

1 David Merritt and Salma Merritt
2 660 Pinnacles Terrace
3 Sunnyvale, CA 94085
4 dymerritt@hotmail.com
5 Tel: 408.469.5584

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **FOR THE COUNTY OF SANTA CLARA**

8 SALMA MERRITT and DAVID MERRITT

9 Plaintiffs,

10 v.

11 ANGELO R. MOZILO, DAVID SAMBOL,
12 MICHAEL COLYER, JOHNNY CHEN, JOHN
13 BENSON, KENNETH LEWIS, COUNTRYWIDE
14 FINANCIAL CORP.; COUNTRYWIDE HOME
15 LOANS, INC.; BANK OF AMERICA;
16 MERSCORP, FIRST AMERICAN TITLE
17 COMPANY AND DOES 1-100, inclusive,

18 Defendants.

Case No. 109cv159993

**Third Amended Complaint For Injunctive,
Equitable, Compensatory and Punitive
and or Exemplary Damages for Injury
Based on Conspiracy—Fraud & Deceit
(Misrepresentation, Concealment, Deceit
& Suppression of Fact); Breach of
Fiduciary Duty; Fraudulent and
Misleading Unfair Competition; Breach of
Title Insurance Contract; Infliction of
Emotional Distress**

(Exceeds \$10,000 Unlimited Civil Case)

Date Action Filed: December 23, 2009

Trial Date:

Judge: Hon. Mark Pierce

19 **ALLEGATIONS**

20 Plaintiffs alleges:

21 1. Plaintiffs Salma & David Merritt is, at all times relevant herein, individuals who reside
22 in Santa Clara County. Plaintiffs purchased and became the owners of their Property on March 27,
23 2006.

24 2. Defendant **Angelo Robert Mozilo** (hereinafter “Mozilo”) was, and at all times herein
25 mentioned, the supervising Mortgage Loan Broker and resident of Thousand Oaks, California.

26 3. Defendant **David Sambol** (hereinafter “Sambol”) is, and at all times herein
27 mentioned, the President of Marketing and resident of Hidden Hills, California.

28

1 4. Defendant **Michael Colyer** (hereinafter “Colyer”) is, and at all times herein
2 mentioned the local Mortgage Broker & a resident of San Mateo county, California.

3 5. Defendant **Countrywide Financial Corporation**, (hereinafter “Countrywide”) is and
4 at all times herein mentioned was, a New York Corporation organized and existing under the laws
5 of the State of New York, but licensed as a Broker to conduct its principle brokerage business out
6 of 4500 Park Granada Blvd. Calabasas, CA.

7 6. Defendant **Countrywide Home Loans, Inc.**, (hereinafter “Countrywide”) is, and at all
8 times herein mentioned was, a New York Corporation organized and existing under the laws of
9 the State of New York with its principle place of business at 4500 Park Granada Blvd. Calabasas,
10 CA and licensed under California Real Estate Broker license no. 00351782 to conduct brokerage
11 business in California. Further, CHL operated and supervised by Angelo Mozilo its principle
12 broker supervisor.

13 7. At all times herein mentioned, defendants Mozilo, Sambol and Colyer, who made the
14 representations herein alleged, is Chief Executive Officer & Chief Broker; President of Marketing
15 and Menlo Park Branch Managing-Broker respectively and, at the time of making the
16 representations herein alleged and at all times herein mentioned, was acting within the course and
17 scope of their employment and authority for defendant Countrywide.

18 8. Defendant **Johnny Holin Chen**, (hereinafter “Chen”) was, and at all times herein
19 mentioned, a resident of, Hayward, California.

20 9. Defendant **John H. Benson**, (hereinafter “Benson”) was, and at all times herein
21 mentioned, a resident of, Gilroy California.

22 10. At all times herein mentioned, defendants Chen and Benson were the agents of
23 defendant Countrywide respectively as California licensed real estate agent and appraiser, and in
24 doing the things herein alleged, was acting within the course and scope of such agency and with
25 the permission and consent of co-defendants Colyer and Mozilo.

26 11. Defendant **Kenneth Lewis**, (hereinafter “Lewis”) was, and at all times herein
27 mentioned, a resident of Charlotte, North Carolina.
28

1 12. Defendant **Bank of America** (hereinafter “BofA”) is, and at all times herein
2 mentioned was, a corporation organized and existing under the laws of the State of North Carolina
3 corporation, with its principle place of business in Charlotte North Carolina. At all times relevant
4 herein, BofA maintained minimum contacts with California by maintaining more than 100 branch
5 offices through California which it conducts its business through by communicating with its
6 branch managers and staff over 100 times per week, including Santa Clara County. BofA is the
7 purchaser and assumer of Countrywide and its subsidiary companies assets and liabilities as it has
8 merged Countrywide under the BofA holding company umbrella.

9 13. Defendant **MERSCORP**, (hereinafter “MERS”) is, and at all times herein mentioned
10 was, a Delaware Corporation organized and existing under the laws of the State of Delaware with
11 its principle place of business in Reston, VA.

12 14. At all times herein mentioned, R.K. Arnold, who made the representations herein
13 alleged, was the Chief Executive Officer and, at the time of making the representations herein
14 alleged, was acting within the course and scope of his employment and authority for defendant
15 MERS/MERSCORP.

16 15. **Defendant First American Title Ins. Company** (hereinafter “FATC”) is, and at all
17 times herein mentioned was, a California Corporation organized and existing under the laws of the
18 State of California, with its principle place of business in Santa Ana, Orange County, California.

19 16. At all times herein mentioned, Parker S. Kennedy, who made the representations
20 herein alleged, was the Chief Executive Officer and, at the time of making the representations
21 herein alleged, was acting within the course and scope of his employment and authority for
22 defendant FATC and its agent Financial Title Company (“FTC”).

23 17. Defendants **Does 1-30**, are, and at all times herein mentioned was, residents of the
24 State of New York.

25 18. Defendants *Does 1-30*, who made the representations herein alleged, is the CEO,
26 Board of Directors, President(s), Vice President(s) and other managers of Bear Sterns, and, at the
27 time of the making of the representations herein alleged and at all times herein mentioned was
28 acting within the course and scope of their employment and authority for Bear Sterns, who, at all

1 relevant times herein, acted as Principle Lender with Wells Fargo Bank, NA (hereinafter “Wells”),
2 in hiring Countrywide and later BofA to broker, service and modify Salma & David Merritt
3 loans.¹

4 19. Defendants **Does 31 through 70** is, and at all times herein mentioned was, residents of
5 California and Texas who was employed as Presidents, Vice Presidents, Managers, Employees or
6 Agents of defendant Countrywide and its subsidiaries, and at the time of the making of the
7 representations or doing things herein alleged, and at all times herein mentioned, was acting
8 within the course and scope of their employment and authority for Countrywide.

9 20. Defendants **Does 71 through 80** is, and at all times herein mentioned was, residents of
10 California and North Carolina, who worked as Presidents, Vice Presidents, employees or agents of
11 defendant BofA and, at the time of the making of the representations or doing things herein
12 alleged was acting within the course and scope of their employment and authority for BofA.

13 21. Defendants **Does 81 through 90** is, and at all times herein mentioned was, residents of
14 California who worked as Presidents, Vice Presidents, employees or agents of Wells and, at the
15 time of the making of the representations herein alleged acted within the course and scope of their
16 employment and authority for **Wells Fargo & Company** (WELLS) under the direction of CEOs
17 Paul Hazen, Richard Kovanevich and John Stumpf.

18 22. Defendants **Does 91 through 95** is, and at all times herein mentioned was, residents of
19 California who worked as Presidents, Vice Presidents, employees or agents of defendant First
20 American Title Company (FATC) and, at the time of the making of the representations or doing
21 things herein alleged were acting within the course and scope of their employment and authority
22 for defendants FTC, FATC.

23 23. Defendants **Does 96 through 100** is, and at all times herein mentioned was, residents
24 of Virginia who worked as Vice Presidents, employees or agents of defendants MERSCORP, and,
25 at the time of the making of the representations or doing things herein alleged were acting within
26 the course and scope of their employment and authority for defendant MERSCORP.

27 ¹ Subpoena *Duces Tecum* have produced proof that Bear Sterns and its managers are Does 1-30 who hired Countrywide Defendants to broker
28 Plaintiffs loans and is the actual funder of loans. Plaintiffs shall amend once confirmed, See *Exhibit 30*.

1 24. Plaintiffs do not know the true names or capacities of Defendants sued herein under
2 fictitious names of Does 1 through 100, inclusive. Plaintiffs intend to amend this action with their
3 names and capacities when learned. Salma & David Merritt are informed and believe and on that
4 basis alleges that Does 1 through 100 are legally responsible in some manner for the acts or
5 omissions alleged and the injuries and damages claimed in this action, or in some manner claims
6 an ownership, security or other interest in the Property.

7 25. Any and all allegations regarding acts or omissions attributed to Countrywide, BofA,
8 FATC, MERS, MERSCORP, Wells Fargo means that the defendant corporations acted through
9 co-defendants and or its officers, directors, employees, agents or representatives while they, in
10 turn, were acting within the actual or ostensible scope of their duties and authority of respective
11 corporate defendants.

12 26. At all relevant times, each defendant knew or realized that the other defendants were
13 engaged in or planning to engage in the violations of law as alleged in this Third Amended
14 Complaint (TAC), knowing or realizing that the other defendants were engaging in or planning to
15 engage in unlawful conduct, each defendant nevertheless facilitated the commission of those
16 unlawful acts; each defendant intended to, and did encourage, facilitate, or assist in the
17 commission of the acts, thereby aided and abetted the other defendants thereat.

18 27. From on or about January 1995 through November 2009, Mozilo, Sambol, Colyer,
19 Chen, Benson, Lewis, Countrywide, BofA, Does 31 through 100, and CEOs of MERSCORP,
20 FATC and Wells, were, at all times herein mentioned, the agent and co-conspirator of, Doe
21 defendants 1-30; and received permission, consent or ratification from Countrywide, BofA,
22 MERSCORP, FATC and Wells Board of Directors to do the things alleged herein.

23 28. The real property that is the subject of this action consists of a townhouse which is
24 located in Santa Clara County; is more particularly described as Assessor's parcel no. 205-54-027,
25 and commonly known as 660 Pinnacles Terrace, Sunnyvale, Ca 94085, and is referred to herein as
26 the property. A legal description of the property is attached hereto as *Exhibit 1*. A copy of Santa
27 Clara County Recorder's recording of property is attached hereto, as *Exhibit 2* and incorporated
28 herein by this reference.

1 29. Defendant MERSCORP, through subsidiary MERS, claims an interest in the property
2 as Beneficiary under a deed of trust dated March 27, 2006, executed by Salma & David Merritt as
3 Trustors to secure a hybrid Pay Option Second Interest only Adjustable Rate Mortgage (Note)
4 promissory note in favor of Countrywide, and a junior Second deed of trust to secure a Home
5 Equity Line of Credit (HELOC) agreement (“HELOC Agreement”), copies of which are attached
6 hereto as *Exhibits 3 and 4*, respectively, in favor of Countrywide. First and Second Deeds of Trust
7 were recorded on April 1, 2006 with the Official Recorder of Santa Clara County as document
8 numbers: 18868879 & 18868880, copies of which are attached hereto as *Exhibits 5 and 6*, each of
9 these exhibits being incorporated herein by this reference.

10 30. Defendant MERSCORP is a company holding itself out, under the name of MERS, as
11 a means of evading county taxes or fees in recording deed of trust liens transacted in California
12 and a private alternative to public recording to conceal its members identities from public scrutiny
13 to avoid charges of fraud and the jurisdiction of courts. A disclosure about MERS to Plaintiffs is
14 attached hereto as *Exhibit 7* and MERSCORP to Countrywide and others *Exhibit 8*.

15 31. At all times herein mentioned, defendants Mozilo, Colyer and Countrywide was, and
16 is, a real estate broker duly licensed by the State of California Department of Real Estate and at all
17 times material hereto functioned as a Real Estate Loan Broker on March 27, 2006, as certified to
18 by way of *Exhibit 11* which is incorporated herein as if fully set forth.

19 **A. Bear Sterns & Does 2-30 Investors Real Estate Lending Pools – Background Scheme**

20 32. From its founding in 1923, Bear Sterns solicited private investment funds from private
21 investors which were invested in, *inter alia*, U.S. Companies which manufactured goods and
22 services.

23 33. From 1960 to 1980, employment from U.S. Manufacturing production dropped from
24 40% of all U.S. employment to about 20% and during this period Bear Sterns, with other Wall
25 Street investment “Houses” directed their investment Brokers to encourage investors to fund
26 Commercial property development and commercial loans in general, through securities which
27 were backed by commercial loans.
28

1 34. The Commercial loan back securities were set to increase (balloon) in payments
2 multiple times in 3, 5 or 10 years and specifically meant for businesses which needed funding for
3 current projects which were projected to achieve revenue growth that would meet such balloon
4 payment levels once their developments were complete and came on line for business.

5 35. In 1980, the U.S. Congress passed the Depository Institutions Deregulation and
6 Monetary Control Act which superseded States usury laws.

7 36. In 1982, Congress passed Alternative Mortgage Transaction Parity Act to preempt
8 state laws which prohibited federally regulated lenders from lending their money to consumer
9 home loan borrowers with terms of adjustable rates, balloon payments and other features which
10 were predatory in nature, thereat for the first time since 1930s allowing federally regulated lenders
11 to issue such repayment terms.

12 37. Plaintiffs are informed and believe and therefore allege that from 1982 to 1992, Bear
13 Sterns CEO(s) and Board of Directors approved for its officers to direct more and more of its
14 investors funds into Financial Lending Pools when would provide funds into the real estate
15 lending market.

16 38. On or about July 1982, Bear Sterns CEO and Board of Directors determined that it
17 could replace the reduction in traditional stock and manufacturing investments, as well as increase
18 its profits, by creating commercial loan securities which would promise certain higher returns on
19 investment.

20 39. On or about April 1993, Bear Sterns Board of Directors, at 383 Madison Avenue, New
21 York, elected James E. Cayne (Cayne) to be its CEO and President of all operations, giving him
22 full authority to act in the name of Bear Sterns and on its behalf.

23 40. From on or about January 3, 1993 to November 1997, Cayne and Bear Sterns Board of
24 Directors, repeatedly and continuously ordered their Vice Presidents, who managed investment
25 Banking Brokers, to direct Bear Sterns Brokers to encourage more and more private investors to
26 place their funds into Bear Sterns mortgage backed security (MBS) pools so that by January 1998,
27 Bear Sterns funding of MBS increased 4 to 6 times.
28

1 41. Plaintiffs are informed and believe and thereby allege that on or about January 15,
2 1994 and each month until June 1994, CEO Cayne held monthly Board meetings where he
3 presented to his Board of Directors the idea of hiring Mortgage Loan Brokers in the U.S. who
4 Bear Sterns could hire to broker loans with residential mortgage borrowers which were theretofore
5 designed principally for commercial borrowers.

6 42. Cayne explained to his board that although residential borrowers would not have
7 enough money to meet the increased payments of the loans balloon payments, that Bear Sterns
8 could ensure that the loans were designed to extract all of the borrowers savings and as much
9 income as the borrower could make, then strip equity from their property before producing default
10 and foreclosure which would be turned around, sold and profits go to Bear Sterns and its investors.

11 43. During these same 1994 board meetings, Cayne further explained to Board of
12 Directors that they could lead Bear Sterns to identify and manage Real Estate loan brokers who
13 would agree to represent to borrowers that they were purchasing loans that were traditional loans –
14 i.e. fixed 30 year loaned – and *conceal* the fact that the loans were not conventional loans at all
15 and make the loan documents so complex and incomprehensible that by the time borrowers know
16 that they had been defrauded, statute of limitations would have mooted any potential action.

17 44. During these same 1994 board meetings, Cayne asked the board to approve for him
18 and Does 2-30 do these things and to enter into “Master Repurchase Agreements” with Real Estate
19 Brokers which will give Bear Sterns authority to order Brokers to originate certain quantity and
20 types of commercial and residential mortgage loans for Bear Sterns, dictate a range of term
21 parameters that would be acceptable to Bear Sterns and supply the funds for loans which Bear
22 Sterns would be the actual Beneficiary of via agreements.

23 45. Cayne worked with Bear Stern’s General Counsel to develop borrower contract
24 agreements which would be provided for its mortgage brokers to convince borrowers to sign.

25 46. Cayne and General Counsel designed borrower contract agreements in a way so it
26 would obscure the actual terms of loans by using point 6 or less sized font, using a hybrid
27 language which was composed of partly legal, banking, real estate and investor terms that no lay
28 person or common real estate professional could understand.

1 47. During 1994 to 2000, Cayne ordered Does 2-10 to hire mortgage loan brokers who
2 were willing to broker loans for Bear Sterns where commercial, and a growing number of
3 residential mortgage borrowers, were identified for brokers to steer borrowers into adjustable rate
4 mortgage loans which they could justify higher profits on the money Bear Sterns lent out.

5 48. Bear Sterns avoided most liability by designing loans so that they did not reset to
6 higher payments until after the statute of limitations had expired on breach of contract, fraud and
7 other civil provisions.

8 **B. Countrywide Real Estate Loan Broker Model – Background Facts**

9 49. On or about January 1969, Loab and Mozilo talked with each other on how they could
10 get into mortgage industry, establish themselves among those already established and they told
11 each other that since they did not have their own capital to lend to mortgage loan borrowers, that
12 they needed to attract money from “investors” who would contract them to broker loans with
13 mortgage borrowers.

14 50. On or about February 1969, Loab and Mozilo decided and agreed for Mozilo to
15 become a licensed California real estate broker who they could solicit borrowers through for
16 mortgage loans under Countrywide Home Loans (CHL); while Loab would solicit investors and
17 together broker mortgage home loans between borrower and investor.

18 51. During 1969, defendant Mozilo took and passed the California Real Estate Broker
19 licensing exam and was issued license number 00368352.

20 52. From 1969 to 2006, Countrywide avoided becoming an actual state or federally
21 chartered lender and functioned as Mortgage Loan Broker who solicited funding pledges from
22 defendant BofA and certain Wall Street Investment houses to fund home-loan borrowers that CHL
23 identified and convinced to permit CHL to broker loans for them.

24 53. From 1969 to 1980, Countrywide was led by co-founder David Loab who strived to
25 build an ethical mortgage lending company and in 1974; he eliminated all commissioned
26 salespersons in order to focus Countrywide on brokering mortgage loan products which met
27 industry, state and federal underwriting standards.
28

1 54. By 1978, Loeb successfully directed CHL to be seen as a reputable and trustworthy
2 company by brokering loan products which had competitive fees and interest rates that Fannie
3 Mae, Freddie Mac and others funded more and more of, while directing CHL to service loans for
4 Savings & Loans and other mortgage lenders, so by 1984 it was servicing \$1 Billion in loans as a
5 Mortgage Loan Broker, and not a lender.

6 55. In 1980 and 1981, Mozilo was privy to The Depository Institution Deregulatory and
7 Monetary Control Act of 1980 that nullified California and other states usury laws which
8 restricted Predatory Lending in the residential mortgage loan industry where borrowers' ability to
9 pay and underwriting standards were ignored and fraud was employed to induce them into
10 fraudulent agreements, resulting in the "subprime" loan industry.

11 56. From 1980 onward Mozilo studied the practices which lead to the S&L crisis of the
12 1980s, the lifting of usury laws and the growth of subprime lending which increased likelihood of
13 loan defaults *and took special note* on how it transferred equity from property owners to lenders
14 and resulted in little or no consequences for the broker-perpetrators.

15 57. In 1990, Loeb ordered the use of computers programmed with federal and industry
16 underwriting standards, EDGE, to reduce the risks of deficient loans, streamline origination
17 process and reduce operation costs and in 1992, unveiled Countrywide Loan Underwriting Expert
18 System (CLUES) to underwrite mortgage loans and expedite the process.

19 58. From on or about January 1990 and repeatedly to 2010, the U.S. Department of
20 Housing and Urban Development (HUD), unveiled a series of policies and goals to encourage
21 mortgage loan lending in underserved areas (minorities and lower income Americans) with
22 affordable loans which would be insured by the Federal Housing Administration (FHA).

23 59. During 1990 and 1991, Loeb and Mozilo learned of HUDs announcements and held
24 talks with each other every month during this period on how they could position Countrywide to
25 take advantage of this effort; they directed their subordinates to register Countrywide with HUD
26 and take steps to qualify the company as a HUD recognized loan broker.

27
28

1 60. In 1992, Countrywide unveiled “House America” program which was publicized to
2 extend loans to minorities as part of HUDs mission, and Loeb directed staff to program CLUES to
3 apply HUDs underwriting standards for designing mortgage loans.

4 61. From 1992 to 1997, Loeb and Mozilo grew CHL substantially by brokering and
5 servicing loans to Prime borrowers, low income and a growing number of minorities; loans which
6 were principally competitive cost, Prime loans that followed industry underwriting standards.

7 62. From 1998 to 1999, Loeb began to transition for retirement and relinquished more and
8 more control of CHL to Mozilo, until finally in April 2000, he retired and turned over the reins of
9 company to Mozilo.

10 **C. Bear Sterns Alliance With MERSCORP & First American – Background Scheme**

11 63. On or about January 1989, defendant FATC Board of Directors elected D.P. Kennedy
12 president of FATC and in 1993, president of FATC Parent Corporation, giving him full authority
13 to act in the name of First American Title Company and on its behalf.

14 64. On or about January 1995, Wells elected Paul Hazen to be president and CEO of
15 Wells & Company, extending to him full control and authority to act in its name and on its behalf.

16 65. On or about January 15, 1995, R.K. Arnold, Kennedy and Hazen, met with WELLS
17 and at Bear Sterns headquarters (HQ) on 383 Madison Ave, New York where Does 2-30 explained
18 how unlicensed private lenders, who they called “Investors,” and were Bear Sterns “clients,”
19 wished to lend money to real estate mortgage borrowers in order to strip them of their life savings,
20 their income then equity and produce defaults and confiscate their homes via foreclosures for
21 resale profits. Further, Does 2-30 desired to evade state and federal lending laws, taxes, County
22 Property Recording Fees, California and other state instrument Commercial Code laws and
23 conceal their identities and activities.

24 66. Additional meetings took place defendant FATC California HQ offices on or about
25 February 15, 1995; and again met at Arnold’s Virginia office on or about March 15, 1995, where
26 each time Does 2-30 explained how they wished to work with Kennedy, Arnold and Hazen to
27 make enormous amounts of money from residential mortgage borrowers.
28

1 67. Specifically, Bear Sterns with Does 2-30, informed Arnold, Kennedy and Hazen that
2 they were going to solicit billions in private dollars to fund mortgages for borrowers and needed to
3 employ brokers willing to craft loans designed to strip equity from Americans, increase likelihood
4 of loan defaults and to give Investors the opportunity to foreclose and resell properties to make
5 more profit (over 30% targeted California borrowers). If borrowers or state officials knew about
6 Bear Sterns and Does 2-30 identities and their intent to circumvent lending and property recording
7 laws, they may sue or criminally prosecute them for such activities. Bear Stearns with Does 2-30
8 stated that in order to conceal their identities from public record they would need Loan Brokers,
9 Escrow and Title agents, to not record Investors names with local County Clerk Recorders, but to
10 falsify local County Recorder Records by naming some entity in their place who would be bound
11 to not divulge their identities publicly.

12 68. On or about January 15 and again on or about February 15, 1995, Bear Sterns CEO
13 with Does 2-30 spoke with Arnold and his partners, asking were they willing to form a corporation
14 that would act as a Frontman for Bear Sterns by recording company's name in place of Bear
15 Sterns with county recorders and conceal Bear Sterns identify from public and borrowers view.

16 69. On or about February 15, 1995, Arnold informed Bear Sterns that he would lead such
17 an effort and form a team of persons who he designated to be his Board of Directors for such a
18 company; and after obtaining certain key endorsements from certain financial institutions during
19 1995, Arnold and his Board formed Mortgage Electronic Registration System, in Delaware, later
20 incorporated again under MERSCORP.

21 70. Immediately following the formations of MERS, Arnold presented himself to his
22 Board for the position of President and CEO; and MERS Board elected him so.

23 71. Among the first acts of Arnold was presenting to MERS Board of Directors, for
24 formal voting, was Bear Sterns proposal for MERS to record itself as beneficiary of deeds of trust
25 and other mortgage instruments in order to conceal Bear Sterns identities, and MERS Board
26 authorized Arnold to proceed with the plan of becoming Frontman for Bear Sterns.

27 72. From on or about January 1997 through July 2010, Arnold directed MERSCORP staff
28 to communicate to mortgage brokers and lenders in the United States that they could evade local

1 property recording fees or taxes; state and federal lending laws and conceal their identities and
2 activities which violate Uniform and California Commercial Codes, by becoming members of
3 MERSCORP and agree to falsely record in their local county records, as in Deed of Trust
4 presented to Plaintiffs, with “MERS” as the beneficiary, trustee or mortgagee, that they could
5 evade paying Recorder Fees. *Exhibit 8* is official public statement of MERSCORP confirming
6 such and is incorporated herein as if fully set forth.

7 73. From January 2000 to December 2010 Arnold with Board approval, made instructed
8 all MERSCORP members who falsified county records citing MERS as beneficiary or mortgagee,
9 to not disclose to borrowers, including Plaintiffs, that MERS was acting as Frontman for Bear
10 Sterns or other Wall Street Investment Houses, but let it appear that brokers like Countrywide, was
11 simply using MERS as a way to record-keep its loans. An example of which Plaintiffs’ attaches
12 hereto as *Exhibits 7 & 8* and incorporates them herein.

13 74. On or about February 15, 1995, Does 2-30 asked Kennedy whether he and FATC
14 would be willing to overlook these planned activities, instruct FATC Escrow and Title employees
15 to disregard California financial instrument, recording and other laws, then separate Deed of Trust
16 from Notes, and help conceal the identities and activities of Investors like Bear Sterns, by having
17 its Escrow staff or agents falsely record MERS as mortgagee or beneficiary, and to further ensure
18 that FATC Title staff and agents overlooked the title defects such as the separation of deed of trust
19 and note, as well as not being able to learn identities or quantity of holders-in-due-course with
20 such loans, promising Kennedy that millions of dollars in business would be sent to FATC if he
21 agreed.

22 75. On or about February 20, 1995, Kennedy presented Bear Sterns proposal to FATC
23 Board of Directors, and after discussion, the Board approved for FATC, its employees and agents
24 participate in recording MERS as mortgagee or beneficiary; ignore title defects during title
25 searches and any fraud within escrow activities against borrowers. FATC Board approved written
26 and or oral agreements with Bear Sterns that called for FATC to instruct and train its Escrow and
27 Title Insurance staff to falsify county records and not report title defects to borrowers or the
28 public.

