 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.

290. 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.

291. 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.

292. 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.

293. 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."**

294. 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.

295. 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.

296. 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.

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

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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.

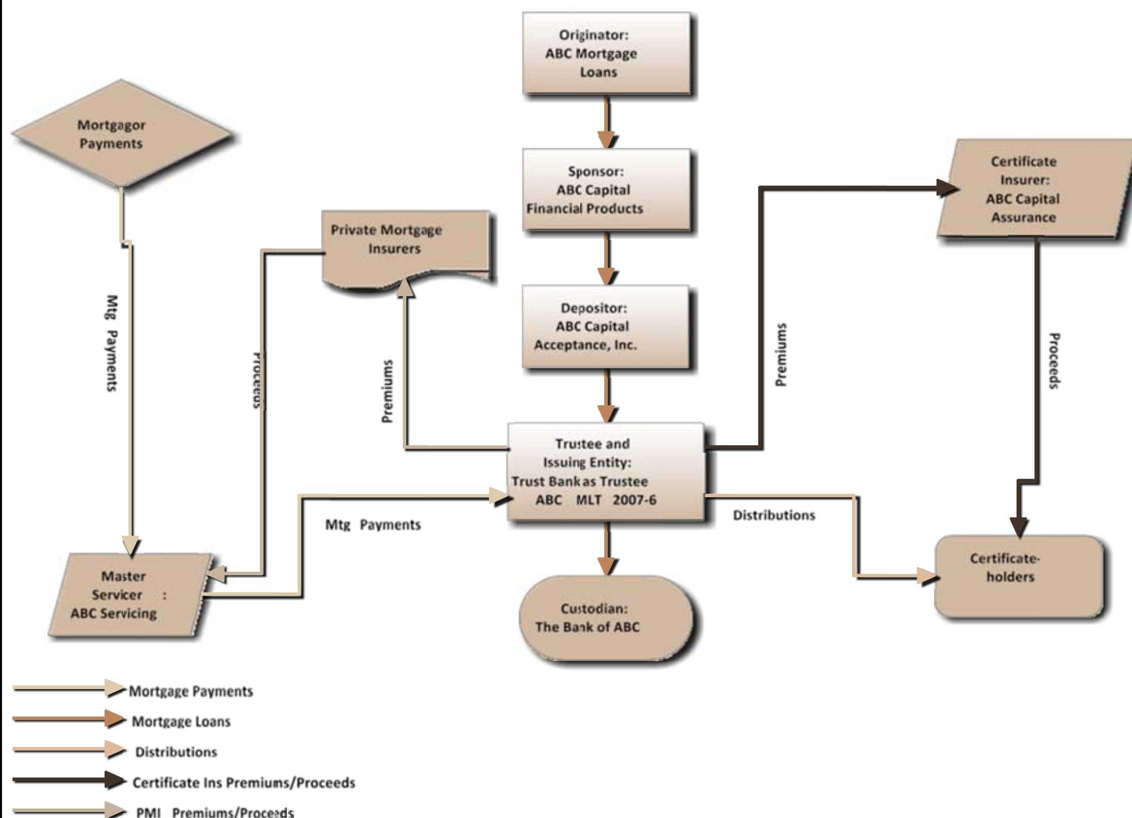

Figure A - Securitization Schematic

298. 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.

299. 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.

There is No Chain of Title

300. 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."

301. "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.

302. 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.

303. 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]

304. 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.

<u>Understanding MERS – And Its Role In Defendants' Wrongful Foreclosure Process</u>

305. 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.

306. 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.

307. 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.

308. 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.

309. 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.

310. 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.

311. 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.

312. 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".

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

314. 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.

315. 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,8 the following described property in the County of [_________].

316. 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

[8] 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.

through duly enacted legislation which includes appropriate safeguards and counterchecks.

317. 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;

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;

318. 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.

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

320. 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

321. 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

322. 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."

323. 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.

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

325. 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.

326. 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.

327. 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.

328. 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.

329. 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.

<u>The Patriot Act</u>

330. 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.

331. 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

1 legitimate financial mechanisms and banking relationships by using them as protective covering for the
2 movement of criminal proceeds and the financing of crime and terrorism…" Title III, § 302.
3 332. Congress also noted that correspondent accounts involving off-shore persons were
4 particularly vulnerable to improper use. Title III, § 302 (8).
5 333. Title III of the Patriot Act requires each financial institution that establishes, maintains,
6 administers, or manages accounts in the United States for an individual or representative of a non-
7 United States person to establish due diligence policies, procedures and controls reasonably designed to
8 detect and report instances of money laundering through those accounts. Title III, § 312.
9 334. Section 327 makes it more difficult for banks to merge if they lack a good track record
10 in combating money laundering. Sections 312, 213, 219 and 325 provide for forfeitures in specified
11 circumstances pertaining to terrorism and money laundering.
12 335. Section 326 requires financial institutions to establish procedures to take reasonable and
13 practicable measures to verify the identity of those applying for an account with the institution (31
14 U.S.C. § 5318(I)(2)(A)) and maintain records of the information used to verify a person's identity,
15 including name, address, and other identifying information (31 U.S.C. § 5318(I)(2)(B)).
16 336. These enhanced due diligence policies, procedures, and controls require that each
17 financial institution ascertain the identity of any foreign bank and the nature and extent of the
18 ownership interest of each such owner, conduct enhanced scrutiny to guard against money laundering
19 and report any suspicious transactions, and ascertain whether such foreign bank provides correspondent
20 accounts to other foreign banks. Title 3, § 312. The Patriot Act, therefore, places an affirmative
21 burden on United States banks to ascertain the identity and nature of the individuals and the sources of
22 the monies it receives from foreign banks or individuals.
23 337. Plaintiffs are informed and believe that a significant number of Countrywide mortgages
24 were transferred to foreign banks.
25 338. To comply with the Patriot Act, Defendants must determine and report the sources of
26 funds used for the mortgages they originate and service, as well as the source of funds used to acquire
27 any mortgages. Bank of America's acquisition of Countrywide Financial also was subject to the Patriot
28 Act.

1 339. Defendants bundled and resold Plaintiffs' mortgages, without any accountability or
2 notices, as well as the transfer off-shore of records pertaining to the foregoing. This scenario is
3 precisely what Congress sought to prevent in enacting the Patriot Act. Anonymous owners may have
4 used these multiple transactions to launder money, further criminal activity, or even fund terrorist
5 operations.
6 340. Defendants perpetrated their massive fraud knowing it would result in a crash, including
7 a wave of foreclosures. To the extent non U.S. citizens have acquired the mortgages (and can be
8 identified), Plaintiffs' homes could be foreclosed upon by transferees, including persons engaged in
9 activities intended to be quarantined by the Patriot Act.
10 341. Pursuant to Title III, §319, when an act or omission of a bank results in property being
11 transferred, sold to, or deposited with a third party or placed beyond jurisdiction of the Court, such
12 property is subject to forfeiture.
13 342. On information and belief, contrary to the Patriot Act, Defendants did not: (1) establish
14 due diligence policies, procedures and controls reasonably designed to detect and report instances of
15 money laundering, (2) establish procedures to take reasonable and practicable measures to verify the
16 identity of those applying for an account and maintain records of the information used to verify a
17 person's identity, including name, address, and other identifying information, (3) determine and report
18 the sources of funds used for the mortgages they originate and service, as well as the source of funds
19 used to acquire any mortgages, or (4) disclose to Plaintiffs the identities, address and telephone
20 numbers of transferees of their mortgages.
21 343. As a consequence of the foregoing, Defendants may be liable for a forfeiture of any
22 loans or interests in Plaintiffs' homes, or other appropriate relief.
23 344. This Complaint does not allege a cause of action for breach of the Patriot Act. Rather,
24 Defendants actions and omissions are relevant to the causes of action alleged herein for the following
25 reasons: (1) such actions and omissions and the potential consequences thereof were concealed from
26 Plaintiffs, (2) such actions and omissions are relevant to determining the availability of punitive
27 damages, and (3) such actions and omissions are relevant to assessing whether there is liability under
28 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

345. 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.

346. 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,''.

347. 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.

348. 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.

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

350. 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.

351. 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

352. 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.

353. 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."

354. 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.

355. 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."

356. 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.

357. 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.

358. 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]
>
> . . .
>
> 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]
>
> . . .
>
> 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]

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

360. 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.

361. 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.

362. 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.

363. 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.

364. 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.

365. 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."