1 76. On or about January 2000, Mozilo requested MERSCORP to permit him, as licensed
2 real estate broker whom Countrywide sold residential mortgage loans through, to enroll
3 Countrywide as member of MERSCORP. After exchanges between Arnold and Mozilo,
4 MERSCORP granted Mozilo's request contingent upon him agreeing to lead Countrywide into
5 falsifying loan documents and county records, as well as keeping secret the fraudulent nature of
6 MERSCORP, its activities and purposes.

7 77. Bear Sterns and Does 2-30 entered into a formal contract agreement with Hazen and
8 Wells where Wells was hired as Bear Sterns "Master Loan Servicer" who would manage the loans
9 produced by Real Estate brokers that Bear Sterns hired; and represent to the Public that Wells was
10 the actual investor-lender of loans, such as Plaintiffs when the truth was Bear Sterns was the actual
11 lender of their funds as demonstrated in *Exhibits 29 & 30* which are incorporated herein as if fully
12 set forth.

13 **D. DEFENDANT MOZILO'S PERSONAL INVOLVEMENT – 2000-2008**

14 78. From on or about May 1995 to March 2000, Mozilo and his 20-year subordinate
15 Stanford Kurland ("Kurland"), from within CHL headquarters², monitored and evaluated the
16 enormous profits that Ameriquest Corporation and other subprime lenders were achieving by
17 inducing Americans to purchase subprime loan products that resulted in payment defaults and
18 foreclosures while transferring Americans equity to subprime lenders.

19 79. On or about January, February, March, April and May of 2000, Bear Sterns Does 2-30
20 with defendant Lewis, on behalf of BofA, held a series of talks with Mozilo and other
21 Countrywide officers at Countrywide California HQ about lending money to mortgage borrowers
22 which they wished to hire Countrywide to broker for Bear Sterns.

23 80. During these multiple discussions in 2000, Lewis with Does 2-30 informed Mozilo et
24 al that they wished to lend BofA and Bear Sterns money out as subprime versus prime loans in
25 order to achieve greater profits and saw residential borrowers as a kind of untapped market that
26

27 ² Unless otherwise specified, all talks, plans, agreements, actions of Mozilo, Kurland, Sambol, Does 31 – 70 are alleged to have taken place in
28 CHL's southern California headquarter offices at 4500 Park Granada Blvd. Calabasas, CA 91302.

1 billions could be earned from and they needed to portray the subprime loans as prime loans in
2 order to induce more residential borrowers into agreements.

3 81. Plaintiffs are informed by findings of California and 13 other states Attorney Generals,
4 the SEC and FTC, and believe that defendants Lewis, BofA, Does 2-30 explained to Mozilo on or
5 about March 15, 2000, that they did not wish to lend predatory loans directly under state or federal
6 regulations because of the restrictions regulations imposed upon lenders and wished to use
7 Countrywide to broker their funds with the certain types of borrowers.

8 82. On or about April 2000, defendant Countrywide Board of Directors—Mozilo, his wife
9 and children having over 50% controlling interest—duly elected defendant Mozilo to be CFC and
10 CHL Chairman and CEO with full authority to speak and act on behalf of Countrywide and
11 continue to be its chief Broker who hired and trained sub-brokers, such as defendant Colyer, to act
12 on his and Countrywide’s behalf when brokering loans to Californians and other Americans.

13 83. On or about April 2000, Mozilo asked Kurland would he accept promotion as
14 Countrywide President and support Mozilo’s plans to broker loans for Bear Sterns and BofA;
15 discard Loeb’s underwriting principles and strip savings, income and equity from mortgage loan
16 borrowers to maximize profits for themselves, Bear Sterns and BofA.

17 84. On or about April 2000, Kurland accepted Mozilo’s offer, and Mozilo presented
18 Kurland to Countrywide’s board of directors where Mozilo and others elected Kurland to be
19 CHL’s president with full authority to speak and act on its behalf.

20 85. On or about May 13, 2000, Mozilo and Kurland discussed how subprime loans were
21 generating higher profits than prime loans and they agreed to develop and work on plans to
22 penetrate and increase sales in the subprime mortgage market; whereby every Monday of each
23 week from May to December 2000, Mozilo and Kurland met at Countrywide’s headquarters main
24 conference room where they continuously planned, designed and approved policies and practices
25 that would train their staff to new company practices.

26 86. On or about April 15, 2000, Does 2-30 and Lewis explained to Mozilo and other
27 Countrywide officers that Bear Sterns and BofA would provide Countrywide with the loan
28 contract agreements that Bear Sterns and BofA needed Countrywide to get borrowers to sign; and

1 such contracts required Mozilo to design loans in a way which would strip borrowers savings,
2 income and property equity before leading to default and foreclosure after statute of limitations
3 had run out on breach of contract, fraud and other civil limitations.

4 87. On or about May 15, 2000, Does 2–30 with Lewis, told defendant Mozilo that as
5 Countrywide’s chief broker, he would have to ensure that he and his sub-brokers concealed from
6 borrowers that they were acting as the broker of Bear Sterns or BofA and if Mozilo agreed to each
7 of these points discussed from January to May 2000 meetings, then Bear Sterns would lend
8 millions of dollars to borrowers that Mozilo was willing to broker loans for.

9 88. Bear Sterns then provided Mozilo a “Master Repurchase Agreement” which, *inter*
10 *alia*, committed Countrywide to broker loans for Bear Sterns and committed Bear Sterns to
11 provide corresponding funds for such loans within a certain time frame, as long as the terms of the
12 loans met the specifications that Bear Sterns or BofA dictated to Countrywide.

13 89. On or about June 2000, Mozilo presented Bear Sterns and BofA proposal with the
14 Master Repurchase Agreement to Countrywide Board of Directors, informed the Board that BofA
15 and Bear Sterns required that Mozilo order, train and direct sub-brokers to represent sub-prime
16 loans as prime loans to borrowers, that it would require substantial change in Countrywide’s
17 underwriting and other policies; thereat Countrywide Board of Directors approved for Mozilo and
18 other officers to enter into agreements with Bear Sterns, BofA, Wells Fargo, MERSCORP and
19 FATC to fulfill Bear Sterns lending goals and objectives.

20 90. From on or about March 2000 through March 2006, Bear Sterns via Does 2-30 and
21 defendant BofA via Lewis, entered into agreements that were renewed in each year, where they
22 committed Bear Sterns and BofA into providing funds for Mozilo and Countrywide to find
23 borrowers who could be induced into buying subprime and later HELCO/Pay Option ARM
24 “Combo” loans, that Countrywide sub-brokers designed in a way so borrowers would not be able
25 to pay off loans to own their homes, but design them to have the highest interest and payment rates
26 that borrower would tolerate which would strip savings, income and equity from property, transfer
27 it to Bear Sterns and BofA, then produce default and foreclosure that MERSCORP would proceed
28 with as a fictitious beneficiary in order to conceal Bear Sterns and BofA.

1 91. On or about June 2000, Bear Sterns and defendant Lewis asked Mozilo to disregard
2 California laws regarding his Real Estate Broker fiduciary duties, and to manage Countrywide in a
3 way which publicly presented Countrywide as the actual lender of the funds being loaned out to
4 Californians and other Americans, and not informed borrowers that Countrywide and Mozilo's
5 sub-broker agents were acting as dual agents.

6 92. From June 2000 to September 2008 Mozilo ignored his Real Estate Broker duties by
7 supervising his sub-brokers with training to not inform borrowers that they and Countrywide were
8 acting as dual agents; design, sell and close mortgage loans which were in borrowers worse
9 financial interests; design loans to strip savings, income and equity from borrowers then produce
10 default and foreclosures; conceal from borrowers that they Countrywide was not actually lending
11 its own money, but funds of Bear Sterns and BofA; misrepresent to borrowers what terms and type
12 of loans they were actually buying and signing.

13 93. From on or about March to December 2000, defendants Mozilo, Lewis, Does 2-30 and
14 Wells spoke with each other respectively from their Calabasas, Charlotte and San Francisco
15 offices once per month regarding Mozilo's progress reports on his efforts to move Countrywide to
16 broker subprime loans for them.

17 94. On or about May 2000, Mozilo and Kurland presented to Countrywide's Board their
18 intent of redirecting Countrywide's brokering of Prime loans for borrowers, to subprime loans for
19 borrowers who would not be able to afford to repay the loans that Countrywide brokered and that
20 such loans would be on behalf of Bear Sterns and BofA pursuant to Master Repurchase
21 Agreements that Countrywide Board approved.

22 95. At the May 2000 Board meeting, Countrywide Board of Director approved Mozilo's
23 plans.

24 96. On or about June 5, 2000, Mozilo and Kurland held meetings with defendant Does 31-
25 50 explaining how they were taking Countrywide – hitherto, primarily Prime lender – in a
26 direction that focused on increasing subprime and “non-conforming” loan originations, in order to
27 generate more money for them.
28

1 97. During this June 2000 and other meetings in 2000, Mozilo and Kurland explained to
2 defendant Does 31-50 how most Americans who had not purchased homes in the last 5 or so years
3 believed that home loans were limited to traditional fix-rate mortgages that were paid off in 30-
4 years and allowed them to build up equity and that they could use this public perception by
5 pretending that Countrywide would broker loans which still fit the traditional quality and type of
6 loans that would allowed them develop equity, while at the same time extending adjustable rate
7 mortgages disguised.

8 98. At this June 2000 meeting Kurland and Mozilo offered Does 31-50 more money if
9 they joined these efforts by helping them come up with marketing, sales and training ideas for
10 retraining Countrywide staff in practices where borrowers could be stripped of savings, income
11 and property equity; and Does 31-50 agreed to join Mozilo and Kurland plans.

12 99. Defendants Mozilo, Sambol, Lewis, Colyer, Does 2-100, Bear Sterns and Wells knew
13 or reasonably should have known that subprime loans produced an increase in loan defaults and
14 home foreclosures among Americans.

15 100. Plaintiffs are informed and believe and based thereon allege that in their April, May
16 and June weekly meetings, Mozilo and Kurland talked about how the culture/staff in Countrywide
17 was use to applying the underwriting standards that Loeb put in place and which they had to
18 replace if they were to succeed in their subprime mortgage lending goals.

19 101. On or about June 19, 2000, Mozilo and Kurland spoke about how they could
20 dramatically increase their borrower client-base, and they stated that they would have to make
21 Countrywide publicly appear to be offering loan products which were financially more beneficial
22 than the loans Countrywide competitors were offering; therefrom Mozilo asked Kurland to
23 instruct his sub-brokers and agents, who have direct contacts with customers, to orally promise to
24 prospective borrowers that Countrywide could put them in loans with no closing cost, 30-year
25 fixed FHA or other “conventional” or “prime” loans at 1, 2, 3 percent interest rate; while at the
26 same time present written loan contracts which were so complex and confusing that borrowers
27 would not readily discern that Countrywide was charging twice or more times what was promised
28

1 or charged by other companies, strip savings, income and equity from property and cause loan
2 defaults and foreclosures.

3 102. Defendants Mozilo with Kurland held a meeting with Does 31-50 after the June 19,
4 2000 meeting where they informed them of their decision, instructed them to meet at least weekly
5 to develop and work out details of plans, so they could promulgate instructions among themselves
6 and other managers through internal memoranda, face-to-face and telephonic talks which would
7 train staff companywide to move in this new direction.

8 103. On or about July 17 and 18, 2000 meetings, Mozilo and Kurland spoke about and
9 agreed with each other to lead Countrywide in a direction that would increase brokering of
10 subprime loans which stripped borrowers savings, income and equity; train staff to not expose this
11 defect and lead borrowers to believe that they could afford to pay off loan just long enough until
12 statute of limitations for fraud and other civil provisions ran its course and MERSCORP was able
13 to foreclose on properties and turn proceeds over to Bear Sterns or BofA.

14 104. In their weekly Monday and Thursday meetings during July, August and September
15 2000, Mozilo and Kurland spoke about how borrowers who are use to buying prime loans, and
16 corresponding lower rate payments, would not be inclined to purchase the average subprime loan
17 and so they agreed that they needed to lure and induce borrowers into buying the loans brokered
18 by Countrywide and Kurland suggested that the best way to do this was to design loans that had an
19 initial low interest and payment rates which would be a teaser or bait rate, to trick the borrower to
20 accept loan terms, while obscuring the fact that it was designed to increase dramatically in future.

21 105. On or about July 17, August 14 and September 25, 2000, Kurland and Mozilo issued
22 orders for defendants Does 31 to 50, Vice President of Operations, Underwriting, managing
23 Mortgage Loan Brokers, to bring remote managers, as defendant Colyer, to Southern California to
24 train them on how to falsely tell borrowers looking to purchase home loans, and who received
25 estimates or commitments from others willing to broker lower rate loans, that Countrywide would
26 provide them with Prime “conventional” loan that had lower payment and interest rate than
27 Countrywide’s competitors.
28

1 106. At these training sessions, broker-managers, such as Colyer in 2004 and 2005, were
2 flown to Countrywide's California offices where they were told instructions by Mozilo, Sambol
3 and Does 31-50 on how to "sell the payment" and conceal from borrowers that Countrywide's
4 brokered loans would be higher than competitors, in order to induce borrowers from buying home
5 loans from Countrywide's competitors; remove contractual loan contingency in real estate loan
6 contract and trapped them into accepting loans brokered by Countrywide.

7 107. Further, Mozilo and Kurland instructed Does 31-50 during the months of July,
8 August and September 2000 meetings to prepare training programs that taught personnel
9 techniques on how not to disclose and conceal from borrowers that Countrywide brokered loans
10 would cost twice or more what competitors would charge or what a prime loan would cost; and
11 that they were intentionally designed to strip equity from borrowers property by subsequently
12 increasing interest rates so as to consume 80 to 150% of borrowers income, make it impossible for
13 borrower to repay loan unless they could correspondingly increase their income as business.

14 108. Defendants Mozilo, Sambol, Does 31-50 knew or reasonably should have known that
15 their instructions and training of Countrywide employees to design loans in a way which stripped
16 savings, income and equity of borrowers would result in defaults, foreclosures and falsification of
17 information stated or given to borrowers by Countrywide sub-brokers.

18 109. On or about September 25, 2000, Kurland and Mozilo met and talked about
19 maximizing their profits further and decided to instruct, train or approve Does 31-50 and Does 51-
20 60 (the latters' headed up Countrywide's subsidiary company Landsafe as its officers) to instruct,
21 encourage or order staff and subcontractor appraisers, to falsely inflate the values of properties
22 that Countrywide was planning to broker in California, so as to broker mortgage loans at higher
23 than fair market property value so they could earn higher profits for Bear Sterns and themselves.

24 110. From on or about January 10 to December 20, 2000, Mozilo exchanged 30 phone
25 conversations with Does 2-30 and defendant Lewis along with 40 e-mails in working out the
26 agreements for him to broker loans for Bear Sterns and BofA which stripped borrowers savings,
27 income and equity before producing default and foreclosure.
28

E. DEFENDANT SAMBOL & MOZILO AS CO-CONSPIRATOR

1
2 111. From on or about October 4, to December 2000 Mozilo and Kurland held weekly
3 meetings, where they spoke about their plans with defendants Sambol and others, their need to
4 identify trustworthy senior staff to head up, lead and support efforts which portrayed to the public
5 that Countrywide was a company that *sold prime loans*, often backed by FHA, applied strict
6 underwriting standards which Federal Housing and Urban Development (HUD) endorsed, could
7 be trusted to broker and otherwise sell borrowers the best loans while being transparent and good
8 investment for general investors; while at the same time senior staff would support efforts which
9 would train and encourage Countrywide employees to conceal from the public and investors that
10 Countrywide was actually being led to defraud savings, income and equity from borrowers and
11 investors, by not brokering prime loans and not applying such standards.

12 112. On or about October 4, 2000, and each Wednesday in October 2000, defendant
13 Sambol and Does 31-50 held talks with Mozilo and Kurland where the latters' told them the
14 details of their plans to broker loans that stripped borrowers savings, income and equity, then
15 default and produce foreclosures; and Sambol with Doe defendants agreed to join and support
16 such efforts (heretofore cited as "Common Goals") in exchange for a certain number of CHL's
17 company, higher employment positions, shares options and or higher compensation.

18 113. On or about October 15, 2000, Mozilo and Kurland presented Sambol to
19 Countrywide's Board of Directors to be in charge of promulgating and enforcing Common Goals
20 orders, directives and ideas among Countrywide employees, agents and the public, including
21 Plaintiffs, so as to achieve Common Goals and the Board voted unanimously for Sambol to head
22 up such efforts.

23 114. From on or about November 2000 to March 2006, defendant Sambol now sat in on
24 Mozilo and Kurland weekly discussions and contributed ideas on how to best present Common
25 Goals to subordinates throughout CHL and market them to Public; and on or about October 15,
26 2000, Mozilo asked Sambol to come up with things that Mozilo can make in Public statements
27 which would help them all accomplish Common Goals and Sambol answered that he would do so.
28

1 115. From on or about October to December 2000, Sambol managed certain Doe
2 defendants in the writing and developing of scripts for Mozilo to state publicly and that brokers
3 and other staff would be trained in order to broker loan products to mortgage borrowers who had
4 little or no understanding of the mortgage market; another script for existing home loan borrowers
5 who may have more knowledge, but not enough to understand the obscured complexities. Sambol
6 also ordered certain Does 31-50 to develop instructions for managers on how to influence staff to
7 design loan products which made borrowers feel as if they were buying the best possible product
8 for the purchase or refinancing of their property, while concealing or obscuring how loans would
9 strip savings, income and equity from their property, lead to default and foreclosure.

10 116. From on or about October-December 2000 through December 2001, Defendant
11 Sambol personally held meetings from Mondays to Friday with groups of staff where they brained
12 stormed and discussed the development of training scripts, procedures and policies that Mozilo
13 and Kurland asked Sambol to produce, and at these meetings Sambol concluded, among other
14 things, that Countrywide would need to train brokers and staff to focus the borrower on the
15 temporary low payment and conceal from borrower that low payment was only temporary by
16 becoming personal with borrowers so they would trust them and have a false sense of comfort and
17 security in Countrywide being an honest and trustworthy fiduciary in brokering their home loan:
18 e.g. by laughing, joking, fabricating stories which relates to borrowers experiences and to
19 otherwise gain borrower's trust such as Colyer March 2006 claims: "We really care about
20 designing the right loan each customer..." "out of all the lenders I've worked for before,
21 Countrywide is the only one I've found who doesn't put its interest ahead of borrowers." "I can go
22 home every day and sleep good because I know that I'm not ripping anyone off and the loans I sell
23 is the best loan possible for the customer..." And "no one can do what Countrywide can."

24 117. From January 2001 to December 2005, Sambol wrote different scripts that guided
25 sub-brokers on how to promise the borrower anything at all which would convince them to hire
26 Countrywide to broker loans, as Colyer represented to Plaintiffs David and Salma on March 14,
27 2006: no closing cost, 1 to 3 % interest rates or payment rates which was low enough to beat all
28

1 the competition; repeating above-described promises and statements, making light jokes and
2 laughing, all in order to convince David and Salma to hire Countrywide to be their loan broker.

3 118. Sambol produced instructions throughout this period for building borrowers
4 confidence up and leading them on as long as possible with false promises of 30-year fixed rate;
5 “the best” and safest possible loan was being worked out; “we provide you with the dream of
6 owning your first home,” as Colyer repeated countless times in March 2006 to David and Salma
7 Merritt; retell false stories about other lenders higher cost loans, and once they had no choice but
8 to go with CHL, present them with loan product which used a low “teaser rate” then rush them
9 through the process of signing while unleashing documents that contain fifty (50) to one-hundred
10 thousand or more words in 8 or 6 point font, cited in a hybrid language not used before in the
11 residential loan industry.

12 119. Each time Sambol produced instructions for sub-brokers or modification of existing
13 instructions, he presented them to Mozilo, Kurland on other Board of Directors who approved
14 instructions in 2001, 2002, 2003, 2004, 2005 and 2006, thereat ordering for instructions to be
15 promulgated throughout Countrywide, including training defendant Colyer from January 2005 to
16 March 2006, in these practices and instructions.

17 120. Sambol then worked with certain underwriters - part of Does 31 to 50 - every
18 Wednesday from on or about January 10, 2001 to March 29, 2006, formulating and modifying
19 how sub-brokers, as defendant Colyer, should work with junior underwriters in designing loans
20 pursuant to agreements Mozilo et al made with Bear Sterns and BofA, with payments that
21 increased over time to take 75, 90 and more than 100% of borrowers income so they could ensure
22 that borrower would default and be subjected to foreclosure, while simultaneously concealing
23 from borrower – i.e. not disclosing – that the loan(s) were being underwritten to increase
24 likelihood of default and foreclosure pursuant to defendants BofA, Does 1-30 and or Wells
25 instructions or criteria.

26 121. On or about December 20, 2000, Sambol wrote up then circulated plans among
27 Countrywide Vice Presidents and Managers - within Does 31 to 50 – informing them that they had
28 to direct, encourage, pressure or order Countrywide sub-brokers and underwriters to ignore part or

1 all of Countrywide’s own promulgated underwriting guidelines in CLUES, through “exceptions”
2 that would be approved by Countrywide “risk management” and or “structured lending desk” staff
3 located in Plano, Texas who would know how many and what types of subprime loans had to be
4 produced to supply Bear Sterns, WELLS and BofA securities pools.

5 122. On or about January 8, 2001, Sambol reported his written plans to Mozilo and
6 Kurland. After some discussion, Mozilo and Kurland added to, modified and essentially approved
7 Sambol’s plans, emphasizing for brokers and agents to “push and sell the lower payment option,”
8 conceal the later balloon payments; and to portray the quality of loans as going through “vigorous
9 underwriting” standards, thereat Mozilo directed Sambol to promulgate these orders to Does 31-50
10 through interoffice memos, emails and phone calls, so they could encourage, train and instruct
11 their subordinate VPs, Managers and brokers throughout Countrywide to follow suit.

12 123. During this January 8, 2001, meeting between Mozilo, Sambol, Kurland and others,
13 Mozilo, Kurland and Sambol stated among each other that they could best manipulate or influence
14 their sub-brokers to carry out their plans by paying them higher compensation directly or via
15 bonuses and other ways; and to persuade staff that they were on a noble mission to help
16 Americans, particularly African-, Latino- and other minorities, achieve the “American Dream” of
17 owning a home.

18 124. Mozilo told Kurland and Sambol that since Loeb had established relations with HUD
19 in providing FHA loans in low-income and minority communities, that they should use this history
20 to portray Countrywide as a company that should be trusted to broker borrower loans, thereat they
21 agreed to have Sambol publicize this to the Public while knowing they nor Countrywide should be
22 trusted by any borrower.

23 125. On or about every Wednesday from January 17 to December 12, 2001, Mozilo and
24 Kurland held face-to-face, telephonic and or e-mail talks with Sambol and or Does 31 to 50, to
25 monitor the development of their predatory lending ideas within Countrywide, receive progress
26 reports on its implementation from VP managers and monitored whether they were effective in
27 increasing home owner defaults and foreclosures.
28

1 126. On or about January 28, 2001, Mozilo, Kurland, Sambol and Does 31-50, met in
2 Countrywide headquarters to discuss the contents of the public statements Mozilo would be
3 making on financial Talk and News programs, Security and Exchange Commission (SEC) filings
4 and other public communications that would be disseminated to Plaintiffs and other Californians.
5 Mozilo, Kurland and Sambol agreed with each other that Mozilo should always state that the
6 quality of loans brokered by Countrywide were “prime quality ... low cost loans ... using quality
7 control audits to monitor compliance with [CHL] underwriting criteria”; while at the same time
8 Mozilo, Kurland and Sambol instructed Does 31-40 to disregard control audits and not apply
9 sound underwriting criteria and to instead from February 2001 to March 2006, Mozilo issued
10 emails and made phone calls to Does 31-50 and ordered them to train underwriters and sub-
11 brokers to start disregarding underwriting criteria to produce an ever growing quantify of
12 subprime and non-prime loans.

13 127. On or about February 2001, and repeatedly each year to March 2006, Mozilo and
14 Kurland told, emailed and wrote memos to Countrywide managing staff, including Sambol and
15 Colyer, to train staff and sub-brokers to not use the term “subprime loans” with borrowers in
16 connection with brokering subprime loans with borrowers, but to use “conventional,” “Prime,”
17 and other terms to conceal the fact that they were brokering inferior loans.

18 128. On or about February 28, 2001, Mozilo personally issued public statements with SEC
19 which reported to Plaintiffs and other Americans, that Countrywide was focusing on producing
20 “prime quality ... low cost loans ... using quality control audits to monitor compliance with
21 Countrywide Home Loans underwriting criteria” that affords Americans best chance to own their
22 first home.

23 129. Defendants Mozilo, Kurland, Sambol on or about March 7, 2002, March 28, 2003,
24 March 12, 2004, March 15 & September 22, 2005 and March 1, 2006 met at Countrywide’s HQ
25 where they talked about Mozilo making direct public statements to Americans, including
26 Plaintiffs, that Countrywide focused on producing “prime quality ... low cost loans ... using
27 quality control audits to monitor compliance with [CHL] underwriting criteria”; “We’re
28 [Countrywide] looking to hold only pristine product on the balance sheet,” and each time on these

1 days *ibid*, Mozilo did in fact make these statements publicly through in Public reports, while
2 knowing he, Kurland and Sambol were increasingly instructing Countrywide subordinates to
3 broker subprime, non-prime and “Combo” loans and to disregard underwriting standards.³

4 130. In 2000, 2001, 2003 and onward, Mozilo directed his staff to conduct market
5 assessments which evaluated loan products being brokered by Countrywide to borrowers and how
6 many borrowers the market was able to sell to, and data repeatedly demonstrated that there was a
7 limitation on number of borrowers in general, and even a smaller number specifically, who were
8 interested or inclined to purchase subprime predatory loans.

9 131. Based on reviews of Federal Trade Commission, SEC and the States of California,
10 Florida, Illinois and New York Attorney Generals, Plaintiffs allege on information and belief that
11 on or about January 12, 2004, Mozilo, Sambol and Kurland talked about the staff findings *ibid*.
12 and agreed that they could broaden the number of potential borrowers if they could convince those
13 who qualified for prime loans that subprime loans were better for them; and they agreed to train,
14 instruct and authorize Does 31-50 to train and instruct their subordinates to manipulate, induce and
15 steer borrowers, who would normally qualify for Prime loans, into subprime loans without
16 disclosing it, and pay subordinates bonuses and higher pay for volume of subprime loans, not
17 quality.