366. 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]

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

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

369. 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.

370. 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.

371. 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.

372. 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.

373. 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."

374. 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."

375. 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;

376. 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.

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

378. 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.

379. 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."

380. 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;

. . .

(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…

381. 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".

382. 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."

383. 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."

384. 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.

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

386. 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."

387. 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.

388. 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).

389. 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.)

390. 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).

391. 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).

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

FUTURE AMENDMENTS

393. 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

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

395. 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.

396. 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.

397. 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.

398. 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.

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

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

401. 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.

402. 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.

403. 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."

404. 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.

405. 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.

406. 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).

407. 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.

408. 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.

409. 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.

410. 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.

411. 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.

412. 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.

413. 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.

414. 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.

415. 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

416. 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.

417. 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.

418. These frauds, concealments, and/or 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 three (3) years prior to the date of filing this action. A reasonable person would have been unable to reasonably discover said misrepresentations and frauds any earlier.

Intentional Misrepresentations: Appraisal Process

(Group 1 Appraisal Plaintiffs Against All Defendants)[9]

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.

[9] Group 1 Appraisal Plaintiffs are defined as all named Plaintiffs within this action.

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.

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

Intentional Misrepresentation: Loan Products

(By Group 2A Plaintiffs (Negative Amortization Loans) –– Against All Defendants)[10]

442. 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.

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

444. 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.

445. 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.

446. 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'

[10] All Plaintiffs in Group 2A have been listed in Footnote 2. Additionally, all Plaintiffs are listed in and have declarations in Appendix A.

stated income and even falsified documents in order to qualify Plaintiffs for the risky loans.

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

448. 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.

449. 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.

450. 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.

451. 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.

452. 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.

453. 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.

454. 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.

455. 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.

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

457. 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 Misrepresentation

(By Group 2B Plaintiffs (Interest Only Loans) –– Against All Defendants)[11]

458. 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.

459. Defendants made numerous misrepresentations to Plaintiffs to induce Plaintiffs to sign loans Defendants knew or recklessly disregarded that the Plaintiffs would default in Interest Only loans, particularly Interest Only Adjustable Rate Loans.

460. Defendants made numerous misrepresentations about the loan terms, interest only period and results of paying interest only for a period of time, the effects of interest only compared to conventional adjustable or fixed term loans, among others and those specified in preceding paragraphs

[11] All Plaintiffs in Group 2B have been listed in Footnote 3. Additionally, all Plaintiffs are listed in and have declarations in Appendix B.

and below.

461. Defendants again misrepresented that Plaintiffs could "afford" their loans because they "qualified" even though Defendants knew this was not the case and therefore put them into risky interest only 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).

462. Defendants made representations that Plaintiffs payments would pay both principal and interest by both affirmative actions and statements and by failing to disclose the true terms of the loans Plaintiffs were induced to sign.

463. 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.

464. 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.

465. Defendants represented that the interest only loans were in fact conventional standard adjustable rate mortgages or conventional fixed rate mortgages. Defendants also represented that there was no financial difference between an interest only loan and the conventional adjustable rate or fixed loans.

466. 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.

467. 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 such payments would later drastically increase and knowing that the borrower would be unable to afford such increased payments.

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468. Failing to inform Plaintiffs that the interest rate was based on the LIBOR index, possibly the most volatile index in the world.

469. Plaintiffs' reasonable reliance and harms are detailed above.

470. The intentional acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard for Group 2B 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 Misrepresentation

(*By Group 2C Plaintiffs (Adjustable Rate Mortgages) –– Against All Defendants*)[12]

471. 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.

472. Defendants again misrepresented that Plaintiffs could "afford" their loans because they "qualified" even though Defendants knew this was not the case and therefore put them into risky and unpredictable loans.

473. Defendants made numerous misrepresentations regarding the terms of the loans, adjustments in the interest rates and payments, effects of the adjustments, uncertainty regarding the interest rates, and misrepresentations about LIBOR index relied on by Defendants.

474. Defendants' representations calculated to make Plaintiffs' 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 based on the LIBOR index which they could in no way know or predict.

475. Defendants' represented Plaintiffs could afford payments under their loan, calculated to make a borrower believe that the loan payment would always be constant, but made the representations knowing that such payments would later drastically increase and knowing that the borrower would be

[12] All Plaintiffs in Group 2C have been listed in Footnote 4. Additionally, all Plaintiffs are listed in and have declarations in Appendix C.

unable to afford such increased payments.

476. 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.

477. 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.

478. Plaintiffs' reasonable reliance and harms are detailed above.

479. The intentional acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard for Group 2C 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 Misrepresentation

(By Group 2D Plaintiffs (Fixed Rate Mortgages) –– Against All Defendants)[13]

480. 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.

481. Defendants once again represented that Plaintiffs "qualified" for their loans and therefore could "afford" their loans.

482. Defendants represented the amount of the loan Plaintiffs qualified for was the correct amount and necessary to afford the property desired, not based on inflated appraisals.

483. Defendants represented that by placing the down payment necessary for the loan that Plaintiffs would be able to afford the loan they qualified for.

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[13] All Plaintiffs in Group 2D have been listed in Footnote 5. Additionally, all Plaintiffs are listed in and have declarations in Appendix D.

484. Misrepresentations 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.

485. 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.

486. 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.

487. 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.

488. Plaintiffs' reasonable reliance and harms are detailed above.

489. The intentional acts described herein and above by Defendants were oppressive, fraudulent, and malicious, and were committed willfully or with reckless disregard for Group 2D 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 (Modification) Plaintiffs Against All Defendants)[14]

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

491. 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

[14] Group 3 Plaintiffs are referenced in Footnote 6, and will be named at a later time.

behind on their payments.

492. 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.

493. 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.

494. 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.

495. 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.

496. 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.

497. 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.

498. 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.

499. 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.

500. 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

501. 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.

502. 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

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Intentional Misrepresentation

(By Group 4 Plaintiffs (Wrongful Foreclosure) –– Against All Defendants)[15]

503. 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.

504. Plaintiffs in Group 4 are already included in Group 1, are in one of Groups 2A-2D, 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.

505. Defendants have already foreclosed upon the properties owned by the Plaintiffs listed in Appendix E. The individualized facts as to why the foreclosures on each of the presently identified Group 4 Plaintiffs was wrongful are detailed in Appendix E. Appendix E details the Plaintiffs individualized facts as to those Plaintiffs presently known whom Defendants have actually sold their properties at a foreclosure sale. As described herein, the foreclosure process begins at the filing of a Notice of Default against a Plaintiff. Additional Group 4 Plaintiffs may be listed at a later time. 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.

506. 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.

507. 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.

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[15] As noted in Footnote 7, all Group 4 Plaintiffs are to be determined at a later time after discovery. Some Group 4 Plaintiffs are currently listed in Appendix E and are known to have had their properties sold at foreclosure. All Group 4 Plaintiffs, presently listed or to be determined, have had their homes sold at foreclosure sale. Group 4 does not include Plaintiffs whom have not had their homes sold at foreclosure sale, such as Plaintiffs who have not received a Notice of Sale.

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

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

510. 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.

511. 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

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

513. 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.

514. 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.

515. 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.

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

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

518. 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.

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

520. 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.

521. 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.

522. 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.

523. 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

524. These misrepresentations were unknown to all Plaintiffs referenced herein at all relevant times herein. All Plaintiffs herein discovered these misrepresentations, frauds and concealments beginning no more than three (3) years prior to the date of filing this action. A reasonable person would have been unable to reasonably discover said misrepresentations any earlier.

Negligent Misrepresentations: Appraisal Process

(Group 1 Appraisal Plaintiffs Against All Defendants)

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

526. 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 410-432.

Negligent Misrepresentations: Loan Products

(Group 2A (Negative Amortization Loan) Plaintiffs Against All Defendants)

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

528. 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 433 - 448.

Negligent Misrepresentations: Loan Products

(Group 2B (Interest Only Loan) Plaintiffs Against All Defendants)

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

530. Group 2B Plaintiffs incorporate and re-allege as though fully set forth herein, all allegations in the First Cause of Action for Intentional Misrepresentation Group 2B Plaintiffs Against All Defendants, paragraphs 449-461.

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Negligent Misrepresentations: Loan Products

(Group 2C (Adjustable Rate Loan) Plaintiffs Against All Defendants)

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

532. Group 2C Plaintiffs incorporate and re-allege as though fully set forth herein, all allegations in the First Cause of Action for Intentional Misrepresentation Group 2C Plaintiffs Against All Defendants, paragraphs 462-470.