18 132. On or about January 15, 2003, through November 13, 2003, Mozilo, Sambol and
19 Does 31-50, hired advertising firm to make the following representations to the Public through
20 Mail Brochures, Telephone calls, Internet, Radio and Television advertisements distributed to
21 home buyers: 100% financing, No Closing Cost, 30-year fixed rate, 1 to 4 percent interest rates;
22 while at the same time Mozilo and Sambol knew that they were ordering Countrywide’s sub-
23 brokers to not afford borrowers any of these terms and intended to only bait them so sub-brokers
24 could broker more expensive subprime loan products.

25 133. On or about October 24, 2005, Bears Sterns with Does 2-30 and Wells summoned
26 Mozilo to their New York City offices and instructed him to direct his sub-brokers to steer

27 ³ Because these public statements are made through public documents which are quite lengthy, Plaintiffs shall not Exhibit
28 them at this time; however, reserves right to present at proper future proceedings.

1 borrowers into what would be called “Pay Option Adjustable Rate Mortgages” (ARMs) and Home
2 Equity Lines of Credit (HELOC) and entered into a new Master Repurchase Agreement with
3 Countrywide via Mozilo which obligated Bear Sterns to continue to fund loans that were brokered
4 by Countrywide according to the terms they dictated.

5 134. On or about October 26, 2005, Mozilo reported this new agreement to Countrywide
6 Board who approved it and he thereafter directed defendants Sambol, Does 31-50 to advertised to
7 Public via newspapers, television, internet, radio and mailing “Combo Loans” were prime loans
8 which borrowers would be able to pay off and secure “**dream of owning your first home,**” while
9 concealing that loans were designed to strip savings, income and property equity and training
10 Mozilo’s sub-brokers to pretend to borrowers, including Plaintiffs, they were originating prime,
11 not subprime loans.

12 **F. MOZILO & SAMBOL TRAINING OF DEFENDANT COLYER**

13 135. On or about October 2005, defendant Mozilo designated Sambol to be the chief
14 officer to head up Marketing and extended Mozilo’s direct authority to direct and train
15 underwriters, sub-brokers to design and broker subprime loan products from on or about October
16 2005 to at least March 27, 2006 when such was designed and sold to the Plaintiffs.

17 136. Defendant Colyer was hired by Mozilo on or before January 2005, to be one of his
18 sub-brokers who would receive training and instructions from Mozilo and from those Mozilo
19 designated to train Countrywide’s sub-brokers.

20 137. From on or about January 2005 to March 2006, defendant Colyer traveled to
21 Countrywide HQ as well as conducted teleconferences with Mozilo, Sambol and other brokers, to
22 undergo training and instructions on how to represent to borrowers that Countrywide would be
23 lending them its own money, while concealing it was third party lender – Bear Sterns – lending
24 funds; how to bait borrowers with agreements of very low monthly payments, then focus their
25 attention on the low payment while concealing the true terms designed to strip them of savings,
26 income, equity and property.

27 138. During his January 2005 to March 2006 trips to HQ, Colyer met and spoke with
28 defendants Mozilo, Sambol and or Does 31 to 50, who detailed for him that as a California Real

1 Estate Broker who was under the management and control of Mozilo, his compensation was tied
2 to him orally promising borrowers whatever he had to promise in order to gain their trust and
3 confidence in him and Countrywide so as to lure them away from competitors and convince them
4 to hire Countrywide to broker their loans.

5 139. Colyer told Mozilo, Sambol and Does 31-50 that he was willing to disregard his
6 duties under California Real Estate Broker codes as long as they compensated him according to
7 agreements which are unknown to Plaintiffs at this time.

8 140. Between January 2005 to March 2006, Mozilo, Sambol and Does 31-50 specifically
9 told Colyer that he needed to convince borrowers that Countrywide would provide them the
10 lowest possibly interest and or payment rate in the industry; would sell them prime loan;
11 underwritten to follow FHA or other federal and state standards; would fulfill borrowers “dream”
12 of owning their home; learn from borrowers their deadline dates for removing loan contingencies
13 from real estate contract and learn what Countrywide competitors were offering and no matter
14 how low offers were, present offers to borrowers which were as much as half of what competitors
15 offers were; manipulate borrower into believing that it was best to not put any or much of a down
16 payment; then design loan(s) which did not fulfill any of these things and stripped them of
17 savings, income, equity and property and to represent to Public that Menlo Park office was a
18 Bank.

19 141. At every training, instruction or other sessions with Mozilo, Sambol or Does 31 to 50,
20 from January 2005 to March 2006, Colyer readily accepted each of these request, including
21 presenting to Public that his office was a Banking operation although he knew that it he was not
22 operating a bank, and upon returning to Menlo Park office after training sessions, he faithfully
23 implemented Common Goals upon those borrowers residing in Santa Clara and adjacent counties.

24 142. During 2004, 2005 and 2006, defendant Countrywide Board of Directors were
25 provided reports from Does 31-50, on behalf of Mozilo, Sambol and others, which reported that
26 the loans Countrywide were brokering through Colyer and other sub-Brokers was causing a
27 dramatic increase in defaults and foreclosures in California and elsewhere and data tied
28 Countrywide staff and agents practices of misleading, lying and otherwise misrepresenting loan

1 products to borrowers as main cause, and each time the Board of Directors reviewed these reports,
2 they privately spoke on this subject and officially voted to support and authorize Mozilo, Kurland,
3 Sambol et al to continue these practices through Colyer and other sub-Brokers.

4 **G. LOAN APPLICATION ALLEGATIONS**

5 143. On or about February 27, 2006, Countrywide’s Consumer Markets Division
6 maintained offices throughout California, including a San Mateo County office whereby
7 Countrywide designed then brokered loan products to consumers, including the Plaintiffs. Further,
8 this office was publicly portrayed as a Banking Institution by positioning “Countrywide Bank” at
9 its entrance although it was in fact a California Mortgage Broker.

10 144. Based on advertisements placed with San Francisco Bay Area and other media
11 groups, on information and belief, Plaintiffs allege that before February 27, 2006, Sambol, Mozilo,
12 Does 31 to 50 began a deceptive marketing campaign to market its Subprime brokering efforts to
13 borrowers such as Salma and David, by aggressively promoting “teaser” interest rates as low as
14 1% and publishing daily or weekly ads portraying Countrywide as a Bank. From on or about
15 January 2005 to March 2006, defendants ran advertisements in the San Jose, San Francisco,
16 Oakland, Los Angeles and other California television channels, Internet and Brochure Mailings
17 stating they would provide loans with 1, 2, 3 or 4% interest rates, no closing costs, low monthly
18 payments or no origination costs. These public advertisements did not distinguish between annual
19 percentage rates, “payment rates,” nor warn Plaintiffs or the public regarding negative
20 amortization, complex acceleration or teaser rates, note reset rates or automatic “re-casting” of
21 promissory note rates into notes bearing rates in excess of 10%, not 1%, that underwritten
22 standards were ignored and that Countrywide knew or had reason to know that purchasers of loans
23 could not repay the loans. Plaintiffs David and Salma saw, heard and read these advertisements
24 throughout 2005.

25 145. From January 2004 to March 2006, Plaintiffs received over ten (10) mailings from
26 Sambol, Mozilo and Does 31 to 50, claiming it was America’s #1 Home lender that could be
27 trusted to sell Plaintiffs the best or right loan for them which would have no closing cost and
28 interest rates as low as 1%; however, these defendants failed to disclose that Countrywide was a

1 broker who would not provide any of these things and would in fact strip them of their savings,
2 income, equity and property.

3 146. These public solicitations portrayed defendant Countrywide as a “lender,” did not
4 disclose that it was a real estate mortgage broker, concealed that it was using Bear Sterns and
5 BofA funds and acting as their broker while concealing that under California law it was obligated
6 to inform borrowers that its role was loan broker for them as well as third party lender.

7 147. From on or about April 13, June 15, July 20, August 17, September 14, October 19,
8 November 16, December 14, 2005; and January 11, February 8, and March 8 2006, Plaintiffs
9 David and Salma both received telemarketing calls from Countrywide defendants Does 61-70,
10 who were supervised by Mozilo, Sambol and Does 31-50, soliciting them to purchase their home
11 loan through Countrywide, and orally promised that Countrywide would be able to sell them a
12 FHA or other type loan which would meet their goal of \$2,000 or so monthly payments by
13 brokering a loan product to be as low as 1%, have no closing cost and be more affordable than
14 what their competitors could broker for Plaintiffs.

15 148. Based on California and 16 other States Attorney General reports, Plaintiffs are
16 informed and believe and based thereon allege that Mozilo, Sambol, Countrywide, as broker for
17 Bear Sterns and BofA, received monthly requests, including March 2006, for the quantity and
18 terms they wished Countrywide to produce Pay Option ARM and HELOC loans secured by
19 borrowers deeds of trust pursuant to the Master Repurchase Agreement Mozilo and Board of
20 Directors entered into with Bear Sterns and BofA. Countrywide then steered borrowers as well as
21 Plaintiffs purchase loans based on Bear Sterns and BofA interests and not Plaintiffs, while
22 concealing from borrowers these broker-lender relationships.

23 149. Based on Wells Fargo 2006 Master Servicing Agreement with Bear Sterns and
24 Countrywide, Plaintiffs are informed and believe and based thereon allege that Bear Sterns with
25 Wells and BofA, were participants in Countrywide’s loan brokering business during March 2006,
26 advanced money to the Countrywide Defendants to broker Plaintiffs loans which they ordered.
27 Further, loans were delivered to Bear Sterns agent Wells by pre-assignment before origination of
28

1 loans. Part of Servicing Agreement accompanies this complaint as *Exhibit 33* and is incorporated
2 herein as if fully set forth.

3 150. Based on Countrywide applications for investment funds from 2004 to 2006,
4 Plaintiffs are informed and believe and based thereon allege that from January 2003 to January
5 2007, approximately 50% of the loans produced by Countrywide were loans brokered for Bear
6 Sterns and BofA funds and not Countrywide loans, all along concealing from borrowers, including
7 Plaintiffs, that they were originating loans for third party lenders while representing that
8 origination was for Countrywide.

9 151. This was concealed from Plaintiffs and had they known Countrywide was not
10 originating loans for itself, they would not have purchased their loan through Countrywide. The
11 Countrywide defendants, through their deceptive and misleading advertising scheme profited
12 immediately on the loans sold to Plaintiffs including but not limited to following:

13 (a) Producing the Pay Option ARM Note at an above market interest rate for such a loan,
14 which earned a higher premium, meaning the Investors paid Countrywide more than 100% of the
15 loan principle amount, which generated an immediate profit of 2-4% of the principle balance of
16 the Note, versus .5%-2% of the principal balance of the Note received on prime loans;

17 (b) Charging Plaintiffs a “loan discount” fee of \$8,129, when in fact Plaintiffs loan was
18 not discounted from the then existing interest rate for the same first loan, but rather charging more,
19 the opposite of defendant Countrywide’s oral representations to the Plaintiffs and the public;

20 (c) Charging loan processing, credit report, appraisal, underwriting and other fees far in
21 excess of defendants costs’, contrary to law, and in excess of those charged by Countrywide’s
22 competitors;

23 (d) Producing the purchase money HELOC second loan at an above market interest rate
24 for similar HELOC loans, which Countrywide immediately pre-sold to the “investors” ordering
25 and providing the loan products for a premium above the principal balance which generated and
26 immediate profit for Countrywide as their agent-broker while not disclosing these relationships or
27 practices to the public or Plaintiffs;
28

1 (e) Engineering larger principle balance loans by falsely inflating value of property
2 through a network of appraisers, including defendant Benson, raising additional profits, and
3 without regard for the ability of purchasers of loans to repay loans, and urged purchasers of loans
4 to encumber their homes over 100% of fair market or assessed value to Defendants' profit – i.e.
5 Plaintiffs loan principle amount was \$60,000 above fair market value of \$670,000 which was
6 known to defendant Countrywide when Plaintiffs loans were produced;

7 (f) Placed purchasers of loans, including Plaintiffs, in credit card “piggyback” Home
8 Equity second loans bearing interest rates over 10% while advertizing 1% “fixed” interest rates
9 and obscuring total monthly payment obligations in disclosures, among other deceptive and
10 misleading advertizing schemes.

11 152. The Plaintiffs, at all times relevant herein, are first-time home buyers who were
12 newlyweds at the time and not at all aware of the process or complexities of purchasing a home;
13 any aspect of home loans, deeds of trust, home financing, loan terms, and evaluating or
14 negotiating home financing and lacked knowledge and experience in secured real estate loans.
15 Plaintiffs placed trust and confidence in the good faith, integrity, and honesty of defendant
16 Countrywide through its local broker defendant Colyer, TV commercials and public statements of
17 Mozilo and other Countrywide representations.

18 153. Based on personal experiences of David and Salma, on information and belief
19 Plaintiffs allege that at all times relevant herein, defendant Countrywide deceptive marketing and
20 advertising practices were untrue and misleading in that Defendant Countrywide, as a matter of
21 practice known to Board of Directors and ordered by Mozilo and Sambol:

22 (a) Provided false and deceptive monthly home loan payment estimates below those
23 provided by other mortgage lenders in order to induce borrowers who are part of the public, as
24 Plaintiffs, to rely on Countrywide Defendants to broker loans for the close of escrow on property
25 and this caused Plaintiffs and other borrowers to release home-purchase-contract loan conditions
26 precedent to Plaintiffs obligation to purchase the home, and once committed to Countrywide,
27 Countrywide defendants then switch, change or otherwise altered the lower estimated mortgage
28 loan interest rates, loan principal amount, loan origination fees, loan costs, loan payments, loan

1 repayment terms, loan index or margin rates, to higher amounts than promised or represented
2 before or at the close of escrow, switching to loans that were less favorable than loans
3 Countrywide's competitors were willing or able to provide public and Plaintiffs;

4 (b) Induced Plaintiffs and public into selecting Countrywide to purchase loan products
5 based on defendant Countrywide's Television, Internet, or other media promises of No Closing
6 Costs', no origination fees, low interest rates, or other loan fees; no competitor was more
7 trustworthy to broker or sell Plaintiffs and borrowers loans than Countrywide;

8 (c) Concealed that defendants intended to provide Plaintiffs with two loans with no down-
9 payment, while discouraging them from making a down-payment against Plaintiffs financial
10 interests to do so; then concealing that Countrywide would not underwrite the FHA or prime fixed
11 rate, 30-year amortization traditional-loan that Defendants orally and in writing promised to
12 Plaintiffs would be the loan they were signing at close of escrow;

13 (d) Failed to state that defendants intended to inflate and increase the purchase price of
14 Plaintiffs home considerably above market value in order to allow Countrywide defendants to earn
15 more on commission over what honest mortgage brokers would have charged; while falsely and
16 deceptively representing its loan products were discounted, and engaged in other deceptive
17 manipulative, and predatory loan practices, which the public and Plaintiffs reasonably could not
18 detect until sometime after close of escrow. Some of defendants' advertisement are attached
19 hereto, marked *Exhibit 9*, and incorporated herein by reference. A copy of defendants initial Good
20 Faith Estimate of loan costs', terms, FHA etc are attached as *Exhibit 10* and incorporated herein by
21 reference.

22 (e) Twice per month from May 2006 to November 2009, delivered false and deceptive
23 monthly home loan interest rate payment coupons to Plaintiffs and other borrowers; false and
24 deceptive Good Faith Estimates of loan, terms and closing costs, which Countrywide presented as
25 the only payment option available to Plaintiffs on the first and fifteenth of each month

26 154. On or about February 25, 2006, defendant Chen had told plaintiffs Salma and David
27 that he was only the Agent for the Sellers who had purchased the property to live in but an
28 emergency arose that forced them to sell the property below what they purchased it for.

1 155. Defendant Chen told plaintiffs Salma and David on or about February 25, 2006, that
2 the owners had paid \$729,000 for property and was willing to sell it to Plaintiffs for \$719,000.

3 156. Defendant Chen further told Salma and David that the reason property value was
4 \$729,000 was due to Sellers putting carpet throughout home, granite kitchen tops, Oven,
5 Microwave, Dishwasher, Air conditioner Units, Internet and Cable wiring throughout and, most
6 importantly, that Townhome was one of only six Townhomes which had a third parking space, in
7 addition to two garage, spaces that was directly adjacent to home.

8 157. Once Plaintiffs agreed to purchase the home and informed Chen that they would seek
9 to get a loan for \$729,000 so they could have carpet removed and wooden floors installed, Chen
10 took back his offer to sell for \$719,000 and raised price to \$729,000.

11 158. On or about February 27, 2006, after Chen re-told Salma and David that owners had
12 paid \$729,000 for Property, Plaintiffs entered into a Residential Real Estate purchase agreement to
13 purchase the real property at 660 Pinnacles Terrace, Sunnyvale in Santa Clara County for the sum
14 of \$729,000 and was willing to put 5-10% down payment.

15 159. On or about March 2, 2006, Salma and David spoke with two mortgage loan brokers
16 who had previously qualified them for funding of other prospective property and committed to
17 find a lender willing to fund this property with payments that included taxes, insurance, 30-year
18 fixed rate that would be prime loan.

19 160. On or about March 10, 2006, David and Salma called defendant Colyer about whether
20 Countrywide could loan them 90-95% of property price; Colyer asked what monthly payments the
21 two other brokers were offering; Plaintiffs told him one broker was offering to provide them a
22 loan for \$4,600 the other for \$4,800 and he told them that he would see what he could do as he
23 took their application over phone. Plaintiffs also told Colyer that Salma was disabled and would
24 only have social security income starting in a year or two.

25 161. Colyer then told Salma and David after taking application that day, that he could
26 provide them with a loan that had payments “maybe 40 percent lower than the quotes the others
27 gave you” and if they would authorize him to run their credit reports and research this he would be
28 able to provide a more certain answer. That they need not worry about their low income because it

1 was normal practice for brokers to “exaggerate” what borrowers made in order to get qualified.
2 Plaintiffs did not know that it was illegal for Colyer to falsify their income.

3 162. Colyer stated to both Plaintiffs during this talk that “Countrywide would fund your
4 home as it does for millions of Americans.... We have been lending money for first time home
5 buyers more than any other lender.” representing that it would be Countrywide’s money funding
6 their property and at no time did Colyer represent that he would be brokering loan for Wells or
7 Bear Sterns.

8 163. On or about March 2006, Bear Sterns communicated to Mozilo, Sambol and Does 31
9 to 50 that they wished for Countrywide, as their broker, to steer as many borrowers as they could
10 into buying loans that financed 100% of their property and design terms to strip borrowers’
11 savings, income, equity and property from them.

12 164. Colyer, through his immediate supervisors who are within Does 31-50, contacted
13 other lenders of home mortgages to determine what types of terms they would provide for
14 plaintiffs and to see whether brokering a loan for others would provide him and Countrywide
15 greater compensation than what Bear Sterns would compensate them for and on or about March
16 23, 2006 Colyer sent Plaintiffs information to “Diablo” loans who, based on this information
17 Plaintiffs believes and allege, informed Colyer and Does 31-50 that Diablo would not compensate
18 them as much as Bear Sterns would. Part of this communication is referenced as *Exhibit 34*,
19 accompanying this complaint and incorporated as if fully set forth herein.

20 165. Plaintiffs are informed and believe and based thereon allege that Colyer contacted
21 Mozilo’s headquarter offices on or about March 10, 2006, spoke with one of the Does 31-50,
22 pursuant to company protocol put in place by Mozilo, Sambol and Countrywide’s board of
23 directors, to learn what types of loan(s) they wished Colyer office to broker for Plaintiffs.

24 166. On or about March 10, 2006, one of the Does 31-50 informed Colyer that they wished
25 for him to sell Plaintiffs a “100% Combo Loan” pursuant to the training they provided him at HQ
26 during 2005 and influence Plaintiffs to not put any down-payment so as to increase Countrywide
27 defendants and Bear Sterns compensation.
28

1 167. On or about March 10, 2006, Colyer accepted the instructions to steer Plaintiffs into
2 Countrywide's five-year Option ARM and HELOC Combo Loan package. Colyer further decided
3 that he would pretend to Plaintiffs that he was arranging a loan that was in their best financial
4 interest and conceal from Plaintiffs that it would strip all their equity and personal funds before
5 producing default and foreclosure.

6 168. On or about March 9, 2006, Plaintiffs met with Colyer as one of Countrywide's top
7 local representatives in Menlo Park offices to complete loan application, provide a copy of the
8 townhome purchase agreement, copies of pay stubs, W-2's, 2005 tax returns and other financial
9 information showing gross income in 2005, was \$32,312 for plaintiff David Merritt and would
10 increase to \$60,000 for 2006 onward; while Plaintiff Salma Merritt was on temporary 2-year
11 disability payments of \$5,200 which was scheduled to reduce to \$1,400 in September 2008.

12 169. On this same day, Colyer reaffirmed his agreement that he would provide a loan that
13 was 40% lower than Plaintiffs two brokers in order to induce them into terminating relations with
14 their two brokers and to accept Countrywide as their lender; and stating that as Manager of office
15 he would ensure that they received the best loans on the market which would meet their financial
16 needs and long term investment goals. Colyer continued to conceal that he and Countrywide was
17 going to broker funds of third party lender Bear Sterns.

18 170. During the week of March 8, 2006, Salma and David conducted internet research on
19 Countrywide and received dozens of public reports and statements that Mozilo, Kurland, Sambol
20 and other Countrywide officers had made. David and Salma read, saw and heard defendant Mozilo
21 stating that Countrywide only sold prime quality loans, used "strict underwriting standards" that
22 insured healthy borrowers; provided borrowers the lowest interest rates and monthly payments in
23 the nation; if investors provided funds for Countrywide to originate loans they would be assured to
24 receive some of the best returns on their investment.

25 171. None of these statements made by Mozilo and published by Countrywide, reported
26 that they were false although Mozilo, Sambol and Countrywide Board of Directors knew that they
27 were false.
28

1 172. During March 8 and 9, 2006 talks with Colyer, Colyer referenced numerous television
2 commercials that had been broadcasted to Plaintiffs and other borrowers – i.e. public – as proof
3 that Countrywide was a lender of money which Plaintiffs could easily trust and would have
4 Plaintiffs best financial interest at heart while knowing such was false.

5 173. Specifically, Plaintiffs read during March 2006, that Countrywide used top industry
6 underwriting standards, was committed to helping women and minorities obtain the “American
7 Dream,” loaned its own money; was regulated federally; employed highest ethical standards;
8 provided best loans for borrowers; was one of the best choices for investors to invest their money
9 in; and “No one [i.e. competitors] could do what Countrywide can.” i.e. provide lowest cost loans
10 that will save borrower far more money than what lenders or other brokers would provide.

11 174. On or about March 10, 2006, and at subsequent meetings in March prior to close of
12 escrow, and at all times relevant herein, defendants, Mozilo, Sambol, and Does 1 to 100, through
13 its local representative Colyer, Kimble and others made, provided and represented to Plaintiffs
14 orally that Countrywide would make an FHA loan for \$729,000 to Plaintiffs, 5% down, with a
15 total monthly payment of \$1,800 - \$2200 per month which paid down loan’s principle and interest,
16 and included property taxes, concealing that it was only an agreement to lure Plaintiffs away from
17 other two lenders or brokers.

18 175. On or about March 10, 2006, Colyer told Plaintiffs, on behalf of Countrywide and his
19 supervising broker Mozilo: “Countrywide applies the strictest underwriting standards to all the
20 loans we produce to ensure that you’re able to maintain your property investment for your
21 future....” And loan will meet FHA and HUD standards; however, Colyer failed to disclose that
22 the truth was a practice to discouraged staff from actually applying federal or other strict
23 underwriting standards and actually reduced Plaintiffs ability to maintain their property in the
24 future.

25 176. On March 10, 2006, at Countrywide Menlo Park offices, Colyer told Plaintiffs that he
26 and his Countrywide staff would work tirelessly to find the very best loan for them, and that if
27 they did not have the right loan product available, that he had the ability to get authorization from
28 his superiors to custom design loan product to meet Plaintiffs needs or obtain it from elsewhere.

1 Colyer further stated that if Plaintiffs could find anyone who could provide them with a lower
2 monthly payment or interest rate than what he will do, then Countrywide will insist that Plaintiffs
3 go with such lender.

4 **H. CO-CONSPIRATORS COLYER, CHEN, BENSON**

5 177. Based on Colyer informing David and Salma on March 17 over phone call, that he
6 had several talks with Chen, Plaintiffs believe and therefore allege that on or about March 10,
7 2006, Colyer contacted Chen and told Chen that he was looking to fund the property for Plaintiffs
8 and was seeking Chen's help in manipulating Plaintiffs into accepting Countrywide as their
9 lender. Chen told Colyer that he fully supported him in funding his property for sell to Plaintiffs.
10 Colyer asked Chen whether he was willing to communicate to Plaintiffs that Countrywide was a
11 good trustworthy place to fund property, Chen stated that he would.

12 178. Also based on this information and belief and written communications between
13 Benson and Chen, Plaintiffs allege that during this talk, Colyer and Chen spoke about the selling
14 price of property; Chen informed Colyer that he recently purchased property for approximately
15 \$650,000 and that although its market value was only approximately \$670,000 currently, that he,
16 Chen, had a working relationship with appraiser – defendant John Benson – who had already
17 agreed with Chen to falsely inflate the value of property beyond its actual market value of
18 \$670,000.

19 179. Further, defendant Chen asked Colyer whether he opposed having Benson conduct
20 Colyer told Chen that he would accept Chen's referral of Benson because Benson also had a
21 working relationship with Countywide in falsely inflating property values for Countrywide
22 previously.

23 180. On this same information and belief Plaintiffs allege that on or about March 10, 2006,
24 Colyer asked Chen to contact Benson on behalf of Countrywide to ensure that Benson would
25 falsely inflate property value beyond the \$729,000 that he was prepared to due for Chen and
26 produce an appraisal report of \$740,000. And Chen told Colyer that he would do this.

27 181. On or about March 10, 2006, Chen contacted Benson with request to falsely inflate
28 the property to meet Countrywide's \$740,000 lending goals and Benson told Chen that he would if

1 Chen and Countrywide promised to refer more work to him in the future. Chen promised Benson
2 such, and then faxed Benson home comparables from other parts of Sunnyvale that he, Chen, and
3 Countrywide wanted Benson to use to falsify Property's appraisal with.

4 182. Defendants Colyer, Benson and Chen respectively took California's Broker,
5 Appraisal and Real Estate licensing exams and directly took an oath that they would not take any
6 actions to falsify the value of any California property, and on or about March 10, 2006, they
7 disregarded this licensing commitment by communicating to Benson information that they wished
8 him to use in order to effect falsified appraisal report. A copy of Countrywide and Chen's
9 communication to Benson is accompanying this complaint as *Exhibit 35* and incorporated herein
10 as if fully set forth.