Negligent Misrepresentations: Loan Products

(Group 2D (Fixed Rate Loan) Plaintiffs Against All Defendants)

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

534. Group 2D Plaintiffs incorporate and re-allege as though fully set forth herein, all allegations in the First Cause of Action for Intentional Misrepresentation Group 2D Plaintiffs Against All Defendants, paragraphs 471 -480.

Negligent Misrepresentations: Loan Products

(Group 3 (Modification) Plaintiffs Against All Defendants)

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

536. 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 481- 493.

Negligent Misrepresentations: Loan Products

(Group 4 (Foreclosure) Plaintiffs Against All Defendants)

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

538. 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 494- 502.

THIRD CAUSE OF ACTION

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

UNFAIR COMPETITION LAW

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

540. 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.

541. 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...'").

542. 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).

543. 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.

544. 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.

545. 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.

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

547. 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.

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

549. 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.

550. 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.

551. 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.

552. 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.

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

554. 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."

555. 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 Appraisal Plaintiffs Against All Defendants)

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

557. Defendants have engaged in unlawful business practices as set forth above regarding Defendants' appraisal inflation scheme.

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

559. 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.

560. 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.

561. 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.

562. 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.

563. 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.

564. 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.

565. 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.

566. 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.

567. 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 2A (Negative Amortization Loan) Plaintiffs Against All Defendants)

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

569. Defendants' unlawful, unfair, and/or fraudulent business practices are most evident with Plaintiffs whom signed negative amortization mortgages.

570. 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.

571. 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."

572. 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.

573. "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).

574. 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.

575. 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 2B (Interest Only Loan) Plaintiffs Against All Defendants)

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

577. Defendants' loan documents failed to adequately and accurately disclose the essential terms of the Interest Only loans.

578. Defendants unfairly represented the Interest Only loans as if the loans were conventional adjustable rate loans or conventional fixed loans.

579. Defendants violated TILA, and therefore UCL, because Defendants buried or did not disclose the terms of the interest only aspect of the loans, inducing Plaintiffs to believe their payments were being applied to principal and interest.

580. Defendants placed Plaintiffs into Interest Only loans, knowing or recklessly disregarding

the truth that after a period of years Plaintiffs would default and owe a principal balance as great as when the loan originated. Defendants knew Plaintiffs with Interest Only adjustable rate mortgages would fail because they were mathematically likely to fail, yet Defendants continued to loan them high amounts because they knew they would be selling the loans to other entities immediately and would not worry about the value of the loan.

581. Defendants' induced Plaintiffs into agreeing to these subprime loans by telling Plaintiffs that by making a low interest only monthly payment they would save money and would be able to refinance Plaintiffs at a later date. However, this was not the case. Instead, Defendants never refinanced these loans and Plaintiffs' equity in their home was non-existent. Defendants and made several fraudulent omissions and misrepresentations regarding the loan type, in violation of Section 17200.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition Law

(By Group 2C (Adjustable Rate Mortgages) Against All Defendants)

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

583. Defendants' actions in implementing and perpetrating their fraudulent scheme of inducing mortgages for which Plaintiffs and numerous other were not qualified based on inflated property valuations and undisclosed disregard for their own writing standards, already below industry standards, unfairly and unlawfully harmed Plaintiffs resulting in the loss of their home, equity in their homes and other damages.

584. Defendants violated TILA because they failed to disclose credit terms so Plaintiffs would 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.

585. Additionally, variable rate mortgage borrowers must be provided with a loan program disclosure that includes any rules relating to changes to the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, and interest rate carryover. *See Boschma v. Home Loan Center, Inc.*, 198 Cal.App.4th 230, 245 (2011). Based on the forgoing facts set out in this Complaint and herein, the defendants violated the TILA and

therefore violating UCL.

586. Plaintiffs were the victim of unfair business practices that violated public policy, were unethical, oppressive, unscrupulous, or substantially injurious to consumers, and the weight of the harm significantly outweighs the lining of corporate executives of Defendants. The States and Department of Justice have stepped in to attack and successfully settle its claims against Defendants as a direct result of Defendants' actions, including the conduct and harms alleged herein.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition Law
(By Group 2D (Fixed Rate Mortgages) Plaintiffs Against All Defendants)

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

588. Defendants' loan documents failed to adequately and accurately disclose the essential terms of the loan in violation of TILA.

589. Defendants represented to Plaintiffs that the only way to get refinanced or be considered for a loan modification is if Plaintiffs fell behind on their monthly payments. After advising Plaintiffs to break the mortgage contract Defendants either ceased contact with Plaintiffs or intentionally failed to approve Plaintiffs' loan modification applications. Defendants made several fraudulent omissions and misrepresentations in violation of Section 17200.

590. Defendants fraudulently placed Plaintiffs into loans they knew they could not afford, primarily placing Plaintiffs into loans they could not afford because of the inflated value of their properties. Defendants knowingly lent more money than the Plaintiffs could afford, regardless of whether the loan was fixed or adjustable, Plaintiffs could not afford the loan. Plaintiffs relied on the Defendants' expertise only to be unfairly taken advantage of.

Violation of California Business and Professions Code § 17200, et. seq. Unfair Competition
(Group 3 (Modification) Plaintiffs Against All Defendants)

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

592. 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.

593. 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.

594. 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.

595. 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.

596. 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.

597. 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.

598. 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.

599. 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.

600. 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)

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

602. 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.

603. 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.

604. 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.

605. 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.

606. 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.

607. 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.

608. 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.

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FOURTH CAUSE OF ACTION

WRONGFUL FORECLOSURE, VIOLATION OF CAL. CIVIL CODE § 2924

(Group 4 Plaintiffs Against All Defendants)[16]

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

610. 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.

611. 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).

612. 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.

613. 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.

614. 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

[16] As noted in Footnote 15, Group 4 Plaintiffs, presently identified and those to be identified at a later time, only include Plaintiffs whom have actually lost their property at a foreclosure sale.

collect money from Plaintiffs thereunder.

615. 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).

616. 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.

617. 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.

618. 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.

619. 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

1 fraudulent misrepresentation, negligent misrepresentation, and unfair competition
2 (under a multitude of predicate violations). For these claims Plaintiffs has requested
3 compensatory damages, restitution, as well as punitive damages, as well as costs of
4 suit and attorney fees, all of which act as set-off against any amounts owed by
5 Plaintiff. Therefore, tender is not required.

6 c. Tender is not required whereas here it would be inequitable to do so. The allegations
7 are rife with inequity and fraud which has placed Plaintiffs in the very perilous
8 position they now seek to desperately avoid. Defendants **intentionally** placed
9 borrowers into loans they knew and intended would fail, by misrepresenting highly
10 material facts surrounding their loans, so that they could turn profit by collecting
11 foreclosure fees, and steal what equity Plaintiffs had left in their property, if any.

12 d. Finally, tender is not required whereas here the sale is void. The sales at issue are
13 void for numerous reasons. First because the loans and deed of trusts themselves
14 were obtained through fraud – this is true as to each and every Plaintiff in the First
15 cause of action for Intentional Misrepresentation. Second a foreclosure sale
16 conducted by an unauthorized trustee is void as a matter of law, as is the case for
17 numerous Plaintiffs in this cause of action. Third, under California Law, a Notice of
18 Default (NOD) initiating foreclosure on behalf of a party who is not a true
19 beneficiary at the time of filing the NOD, *as here*, is **void ab initio**, rendering any
20 subsequent foreclosure based on that NOD void as well. As to virtually every
21 Plaintiff in this Cause of Action, the party who executed the NOD was not the true
22 beneficiary at the time the NOD was recorded. A litany of cases affirm this rule.
23 Fourth and finally, in many cases the ultimate foreclosing party (at the foreclosure
24 sale) was not even the party listed on the NOD. The NOD did not authorize such
25 party to foreclose, and the foreclosure of a property by an unauthorized party is void
26 as a matter of law. California law requires that any foreclosure sale based on a void
27 notice of default is also void. For each of the aforementioned reasons Defendants
28 foreclosure is void and thus no tender is required.

620. Furthermore, the deeds upon sale at issue fail to include the conclusive presumption language.

621. 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.

622. 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.

623. 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: March 1, 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: March 1, 2016

Respectfully submitted,

BROOKSTONE LAW, PC

By: ____________________________

Jonathan Tarkowski
Attorneys for Plaintiffs