11 183. On or about March 10, 2006, Chen and Colyer, on behalf of Mozilo and Sambol,
12 formally hired defendant Benson, to produce a false appraisal of property and on or about March
13 17, 2006, Benson wrote up an appraisal report that falsely appraised Property at \$740,000 and
14 delivered it to Colyer and Chen.

15 184. Colyer and Chen then reviewed Benson's report, thanked him for the falsified value
16 and compensated him not only with hundreds of dollars for this appraisal, but by having him
17 perform additional appraisals on other borrower properties from March 2006 to December 2008.

18 185. Based on reports produced by California and 16 other state Attorney Generals
19 Plaintiffs believe and allege that Mozilo, Sambol, Does 31-50 and Countrywide made it company
20 practice to falsify appraisals by encouraging, pressuring or manipulating California Appraisers,
21 including Benson, to falsely inflate property values in order to maximize Countrywide's profits
22 and defraud Californians.

23 186. On or about March 12, 2006, Chen called David's cell phone asking him about who
24 Plaintiffs planned to get their loan through and after mentioning the two brokers, Chen told
25 Plaintiffs that he would not trust anyone better than Countrywide, that some of his clients used
26 Countrywide and had good experiences, causing Plaintiffs to believe Chen and rely on this to hire
27 Countrywide to broker a loan for them. At the same time, Chen concealed that as the sellers' agent
28

1 he was not suppose to be contacting Plaintiffs and failed to disclose that he was, in part, an agent
2 for Colyer and Countrywide.

3 187. On or about March 14, 2006, two days before Plaintiffs deadline to remove
4 contractual loan contingency, Colyer summoned Salma and David to his office, gave them written
5 agreement to lend them money at 1-3% - See *Exhibit 10* - failing to disclose that Countrywide
6 practice was to misrepresent what loans Countrywide would broker for borrowers like Plaintiffs.

7 188. On or about March 15, 2006, Plaintiffs called Colyer and told them that they would
8 like to borrow money from Countrywide and at no time did Colyer disclose that he was brokering
9 loan for others, promised them that Plaintiffs could trust him to sell them the best possible loan
10 available on the market and emphasized that Countrywide was one of the best “Banks in the U.S.”

11 189. As part of Countrywide’s deceptive marketing scheme, defendant Countrywide and
12 Mozilo trained employees and agents, as Colyer, to portray Countrywide as the actual lender by
13 holding itself out as a Bank through saturating Newspaper and other media with Countrywide
14 Bank ads; displaying “Countrywide Bank” signs to Public view; setting up bank at entryway of
15 offices with banking literature everywhere and structuring the physical appearance similar to how
16 consumers find banks set up.

17 190. During the March 2006 visits to Colyer’s office, Salma and David saw, heard and
18 read these representations and in conjunction with the March 14, 2006 loan Good Faith Estimate,
19 Plaintiffs were induced into removing Residential Purchase Agreements Loan Contingency in
20 paragraph 14 of the California Association of Realtors (“AR”) Residential Purchase Agreement,
21 due to reliance thereon as well as the Countrywide marketing ads, phone calls, brochures, internet
22 and media representations, and were committed and locked into the real estate purchase contract,
23 thereby being reluctant to cancel commitment with Countrywide. See *Exhibit 10*.

24 191. Had Plaintiffs known the true facts regarding Countrywide’s deceptive loan
25 marketing practices, they would not have removed, on March 16, 2006, the loan contingency, and
26 would have either terminated the purchase agreement, or sought loan elsewhere. Countrywide as
27 an institution and corporation were using the known terms of California Association of Realtors
28

1 form Residential Purchase Agreement in furtherance of its “predatory loan scheme” at all times
2 relevant herein.

3 192. The Good Faith Estimate, attached hereto as *Exhibit 10*, which Plaintiffs and general
4 public relied on further states that:

- 5 (a) No loan origination fee would be charged to Plaintiffs;
- 6 (b) \$400 loan preparation fee
- 7 (c) \$60 appraisal fee
- 8 (d) \$40 credit fee and
- 9 (e) Total loan costs and fees of \$2,550.

10 193. Based on reports produced by FTC, California and 16 other states Attorney Generals
11 Plaintiffs are informed and believe and based thereon allege that Mozilo, Sambol and Does 31-50
12 trained and encouraged Colyer and other sub-brokers, to make deceptive and misleading written
13 statements to prospective purchasers of loans, including Plaintiffs, pursuant to policies or practices
14 promulgated by Mozilo, Colyer, Sambol and Does 1 to 100, from on or about January 2001 to
15 March 2006, who knew that such writings and statements were deceptive, false, and misleading,
16 and knew that after purchasers of loans released contract loan contingency, including Plaintiffs,
17 that Countrywide would at the close of escrow demand thousands of dollars more, such as in
18 Plaintiffs case where it was at least \$15,000 in fees above that agreed to.

19 194. Based on reports produced by FTC, California and 16 other states Attorney Generals
20 Plaintiffs are informed and believe and based thereon allege that from on or about January 2001
21 and each month to March 2006, Mozilo and Sambol instructed and authorized Does 31-50, to train
22 its employees, including Colyer, to switch and alter Prime loan representations or agreements
23 made to the Public, and Good Faith Estimates, such as Plaintiffs FHA fixed rate \$1,800 per month
24 mortgage payment, to a Pay Option Note and HELOC Agreement at or just before the close of
25 escrow, whereby home buyers would be in contractual breach of their CAR Residential Purchase
26 Agreements if purchasers, including Plaintiffs, did not sign and close loans originated by
27 defendant Countrywide on the pain of Plaintiffs losing their deposits, Property and be subject to
28 lawsuit for \$729,000 and sign Countrywide agreement under duress.

1 195. During 2005-2006, California real estate decreasing market conditions had put
2 defendants Mozilo, Sambol, Colyer on sufficient notice that the appraised value of \$740,000 was
3 an inflated and false value of Plaintiffs' townhome.

4 196. Based on reports produced by FTC, California and 16 other states Attorney Generals
5 Plaintiffs are informed and believe and based thereon allege that Mozilo, Sambol, Colyer and
6 Does 1-100 were so driven for profits and market share, promised and agreed to whatever it took
7 to broker loan products faster, by disregarding or easing underwriting criteria to increase the risk
8 purchasers of loans would default and lose their homes; actively pushing underwriters and sub-
9 brokers to ease underwriting rules, added exceptions to the already eased underwriting standards
10 while receiving daily detailed underwriting characteristics of each loan, including Plaintiffs, which
11 was approved by Does 31 to 50 under the direct supervision, guidance, training and authorization
12 of Mozilo and his real estate broker license.

13 197. During March 2006, underwriters, appraisers, loan agents, brokers, including branch
14 managers, regional vice presidents of Countrywide Does 31-100, were paid commissions and
15 bonuses based on loan volume produced, and broker offices were expected to manufacture 40 or
16 more loans per day, while concealing from borrowers, including Plaintiffs, that loan products were
17 not suitable to meet their financial needs and would not allow them to pay off and home their
18 home, often being 60 and more percent above borrowers income.

19 **I. FATC ESCROW & TITLE FRAUD**

20 198. From at least January 2000 to March 2006, defendant FATC entered into agreements
21 with various Underwritten Title Companies to produce escrow and title search functions that it,
22 FATC could underwrite as chief Title Insurance Company and one of these companies were
23 Financial Title Company, a subsidiary of Colorado based Mercury Co. who joined in agreements
24 with FATC after CEO Kennedy presented this intent to FATC board during 2000, who approved
25 Kennedy to proceed with such plans.

26 199. From January 2006 to March 2006, FATC required such companies to train and
27 instruct its staff to comply with the conditions agreed to between FATC CEO Kennedy,
28

1 MERSCORP Arnold and Does 1-30, which called for FATC to ignore title defects and ensure
2 escrow agents covered up and otherwise not disclose such defects before borrowers.

3 200. On or about October 2005, when defendant Chen closed escrow for approximately
4 \$650,000 on Property, the promissory note and deed of trust was split up from one another, and
5 assigned to and recorded to defendant MERSCORP agent MERS, while in truth Note was sent to
6 some undisclosed Beneficiaries who were actual owners of Note, each with varying levels of
7 ownership in Chen's promissory note and hence holders in due course.

8 201. On or about March 20, 2006 FATC directed its agent FTC to conduct another title
9 search and to conduct escrow on Property, after being contacted by defendants Chen and Colyer
10 regarding the sale of Property to Plaintiffs and based on information obtained from Wells Fargo,
11 County of Santa Clara Records Office and Plaintiffs experiences Plaintiffs are informed and
12 allege that one of Does 91-100 conducted title search of Property and took notice that it was
13 recorded as belonging to MERS, learned that Note was separated from deed of trust and that there
14 was multiple breaks in the title, possibly more than a dozen holders in due course claiming rights
15 to Property and no way to validate a clean title.

16 202. FTC staff reported its findings to FATC staff who are part of Does 91-100, Chen,
17 Colyer and Does 31-50; who spoke with each other on or about March 20, 2006, and agreed that
18 FATC should direct its FTC agent to ignore the title defects, order FTC to issue Preliminary Title
19 Report and close escrow as is, and withhold certain loan documents from Salma and David so they
20 could not readily learn of defects or otherwise know that they were being induced to purchase a
21 loan other than they were promised.

22 203. On or about March 26, 2006, FTC issued Report as FATC instructed and on March
23 27, 2006 provided its Escrow agent Wyatt with two sets of documents which were partially filled
24 out with financial information, instructed her to do whatever she could to convince Salma and
25 David to sign their set of documents, leave Plaintiffs with the second mostly blank documents and
26 return them to her supervisor; thereat Wyatt convinced Salma and David hat they were being
27 issued the same documents that they had signed when they were being left with missing and blank
28 documents.

1 204. On or about March 28, 2006, FATC agent FTC caused blank documents to be given
2 to Colyer and Does 31-50, who altered the escrow documents by filling in blank areas of Truth in
3 lending and other forms, then recording them with County of Santa Clara Recorders Office in this
4 altered condition and did not inform Salma or David of this at any time thereafter.

5 **J. LOAN ORIGINATION ALLEGATIONS**

6 205. On or about March 20, 2006, Countrywide’s agent Colyer informed Salma and David
7 orally in a meeting, that he and his staff in Menlo Park and Southern California had done all that
8 they could to make a FHA loan with payments between \$1,800 and \$2,200 for them and even
9 contacted other lenders; however, that due to “issues” that arose, it was not possible and that he
10 came up with something better which would allow them to keep their 5% down-payment and use
11 it for other investment purposes. Plaintiffs did not understand what Colyer was proposing and he
12 told them to “trust” him because he was going to look out for their best interest and provide them
13 with the best possible loan on the mortgage market.

14 206. Colyer had told Salma and David that although they had “good credit,” that his
15 underwriters were reluctant to approve the loan that Countrywide promised to provide, but if they
16 just had patience and trust, he would deliver the very best loan for them; concealing from
17 Plaintiffs that he was under instructions to broker two subprime loans for them although they
18 qualified for prime loan which would not strip them of savings, income, equity or property.

19 207. Plaintiffs Salma and David had fully considered Colyer and Countrywide to be a
20 fiduciary which had their best financial interests in mind, not broker for others, and believed
21 Countrywide’s oral and television, internet, newspapers representations would protect their
22 interests.

23 208. Colyer did not disclose to Salma and David at any time, that Countrywide and Mozilo
24 practice and policy had trained Colyer to discourage down-payments in order to increase the
25 amount of the loan, so Colyer, Mozilo, Sambol and Does 1 through 100, would earn more revenue
26 and their stock values would increase.
27
28

1 209. On or about March 25, 2006 agent Colyer then reported to Salma and David, with
2 excitement and feigned pleasure in himself, that he was able to work out a much better loan
3 product then he believed possible which had a \$5,200 monthly payment schedule for Plaintiffs.

4 210. Plaintiffs Salma and David told Colyer they could not afford such and would have to
5 go with other brokers who had already agreed to sell them a loan with lower payments. Colyer
6 then pleaded with them to not do so, that he was presenting this loan as an option because he had
7 let a lower level subordinate handle the loan origination, that he “sees” where they made the errors
8 and that he could clear it up in little time, if Plaintiffs would excuse the mistake and bare with him.
9 Colyer also pointed out that they would be subject to lawsuit if they did not close escrow, all
10 together induced Plaintiffs to continue to rely on Colyer and Countrywide’s representations.

11 211. On or about March 26, 2006, Colyer with Does 61-70, designed a Pay Option ARM
12 and HELOC for Plaintiffs which did not include property taxes, insurance or HOA fees and would
13 initially consume over 50% of their income and 70% by October 2008 and over 100% in March
14 2011. Further, Countrywide increased the loan to \$754,000, some \$80,0000 above property market
15 value, which contained some \$15,000 in fees that Countryside did not inform Plaintiffs about; and
16 Colyer contacted his boss, one of Does 31-50 in Countrywide headquarter offices for approval
17 and, pursuant to Countrywide practices was approved to broker these loans for Plaintiffs.

18 212. Based on Salma and David talks with Colyer and Attorney Generals reports, Plaintiffs
19 are informed and believe and thereon allege that Colyer asked Katherine Colciano, local junior
20 underwriter, to officially sign off on loan package they created for Plaintiffs. Colciano informed
21 Colyer that Plaintiffs would not be able to repay loan and would be headed towards certain
22 default; thereat Colyer asked her to disregard such underwriting principles and contact her
23 underwriting boss at HQ – one of Does 31-50 – to gain exception approval. Colciano sent in
24 request for exception to authorize brokering a loan that would not meet Countrywide’s own
25 underwriting guidelines and would strip from Plaintiffs: savings, income, equity and property.

26 213. By March 24 and 25, 2006, Plaintiffs contacted the two brokers who had previously
27 provided them with offers to sell them loans for the purchase of their home and was told that there
28 was not enough time to underwrite loan by the April 10, 2006 close of escrow dead line.

1 214. Plaintiffs spoke with their Real Estate agent Earl Taylor, on or about March 25, 2006
2 and he informed them that if they did not follow fund the property pursuant to the deadline set
3 forth in the contract they had signed, that they would definitely lose their “earnest money”
4 provided in escrow and would open themselves up for possible liability and lawsuit.

5 215. On or about March 26, 2006, Colyer called Salma and David with lots of enthusiasm
6 explaining that he was able to secure them “the best loan possible” on the market after receiving
7 approval from his “our headquarters in Southern Cal,” and that Plaintiffs will be able to enjoy their
8 new home, but he refused to give them the details of this loan and told Salma and David that he
9 was still working out the final details, but they would not be “disappointed.” At the same time,
10 defendant Colyer was using techniques that Mozilo, Sambol and Does 31-50 taught him, during
11 his 2004-2005 training at Countrywide HQ, to use on borrowers just like David and Salma.

12 216. On or about March 26, 2006, Colyer and Colciano supervisor, one of the Does 31-60
13 at Countrywide HQ, ordered her to disregard Plaintiffs inability to repay the loans and to approve
14 it based on Mozilo and Sambol policy to broker as many loans as possible that are designed to
15 strip equity from property owner. Where HELOC was to act as a credit card type line of credit
16 that neither David or Salma applied for and used without any discloser for prior agreement as a
17 down-payment on their property of \$147,000; and a second loan, Pay Option ARM, would pay the
18 remaining amount of \$591,000

19 217. On or about March 26, 2006, Salma and David stopped into Countrywide’s Menlo
20 Park offices to speak with Colyer and noted again that the office was designed to look like a
21 banking establishment and at the entrance had “Countrywide Bank, N.A.” prominently displayed
22 and gave borrowers, including Plaintiffs, the sense that they were dealing with a reputable, honest
23 and possibly federally regulated banking institution who was lending its own money, although the
24 Bank had no connection with the mortgage loans brokered in the main area of the office.

25 218. Defendant Countrywide, Mozilo, Colyer and Does 31 to 50, did not disclose to the
26 public, or Plaintiffs, that Countrywide Menlo Park office was not a bank, was not lending its own
27 funds, but the funds of Bear Sterns and BofA; and that Countrywide was directly operating under
28 Mozilo California real estate broker license.

1 219. On March 26, 2006, Colyer's assistant Brandon Bell informed Salma and David that
2 Colyer was not able to see them then, but that their loan documents were pretty much complete
3 and that they would be dispatching a representative of the title company to Plaintiffs Mt. View,
4 California apartment with the final documents for them to sign, and he, Colyer and FTC/FATC
5 concealed that Plaintiffs had a right to go to title company to close escrow, review and be part of
6 escrow instructions or have lawyer review loan documents before close of escrow.

7 220. On or about March 27, 2006 Colyer and Does 61-70, applied the training that they
8 received from Mozilo-Countrywide and designed Plaintiffs HELOC and ARM Note loans to have
9 the major defects of ultimately consuming over 100% of Plaintiffs income each month; initially
10 65% when property taxes are included until December 2006; then 75% of income from January to
11 December 2007; then 97% from January to October 2008; and on May 1, 2011, set to consume
12 over 100% of Plaintiffs income, leaving them with no money for food, gas, day care, medical bills
13 et cetera and guarantying default and foreclosure.

14 221. From on or about March 18 to 27, 2006, defendant Colyer emailed and called
15 defendants Sambol and Mozilo in HQ after sending them loans he brokered for them, to gain their
16 approval to broker them, and based on statements made by Colyer to David and Salma during this
17 period and Colyer's acts, they are informed and believe, and based thereon allege that Sambol and
18 Mozilo told Colyer that the tactics and design of loans they approve and had one of Does 31-50
19 sign off to officially approve the loans for issuance to Plaintiffs.

20 222. At no time during March 2006, had Colyer, Mozilo, Sambol or any Countrywide
21 personnel communicated any of these loan designs to Salma or David, and Colyer with Does 71-
22 80 held at least 30 talks with David and Salma during March 2006, but failed to disclose the terms
23 of the loans, that there would in fact be two loans which totaled \$754,000, not give any disclose
24 prior to close of escrow on any other aspect of loan and let Plaintiffs continue to rely on the March
25 14, 2006 agreement to produce a FHA 1,800 to 2,200 30 year fix.

26 223. Neither Countrywide, Mozilo, Colyer nor Does 1-100 applied any fiduciary principles
27 in brokering Plaintiffs loans. Defendants Mozilo, Colyer and others lead Plaintiffs into believing
28 that they could pay for loans because Countrywide had advertised from 2001 to 2006, and orally

1 stated March 2006 to David and Salma in Menlo Park offices, that Countrywide applies strict
2 “underwritten” standards to their loans; when in truth, from January 2001 through March 2006,
3 Mozilo and Sambol trained, encouraged and authorized Does 31-50 to ignore, disregard or
4 otherwise not apply underwriting standards and actually provided unconventional, non-prime
5 private “investor” loans, unlike federally insured loans, while representing to public, and Plaintiffs
6 during March 2006.

7 224. The Plaintiffs had a high degree of emotions, excitement and anxiety due to this being
8 their first real estate purchase, which Colyer and Countrywide ascertained; and this inclined Salma
9 and David to rely upon Colyer, Chen, Benson, Mozilo, Sambol and others who presented
10 themselves as experts in the mortgage loan industry. Countrywide, through Mozilo and Sambol
11 Public ads and publicity, with Colyer and Does 61-70 face-to-face presentations of promises,
12 agreements and representations, coupled with Plaintiffs never had any training or understanding of
13 loan or mortgage loan industry or its regulatory laws at the time, made them vulnerable to
14 whatever these Defendants stated.

15 225. On March 27, 2006, Colyer contacted defendant FATC staff Does 91-95, requesting
16 them to dispatch agent to Plaintiffs’ residence in Mt. View, California for the purpose of closing
17 escrow pursuant to the agreement that FATC Board made with Bear Sterns. At no time relevant
18 herein did Countrywide or anyone else inform Plaintiffs that it is customary for borrowers to be
19 invited to sign at the escrow and title company offices, with a loan agent and/or realtor present to
20 answer any questions that borrower may, or to be available by telephone to answer questions.
21 Based on Salma and David experiences and research showing others experienced the same,
22 Plaintiffs are informed and believe and based thereon allege that Countrywide had a practice for
23 brokers to not be present at close of escrow and not be available by telephone to answer loan
24 purchasers questions, specifically because Countrywide produced loans at escrow with terms and
25 conditions that were different then borrowers, including Plaintiffs, were promised or expected, in
26 that the loans are: (a) higher interest rates variable instead of fixed rates; (b) greatly increased loan
27 costs’; (c) non-prime terms; (d) higher margins and indexes; and (e) different indexes, among
28

1 other material things, this bait and switch tactic was part of defendants' predatory deceptive,
2 misleading and false loan marketing and sales practices.

3 226. At no time prior to close of escrow did Mozilo, Colyer, Sambol, FATC, Countrywide
4 or any defendant disclose to Plaintiffs the material terms of the loans presented to Plaintiffs for
5 signature at close of escrow, and among other things, these defendants failed to disclose to Salma
6 and David the private mortgage market Pay Option ARM loan or "piggyback" HELOC
7 Agreement prior to escrow signing, including:

8 (i) That Plaintiffs would have to ultimately pay up to \$6,693 per month on the Pay Option
9 ARM which would be beyond their monthly income at that time;

10 (ii) Plaintiffs would be required to pay up to 18% interest which could be more than an
11 additional \$2,400 per month on the HELOC loan, or 35% more than total income;

12 (iii) What "index" or "margin" meant and the effects they would have on Plaintiffs future
13 monthly obligations;

14 (iv) The Pay Option product would reset to a 25-year loan amortization schedule, greatly
15 increasing monthly payments beyond the disclosed \$6,693 schedule payment;

16 (v) Property taxes and insurance would not be included in loan and would require an
17 additional \$1,000 per month expense for Plaintiffs;⁴

18 (vi) Pay Options products were originally designed and sold to those with business
19 projects which expected substantial revenue increases before reset or recast dates;

20 (vii) Loans were designed to exhaust all their savings, income, equity; and,

21 (viii) It was a high probability that Plaintiffs would default on their loans and be
22 foreclosed upon unless Plaintiffs income increased by at least 75%.

23 227. Defendants Mozilo, Sambol, Kurland, Colyer, Countrywide, Bear Sterns and Does
24 31-50 designed the Pay Option ARM and HELOC agreements which they presented to David and
25 Salma on March 27, 2006, and these defendants, each one of them, intentionally designed them to
26 be so complex for lay borrowers, that Plaintiffs would not be able to understand or ferret out the

27 ⁴ Plaintiffs did not learn until circa October 2006 that they had to pay their own property taxes and in speaking with Colyer he said that was the
28 way all loans were done and was oversight on his part.

1 undisclosed adverse loan terms before, during or after close of escrow, without finding and hiring
2 a very specialized professional who was specially trained in law, real estate, Wall Street and
3 mortgage loan areas combined.

4 228. On March 27, 2006, Does 91-95, under FATC Board of Directors authority and
5 pursuant to FATC agreement with Bear Sterns, instructed escrow employee Ms Wyatt to take two
6 different sets of loan documents to Salma and David home and get them to sign the first set of loan
7 documents then leave them with the second set. Does 91-95, acting on instructions of defendant
8 Colyer who was in turn acting on practices that Mozilo and Sambol directly trained him with, left
9 out of the second set of documents which set forth the loan terms, the amount being borrowed, the
10 amount that would have to be paid back, Plaintiffs right to rescind loans and other material
11 information regarding the loans. The first set of documents also left blank most of the amounts so
12 in the event Plaintiffs did read the forms; they still would not know that they were getting two
13 loans or know what they amounted to.

14 229. On March 27, 2006, Does 91-95 sent Ms Wyatt to Plaintiffs home, asked them to sign
15 documents and as David began to read the loan documents Ms Wyatt stated that she did not have
16 time for them to read documents, that she was providing them with copies of every document they
17 were signing and that they could read them afterwards. Both Plaintiffs signed the documents and
18 David proceeded to make copies on their home copier, but was told by agent Wyatt that it was best
19 for her to process documents and Plaintiffs would be able to get signed copies from Countrywide.

20 230. On or about March 28, 2006, Salma and David read portions of loan documents and
21 were able to make out what seemed to be two loans that were issued and did not see anything
22 about FHA or payments. Salma and David called agent Colyer asking how much were the loans
23 for and whether they were actually two or one FHA loan. Colyer talked about how much work he
24 had put into finding the right loan for them; how he tried to find other lenders and had to settle on
25 one “investor” who was willing to give him “excellent” loan terms for Plaintiffs; that he lost
26 money on this “deal,” but since he personally liked Plaintiffs he was willing to take a lost. Finally,
27 after David repeatedly asked him, Colyer told Salma and David that loans were over 4,569.
28

1 231. On March 28, 2006, David and Salma became surprised and concerned as Colyer
2 chimed in saying that loans were conventional and the same as prime loans, and was the only
3 possible way of financing property in the mortgage loan market and that if Plaintiffs faithfully
4 maintained their payments without delinquencies for a year, that he guaranteed them a new loan
5 which would dramatically reduce their payments, concealing property taxes was not included in
6 loans. At the same time Colyer knew that everything he stated was untrue and failed to disclose to
7 Plaintiffs that it was part of training he received from Mozilo, Sambol and Does 31-50.

8 232. On or about March 28, 2006 Does 91-95 sent the signed, and mostly blank loan
9 documents to Colyer who then filled in the blank portions of the documents with MERS being
10 loans Beneficiary pursuant to Countrywide's Board of Directors agreement with Bear Sterns, and
11 filled in other information regarding the amounts of loan charges, \$754,000 loan versus the
12 \$729,000 agreed upon by David and Salma, then returned documents to FATC Does 91-95.

13 233. On or about March 29, 2006, Does 91-95, pursuant to FATC agreement with Bear
14 Sterns filed Deed of Trust and HELOC Note and Agreement with Santa Clara County Recorder,
15 failed to inform the Recorder, Plaintiffs or others that they were filing falsified information then
16 transmitted Deed to Trust to Bear Sterns and the Note to MERSCORP staff, Does 96-100, who in
17 turn transmitted Notes Wells Fargo thereafter as Master Servicer for Bear Sterns.

18 234. On or about March 29, and 30, 2006 Colyer orally repeated to David and Salma when
19 they went to his office, that he would refinance the loans within a year if they made all payments
20 on time, manipulating them with the fact that Countrywide brokers billions of dollars in loans each
21 year successfully, employing a technique which Mozilo and Sambol trained him to use during
22 2005 at HQ, to lull borrowers as Plaintiffs, to trust Countrywide further.

23 235. On March 27, 2006, Plaintiffs signed and executed Pay Option ARM and HELOC
24 loan documents under the clear belief that they would face lawsuit for \$729,000 for failure to close
25 escrow, lose Earnest Money and Property, and that Colyer and Countrywide were honest brokers,
26 thereat compelling them, under economic duress and without any assistance from lawyer or
27 financial professional, and with these fears coupled with not understanding the terms of either loan
28

1 defendants left them with blank documents. The Plaintiffs did not know that this was part of
2 Countrywide's deceptive advertizing and marketing practices and scheme.

3 **K. DEFENDANTS LEWIS & MOZILO CONSPIRACY**

4 236. On or about January 2001, Bank of America (BofA) Board of directors approved K.
5 Lewis to be its CEO in charge of representing BofA interests and leading it in the direction he
6 deemed proper.

7 237. Based on BofA public reports, Countrywide history and news media reports Plaintiffs
8 are informed and believe and thereon allege that defendant Lewis held a series of face-to-face and
9 telephonic meetings with Mozilo at Countrywide HQ between January 2006 and December 2007,
10 where Mozilo communicated Countrywide was running into financial difficulties and was headed
11 towards bankruptcy and he wished to increase Countrywide's predatory lending so he, Mozilo
12 could represent publicly that Countrywide was very healthy and not in the business of producing
13 predatory loans, so as to increase its stock value and allow Mozilo, his family, Sambol and Does
14 31-50 to sell their stock off at inflated values and retire.

15 238. Mozilo further told Lewis that since BofA has been a continuous lender of loans
16 brokered by Mozilo and his sub-brokers that he was offering to sell Countrywide to BofA at a very
17 cheap price if Lewis would do whatever he could to cover up Mozilo et al deeds in the event their
18 fraud became known and they were prosecuted.

19 239. On or about December 2007, Lewis presented this proposal to his BofA Board of
20 Directors and on or about January 15, 2008, BofA Board agreed to support proposal and
21 authorized Lewis to enter into this and other details of agreement with Mozilo and his team.

22 **L. LOAN SERVICING ALLEGATIONS**

23 240. On or about March 28, 2006, Plaintiff David called Colyer at Menlo Park office
24 informing him that FTC/FATC had not delivered any signed loan documents and they requested
25 copies of all loan documents they signed. Colyer promised that copies would be mailed.
26 Countrywide did not mail Plaintiffs any signed loan documents at this time or the next 2 years, 10
27 months.
28

1 241. From on or about March 8 through March 30, Colyer and Does 61 to 70, continuously
2 and repeatedly told Plaintiffs that all of their monthly payments would be applied to the principle
3 of their loans. The truth was that Colyer was designing loans pursuant to practices he was trained
4 with in 2005 by Mozilo, Sambol and Does 31-50, which applied all of Plaintiffs savings and
5 income to interest of loans.

6 242. On or about August 8, 2006, Salma and David contacted Countrywide asking staff
7 why their loan principles were not being reduced, and were told because their loan agreements
8 called for them to remain same for 3 years on the HELOC and 5 on the Pay Option ARM make
9 only “minimum payments and no more.” Thereat Salma and David called Colyer about this and he
10 told them that this was a last minute change that he forgot to tell them about and that it was not
11 that important because he planned to refinance them within a year and so they should not worry
12 about this.

13 243. In at least two of the discussions with Does 61-70 regarding principles not being
14 reduced, a friend of Plaintiffs sat in on September 2006, discussions where Does 61-70 told
15 Plaintiffs that they could only make minimum payments and not pay more to pay down principles
16 of loans; then in October 2006, Colyer finally admitted to David, Salma and Mr. Smith that they
17 could only pay down principle if they specifically instructed Countrywide staff to apply funds to
18 it. See *Declaration of Ronnie Smith* attached hereto as *Exhibit 13*.

19 244. Plaintiffs Salma and David sent communications to defendants Countrywide, Mozilo,
20 BofA CEO Lewis and Wells CEO Stumpf and their agents Kurland, Sambol, Colyer and Does 71-
21 90, including but not limited to the following dates: October 23, 2006 April 7 & 8, May 12,
22 August 8, 2007, January 2, February 11, April 1, September 2, and October 1, 2008 each attached
23 hereto as *Exhibits 15 to 24*. Plaintiffs also called defendants Mozilo and Countrywide local and
24 headquarter offices in 2006 on or about March 28 & 30; April 1, 13 & 27; June 14; August 12;
25 November 2. Then in 2007 on or about February 3; April 5; June 7; September 22; November 1.
26 And during 2008 on or about January 25; February 17; April 4; July 19; August 7 & 21;
27 September 14, 15 & 20; October 5 & 19; November 4, 6, 14, 17; December 3, 17, 2008.
28

1 245. These communications requested, *inter alia*, for defendants Countrywide, Mozilo and
2 their agents Lewis, Stumpf et al, to supply Plaintiffs with the *signed* documents that FATC/FTC
3 and Countrywide refused and failed to deliver to Plaintiffs on March 27, 2006; for defendants to
4 rectify Plaintiffs loans by replacing the two they were coerced into buying under duress, with one
5 FHA or other traditional loan that they could afford to repay.

6 246. Based on the actions or inactions by these defendants, reports from California and 16
7 State Attorney Generals, FTC and SEC Plaintiffs are informed and believe and thereon alleged
8 that in response to reading Plaintiffs communications, Mozilo, Sambol, Lewis, Stumpf, Colyer and
9 Does, called each other about on or about the above-cited dates and told each other that it would
10 be best to refuse to provide any of the final loan documents Plaintiffs signed on March 27, 2006
11 and refused to provide Plaintiffs with the loan defendant Countrywide had promised on March 14,
12 2006 and several times on and around this date. Such refusals authorized, ratified and sanctioned
13 by Countrywide, Mozilo and BofA was part of their deceptive loan scheme.

14 247. From March 2006 to December 2008, neither Salma nor David received any signed
15 loan documents from any defendant or their agents.

16 248. On or about the 20 days of May, June, July, August, September, October, November
17 and December of 2006; and on or about the 20 of January, February, March, April, May, June,
18 July, August, September, October, November and December of 2007; and on or about the 20 of
19 January, February, March, April, May, June, July, August, September, October 2008, defendants
20 Countrywide, Mozilo, BofA, Lewis, Stumpf, Colyer and Does 1 to 100, falsely charged Plaintiffs
21 either 11.25%, 10.25% or other percentages as HELOC fees when the HELOC Agreement was
22 contracted for no more than 3% margin above 12-Month LIBOR Index which had a high of 5.72
23 in June of 2006 and a low of 2.5 between April 2006 and September 2008, meaning Countrywide,
24 BofA, Mozilo, Sambol, Colyer, Does 1 through 100, falsely charged 4 to 7 interest rate points
25 above what HELOC Agreement contracted and they accomplished this by sending Plaintiffs:

26 a) False and deceptive monthly mortgage payment coupons which represented to be
27 payments which would pay down the principal of Pay Option ARM over 25 to 30 years, when in
28 fact it would be 50 years or more; and,

1 **b)** False and deceptive monthly mortgage payment coupons which purported to be
2 payments which would pay down the principal of HELOC with dollar amounts which were 5 to 7
3 percentage points higher than contractually agreed upon.

4 249. As a result of these continuous and repeated false charges, which were hidden from
5 Plaintiffs, due to Colyer, Mozilo, Sambol, FATC concealing the original loan disclosures,
6 defendants Countrywide, Mozilo, BofA, Colyer and Does 1 through 50, and 61 to 90,
7 misrepresented to Plaintiffs what they were actually obligated to pay pursuant to agreement, and
8 induced them to pay \$200 to \$750 more each month from April 2006 to September 2008, than
9 what agreement called for, resulting in Bear Sterns with Does 2-30 using Countrywide to falsely
10 overcharge Plaintiffs more than \$10,000 during this period.

11 250. On or about September 15, 2006, after Salma and David learned from Santa Clara
12 Tax Assessor that they owed \$6,065 in property taxes for 2006, they spoke with a broker who
13 previously committed itself to brokering a mortgage loan for their property and was informed that
14 traditionally, mortgage loans included taxes within monthly payments, however, when a broker or
15 lender does not do this they are obligated to inform borrower of this.

16 251. On or about September 17, 2006, Salma and David visited Colyer's Menlo Park
17 offices and, *inter alia*, questioned him about taxes and Colyer told them that taxes were not
18 included because it would have given Plaintiffs an inaccurate understanding about the lending
19 industry and benefits of the loans Countrywide brokered for them.

20 252. Neither before or during close of escrow had defendant Countrywide disclosed to
21 Plaintiffs that property taxes and insurance would not be included within monthly payments,
22 resulting in more than \$900 per month that Plaintiffs had to separately pay, and if it was disclosed
23 to them that taxes were not included they would have rejected the loan and gone with a broker
24 who included taxes in their loan.

25 253. At no time before this period had any Countrywide defendant or staff disclose plainly
26 to Plaintiffs that their monthly payments would not be applied to principle balance or that they
27 would have to pay more than the amounts disclosed on payment coupons if they wished to pay
28 balance down.

1 254. During October to December 2005, Colyer was trained by Mozilo and Sambol at HQ
2 to discourage borrowers from providing down-payments for homes and design loans that were
3 interest only, in order to broker ARMs and HELOCs (Combo Loan); and during March 2006,
4 Colyer acted on this training by discouraging Salma and David from putting down money as down
5 payment and concealed or failed to disclose to them in order to maintain the highest possible
6 payments from Plaintiffs purely in their own, Bear Sterns, FATC, MERSCORP and Wells Fargo
7 interests for profits.

8 255. From January 2007 through October 2008, Plaintiffs sent \$144,191.80 in mortgage
9 payments to Bear Sterns and Wells Fargo through Countrywide and BofA, when they were only
10 required under the terms of the Note and HELOC to send \$82,872.90. David and Salma called
11 Countrywide and BofA during 2006, 2007 and 2008 asking them to apply the extra amounts sent
12 in their monthly payments to both the Note and HELOC principles.

13 256. From January 2007 through October 2008, WELLS with Does 1-30, Countrywide and
14 BofA only applied part of the extra money being sent to the Note (\$146,000) with \$64,000 to
15 interest; and to HELOC, only \$51,000 was applied to HELOC principle to pay it down with
16 \$22,318.90 kept by Countrywide and BofA as falsified charges.

17 257. By not applying Plaintiffs \$144,191.80 to both HELOC and Note principles, WELLS
18 with Bear Sterns, Countrywide and BofA maintained a higher principle balance on both loans that
19 additionally falsely charged Plaintiffs by another \$14,223 that Plaintiffs have not had credited
20 towards them.

21 258. From on or about December 2007 through July 15, 2008, defendant Lewis held
22 monthly talks from his North Carolina office to Mozilo in his Calabasas offices, where Mozilo and
23 Lewis worked out final terms of Countrywide sale to BofA and received additional assurances
24 from Lewis that he would cover-up the predatory loan practices and other frauds committed by
25 Mozilo, Sambol and others.

26 259. From on or about January 8 to July 2008, defendant Lewis instructed Does 71-80 to
27 perform financial, operational and policy auditing of Countrywide, and these personnel reported,
28 *inter alia*, that most of Countrywide loans which they had sold, including Plaintiffs, were

1 predatory loans which ensured Plaintiffs and other borrowers default and ultimate foreclosure, and
2 that Countrywide was intentionally falsifying monthly charges to borrowers such as Plaintiffs who
3 were ignorant of and otherwise did not contest higher than agreed upon interest rate payments
4 each and every month. Lewis lobbied BofA Board to see this as a good opportunity for BofA to
5 obtain savings, income, equity and properties from Americans.

6 260. On or about March 2008, BofA Board of Directors accepted Lewis' assessment and
7 his agreement with Mozilo to cover-up Countrywide officers' fraud; and voted to approve him and
8 Does 71-80 to acquire Countrywide on behalf of BofA.

9 261. On or about August 1, 2008, BofA officers Does 71-80 held meetings regarding the
10 predatory lending practices and loan overcharging of loans which BofA had acquired, and agreed
11 that since they were generating hundreds of millions of dollars in additional profits by falsely
12 overcharging borrowers, that they would not stop overcharging borrowers, including Plaintiffs,
13 unless borrowers complained.

14 262. On or about July 20, August 20, September 20, October 20, November 20, December
15 20, 2008 and January 20, February 20 and March 20 2009, defendant BofA and Does 71 to 80,
16 sent Plaintiffs monthly billing statements which falsely represented that Plaintiffs were obligated
17 to pay six (6) margin points above LIBOR, when HELOC Agreement obligated them to only 3
18 points above LIBOR, thereat over billing Plaintiffs hundreds of dollars to which they paid \$1,100
19 from July to September 2008 of directly to BofA before they refused to make any more payments.

20 263. BofA, on behalf of itself and for Countrywide has refused to refund the more than
21 \$75,233 falsely charged monies defrauded from Plaintiffs on Bear Sterns, Does 2-30, Mozilo,
22 Sambol, Colyer, Wells, BofA and Countrywide's behalf from April 2006 through October 2008.

23 264. On or about September 15, 2008, and repeatedly during the dates cited in October,
24 November and December 2008 and January 2009, Salma and David notified Countrywide's
25 successor in interest, defendant BofA through Lewis and Does 71-80 who was its Vice Presidents
26 and other managers functioning on behalf of BofA with its full authority, of the illegal, deceptive
27 and fraudulent acts of Countrywide as alleged above; then demanded for it to produce the loan
28 originally promised to Plaintiffs, citing that they could no longer continue to make payments

1 because of fraud and that Plaintiffs would refuse to make further payments until the originally
2 promised loan was issued them. Further, they requested BofA to provide them copies of the loan
3 documents FTC/FATC failed to provide, including disclosures, notes, and deeds of trust and
4 identify the holders in due course.

5 265. On or about September 2, and October 8 2008, Salma and David contacted Lewis and
6 on or about September 2, September 16, October 8, October 14, October 15, November 6,
7 December 3, 2008 and January 8 and 16, 2009, they both repeatedly spoke with Does 71 to 80,
8 explaining that Plaintiffs would not make any more payments due to the fraud which was
9 perpetrated upon them among other things.

10 **M. RESCISSION ALLEGATIONS**

11 266. From on or about March 8 to 27, 2006, Countrywide, through its duly recognized
12 local representative Colyer, directly informed Plaintiffs that Countrywide would broker a prime or
13 conventional loan for them that would meet all federal underwriting guidelines, including payment
14 of property taxes within monthly payment of \$2,200.

15 267. On March 27, 2006, Countrywide baited and switched the loan, and forced Plaintiffs,
16 under duress, into purchasing two loans which were not the loan promised and which concealed
17 many defects which Plaintiffs could not discern without professional help and due to filled in loan
18 documents being withheld from them until January 2009.

19 268. On or about September 15, 2006, Plaintiffs were notified by Santa Clara County
20 Assessor that some \$6600 were due in property taxes and when they called Colyer about it he told
21 them that they had to pay it since the loan did not account for such.

22 269. Plaintiffs are informed and believe, and based thereon allege that Mozilo, Sambol,
23 Kurland, Bear Sterns and Does 2-30, designed loan documents to be so complex and filled with
24 legal and financial jargon in order to conceal information and make it incomprehensible and
25 confusing for Plaintiffs and laypersons, particularly first time home buyers. Further, at no time did
26 Countrywide ever afford Plaintiffs, including other loan purchasers, time to read the loan
27 documents or provided them with professionals who could interpret it for them.
28

1 270. The market value of Plaintiffs townhome, was approximately \$670,000; and pursuant
2 to their practice of fraud, WELLS, Does 1-30, Countrywide, Mozilo, Sambol, Colyer and Does 1
3 through 70, brokered a loan of \$754,000 for Plaintiffs, some \$84,000 above actual value of home
4 which represents additional damages due Plaintiffs.

5 271. Further, Bear Sterns, Does 2-30, BofA, Lewis refused, and continues to refuse, to
6 offer any adjustment to the false inflated value of the original loan and from March 2006 to April
7 2011, acts to cover up or conceal evidence of Mozilo, Sambol, Colyer, Does 31-50 actions that
8 falsely inflated property value through its agents Benson, Colyer and Chen.

9 272. On or about January 20, 2009, BofA provided to Plaintiffs copies of loan documents,
10 but these documents were different, specifically the HELOC Agreement and Note than what
11 Plaintiffs recall. At this time Plaintiffs orally tendered their home to BofA, Lewis, Wells Fargo
12 and Bear Sterns in exchange for rescinding the HELOC and Note loans based on fraud.

13 273. On or about January 28, 2009, Salma and David rescinded Note and HELOC
14 agreements and tendered their home. Lewis, Does 71-80, and Does 2-30 received and read
15 Plaintiffs formal written rescission asking them to return every payment they ever made, along
16 with property taxes of \$22,827.87; \$1,575 in HOA fees and \$37,000 in home improvement
17 invested and Does 81-100, including president Barbara Deseor conferred with Lewis, Does 2-30,
18 talked about Plaintiffs rescind notice and decided, each one of them, to cover up their co-
19 defendants fraud by not honoring Plaintiffs right to rescind and attempted to manipulate David and
20 Salma to consummate loan modifications; however, after studying modification, Plaintiffs
21 determined it was designed to nullify and cover-up the fraudulent aspects of the original loan that
22 their Countrywide colleagues committed. See *Exhibit 14*, incorporated herein in full.

23 274. The Salma and David orally and in writing informed WELLS, Lewis, Bear Sterns
24 Does 2-30, and BofA about the fraud they experienced in the application and origination of loans
25 then tendered the property to them in exchange for all funds they paid. As of January 2009, the
26 property was valued at \$723,800 by the Santa Clara County Assessor whose assessment was based
27 on defendants false inflated appraisal, in part, and is incorporated herein as if fully set forth as
28 *Exhibit 25*. The Plaintiffs had a principle balance outstanding secured by the First Deed of Trust

1 ARM as of January 2009, of 591,000, and for the Second Deed of Trust Agreement \$91,000 in full
2 totaling: \$682,000, meaning that BofA should have honored rescission and paid Plaintiffs the
3 difference of \$41,000 plus all the property taxes of \$27,714.74 they had paid to Santa Clara
4 County from 2006 through 2009, and \$36,000 for home improvements. For a total of \$104,714.74
5 based on the record. This was before Plaintiffs had learned that Countrywide and BofA had
6 illegally overcharged them on HELOC with the 11.25% rate, adding thousands more.

7 275. Since WELLS, Bear Sterns Does 2-30, BofA, Lewis, refused Plaintiffs offer to
8 rescind, and attempted to cover up fraud with loan “modification,” Plaintiffs allege that they are
9 entitled to be made whole and a refund of the original amount of money that they paid into
10 HELOC - \$55,900 – and not simply \$41,000 along with all other damages suffered as a result of
11 defendants fraud and other violations according to additional damages suffered due Plaintiffs
12 being forced to hold on to home pending the outcome of litigation to attain their recession rights.

13 276. Plaintiffs allege that Lewis, Does 71-80 produced a modification of original loans on
14 orders of Wells Fargo CEO Stumpf who acted pursuant with agreement it had with Bear Sterns, in
15 order to cover up Mozilo, Colyer, Sambol et al March 2006 fraudulent acts; the 2006 to 2008
16 overcharges; denial of loan documents and rescission of Plaintiffs. Further BofA and Does 71-80
17 modifications was a continuation of predatory lending practices of Countrywide in that it was
18 designed to continue to strip savings, income, equity and property, prevent Plaintiffs from paying
19 loan off loans and ultimately consume over 100% of their income. *Exhibit 14*.

20 277. On February 24, 2009, BofA, Lewis, Stumpf, WELLS and Does 71-80 delivered loan
21 modifications and through a series of teleconferences with Plaintiffs repeatedly threaten Plaintiffs
22 with default, foreclosure and very negative FICO credit score if Plaintiffs did not sign, accept and
23 make BofA’s new loan payments. The loan modifications on its face conceals past fraud.

24 278. Although Does 71-70 new loan provided a temporary 4.5% interest rate, they
25 continued to mislead Plaintiffs buy representing that they only needed to pay the interest and was
26 in fact designed to not pay down the principle. Further on April 1, 2012 monthly payments
27 doubled and this did not include HELOC payments which Defendants failed to disclose and did
28 not include property taxes, home owners insurance, HOA fees and positioned Plaintiffs, again, to

1 not be able to prospectively repay loan and would cause them to default and be foreclosed upon.
2 Plaintiffs signed the new loan but refused to give any consideration for it due to these issues that
3 an attorney pointed out afterwards; as well as it containing the inflated and false-principle balance
4 manufactured by Chen, Benson, Colyer et al March 2006; did not return defrauded funds; did not
5 apply Plaintiffs \$200,000 in monthly payments to principle as Countrywide promised to do in
6 2006; and it was not FHA or other traditional 30-year fixed loan.

7 279. From on or about April 28, 2006, and continuing through to at least June 2010, the
8 Plaintiffs expended money, time and labor to make improvements to the property, including but
9 not limited to installing over 1600 sq foot wood flooring, remodeled the 3 bathrooms, painted
10 every ceiling and wall throughout three floors, bathrooms and garage walls; special garage floor
11 sealant and paint; garage door installation; new light fixtures and more at a cost to the Plaintiffs of
12 at least \$36,000 for improvements.

13 280. On or about March 31, 2006, defendant Countrywide submitted with FATC/FTC
14 escrow exculpatory documents for Plaintiffs signatures, including, Notices and Closing
15 Instructions. At the time of closing these documents were incomplete with blank or unfilled-in
16 sections and were being presented to Plaintiffs for the first time, including 3/27/06 Good Faith
17 Estimate, Right to Rescind, Truth In Lending statements and other forms, part of which are
18 attached hereto as *Exhibits 26 to 28* and incorporated herein as if fully set forth.

19 281. The Plaintiffs, as first-time home buyers were inexperienced and lacked the capacity
20 to understand the notices, disclosures or that documents should not have been signed with omitted
21 information. Defendants Bear Sterns, WELLS, Does 2-30, Countrywide, BofA, Mozilo, Colyer,
22 Sambol, FATC, knew Plaintiffs were unassuming and lacked experience as well as knowledge to
23 comprehend. These Defendant should be stopped and prevented from asserting any defense based
24 upon these exculpatory Notices and Disclosures or documents being left blank.

25 282. On or about March 27, 2006, Plaintiffs signed and executed numerous documents that
26 FATC agent presented; however, Plaintiffs were not afforded any time to evaluate or make copies
27 of those documents and do not recall signing any documents which assigned MERS as beneficiary
28 or Recontrust as Trustee for the Note and or HELOC Agreement which are incorporated herein as

1 Exhibits 5 and 6, respectively. Plaintiffs also had no way of knowing that California law required
2 holder in due course record title in their name and to not separate Note from deed of trust and that
3 their title had this and other defects with was known to every defendants on March 27, 2006.

4 Further, this failure to provide Plaintiffs with all documentation and or fully filled in documents,
5 resulted in the failure of Bear Sterns, WELLS, Does 2-30, Mozilo, Colyer, Sambol, Countrywide,
6 MERSCORP, and FTC/FATC to disclose or conspicuously disclose the following:

7 **a)** Note and HELOC Agreement were designed to ensure that Plaintiffs would default
8 and face foreclosure;

9 **b)** Countrywide, Colyer, WELLS, Does et al were putting their interest ahead of
10 Plaintiffs;

11 **c)** Colyer was acting as a Triple agent on behalf of Countrywide, WELLS with Does 1-
12 30 and Plaintiffs;

13 **d)** Recontrust is/was owned and controlled by Countrywide, Mozilo et al and a biased,
14 not neutral third party as Defendants represented;

15 **e)** Countrywide, Mozilo, WELLS with Does 1-30 and 81 through 90 et al are
16 members/owners of MERS and plotted with MERS to effect fraud upon Plaintiffs;

17 **f)** MERS was designed and operated to be a front company for WELLS with Does 1-30,
18 in order to shield themselves from claims of fraud perpetrated upon borrowers, such as Plaintiffs,
19 by Countrywide and other predatory lenders;

20 **g)** MERS was not an actual Beneficiary for Countrywide or anyone else, but simply a
21 Strawman publicly recorded as a real beneficiary for Does 1-30 with WELLS;

22 **h)** Note was pre-assigned to others who are part of WELLS with Does 1-30 Investors
23 before the close of escrow and that all Countrywide defendants were in fact representing WELLS
24 with Does 1-30 in brokering loans to Plaintiffs as WELLS with Does 1-30 agent;

25 **i)** Concealing from Plaintiffs that Countrywide was never the assignee and that WELLS
26 with Does 1-30 were assignees;

27 **j)** Countrywide, Mozilo, Sambol, WELLS with Does 1-30 conspired to divide Plaintiffs
28 loans up, as other borrowers, so that portions could be sold off to “investors” whose identities

1 would be concealed from Plaintiffs so there would be no way to identify any holder in due course
2 and so Plaintiffs would have no way of knowing who to sue once cognizance of fraud surfaced;

3 **k)** Countrywide, Mozilo, Sambol and Does 1 through 50, had a practice of using
4 borrowers, including Plaintiffs, social security numbers and other personal and financial
5 information to secure funds from investors without Plaintiffs permission.

6 283. The Plaintiffs allege at all times relevant herein that no purchaser assignee, pledgee or
7 subsequent holder of Notes is or can be a holder in due course of the HELOC Agreement should
8 there be one, including defendant BofA, WELLS, Does 2-30, Bear Sterns or its successor in
9 interest JP Morgan, each such assignee being deemed to have received Notice under Regulation Z
10 §226 et seq. that purchasers or assignees could be liable for all of Plaintiffs claims and defenses
11 with respect to the HELOC that Plaintiffs could assert against defendant Countrywide.

12 284. Defendant MERS is not a bona fide purchaser for value or holder in due course of
13 either the interest only ARM Note or HELOC Agreement, but MERS is a Pretender Beneficiary or
14 Mortgagee held up by Bear Sterns to deceive the Plaintiffs and public, by concealing who is true
15 Beneficiary. Further, under MERS private recording system, no purchaser or assignee of
16 Countrywide's beneficial interest appears in the public records of Santa Clara County as
17 evidenced by the Santa Clara County Office of the Clerk Recorder dated July 27, 2010, attached
18 hereto as *Exhibit 2* and incorporated herein as if fully set forth.

19 **N. FATC, MERSCORP, Countrywide, Bear Sterns & Wells Involvement**

20 285. Based on Florida, California, Kansas and other state cases, along with county of Santa
21 Clara records, Plaintiffs are informed and believe and thereon allege that from at least January 15,
22 2001 to March 30, 2006, Mozilo instructed all of his subordinate brokers, including Colyer, to
23 instruct title companies as FATC and FTC, to falsely record in Santa Clara County Clerk-Recorder
24 records that MERS would be the mortgagee or beneficiary of mortgage Notes or HELOCs it
25 specified. Further, Mozilo instructed Countrywide brokers being supervised by himself, to
26 represent to borrowers, including Plaintiffs, that Countrywide Home Loans, Inc., would remain the
27 owner of the Note/HELOC and to falsely record MERS as their mortgagee or beneficiary while
28 concealing that MERS was actually a Strawman or front for WELLS and Bear Sterns.

1 286. On or about January 2001, Countrywide, through its duly appointed CEO Mozilo,
2 negotiated with defendants Bear Sterns, Does 2-30, MERSCORP & FATC the language that
3 would be used in recording MERS in County Recorder offices as beneficiary, including Santa
4 Clara County. The CEOs of MERSCORP & FATC directed their staff to work with Countrywide
5 staff on the language, resulting in the language cited in *Exhibits 7 and 8* which MERSCORP &
6 FATC promulgated to FTC.

7 287. Before March 14, 2006, when Colyer had issued Countrywide's representation to
8 provide Plaintiffs with a 30-year fixed 1 to 3 percent loan, *Exhibit 10*, Bear Sterns communicated
9 to Countrywide to supply them with a certain number and quality of Pay Option ARM Notes and
10 HELOC agreements, and that Colyer in steering Plaintiffs to purchase such loans was fulfilling
11 such request pursuant to Master Repurchase Agreement Mozilo entered Countrywide into with
12 Wells and Bear Sterns before March 2006, thereby Countrywide was not owner of Notes.

13 288. Colyer, Mozilo, Sambol, WELLS with Does 1-30 concealed from Plaintiffs that loans
14 were being brokered on behalf of WELLS and Bear Sterns and had Plaintiffs known this they
15 would not have purchased their loan through Countrywide.

16 289. On or about March 27, 2006, Colyer contacted FATC agent FTC, to send an
17 employee to close escrow on Plaintiffs and secure their signatures on all loan documents presented
18 in escrow, and to not leave certain documents that they sign with Plaintiffs, and those which were
19 left, leave them un-filled in order to conceal from Plaintiffs the actual cost of the loans or what
20 their rights to rescind was. Further, Colyer directed FTC to not permit Plaintiffs to copy signed
21 originals, but go to Santa Clara County Clerk-Recorder and falsely record MERS as the
22 mortgagee, beneficiary and trustee.

23 290. FATC CEO was informed by Does 2-50, that MERSCORP was only a front or
24 Strawman for WELLS and Bear Sterns and operated to allow Does 2-30 to sale and resale Notes
25 without informing the public or borrowers, including Plaintiffs, the Chain of Title or who the
26 actual Note Holder was at a given time and followed Countrywide's instructions, as it has done
27 thousands of times before in California, by sending agent FTC representative to close escrow at
28 Plaintiffs Mt. View, California home on March 27, 2006.

1 291. Defendant FATC representative Javani Wyatt⁵ presented David and Salma escrow
2 documents on March 27, 2006, which were not filled in or partially filled in, rushed Plaintiffs to
3 sign them based on her not having time for them to read them before signing; refused to let
4 Plaintiffs copy them on their copier with the promise that they could contact Countrywide to
5 obtain copies of signed documents and left Plaintiffs with some of the documents missing, unfilled
6 in or partially filled.

7 292. On or about March 30, 2006, FATC sent another agent to follow the orders of
8 Countrywide and they paid the \$130 filing fees to Santa Clara County Clerk-Recorder and falsely
9 recorded in County of Santa Clara records that MERS was the mortgagee or beneficiary along
10 with Recontrust, and concealed from the Plaintiffs and the public who the holder of the Note or
11 HELOC was, immediately clouding Title of Property.

12 293. On or about April 1, 2006, some of the Does from 2-30 sold Plaintiffs Note and
13 HELOC to others who were or were not members of MERSCORP. From April 1, 2006 through
14 July 2010, Plaintiffs Note and HELOC was sold multiple times in portions via securities pooling,
15 by Bear Sterns and WELLS who ignored California Commercial Code provisions regarding laws
16 on endorsements, chain of title and instrument laws to where the owner of the Note and HELOC is
17 not actually known. Each of the named Defendants concealed from, and did not disclose to
18 Plaintiffs these things or that they would be using Plaintiffs' personal and financial information to
19 generate money.

20 294. On or about October 15 2006, April and June 2007, January, March, July, August,
21 September and November 2008, Salma and David contacted Colyer and other Countrywide
22 employees in an attempt to speak with the actual owners of their Note and HELOC so they could
23 negotiate a refinancing of their two loans and obtain the "one" loan promised by Countrywide.
24 Further, to inform actual Note Holder that Plaintiffs were victims of fraud. At this time, Colyer
25 and other staff represented to these Plaintiffs that Countrywide was the owners of Notes, while
26 knowing in truth Bear Sterns and Wells Fargo were.

27 ⁵ Agent Wyatt is not sued at this time although she is culpable of wrongdoing, but right is reserved to sue.
28

1 295. On or about November 2008, May 2009 and July 2010, Countrywide and BofA
2 represented to Plaintiffs that WELLS or Does 1-30 was the owner of this action's Note; however,
3 WELLS, pursuant to Stumpf orders, has denied this and BofA provided proof of this which
4 Plaintiffs incorporates herein as *Exhibit 29*, as if fully set forth herein. Further, from January 2009,
5 when Plaintiffs formally tendered their home and rescinded their loans, up to August 2010,
6 WELLS with Does 1-30, through its agent BofA, refused to rescind loans in order to cover-up and
7 support their own and Countrywide's application, origination and servicing fraudulent acts.

8 296. Since the filing of this action at least forty Attorney Generals from US States along
9 with Federal Government investigated and brought fraud, conspiracy actions against Mozilo,
10 Sambol, Countrywide, MERSCORP, Does 2-30, Bear Sterns et al which arise from substantially
11 the same questions of fact and laws alleged herein. The Plaintiffs are submitting just four related
12 ones as *Law Suit Exhibits 36 to 39* accompanying Third Amended Complaint and are incorporated
13 herein as if fully set forth.

14 **FIRST CAUSE OF ACTION**

15 **(Conspiracy to Commit Fraud-Misrepresentation, Deceit, Concealment)**

16 Plaintiffs adopt and incorporate herein paragraphs 1 through 295, above as if fully set forth
17 in this cause of action.

18 **Defendants Mozilo, Sambol, Colyer, Benson and Chen**

19 297. On or about March 7, 2002, March 28, 2003, March 12, 2004, March 15 & September
20 22, 2005 and March 1, 2006 defendants Mozilo, Sambol, Countrywide, Does 31-50 made the
21 following representations to American Public in SEC filings: Countrywide produced "prime
22 quality ... low cost loans ... using quality control audits to monitor compliance with [CHL]
23 underwriting criteria"; "...[Countrywide] looking to hold only pristine product on the balance
24 sheet," and loans are designed to meet borrowers needs. In every month from January 2005 to
25 March 2006, these same defendants made the following representations in San Jose Mercury, San
26 Francisco Chronicle and other Bay Area News papers: Countrywide Bank was the same or similar
27 to Countrywide Home Loans and offered the best interests rates of any other Bank. From January
28 2005 to March 2006, Sambol and Mozilo ordered Does 31-50 to hire advertising firm to publish

1 TV, Internet and Junk Mail Ads transmitted and sent to American mortgage loan borrowers which
2 made the following representations: Countrywide would provide mortgage loan borrowers 1 to 4
3 percent interest rate loans; lowest monthly payments in the industry; no competitor could provide
4 less expensive payments or interest rates; would charge borrower no closing fees; would charge no
5 origination fees; provide FHA backed loans; provide 30-year fixed rate; would facilitate
6 borrower's ability to own their home securely. During January 2005 to March 2006, Salma and
7 David saw, read and heard each and every one of these representations in named Newspapers,
8 local and national TV stations, Countrywide, SEC and other Internet sites, brochures mailed by
9 Mozilo and Sambol Ad Agents to their home and phone calls received from Does 45-50 and
10 March 9, 10, 14, 18, 20 to 28, 2006 face-to-face and phone talks with defendant Colyer. From
11 May 2006 to November 2008, Mozilo, Sambol, Colyer, Does 1-100, Wells Fargo, BofA and
12 Lewis made the following representations to Salma and David twice per month, every month, by
13 way of payment vouchers: Plaintiffs owed monthly payments some 20-30% above what loan
14 documents specified. During March 2006 Colyer and Chen directly represented to Salma and
15 David through face-to-face and phone conversations that Countrywide was a trustworthy and best
16 company to get loan from. From February to November 2009 defendants Lewis and Does 71-80
17 made representations that the modification of their loans would combine both loans into one,
18 include property taxes, be a 30-year fixed loan that would be below 30% of Plaintiffs monthly
19 income. On or about March 18, 2006, defendants Colyer, Benson and Chen made representations
20 through an official Appraisal report reporting to public and Plaintiffs that the value of Property
21 was \$739,000.

22 298. The representations made by defendants Mozilo, Sambol, Does 31-50 were in fact
23 false. The true facts were Mozilo and Sambol trained subordinates to broker the most costly loans
24 for borrowers; hide the charges of closing and origination fees by wrapping it into loan thereby
25 increasing loan beyond what borrower agreed upon; direct appraisers to falsify value of property
26 to higher value to make more profit; train, order and encourage underwriters and sub-brokers to
27 not apply or lower underwriting standards; not broker FHA loans; design loans to strip Plaintiffs
28 savings, income, equity and ensure that they are not able to securely own their property; broker 3,

1 5 or 10 year Adjustable Rate mortgage terms, not 30-year fixed; Plaintiffs owed 20-30% less than
2 what these defendants represented each month; Countrywide was not a trustworthy company since
3 its officers and sub-brokers were intentionally defrauding millions of Americans; modification
4 was intended to cover-up past fraud and abrogate Plaintiffs rights to sue for damages thereto; did
5 not include property taxes; were still two loans and would exhaust 80-100% of Plaintiffs income
6 and the actual value of Property was \$700,000 or less.

7 299. When defendants Mozilo, Sambol, Colyer, Benson, Chen, Lewis and Does 31-50 with
8 71-80, made these representations, they knew them to be false and made these representations with
9 the intention to deceive and defraud the Public and Plaintiffs Salma and David in order to induce
10 Plaintiffs along with the Public to act in reliance on these representations in the manner alleged
11 herein, or with the expectation that they would act so.

12 300. Plaintiffs Salma and David, at the time these representations were made by
13 defendants Mozilo, Sambol, Colyer, Chen, Benson, FATC, MERSCORP, Countrywide, BofA,
14 Lewis, Does 1-100, and at the time Salma and David took the actions herein alleged, was ignorant
15 of the falsity of the defendant's representations and believed them to be true. In reliance on these
16 representations, Salma and David was induced to and did agree to purchase their property,
17 unbeknownst to them at a falsified higher value; hired Countrywide to broker their loan; made
18 monthly payments 20-30% above agreed upon for 2 years 10 months; used up all their savings,
19 income and equity to meet defendants representations. Had Salma and David known the actual
20 facts, they would not have taken such actions. Their reliance on these defendants' representations
21 was justified because they are not trained in real estate, loans, and law or otherwise cognizant of
22 this area, and hired these defendants to actually provide a trustworthy service of brokering a loan.

23 **Defendant Chen, Benson and Colyer**

24 301. On or about February 27, 2006, plaintiffs Salma and David entered into a written
25 agreement to purchase property situated at 660 Pinnacles Terrace, Sunnyvale, and Santa Clara
26 County, California from Defendant Chen. A copy of this agreement accompanies this complaint as
27 *Exhibit 32* and made part hereof by reference.
28

1 302. In this sales transaction, defendant Chen acted as the real estate agent for “seller” of
2 property and concealed that he was one of the sellers. Plaintiffs, as buyers, was represented by
3 Earl Taylor. Confirmation of the agency relationships is set forth in Exhibit 32.

4 303. Prior to the execution of the sales agreement and continuing through the escrow
5 period, defendant Chen was aware that he was one of the sellers of the property; that he and
6 Colyer had enlisted defendant Benson to falsely increase the value of Property more than \$40,000
7 above its fair market value; that the parking space adjacent to Property was at that time property of
8 the Home Owners Association; and that the loans he encouraged Plaintiffs to purchase from
9 Countrywide would be financially defective and was part of conspiracy to defraud David and
10 Salma out of their savings, income, equity and property. Defendant Chen knew that these defects
11 in the property value and loans as well as parking space were unknown to, or were beyond the
12 reach of Plaintiffs.

13 304. These defects and misrepresentations materially affect the value and the desirability
14 of the property.

15 305. Defendant Chen failed to disclose to Salma and David the existence of these defects
16 with the intent to induce Plaintiffs to complete the purchase of the property. Defendant took
17 certain affirmative acts to insure that Plaintiffs would not discover the defects or misrepresent-
18 tations by hiring and conspiring with defendants Benson and Colyer to falsify the appraisal report;
19 produce loans for the falsified amount; concealed that he was actually the Seller of Property; told
20 Plaintiffs that Seller purchased Property for \$729,000 and confirmed Countrywide was a
21 trustworthy place to get their loans.

22 306. As a result of defendant Chen’s fraudulent failure to disclose defects and made false
23 representations to Salma and David, Plaintiffs completed the purchase of the property and has
24 been damaged in having their savings, income and equity stripped from them in excess of
25 \$200,000.

26 307. On or about February 25, 2006 at Property address, defendant Chen, with the intent to
27 defraud and deceive Salma and David and with the intent to induce both Plaintiffs to: purchase the
28 above-described real property for a sum of \$729,000; represented to the plaintiffs that Sellers had

1 purchased the property at and above the cost of \$729,000; an appraisal will confirm Property's
2 value; that this property contained third parking space which increased acreage by approximately
3 20% and that he was only the agent for the Seller. These representations were false, and defendant
4 Chen knew them to be false at the time he made them, and at all times herein mentioned. In fact
5 and truth, the above-described real property was worth only approximately \$700,000; it was
6 purchased for \$750-760,000; defendant Chen was a owner and Seller; Chen and Colyer had
7 enlisted Benson to falsify appraisal report which they presented to David and Salma on or about
8 March 18, 2006 at Colyer's Menlo Park office, to eliminate any doubt that Plaintiffs held about
9 Property's value; and property acreage was about 20% less than what Chen represented.

10 308. Salma and David did not know that these representations were untrue, but on the
11 other hand, believed them to be true. In reliance on this representation, Plaintiffs entered into a
12 contract of purchase and sale of the above-described real property with the defendant, and paid the
13 defendant the sum of \$739,000 as a purchase price therefor. The contract of sale is attached hereto
14 as *Exhibit 32*, and made part hereof. Except for the false representations of defendant Chen,
15 Colyer and Benson, the Plaintiffs would not have entered into the above-mentioned contract and
16 would not have paid the contract sum of \$739,000, or any sum, for the above-described real
17 property, to defendants Chen, Benson, Colyer et al. Defendant Chen escorted Plaintiffs around the
18 home, showed them how the parking space was directly adjacent to the home, displayed for them
19 photos and official real estate print outs of other townhomes in Sunnyvale which had similar and
20 higher sales prices to \$739,000, did not have any expertise in this area and was urged by Chen,
21 Benson's Appraisal report and Colyer to accept each of their assurances as to the value of the
22 Property.

23 **Fraudulent Promises**

24 309. On or about March 14, 2006, defendant Colyer, acting on the aforementioned
25 authority of defendant Mozilo and Countrywide Board of Directors, promised Salma and David
26 that he could guaranty to provide them with a loan which was FHA 30-year fix with monthly
27 payments of \$2,200 or less as long as Plaintiffs hired him and terminated the two other brokers
28 they were working with. This was a practice that Colyer learned directly from defendants Mozilo,

1 Sambol and Does 31-50 during 2005 and 2006, when they trained him at Countrywide HQ and
2 was a promise similar to others that Colyer, Mozilo, Sambol and hundreds of other Countrywide
3 staff made to other mortgage loan borrowers in order to lure them into hiring them to broker loan.

4 310. At the time defendant Colyer made the promise to David and Salma on at least 2 face
5 to face and 3 telephonic talks between March 10 to 18, 2006, Colyer had no intention of
6 performing it.

7 311. The promise was made by Colyer with the intent of being an additional inducement to
8 the Plaintiffs terminate their other brokers, remove loan contingency from Real Estate Sales
9 Contract with Chen and commit to letting Colyer take their application.

10 312. David and Salma, at the time this promise was made, and at the time Plaintiffs took
11 the actions herein alleged, was ignorant of Colyer's training from Mozilo and Sambol and his
12 secret intention not to perform and Plaintiffs could not, in the exercise of reasonable diligence,
13 have discovered the defendant's secret intention. In reliance on the promise of the defendant,
14 Plaintiffs hired Colyer to broker them the above-described loan. If the Plaintiffs had known the
15 actual intention of the defendants, Plaintiffs would not have taken such action.

16 313. Defendants Colyer, Mozilo, Sambol, Does 31-50 and Countrywide, failed to abide by
17 their promise by brokering a loan which was twice the amount of loan promised, was two versus
18 one loan and retained the other detrimental qualities described above.

19 314. As a proximate result of the fraudulent conduct of these defendants as herein alleged,
20 Salma and David was induced to exhaust their savings, income, equity and thousands of hours of
21 their time and energy in an attempt to rectify the fraud perpetrated upon them, by reason of which
22 the Plaintiffs have been damaged in the sum of \$400,000

23 315. The aforementioned conduct of defendants Mozilo, Sambol, Colyer, FATC, Lewis,
24 MERSCORP was intentional misrepresentations, deceit, or concealment of material facts known
25 to defendants with the intention on the part of the defendants of thereby depriving Plaintiffs of
26 property and legal rights or otherwise causing injury, and was despicable conduct that subjected
27 Plaintiffs to a cruel and unjust hardship in conscious disregard of the Plaintiffs rights, so as to
28 justify an award of exemplary and punitive damages.

1 **a. False Representations And Concealments – 1st Element**

2 316. This is a list of the false representations made to mortgage loan borrowers such as
3 Plaintiffs through California news papers, magazines, radio, television, brochures, public
4 corporate filings and internet which specifically included, but is not limited to:

5 (i) Pay no closing cost loans; (ii) No origination fees; (iii) receive 1, 2, 3 or 4% interest
6 rate; (iv) lowest payments in industry and “no one could do” better; (v) could be trusted to provide
7 best loan; (vi) prime loan financing; (vii) strict or sound federal underwriting standards applied;
8 (viii) high quality underwriting audits; (ix) Save thousands without making down-payment; (x)
9 chance to actually own your first home; (xi) Countrywide will loan money; x(xii) All loan
10 documents they sign will be delivered to them; (xiii) Title will be clear of any cloud; (xiv) Title
11 Company would deal honestly and fairly. From on or about January 15, March 15, July 15,
12 October 15, December 15, 2005, and continuously and repeatedly to March 2006, Plaintiffs saw,
13 heard and read these representations in San Jose, San Francisco, Oakland, Los Angeles, Atlanta,
14 Chicago, Detroit and New York newspapers, local television and radio stations, on Internet and
15 advertising brochures mailed by Countrywide upon Sambol and Mozilo personal orders and
16 instructions.

17 317. This is a list of the false oral and written representations and promises to Plaintiffs
18 which specifically include, but are not limited to:

19 (i) Countrywide (hereinafter cited as “CW”) was selling Plaintiffs Prime conventional 30-
20 year fixed rate FHA mortgage with an interest rate between 1-3%; (ii) Followed federal
21 underwriting standards; (iii) CW was selling loans for itself and would be the holder-in-due course
22 of loan; (iv) Would fully meet Plaintiffs financial ability to pay off loan in 30-years; (v) Property
23 was accurately appraised at \$740,000; (vi) the Pay Option & HELOC two loans was very best and
24 only option for Plaintiffs available in the mortgage market; (v) Plaintiffs had ability to repay loans;
25 (vi) Loan documents and information therein would be faithfully delivered to Plaintiffs; (vii) CW
26 was going to “refi” into originally promised loan if Plaintiffs made monthly payments for year;
27 (viii) CW staff were honest and trustworthy professionals; (ix) Plaintiffs did not qualify for prime
28 or conventional loan; (x) Plaintiffs owed 11.25% on HELOC; (xi) Payments and 6.5% on Note

1 would last 30-years; (xii) There would be no cloud on title; (xiii) Best to not put down payment;
2 (xiv) Actual chance for Plaintiffs to own their first home.

3 **b. Actual Truth – 2nd Element**

4 318. This is a list of the **true facts**, including but not limited to: (i) defendants would charge
5 closing cost & origination fees; (ii) employees and agents were untrustworthy as fiduciaries and
6 not only overcharge costs, but falsify monthly coupons from April 2006 to January 2009 with
7 11.25% interest rate payments; (iii) design loans to be among the highest payments, fees and
8 interests in industry; (iv) Plaintiffs qualified for prime conventional loan; (v) deny prime loan and
9 sell them subprime; (vi) not apply federal or even Countrywide underwriting standards; (vii)
10 maintain low quality underwriting audits or negate audits; (viii) cost thousands of dollars more
11 than what Plaintiffs should have paid if loan sold by honest broker; (ix) not making down payment
12 was in Plaintiffs worse interests; (x) loans designed to strip equity from Property; (xi) made loans
13 so complicated that no layperson, first-time home buyer or many real estate or loan professionals
14 could understand loan terms or payments; (xii) underwrote loans to ensure default of payments
15 and foreclosure; (xiii) designed payments to initially be lower – teaser rate – in order to bait and
16 conceal or obscure the later higher payments that would be impossible for Plaintiffs to pay; (xiv)
17 violate all fiduciary duties and only ensure profits for CW, Wells and Does 1 through 100; (xv)
18 pretend CW was bank to engender confidence and trust in staff; (xvi) steered Plaintiffs to purchase
19 loan that was presold or ordered by Wells or Does 1-30; (xvii) FHA 30-year 1-3% promise was
20 solely to entrap Plaintiffs to be committed to CW and terminate other lenders; (xviii) always
21 charged closing and origination costs; (xix) Was dual or triple agent and did not provide written
22 nor oral disclosures of such; (xx) left Plaintiffs with unfilled-in documents and did not provide
23 certain other documents; (xxi) provided different loan at close of escrow than what was initially
24 promised; (xxii) inflated value of property above \$670,000 to sell higher valued loan and
25 commissions; (xxiii) had right to close escrow at title company and invite professionals to review
26 documents; (xxiv) loans would first consume 65% then over 100% of income; (xxv) property
27 taxes and insurance were not included in payments; (xxvi) Plaintiffs had right to have excess
28 payments pay down principles of both loans; (xxvii) should have paid between 4.5 and 8% on

1 HELOC; (xxviii) MERS designated as mortgagee or beneficiary to cloud title and conceal Does 1-
2 30; (xxix) MERSCORP Wells with Does 1-30 agent to effect pre-planned foreclosure on Plaintiffs
3 and conceal fraud of Wells with Does 1-30; (xxx) Plaintiffs had right to rescind loans once
4 documents were provided in January 2009 which exposed 2006 fraud; (xxxi) BofA modified loan
5 to cover up CW et al 2006 to 2009 fraud; (xxxii) defendants sold Plaintiffs loans to supply
6 mortgage backed securities and not to provide them chance to actually own a home at all; (xxxii)
7 Wells or Does 1-30 were the de facto Note holders and not CW; (xxxiii) No intention of delivering
8 any signed loan documents; (xxxiv) Concealed Title Insurance policy until 2010; (xxxv) Intended
9 to cloud title and in fact did cloud title; (xxxvi) Aided and Abetted in fraud at the close of escrow;
10 (xxxvii) No intent of having title company deal honestly and fairly.

11 **b. Knowledge of False Representations or Concealments – 3rd Element**

12 319. Each and every one of the Defendants were directly involved in Plaintiffs loans either
13 during application, origination, servicing and/or rescinding stages personally or through their
14 named CEOs, employees or agents herein.

15 320. The falseness of each representation was fully known to defendants Mozilo, Sambol,
16 Lewis, Does 2-30, Mozilo, Sambol, Colyer, Chen, Benson, Countrywide, Does 31-50 & 61 to 70,
17 BofA, Does 71-80, Wells Does 81-90, MERSCORP and R.K. Arnold, FTC & FATC agents Wyatt
18 and Does 91-100 and Bear Sterns as specifically alleged above.

19 **c. Intent to Remove Competition and Induce Plaintiffs to Act – 4th Element**

20 321. The representations were made by Defendants to remove broker competition and to
21 induce Plaintiffs to act thereon, and Plaintiffs did act by doing specifically as alleged as follows:

- 22 (i) Giving full trust and confidence in Colyer, Chen, Benson and Does 61-70 decisions;
23 (ii) Believed Countrywide was a reputable and honest banking institution; (iii) believed CW would
24 provide a prime quality FHA or conventional 30-year fix mortgage between 1-3%; (iv) sell them
25 very best loan on the market; (v) accepted their status as mortgage experts; (vi) trusted them to be
26 honest fiduciaries who placed Plaintiffs interest first; (vii) accepted them as *Plaintiffs agent* who
27 did not have any others whose interest would come before Plaintiffs; (viii) took their assurance
28 that it was best to not put money down; (ix) believed there would not be closing cost; (x) believed

1 high quality underwriting standards applied; (xi) believed loan would allow actual ownership of
2 home; (xii) underwriting would ensure ability to repay loan; (xiii) loan would be 30-50% lower
3 than what other lenders could do; (xiv) trusted for all loan documents to be delivered; (xv)
4 believed in promise to refinance; (xvi) accepted promise to apply monthly payments to principles
5 of both loans; (xvii) accepted appraisal report of \$740,000 was true value; (xviii) accepted
6 assurance that Countrywide would be holder of Note; (xix) believed taxes would be included in
7 payments; (xx) signed agreement for purchase of Property; (xxi)

8 322. Further, Defendants Colyer, Benson, Chen, Countrywide, BofA, FTC/FATC,
9 WELLS, Stumpf, Lewis, MERSCORP, Recontrust, Mozilo, Sambol, Wells and Does 1 -50 failed
10 to reveal and suppressed facts such as including but not limited to: 1) Their promises were made
11 only to persuade Plaintiffs to not seek lending elsewhere; 2) No 30-year or conventional loan
12 would be afforded; 3) Two, not one, loans would be issued at 6.5 and 11.25%; 4) CW did not
13 follow federal underwriting standards; 5) CW was acting as agent for Wells with Does 1 – 30 who
14 were actual holders of Note; 6) Property was actually worth \$670,000; 8) Designating seemingly
15 innocent MERS as Beneficiary versus Does 1-30 or WELLS, would not raise questions or
16 concerns and persuade Plaintiffs to agree; 9) Signed loan documents with cost of loan, rescinding
17 date and other loan data; 10) Other loan options were available; 11) Loans were actually subprime
18 and unconventional; 12) final signed and completely filled-in loan documents; 13) CW was not a
19 bank but a real estate mortgage broker; 14) Final loan payments would not and did not include
20 taxes, insurance etc.; 15) Not delivering ultimate signed loan documents would not contradict
21 what was being represented to Plaintiffs; 16) Title Policy; 17) Right or need to have lawyer review
22 all documents before signing.

23 **d. Plaintiffs Reliance on Misrepresentations/Concealment – 5th Element**

24 323. The Plaintiffs reliance on Defendants representations was justified and reasonable
25 because Plaintiffs:

26 (i) Are first-time home buyers; (ii) not trained or work in real estate or financial industries;
27 (iii) hired Colyer/Countrywide to be their broker with all fiduciary duties; (vi) told loan would be
28 through CW; (vii) saw CW as Publicly traded and American Corporation; (viii) saw television and

1 other advertisements presenting CW as a honest trustworthy institution; (ix) were told that federal
2 underwriting standards was applied to loans; (x) read and heard Mozilo personal public reports
3 that CW employed high quality underwriting audits; (xi) were manipulated to trust and have
4 confidence in CW; (xi) believed Colyer & Does 61-70 were professional financial experts; (xiii)
5 believed professional and honest standards would dictate that all Defendants had legal
6 responsibilities and duties to consumers; (xix) Chen, Wells vouched for CW credibility; (xx) were
7 not afforded time to review loan documents and not informed that they could hire lawyer or
8 professional; (xxi) received each month official coupons demanding certain amount in payments;
9 (xxii) were promised that payments would apply to principle and told this was the way loans
10 worked; (xxiii) was told that CW was providing funds for loans and would be holder of Note and
11 HELOC; (xxiv) each and every defendant are trained professionals in the real estate and lending
12 brokerage industries; (xxv) each and every defendant was in positions of advantage with respect to
13 knowledge of facts concerning real estate and lending industries; (xxvi) had federal and state
14 rights to receive every loan document signed and filled in.

15 **e. Damages from Misrepresentations/Concealment – 6th Element**

16 324. As a proximate result of the fraudulent concealments of each and every defendant
17 herein alleged, Plaintiffs were forced to expend 350 days of 8-hours which was lost to time
18 commitment to employer; and 150 days of 8-hours each lost in work regarding their own private
19 California Corporation business activities, due to their needs to investigate and uncover
20 misrepresentations herein as well as studying law and litigation at a cost of not less than
21 \$1,375,000 in lost wages, bonuses and business development.

22 325. As an additional proximate result of misrepresentations and the failure to disclose the
23 true facts, Plaintiffs have been damaged in that the value of the property is far less than the sales,
24 appraised and funded prices. The exact amount by which Plaintiffs have been damaged is
25 unknown at this time, but it is at least the difference between what Plaintiffs paid for the Property
26 and its true value, or other damages, which are unknown to Plaintiffs at this time. Plaintiffs have
27 also suffered consequential damages in the form of closing costs, escrow fees, loan origination
28 fees, title insurance, moving expenses, payments of principal and interest on the purchase money

1 loans, improvements made to Property, and other expenses, among other damages, according to
2 proof at trial in addition to sums cited infra.

3 326. On or about March 27, 2006, Plaintiffs are informed and believe and based thereon
4 allege that Countrywide sold Plaintiffs loan for an amount in excess of the principle amount of
5 \$591,000 (Hybrid ARM), and \$147,000 principle amount of the HELOC second loan by using
6 Plaintiffs financial and personal information without permission, disclosure or right to do so.

7 327. As a proximate result of Countrywide misrepresentations Plaintiffs have been
8 defrauded of the sum of \$9,300 loan costs'; 82,550 paid on the HELOC loan and \$99,700 paid on
9 the Hybrid Pay Option ARM loan, and Plaintiffs have been damaged further in that Plaintiffs
10 could have qualified for either an FHA, prime loan or other type of conventional loan, but was
11 steered into and sold a subprime loan which immediately affected credit score negatively. Also
12 sold a loan that was above interest rate they qualified for - 6.5% rate paid by Plaintiffs for their
13 first and 7.5% on their second HELOC. Further, to loss sustained in false inflated appraisal of the
14 market value of Plaintiffs home in the sum of \$66,000; For excessive above prime market interest
15 rates charged on the Hybrid Pay Option ARM in the sum of \$113,169 more than Plaintiffs would
16 otherwise have paid and \$964,444 over the term of the Pay Option ARM loan; For excessive
17 above market interest and principle paid on the credit card HELOC loan in the approximate
18 amount of \$32,550, when the exact amount becomes known to Plaintiffs, they will amend this
19 complaint to state the such loss.

20 328. Additionally, as results of Defendants, and each of them, misrepresentations,
21 Plaintiffs completed the purchase of the home using Defendants purchase money loans, and once
22 fraud became known to them they were forced to cease payments on fraudulent loans and tender
23 their property which had depreciated by \$20,000 in January 2009, and was further subject to fraud
24 when BofA refused their right to rescind and reported Plaintiffs to credit bureau as being in default
25 of loan payments and now Property depreciating to \$550,000 as a direct result of Defendants
26 refusal to rectify fraud and rescind loan January 2009. This is an additional \$180,000 as lost to
27 Plaintiffs. There are other damages in a sum presently unknown to Plaintiffs and Plaintiffs will
28 amend this complaint when the sum becomes known to them.

1 329. In doing the things alleged in this complaint, each and every defendant acted with
2 oppression, fraud and malice, and said acts were approved and/or ratified by each of the remaining
3 Defendants. Plaintiffs are therefore entitled to punitive damages in a sum according to proof.

4 330. The various acts and representations of defendants, and each of them, were all false
5 and made as the result of, and in furtherance of, an agreement whereby each of the defendants
6 knowingly conspired with the other defendants to sell David and Salma aforementioned Property
7 and loans at prices much greater than its value and to divide the profits derived from that sale
8 among themselves.

9 **Formation and Operation of Conspiracy**

10 331. Plaintiffs are informed and believes and thereon alleges that at all times herein
11 mentioned each of the defendants was the agent and employee of each of the remaining
12 defendants, and in doing the things herein alleged, was acting within the course and scope of such
13 agency.

14 332. From on or about January to December 2005, defendants Mozilo, Sambol, Does 2-50,
15 the CEOs of Bear Sterns, Wells Fargo, MERSCORP, FATC, knowingly and willfully conspired
16 and agreed among themselves to make false representations to Public and or Plaintiffs in order to
17 lend money to and defraud mortgage loan borrowers such as Plaintiffs, out of their savings,
18 income, equity and properties.

19 333. The numerous and specific representations, its falsities, truth and damages thereof are
20 set forth fully from ¶¶ 296-329 and incorporated fully herein.

21 334. Defendants Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns, Wells Fargo,
22 MERSCORP, FATC did the acts, things and omissions herein alleged pursuant to, and in
23 furtherance of, the conspiracy and above-alleged agreements repeatedly made among them.

24 335. Defendants Lewis, Colyer, Chen, Benson, Does 51-100, MERSCORP, Countrywide,
25 FATC, Wells Fargo, FTC furthered the conspiracy from October 2005 repeatedly and
26 continuously until March 2009 and up to April 2011, by cooperation with or lent aid and
27 encouragement to or ratified and adopted the acts of defendants Mozilo, Sambol, Does 2-50, the
28

1 CEOs of Bear Sterns and BofA by holding discussions with these defendants, undergoing training,
2 agreement to follow their wishes as described throughout above and referenced ¶¶ 296-329.

3 336. Plaintiffs are informed and believes and thereon alleges that the last overt act in
4 pursuance of the above-described conspiracy occurred on or about April 7, 2011, on which date
5 Bear Sterns successor in interest, JP Morgan Chase, ordered Wells Fargo to direct BofA to try to
6 convince Plaintiffs to accept a modification of loans in order to abrogate their right to redress
7 herein, and to cover up past and existing fraud and conspiracy and continues to seek payments on
8 the loans at issue herein.

9 **Second Cause of Action—Conspiracy to Commit Breach of Fiduciary Duty**

10 Plaintiffs adopt and incorporate herein paragraphs 1 through 335, above as if fully set forth
11 in this cause of action.

12 **Defendants Mozilo, Sambol, Colyer, Countrywide, Bear Sterns & Does 1-50**

13 337. From January 2005 to March 2006, defendants Mozilo and Sambol made all of the
14 Public statements, TV, Internet, Brochure mailings and other media ads, News Paper articles,
15 publicity, SEC and other public reports as a means for soliciting mortgage loan borrowers in need
16 of a broker to find identify and negotiate loan for them to purchase their property; and they wished
17 to service loans for borrowers and lenders as well and act as agents for both.

18 338. A copy of this agreement accompanies this complaint as *Exhibit 10* and with Colyer's
19 oral commitment makes up the agreement and is incorporated herein as if fully set forth and made
20 on behalf of Mozilo and Countrywide.

21 339. On or about March 14, 2006, plaintiffs Salma and David entered into a written and
22 oral agreement to have Countrywide broker a loan for the purchase of property situated at 660
23 Pinnacles Terrace, Sunnyvale, Santa Clara County, California. Defendant Colyer acted as a real
24 estate loan sub-broker under the authority of chief broker Mozilo and the authority of Countrywide
25 Board of Directors. Pursuant to his actions, he took on the role of broker for Plaintiffs, Bear Sterns
26 and Countrywide. Confirmation of the agency relationships is set forth in *Exhibit 10* and oral
27 statements above regarding Plaintiffs and *Exhibit 30* for Bear Sterns. As Plaintiffs agent,
28

1 defendants Colyer, Mozilo and Countrywide owed to Plaintiffs a fiduciary duty to make the fullest
2 disclosure of all material facts that might affect Plaintiffs decision to purchase the property.

3 340. Prior to the execution of the loan agreement and continuing through the escrow
4 period, defendant Colyer was aware of certain defects in the loan, its application, origination,
5 funding and servicing stages, to wit: That Chen and he had enlisted defendant Benson to falsely
6 increase the value of Property more than \$40,000 above its fair market value; that the Good Faith
7 Estimate and his Oral agreement to fund property with FHA for \$2,200 or less would not be
8 authorized by Mozilo or Sambol; that he was planning to broker two loans instead of the one
9 Salma and David repeatedly asked him to broker; by encouraging Plaintiffs to not put any down
10 payment down would cost them far more in the long term; that loan would be for \$754,000 and
11 not \$729,000 that they agreed upon (\$54,000 above fair market value); loans were designed to
12 strip Plaintiffs of their savings, income, equity and property; closing cost and origination fees
13 would be charged to Plaintiffs; loans would consume first over 60% of Plaintiffs income and
14 ultimately consume over 130% of income; Countrywide was not a bank and would not be
15 Plaintiffs lender; loans would be owned by Bear Sterns, a Wall Street firm who would divide
16 Plaintiffs Note up among multiple “investors”; Plaintiffs would not be able to know or
17 communicate with their lender to renegotiate loan terms; Plaintiffs would not know who to pay
18 off, or whether their payments were actually going to the true owner of their loans; loans would
19 ensure that Plaintiffs defaulted on payments and face possible foreclosure; the principles on the
20 loans would never be reduced as long as Plaintiffs followed Countrywide’s payment voucher
21 representations; that real estate market was on a downturn and so getting a home loan at that time
22 was financially unwise; HELOC was a high interest credit card line of credit which would cost
23 Plaintiffs 2 to 4 times above what a basic home loan would cost; loan documents and its terms
24 would not be disclose to Plaintiffs on March 27 or anytime thereafter until January 2009; loans
25 were based on a falsified income; no underwriting standards were applied to any of the loans;
26 payments would remain the same even after the LIBOR index fell, which payment schedules were
27 contractually tied to; no refinancing was ever intended; Colyer, Chen and Benson were operating
28 under strict practices implemented and enforced by Mozilo, Sambol and Does 31-50, preventing

1 them from providing a loan that would be in Plaintiffs interests. Defendants Colyer, Chen,
2 Benson, Mozilo, Sambol et al knew that these defects in the loans and were unknown to, or were
3 beyond the reach of Plaintiffs David and Salma.

4 341. These defects and misrepresentations materially affect the value and the desirability
5 of the loans which these defendants brokered for Plaintiffs and at all times mentioned in this
6 complaint, Salma and David were unaware of the existence of these defects.

7 342. Defendants Colyer, Chen, Benson, Mozilo, Sambol failed to disclose to Salma and
8 David the existence of these defects with the intent to induce Plaintiffs to complete the purchase of
9 the property. Defendant took certain affirmative acts to insure that Plaintiffs would not discover
10 the defects or misrepresentations by hiring and conspiring with defendants Benson and Colyer to
11 falsify the appraisal report; produce loans for the falsified amount; concealed that he was actually
12 the Seller of Property; told Plaintiffs that Seller purchased Property for \$729,000 and confirmed
13 Countrywide was a trustworthy place to get their loans.

14 343. As a result of defendants Colyer, Mozilo, Sambol, Does 1-50, Countrywide and Bear
15 Sterns breach of their fiduciary duty to make the fullest disclosure of all material facts that might
16 affect Plaintiffs decision to purchase the loans, Plaintiffs completed the purchase their property
17 with such defective loans and has been damaged in the sum equal to the amount required to repair
18 these defects.

19 344. Defendants, each of them, breached their fiduciary duty as Plaintiffs' agent when
20 they, among other things: 1) Failed to disclose that Colyer was acting as a dual and triple agent,
21 representing Does 1-31 with Wells, Countrywide and Plaintiffs; 2) Paying loan brokers as Colyer
22 commission based on volume and not Plaintiffs ability to repay loan; 3) When they repeatedly
23 failed to disclosed that they were not designing a loan to afford Plaintiffs ownership of Property,
24 but to meet the needs of mortgage back securities goals; 4) Steering Plaintiffs into loans made for
25 Does 1-30, Wells and Countrywide benefit alone; 5) Placed Plaintiffs in a sub-prime versus prime
26 loan; 6) Falsely charged them with 11.25% interest rate; 7) Designed loan to default and
27 foreclosure in 2008; 8) Loans payments with taxes and insurance would consumed over 60 then
28 100% of income; 9) That Colyer and other defendants would earn extra or higher commissions for

1 steering Plaintiffs into subprime loans; 10) That defendants would receive higher commissions for
2 manipulating Plaintiffs to not put any money down and accept the “Combo Loan”; 11) That the
3 HELOC was designed with a high risk volatility and that with the future balloon payments of Pay
4 Option ARM would produce Plaintiffs to default and foreclosure.

5 345. Further, each of these defendants had a fiduciary duty and legal obligation to comply
6 with the regulations of the Commissioner of the Department of Real Estate Rules and Regulations,
7 including:

8 (a) Timely disclosure of all loan charges;

9 (b) Not exceed the maximum amount of brokerage costs, including appraisal fees, escrow,
10 title, notary, recording and credit investigation fees;

11 (c) The amount of commissions being charged to loan purchaser, directly or indirectly in
12 the form of loan origination costs, documentation and all other costs charged to the purchaser;

13 (d) The nature of the loans – whether federally regulated residential mortgage loans or
14 non-conventional private loans not federally regulated, insured and underwritten;

15 (e) That mortgage fiduciary duties be timely discharged before the close of escrow
16 including timely disclosure of Good Faith Estimate; truth in lending disclosure, rights to cancel,
17 real estate settlement procedures disclosures, among other things, delivering said disclosures at
18 close of escrow;

19 (f) Disclosure of broker of record license number and agents license numbers;

20 (g) To deliver to the loan product buyer, including Plaintiffs, purchasers copies of all loan
21 documents signed by Plaintiffs.

22 346. Defendant Mozilo was the responsible managing broker of defendant Countrywide in
23 charge of supervising and ensuring all real estate mortgage loan brokers, corporate officers,
24 regional managers and licensed branch managers, including Michael Colyer, discharged and
25 performed Countrywide’s fiduciary duty when brokering loans for borrowers.

26 347. In this transaction, Countrywide had a fiduciary duty to Plaintiffs including the duty
27 to place the economic interests of Plaintiffs ahead of the economic interest of Countrywide as
28 broker, including defendant Mozilo’s and Bear Sterns.

1 348. Prior to close of escrow on April 1, 2006, and execution of mortgage loan documents
2 on March 27, 2006, Countrywide knew and became aware that Countrywide did not disclose to
3 Plaintiffs:

4 (a) All of the loan charges, until all loan documents were delivered almost three (3) years
5 later – January 2009;

6 (b) The actual amounts being paid by Countrywide, among other things, for appraisal
7 fees, loan discount, escrow, title, and credit investigation fees;

8 (c) The amounts to be received by Countrywide for selling to Wells with Does 1-30,
9 an above market interest rate loan, origination costs and other costs charged to Plaintiffs,
10 or that Plaintiffs could have paid Countrywide directly in cash for loan origination costs instead of
11 including them in the principle amount of the loan;

12 (d) The loans were private loans not federally regulated or insured and underwritten to
13 FHA, FHLML or BNMA underwriting standards, other than the letters “NC” at the top right of
14 Countrywide’s Good Faith Estimate dated March 27, 2006, attached as Exhibit 26 hereto;

15 (e) Countrywide’s absolute failure to provide Plaintiffs with any loan documents until on
16 the very day for execution of documents for close of escrow contravened state laws;

17 (f) It was not a federally or state chartered regulated financial institution licensed as such
18 although Countrywide held itself out as such and did not disclose that it was a mortgage loan
19 broker with loan origination endorsement by the California Department of Real Estate and did not
20 disclose that this status or its broker and agents license numbers;

21 (g) Did not discharge its fiduciary duty to provide copies of loan documents, or signed
22 loan documents to Plaintiffs.

23 349. Additionally, Plaintiffs, as loan purchasers, were not represented by any other
24 mortgage loan broker or agent, but Countrywide acted on Plaintiffs’ behalf and when it became
25 aware of the defects in the loans being sold to them had the fiduciary duty to disclose all of the
26 defects in the loans and loan process, including those stated in above.

27 350. At all times relevant herein, Plaintiffs were unsophisticated first time homebuyers-
28

1 mortgagors, having no knowledge of finance, mortgages, banking, mortgage brokers, loan
2 terminology: Plaintiffs David Merritt working as sales representative, Plaintiff Salma Merritt
3 disabled with only medical training, as both were faced with complex legal and financial terms of
4 loans, with references to LIBOR index, Wall Street Journal money rate yields, resets, recasts,
5 multiple alternative adjustable repayment schedules, with multiple 30 or 25 amortization
6 schedules delivered to Plaintiffs by FTC/FATC in their residence at close of escrow. The
7 deceptions and extreme risks were beyond Plaintiffs' ability and capability to detect. Further,
8 Plaintiffs had a right to rely on Defendants as fiduciaries and could have spent days diligently
9 researching the complexities and not discovered these deceptions. Plaintiffs would not have signed
10 the loan documents and note to purchase their home had they known.

11 351. Because Defendants refused to deliver or provide loan documents to Plaintiffs,
12 especially the promissory Note and Agreement, until January 2009, and less than three years
13 elapsed between Plaintiffs discovery of the facts complained of herein, they brought a federal
14 action on March 18, 2009. Further, Defendants actions also show on a monthly basis, continuing
15 acts to violate Plaintiffs' rights by: 1) Monthly charging and accepting higher then agreed on
16 interest payments; 2) failure to refund all back false charges; 3) issuing February 2009
17 modification to cover up past misdeeds; and 4) failure to enforce rescission laws as of August
18 2010.

19 352. As a result of defendant Countrywide's failure to make disclosure of all material
20 adverse facts regarding loan information that would have affected Plaintiffs decision to purchase
21 the loans Plaintiffs have been monetarily damaged in the sums stated above. Plaintiffs have been
22 damaged further economically in that Plaintiffs could have qualified for, purchase and closed a far
23 lower monthly payment loan that Plaintiffs could easily afforded and paid, or taken other action
24 including not purchasing the townhome but for Defendants Breach of Fiduciary Duties, intentional
25 deceit and failure to disclose.

26 353. Plaintiffs are informed and believe and based on such information and belief allege
27 that in doing the things alleged in this Amended Complaint, said Defendants, and each of them,
28 acted with malice, oppression and fraud, and that said acts were approved and or ratified by each

1 of the remaining defendants, Plaintiffs are therefore entitled to punitive damages in an amount
2 according to proof.

3 **Formation and Operation of Conspiracy**

4 354. Plaintiffs are informed and believes and thereon alleges that at all times herein
5 mentioned each of the defendants was the agent and employee of each of the remaining
6 defendants, and in doing the things herein alleged, was acting within the course and scope of such
7 agency.

8 355. From on or about January to December 2005, defendants Mozilo, Sambol, Does 2-50,
9 the CEOs of Bear Sterns, Wells Fargo, MERSCORP, FATC, knowingly and willfully conspired
10 and agreed among themselves to breach their fiduciary duties in regards to Plaintiffs in order to
11 lend money to them and defraud Plaintiffs out of their savings, income, equity and properties.

12 356. The numerous and specific breaches and damages thereof are set forth fully from ¶¶
13 296-329 and 337-355 and incorporated as if fully set forth herein.

14 357. Defendants Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns, Wells Fargo,
15 MERSCORP, FATC did the acts, things and omissions herein alleged pursuant to, and in
16 furtherance of, the conspiracy and above-alleged agreements repeatedly made among them.

17 358. Defendants Lewis, Colyer, Chen, Benson, Does 51-100, MERSCORP, Countrywide,
18 FATC, Wells Fargo, FTC furthered the conspiracy from October 2005 repeatedly and
19 continuously until March 2009 and up to April 2011, by cooperation with or lent aid and
20 encouragement to or ratified and adopted the acts of defendants Mozilo, Sambol, Does 2-50, the
21 CEOs of Bear Sterns and BofA by holding discussions with these defendants, undergoing training,
22 agreement to follow their wishes as described throughout above and referenced ¶¶ 296-329.

23 359. Plaintiffs are informed and believes and thereon alleges that the last overt act in
24 pursuance of the above-described conspiracy occurred on or about April 7, 2011, on which date
25 Bear Sterns successor in interest, JP Morgan Chase, ordered Wells Fargo to direct BofA to try to
26 convince Plaintiffs to accept a modification of loans in order to abrogate their right to redress
27 herein, and to cover up past and existing fraud and conspiracy and continues to seek payments on
28 the loans at issue herein.

Third Cause of Action—Conspiracy to Commit Unfair Business Practices

1
2 Plaintiffs adopt and incorporate herein paragraphs 1 through 359, above as if fully set forth
3 in this cause of action.

4 360. Between January 2004 and March 2006, defendants Mozilo, Sambol, Colyer, Chen
5 with Does 31-50 offered to David and Salma and other members of the Public looking for
6 mortgage loans, to broker for them, or otherwise sale Countrywide’s services to them all at no
7 closing or origination cost and with reduced interest rates that ranged between 1-4%. These offers
8 of service at no cost were made below cost, in that Countrywide needed to earn at least \$2,500 per
9 loan in order to pay all its staff and maintain its overhead and Countrywide lending-funding
10 investors expected charging borrowers 6 to 12 percent interest on funds they lent out through
11 Countrywide, meaning that Countrywide would have to pay the difference to lender-investors.

12 361. Plaintiffs are informed and believes and thereon alleges that defendants Mozilo,
13 Sambol, Colyer and Countrywide performed the above-mentioned acts for the purpose of injuring
14 borrowers as Plaintiffs by inducing them into terminating business relations with loan brokers they
15 were planning to buy mortgage loan through as well as injuring their competitors that Plaintiffs
16 and other borrowers may look to for financing their property.

17 362. Defendants, and each of them, threatens to continue or not correct these practices by
18 keeping in place the loans which were brokered for Plaintiffs in 2006, or threatens to replace them
19 with similar loans by representing them below their actual cost to Plaintiffs and other California
20 property owners.

21 363. As a proximate result of the above-mentioned acts of defendants, and each of them,
22 Plaintiffs have been deprived of accessing much more competitive loans for their property due to
23 the damages caused to their credit, stripping of savings, income and equity which exceeds the sum
24 of \$200,000, trebled to the sum of \$600,000.

25 364. Since 2001 and up to June 2007, defendants Mozilo, Sambol, Colyer, Chen, Benson,
26 Lewis, Does 1-100, combined, conspired and agreed together to falsely inflate the values of
27 properties in California in order to increase each of their own commissions as real estate brokers,
28 agent and appraiser. This was formalized as unwritten policy by way of defendants establishing

1 the practice and through e-mail and telephone communications and, at all times relevant herein,
2 published and disseminated on a regular basis to all Countrywide sub-brokers, appraisers and
3 agents working with Countrywide from 2004 to 2007.

4 365. In furtherance of this unlawful combination, conspiracy and agreement, defendants
5 Mozilo, Sambol, Colyer, Chen and Does 1-100 refused to accept for inclusion in its pool of
6 appraisers any appraisers who were not willing to falsely inflate property values that they wished
7 to broker loans for, fund or sale and encouraged each other to not hire appraisers who were
8 unwilling to cooperate with their false inflations wishes.

9 366. As a proximate result of the acts of defendants, and each of them, Plaintiffs property
10 was artificially inflated at a high level and have been forced to exhaust their savings, income,
11 equity and property and Plaintiffs were deprived of the benefit of free, competitive negotiations
12 for mortgage loan. The Plaintiffs damages exceeds \$200,000.

13 367. Defendants, and each of them, continuing wrongful conduct as alleged above, unless
14 and until restrained by order of this Court, will cause great and irreparable harm to Plaintiffs by
15 the lost of their home and or savings, income and equity.

16 368. Plaintiffs have no adequate remedy at law for the injuries currently being suffered or
17 which will result in the future from defendants' continued wrongful conduct in that they have
18 already loss over \$200,000, are constantly losing thousands of dollars weekly and monthly in
19 having to seek redress for herein and in the end will lose their only home.

20 **Fourth Cause of Action—Conspiracy to Commit Unfair Business Practices**

21 **(Violation of Bus. & Prof. § 17200-Fraudulent Acts/Practices)**

22 Plaintiffs adopt and incorporate paragraphs 1 through 368 above as if they were fully set
23 forth in this Cause of Action.

24 369. Defendants Colyer, Mozilo, Sambol, Chen, Benson, MERSCORP, FATC, Lewis, at
25 all times herein mentioned, were the agents of defendants Countrywide and, in doing the things
26 alleged herein, were acting in the scope of such agency and with the permission and consent of
27 Countrywide Board of Directors.
28

1 370. The Court has jurisdiction over this claim pursuant to Business and Professions Code
2 § 17200 et seq., specifically § 17203, which provides any person who engages, has engaged, or
3 proposes to engage in unfair competition may be enjoined in any court, or as may be necessary to
4 restore to any person in interest any money or property, real or personal, which may have been
5 acquired by means of such unfair competition; and § 17204, which provides for actions for any
6 relief pursuant to the Unfair Competition Law to be prosecuted exclusively in a court of competent
7 jurisdiction by any person who has suffered injury in fact and has lost money or property as a
8 result of such unfair competition.

9 371. Countrywide was licensed by the Department of Real Estate and Secretary of State of
10 California to conduct business therein and at all times mentioned owned and operated numerous
11 brokerage retail offices located throughout California for the purpose of soliciting mortgage
12 borrowers to broker their loans for, service their loans and solicit lenders/investors who would
13 fund such borrower loans.

14 372. Beginning on or about January 2004, and continuing to March 2008, Countrywide has
15 engaged in advertising to the public, including Salma and David, and offering for sale brokering
16 services described as “Home Loans.” The advertising consists of consecutive daily, weekly or
17 monthly advertisements published in San Jose Mercury, San Francisco Chronicle, KTVU, KNTV,
18 KRON and Los Angeles Times and that areas TV channels as well. The advertisements were
19 disseminated to and received by the public throughout California, and the Plaintiffs.

20 373. Defendant Countrywide advertisements were likely to deceive the public in that it
21 stated that Countrywide would provide loans with terms, conditions and fees that no other
22 competitor could provide; provide 1, 2, 3 or 4% interest rates; monthly payments of \$1,800-2,200;
23 no closing cost; no origination fee; 30-year fix interest rate; fixed interest rate (implying 30-years);
24 Countrywide could be trusted to provide best loan; prime loans; followed strict underwriting
25 standards; high quality loans; would save borrower thousands of dollars on financing with
26 Countrywide; that Countrywide was a Bank by publicizing Countrywide Bank, which was simply
27 an on-line depository with the identical branding, logos and often next to Countrywide Home
28 Loans; however, Countrywide, through its appointed agents named herein, failed to state that all of

1 these things were untrue and that it provided inferior loans. Specifically, advertisements failed to
2 state that Countrywide Home Loans was a broker which did not lend its own funds for any of the
3 advertised terms or time-periods; it was designing loans to strip borrowers of their savings,
4 income, equity and property; other competitors offered far better loans; Countrywide loans was
5 financially defective in that it increase the likelihood of its borrowers to default on loans, have
6 their properties foreclosed upon or lead to bankruptcy; normally no borrower was issued a 1-4%
7 interest loan and those who did received it only as short term bait to induce them into buying
8 Countrywide services and later having interest rate double, treble or more; all borrowers were
9 charged closing cost and origination fees which Countrywide hid be “wrapping” cost into overall
10 loan and that no 30-year fix were brokered, but 3, 5 or 10 year adjustable rate loans were.

11 374. As a direct, proximate, and foreseeable result of defendants Colyer, Mozilo, Sambol,
12 Chen, Benson, MERSCORP, FATC, Lewis and Countrywide wrongful conduct, as alleged above,
13 plaintiffs Salma and David and numerous members of the public, who are unknown to Plaintiffs
14 but can be identified through inspection of defendants brokerage/sales records and other data,
15 bought and paid for loan brokerage services that was advertised without knowing that the loans
16 were not sufficient quality loans. Plaintiffs have so far paid more than \$200,000 out of pocket cost
17 directly for the loans. Plaintiffs are informed and believe and thereon alleges that at least 10,000
18 other customers individually paid between \$100,000-\$200,000 for the loans that they bought.
19 Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all revenues,
20 earnings, profits, compensation, and benefits which may have been obtained by Defendants, and
21 each of them, as a result of such business acts or practices.

22 375. From January 2009 to present, Countrywide and its successor in interest, BofA, has
23 failed and refused to accede to Plaintiffs requests for refund in exchange for returning the home
24 that they bought. Plaintiff is informed and believes, and thereon alleges that defendants, and each
25 of them, has likewise failed and refused, and in the future will fail and refuse to accede to other
26 customers’ requests for refunds.

27 **Formation and Operation of Conspiracy**
28

1 376. Plaintiffs are informed and believes and thereon alleges that at all times herein
2 mentioned each of the defendants was the agent and employee of each of the remaining
3 defendants, and in doing the things herein alleged, was acting within the course and scope of such
4 agency.

5 377. From on or about January to December 2005, defendants Mozilo, Sambol, Does 2-50,
6 the CEOs of Bear Sterns, Wells Fargo, MERSCORP, FATC, knowingly and willfully conspired
7 and agreed among themselves to commit unfair business practices in regards to Plaintiffs in order
8 to lend money to them and defraud Plaintiffs out of their savings, income, equity and properties.

9 378. The numerous and specific breaches and damages thereof are set forth fully from ¶¶
10 296-329 and 337-355 and incorporated as if fully set forth herein.

11 379. Defendants Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns, Wells Fargo,
12 MERSCORP, FATC did the acts, things and omissions herein alleged pursuant to, and in
13 furtherance of, the conspiracy and above-alleged agreements repeatedly made among themselves.

14 380. Defendants Lewis, Colyer, Chen, Benson, Does 51-100, MERSCORP, Countrywide,
15 FATC, Wells Fargo, FTC furthered the conspiracy from October 2005 repeatedly and
16 continuously until March 2009 and up to April 2011, by cooperation with or lent aid and
17 encouragement to or ratified and adopted the acts of defendants Mozilo, Sambol, Does 2-50, the
18 CEOs of Bear Sterns and BofA by holding discussions with these defendants, undergoing training,
19 agreement to follow their wishes as described throughout above and referenced ¶¶ 296-329.

20 381. Plaintiffs are informed and believes and thereon alleges that the last overt act in
21 pursuance of the above-described conspiracy occurred on or about April 7, 2011, on which date
22 Bear Sterns successor in interest, JP Morgan Chase, ordered Wells Fargo to direct BofA to try to
23 convince Plaintiffs to accept a modification of loans in order to abrogate their right to redress
24 herein, and to cover up past and existing fraud and conspiracy and continues to seek payments on
25 the loans at issue herein.

26 **Fifth Cause of Action—Conspiracy to Commit Unfair Business Practices**

27 **(Untrue or Misleading Advertising)**

28

1 Plaintiffs adopt and incorporate paragraphs 1 through 381 above as if they were fully set
2 forth in this Cause of Action.

3 382. Defendant Mozilo at all times herein mentioned Countrywide CEO and defendant
4 Sambol at all times herein mentioned Countrywide’s President of Marketing and Training which
5 includes Advertising. Both Mozilo and Sambol were acting as agent of defendant Countrywide,
6 and in doing the things herein alleged was acting within the course and scope of such agency and
7 with the permission and consent of Countrywide Board of Directors.

8 383. Beginning on or about January 2004, and continuing to March 2008, Countrywide has
9 engaged in advertising to the public, including Salma and David, and offering for sale brokering
10 services described as “Home Loans.” The advertising consists of consecutive daily, weekly or
11 monthly advertisements published in San Jose Mercury, San Francisco Chronicle, KTVU, KNTV,
12 KRON and Los Angeles Times and that areas TV channels as well. The advertisements were
13 disseminated to and received by the public throughout California, and the Plaintiffs.

14 384. Defendants Countrywide, Mozilo, Sambol et al has engaged in the advertising herein
15 alleged above with the intent to directly or indirectly perform the loan brokering services
16 described herein and to induce the public to enter into an obligation relating to their brokering
17 services described herein.

18 385. Defendants and each of them, advertising was untrue or misleading as described
19 above and caused injury in fact to the plaintiffs resulting in loss of money or property. Plaintiffs
20 Salma and David were deceived by the aforementioned advertisements and hired defendants, and
21 each of them, to perform the brokerage services in reliance thereon, resulting in Plaintiffs loss of
22 money and property.

23 386. In making and disseminating the statements herein alleged, defendants, and each of
24 them, knew or by the exercise of reasonable care should have known, that the statements were
25 untrue or misleading and so acted in violation of section 17500 of the Business and Professions
26 Code.

27 **Formation and Operation of Conspiracy**
28

1 387. Plaintiffs are informed and believes and thereon alleges that at all times herein
2 mentioned each of the defendants was the agent and employee of each of the remaining
3 defendants, and in doing the things herein alleged, was acting within the course and scope of such
4 agency.

5 388. From on or about January to December 2005, defendants Mozilo, Sambol, Does 2-50,
6 the CEOs of Bear Sterns, Wells Fargo, MERSCORP, FATC, knowingly and willfully conspired
7 and agreed among themselves to falsely or misleadingly advertise in order to lend money to Public
8 and defraud borrowers, as Plaintiffs out of their savings, income, equity and properties.

9 389. The numerous and specific breaches and damages thereof are set forth fully from ¶¶
10 296-329 and 337-355 and incorporated as if fully set forth herein.

11 390. Defendants Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns, Wells Fargo,
12 MERSCORP, FATC did the acts, things and omissions herein alleged pursuant to, and in
13 furtherance of, the conspiracy and above-alleged agreements repeatedly made among themselves.

14 391. Defendants Lewis, Colyer, Chen, Benson, Does 51-100, MERSCORP, Countrywide,
15 FATC, Wells Fargo, FTC furthered the conspiracy from October 2005 repeatedly and
16 continuously until March 2009 and up to April 2011, by cooperation with or lent aid and
17 encouragement to or ratified and adopted the acts of defendants Mozilo, Sambol, Does 2-50, the
18 CEOs of Bear Sterns and BofA by holding discussions with these defendants, undergoing training,
19 agreement to follow their wishes as described throughout above and referenced ¶¶ 296-329.

20 392. Plaintiffs are informed and believes and thereon alleges that the last overt act in
21 pursuance of the above-described conspiracy occurred on or about April 7, 2011, on which date
22 Bear Sterns successor in interest, JP Morgan Chase, ordered Wells Fargo to direct BofA to try to
23 convince Plaintiffs to accept a modification of loans in order to abrogate their right to redress
24 herein, and to cover up past and existing fraud and conspiracy and continues to seek payments on
25 the loans at issue herein.

26 **Sixth Cause of Action-Conspiracy to Breach of Title Insurance Contract**

27 Plaintiffs adopt and incorporate herein paragraphs 1 through 392, above as if fully set forth
28 in this cause of action.

1 393. On or about March 27, 2006, in Santa Clara County, California, defendant FATC,
2 through its agent FTC, for a valuable consideration, issued to Plaintiffs their written policy of title
3 insurance No. 1097136 – CEO, a copy of which is attached hereto, marked *Exhibit 12* and made a
4 part hereof.

5 394. By express terms of the above-mentioned policy, defendants insured Plaintiffs against
6 any loss or damage sustained or incurred by Plaintiffs, including fraud or misrepresentation,
7 insured for \$729,000, by reason of any defect in lien, encumbrance, fraudulent concealment,
8 misrepresentation, unmarketability of the title. By concealing the unknown actual lien holders
9 behind MERS, failing to deliver complete and all copies, conspiring with co-defendants to effect
10 such and clouding title, this Policy is invoked. The real property referred to in the policy is located
11 in Sunnyvale, Santa Clara California, and is more particularly described in policy.

12 395. On or about March 30, 2006, defendants directly created a cloud on title when they
13 directed County Recorder to record MERS as the beneficiary/mortgagee. As stated above, FATC
14 and FTC agreed with Wells, Countrywide, Bear Sterns, Does 2-30 to record MERS as such,
15 knowing or should have known that doing so would aid and abet the commission of fraud.

16 396. Further, defendant FATC/FTC aided and abetted co-defendants, and all of them, in
17 conspiracy to commit fraud when it ordered, instructed, encouraged or ratified acts or omissions
18 of: 1) Agent Wyatt failing or refusing to deliver complete and filled in copies of signed loan
19 documents; 2) Abrogating Plaintiffs right to hold close of escrow at title company; 3) Discourag-
20 ing Plaintiffs from reading loan documents before signing them; 4) Not preparing original loan
21 documents in quid triplicate; 5) Not delivering right to rescind notice with filled in dates; 6) Not
22 delivering Truth In Lending Disclosures filled in; 6) Refusing to allow plaintiff to make copies of
23 their signed loan documents on their own home copier; 7) Concealing actually loan policy from
24 Plaintiffs until July 2010; 8) Ordered or ratified agents acts to falsely record MERS as beneficiary.

25 397. At the time of the issuance of the title policy mentioned herein, the property had liens
26 placed on it by FATC in the name of MERS. MERS does not in fact have authority to place a lien,
27 but FATC represented to Plaintiffs and County Clerk that MERS was an actual authorized lien
28 holder while FATC knew or should have known that it was a front company of Bear Sterns, Does

1 2-30, WELLS and others to help facilitate fraud upon Americans. At the time the policy was
2 issued, this defect was a matter of public record, having been recorded on March 30, 2006 of the
3 Official Records in the Office of the Recorder of Santa Clara County, California. *Exhibit 2.*

4 398. Plaintiffs discovered the facts giving rise to the loss, as described herein, by reason of
5 learning about FATC/FTC agents' role herein, on or about July 15, 2010.

6 399. On or about July 15, 2010 Plaintiffs contacted FATC and notified defendant orally
7 and on August 12, 2010 in writing, informing it of the loss herein and the facts giving rise to it and
8 defendant has not inform Plaintiffs that this notice was inadequate.

9 400. Plaintiffs have performed each and every act and thing required by Plaintiffs to be
10 performed under the terms and conditions of the policy herein.

11 401. At the time when plaintiff discovered the above described defects, misrepresentations
12 and fraud Plaintiffs owed \$610,000 on Property. As a proximate result of the existence of the
13 above-described defects, fraud and misrepresentations, the value of Plaintiffs' interest in the
14 property has been increased to \$2,247,000.

15 402. At the time of the filing of this action, FATC has not quieted or rectified the defects,
16 fraud or misrepresentations as to eliminate or mitigate Plaintiffs' losses as set forth herein, and
17 defendant has refused to indemnify Plaintiffs for their losses herein, pursuant to the terms of the
18 policy herein.

19 403. Defendant FATC refuses or fails to indemnify Plaintiffs or otherwise come to
20 Plaintiffs aid pursuant to terms of policy.

21 404. In refusing to fulfill its obligations under the policy, FATC acted in violation of the
22 covenant of good faith and fair dealing that is implied by law in the policy.

23 405. In committing the acts or omissions described herein, FATC acted in conscious
24 disregard of the rights of Plaintiffs and others are guilty of malice, oppression or fraud as set forth
25 and referenced in ¶¶ 1 -399. The conduct of FATC warrants an assessment of punitive damages in
26 an amount appropriate to punish defendant and deter others from engaging in similar wrongful
27 conduct.

28

1 406. As a proximate result of defendants conduct, and each of them, Plaintiffs have
2 suffered emotional distress as particularly set forth in Count IX and incorporated herein as if fully
3 set forth herein.

4 WHEREFORE, Plaintiffs pray judgment against defendant as follows:

5 For the sum of \$739,000, with interest thereon at the legal rate from and after March 27,
6 2006, until paid; General damages according to proof; For exemplary or punitive damages; For
7 costs of suit herein incurred; and, for such other and further relief as the court may deem proper.

8 **Formation and Operation of Conspiracy**

9 407. Plaintiffs are informed and believes and thereon alleges that at all times herein
10 mentioned each of the defendants was the agent and employee of each of the remaining
11 defendants, and in doing the things herein alleged, was acting within the course and scope of such
12 agency.

13 408. On or about March 2006, defendants Mozilo, Sambol, Colyer, Does 2-50, the CEOs
14 of Bear Sterns, Wells Fargo, MERSCORP, FATC, knowingly and willfully conspired and agreed
15 among themselves to breach the Title Insurance purchased by Plaintiffs in order to achieve
16 Common Goals and defraud Plaintiffs out of their savings, income, equity and properties.

17 409. The numerous and specific breaches and damages thereof are set forth fully from ¶¶
18 296-329 and 337-355 and incorporated as if fully set forth herein.

19 410. Defendants FATC, Colyer, Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns,
20 Wells Fargo, MERSCORP did the acts, things and omissions herein alleged pursuant to, and in
21 furtherance of, the conspiracy and above-alleged agreements repeatedly made among themselves.

22 411. Defendants Lewis, Colyer, Does 51-100, MERSCORP, Countrywide, FATC, Wells
23 Fargo, FTC furthered the conspiracy from October 2005 repeatedly and continuously until March
24 2009 and up to April 2011, by cooperation with or lent aid and encouragement to or ratified and
25 adopted the acts of defendants Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns and BofA by
26 holding discussions with these defendants, undergoing training, agreement to follow their wishes
27 as described throughout above and referenced ¶¶ 296-329.
28

1 412. Plaintiffs are informed and believes and thereon alleges that the last overt act in
2 pursuance of the above-described conspiracy occurred on or about April 7, 2011, on which date
3 Bear Sterns successor in interest, JP Morgan Chase, ordered Wells Fargo to direct BofA to try to
4 convince Plaintiffs to accept a modification of loans in order to abrogate their right to redress
5 herein, and to cover up past and existing fraud and conspiracy and continues to seek payments on
6 the loans at issue herein.

7 **SEVENTH CAUSE OF ACTION**

8 **Conspiracy to Commit Intentional Infliction of Emotion Distress**

9 Plaintiffs adopt and incorporate herein paragraphs 1 through 412, above as if fully set forth
10 in this cause of action.

11 413. Defendants Colyer, Benson, Chen, Does 31-100, FATC/FTC, MERSCORP at all
12 times herein mentioned were the agents and employees of their codefendants Mozilo, Sambol,
13 Lewis, Countrywide, BofA, Wells Fargo and Bear Sterns with Does 2-30, and in doing the things
14 herein alleged above were acting within the course and scope of such agency and the permission
15 and consent of their co-defendants.

16 414. During 2004 and 2005, both Plaintiffs, independent of each other where looking
17 throughout the Bay Area to purchase their own homes; both having grown up with the dream of
18 owning a home. In December 2005, Plaintiffs were married after being engaged and decided
19 beforehand to incorporate each other's plans for purchasing home. After three months of actively
20 looking they met defendant Chen and decided to seek purchasing his property.

21 415. Neither plaintiff had trained or studied the real estate market or lending practices or
22 loans; but both presumed that those who advertised and worked in such industries were ethical and
23 would not be able to stay in business unless they provided honest and valuable fiduciary services.

24 416. The defendants, and each of them, had a special relationship with each other that was
25 not disclosed to Plaintiffs and they had the common goal of identifying unsophisticated first time
26 home buyers who would be vulnerable to misrepresentations and not have the capacity to know
27 that they were being defrauded or otherwise be incapable of effectively dealing with it.

28

1 417. From on or about March 14 to 30, 2006, defendants, and each of them, took
2 unbeknownst to Plaintiffs, concerted efforts to take all of the actions or omissions alleged from ¶¶
3 296 to 329, in order to strip David and Salma of all savings, income, equity and property, in
4 violation of Plaintiffs' property and personal rights. Plaintiffs did nothing to any of the defendants
5 which would justify their conspiracy to defraud, breach of fiduciary duties or falsely advertise to
6 them. And each defendant ratified the acts on behalf of their co-defendants by coordinating their
7 acts or omissions with them, acquiescing or otherwise supporting them.

8 418. Defendants, and each of them, knew that Plaintiffs were susceptible as newly married
9 couple who were driven to accomplish the "American Dream" of home ownership and being first
10 time home buyers, all the more emotionally driven and susceptible; uneducated in matters of home
11 loan industry; recipients of barrage of Countrywide advertising; told false promises by staff, and
12 their acts and omissions were intentional and malicious and done for the purpose of causing
13 Plaintiffs to suffer humiliation, mental anguish, and emotional and physical distress. Defendants,
14 Chen, Benson, Colyer, Mozilo, Sambol, Does 2-100, Bear Sterns, Wells Fargo, and each of them,
15 conduct in confirming and ratifying that conduct, was done with knowledge that Plaintiffs'
16 emotional and physical distress would thereby increase, and was done with a wanton and reckless
17 disregard of the consequences to Plaintiffs.

18 419. The Defendants, and each of them, during the aforementioned application,
19 origination, county recording, servicing and modification stages failed or refused to cease their
20 emotionally distressing conduct even in the face of Plaintiffs expressly notifying defendants of the
21 distress their acts and omissions were causing them confirming the wantonness and reckless
22 disregard of the consequences to Plaintiffs.

23 420. As a proximate result of the acts alleged herein above, Plaintiffs suffered humiliation,
24 mental anguish, and emotional and physical distress, and has been injured in mind and body,
25 including but not limited to:

- 26 a) Facing homelessness;
- 27 b) Delayed having children;
- 28 c) Pains from headaches constantly, and migraine like ones;

- 1 d) Unable to work or be gainfully employed;
- 2 e) Unable to study for United States Medical Licensing Exams;
- 3 f) Anxiety, fears, uncertainty etc.
- 4 g) Insomnia, depression, low libido, blood pressure;
- 5 h) Unable to pay living expenses, going without many necessities and desires in
- 6 recreation and social activities;
- 7 i) Visits to doctors, psychiatrist, physiatrist, mental breakdowns, and medication
- 8 prescribed;
- 9 j) Unable to protect family;
- 10 k) Loss wages, bonuses, development of their private company;
- 11 l) Default status and face foreclosure;
- 12 m) Very negative credit scoring;
- 13 n) Depression; and,
- 14 o) Termination from job after more than 6 years.

15 **Formation and Operation of Conspiracy**

16 421. Plaintiffs are informed and believes and thereon alleges that at all times herein
17 mentioned each of the defendants was the agent and employee of each of the remaining
18 defendants, and in doing the things herein alleged, was acting within the course and scope of such
19 agency.

20 422. From on or about January to December 2005, defendants Mozilo, Sambol, Does 2-50,
21 the CEOs of Bear Sterns, Wells Fargo, MERSCORP, FATC, knowingly and willfully conspired
22 and agreed among themselves to breach their fiduciary duties in regards to Plaintiffs in order to
23 lend money to them and defraud Plaintiffs out of their savings, income, equity and properties.

24 423. The numerous and specific breaches and damages thereof are set forth fully from ¶¶
25 296-329 and 337-355 and incorporated as if fully set forth herein.

26 424. Defendants Mozilo, Sambol, Does 2-50, the CEOs of Bear Sterns, Wells Fargo,
27 MERSCORP, FATC did the acts, things and omissions herein alleged pursuant to, and in
28 furtherance of, the conspiracy and above-alleged agreements repeatedly made among themselves.

1 425. Defendants Lewis, Colyer, Chen, Benson, Does 51-100, MERSCORP, Countrywide,
2 FATC, Wells Fargo, FTC furthered the conspiracy from October 2005 repeatedly and
3 continuously until March 2009 and up to April 2011, by cooperation with or lent aid and
4 encouragement to or ratified and adopted the acts of defendants Mozilo, Sambol, Does 2-50, the
5 CEOs of Bear Sterns and BofA by holding discussions with these defendants, undergoing training,
6 agreement to follow their wishes as described throughout above and referenced ¶¶ 296-329.

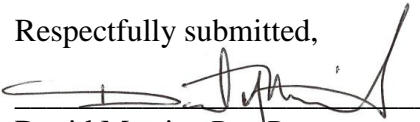
7 426. Plaintiffs are informed and believes and thereon alleges that the last overt act in
8 pursuance of the above-described conspiracy occurred on or about April 7, 2011, on which date
9 Bear Sterns successor in interest, JP Morgan Chase, ordered Wells Fargo to direct BofA to try to
10 convince Plaintiffs to accept a modification of loans in order to abrogate their right to redress
11 herein, and to cover up past and existing fraud and conspiracy and continues to seek payments on
12 the loans at issue herein.

13
14 WHEREFORE, Plaintiffs pray for judgment in the form of:

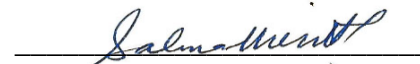
- 15 i. Trial by jury;
- 16 ii. That Plaintiffs rights and obligations as to the various claims against each defendant
17 be determined by the Court;
- 18 iii. For a temporary restraining order, a preliminary injunction, and a permanent
19 injunction, all enjoining defendants from: 1) offering or modifying any loans to
20 borrowers which contain lower “teaser rates/payments”; 2) selling any subprime or
21 Pay Option Adjustable Rate Mortgage or “Combo Loan” to residential consumers
22 unless property purchase includes future commercial revenues which can cover
23 balloon/increase payments; 3) contact all credit bureaus and communicate to them
24 whatever is necessary to totally and fully return Plaintiffs credit rating, status, history
25 and other elements back to pre-default status; 4) attempting to collect any payments
26 from Plaintiffs on property unless defendants pay all compensation and other
27 damages produced by injuries defendants activities caused.
- 28

- 1 iv. For defendants restore Plaintiffs to their March 30, 2006 date, refund all monies paid
- 2 them, including improvements, property taxes, HOA fees etc.
- 3 v. For general damages of \$192,550 plus \$215,000 for total of \$407,550;
- 4 vi. For special damages in the amount of \$1,375,000 for the loss of earnings, bonuses
- 5 and lost business development; or, an amount according to proof;
- 6 vii. For punitive damages according to proof, against each respective defendant and for
- 7 that sum be trebled;
- 8 viii. Cost of suit herein incurred;
- 9 ix. For interest on these sums at the legal rate;
- 10 x. Pursuant to Business and Professions Code § 17203, that defendant Countrywide, its
- 11 successor BofA, and their employees, agents, representatives, successors, and
- 12 assigns, and all person who act in concert with them be enjoined from any acts of
- 13 unfair competition as set forth herein;
- 14 xi. For Plaintiffs reasonable attorney fees;
- 15 xii. For such other and further relief as the Court may deem just and proper.

16
17
18 Dated: April 15, 2011

Respectfully submitted,

David Merritt, *Pro Per*

19
20 Dated: April 15, 2011


Salma Merritt, *Pro Per*

21
22
23 VERIFICATION

24 We, Salma Merritt and David Merritt, are the Plaintiffs in the above entitle action. We have
25 read the foregoing complaint and know the contents thereof. The same is true of our own
26 knowledge, except as to those matters which are therein alleged on information and belief, and, as
27 to those matters, we believe it to be true.
28

1 We declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Signed and Executed in Sunnyvale, Santa Clara County California on this 15th Day of April 2010.

4 David Merritt, 660 Pinnacles Terrace, Sunnyvale, Ca. 94085

5
6 Salma Merritt 660 Pinnacles Terrace, Sunnyvale, Ca. 94085

7
8
9 **CERTIFICATE OF SERVICE**

10 I, Milakaa Terry, being over 18 years of age, hereby certify that I sent true copy of Plaintiffs Third
11 Amended Complaint in a self address envelop with prepaid postage addressed to:

12 Kevin Cody, 50 west san Fernando street, suite 1400, San Jose, Ca 95113;

13 Stanley K. Yim, 1625 The Alameda, Suite 708, San Jose, Ca 95126

14 James Goldberg, 2 embarcadero center suite 1410, San Francisco ca

15 Bryan Kreft One California st. 3rd floor, San Fran 94111

16
17 Then placed each in US postal office in Sunnyvale, Ca. on this 15 Day of April 2011.

18 _____
19 Milakaa Terry
20 950 College Dr.
21 San Jose, Ca

22
23
24
25
26
27
28