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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SALMA MERRITT AND DAVID MERRITT, Plaintiffs, vs. COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS, INC.; ANGELO MOZILO; DAVID SAMBOL; MICHAEL COLYER; DOE 1; DOES 2-100, inclusive; BANK OF AMERICA; KEN LEWIS; WELLS FARGO; JOHN STUMPF; JOHNNY CHEN; JOHN BENSON, Defendants'.	Case No.: C09-01179 JW **STIPULATED SECOND AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER FEDERAL AND STATE LAWS VIA PENDENT JURISDICTION; COMPENSATION, INJUNCTIVE RELIEF, RESCISSION AND OTHER EQUITABLE RELIEF; JURY DEMAND**

I. JURISDICTION

The Plaintiffs, Salma and David Merritt, pro se, comes before this honorable Court pursuant to Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 *et seq.*; 15 U.S.C. § 1602 *et seq.* (Truth in Lending Act (TILA)); False Designations … False Descriptions…. 15 U.S.C. §§ 1125 *et seq.*; Unfair Debt Collection Practices 1692 *et seq.*; 12 U.S.C. § 2601 *et seq.* (RESPA); 28 U.S.C. § 1331, 1343, 1337, 42 U.S.C. §§ 1981 & 1985 violations of California Civil Codes §§ 1550, 1572 *et seq.*; §§ 1709 et seq, 1750 et seq. (Fraud) and §§ 3300 *et seq.* (Breach of Contract) and violations of the California Business and Professional Codes Unfair Competition Law 17200 *et seq.* and False Advertising Law 17500 *et seq*, pursuant to pendant jurisdictional authority, alleging the following:

II. PARTIES And VENUE

1. Plaintiffs Salma and David Merritt, are home owners who reside in their principle residence at 660 Pinnacles Terrace, Sunnyvale, CA. 94085.

2. At all times relevant hereto, defendant Countrywide Financial Corporation ("CFC"), a Delaware corporation, has transacted and continues to transact as a subsidiary of Bank of America, a North Carolina corporation, throughout the State of California, including Santa Clara County. It is headquartered at 4500 Park Granada Blvd. Calabasas, CA 91302.

3. At all times relevant hereto, defendant Countrywide Home Loan, Inc, ("CHL"), a New York corporation, has transacted and continues to transact business throughout the State of California, including Santa Clara County. CHL is a subsidiary of CFC. Addressed ibid.

4. At all times relevant hereto, defendant Angelo Mozilo ("Mozilo") was Chairman and Chief Executive Officer of CFC. Defendant Mozilo directed, authorized and ratified the illegal conduct of the Countrywide named and unnamed defendants set forth herein which violated Federal and or State laws. His address was at 4500 Park Granada Blvd. Calabasas, CA and sued in individual and professional capacity.

5. At all times relevant hereto, defendant David Sambol ("Sambol") was the President of CHL and, since approximately September 2006, served as the President and Chief Operating Officer of CFC. Sambol directed, authorized and ratified the illegal conduct of CHL that contravened Federal and State laws, and after September 2006, the Countrywide Defendants, as set forth herein. Defendant Sambol is a resident of Los Angeles County and was headquartered at 4500 Park Granada Blvd. Calabasas, CA 91302 and sued in individual and professional capacity.

6. At all times relevant hereto, defendant Michael Colyer ("Colyer") was a branch manager at CHL Menlo Park office, and is now sales manager at Countrywide Bank. Colyer carried out the illicit directives of defendants Sambol, Mozilo, and Countrywide that violated Federal and State laws. Defendant Colyer is a resident of San Mateo County and located at 40 Hawthorne Ave Los Altos, CA 94022 and sued in individual and professional capacity.

7. At all times relevant hereto, defendant Doe 1 was the underwriter for CHL at the

time the acts herein occurred. Doe 1 carried out the illegal directives of defendants Sambol, Mozilo, CHL and Colyer which contravened Federal and or State laws. Defendant Doe 1 is a resident of the State of California (county currently unknown).

8. Plaintiffs are not aware of defendants Does 2 through 100, names and capacities, and sues these defendants by such fictitious names. Each of these defendants are responsible in various specific ways for the illicit actions or inactions alleged herein. Plaintiffs shall amend Complaint to add their true names once they are discovered.

9. These defendants cited in paragraphs 1 through 7, supra, shall be collectively referred to as "Defendants."

10. Defendant John Stumpf, at all times relevant hereto, functioned as CEO of Wells Fargo and is liable for the illegal actions he took herein. He is sued in his individual capacity and head quartered at 420 Montgomery St. San Francisco, CA 94163, and liable for his acts that violated State and Federal laws.

11. Defendant Ken Lewis, at all times relevant hereto, functioned as CEO of Wells Fargo and is liable for all actions he took herein. He is sued in his individual capacity and head quartered at 100 N. Tryon St, Charlotte, NC 28255, and liable for his illegal acts that violated State and Federal laws.

12. Defendant Wells Fargo, a California Corporation, at all times relevant hereto, was the entity which purchased Plaintiffs mortgage in its effort to support Defendants predatory lending practices, it is responsible for its illegal actions that violated State and Federal laws. It is located at 420 Montgomery St. San Francisco, CA 94163.

13. Defendant Bank of America, ("BofA"), a North Carolina Corporation, at all times relevant hereto, became the controlling interest and owner of defendants CHL and CFC, and conducts business throughout the state of California and Santa Clara. It is fully liable for its illegal acts that violated State and Federal laws. It is headquartered at 100 N. Tryon St, Charlotte, NC 28255.

14. Defendant Johnny Chen, at all times relevant herein, was the selling agent and owner of the property at issue. He is fully responsible for his illegal acts which violated Federal

and State Laws. He resides at 271 Woodruff way, Milpitas, CA 95035.

15. Defendant John benson, at all times relevant herein, was the appraising agent of Countrywide. He is fully responsible for his illegal acts which violated Federal and State Laws and his last known address of business is: 7550 Prestwick Court, Gilroy, CA 95020.

16. All references made in this Action to any act or omission of any defendant(s), that allegation shall mean that each defendant acted or omitted individually and jointly with the other defendants.

17. Any and all allegations regarding acts or omissions by corporate or business defendant means that the corporation or the business did the acts or omissions through its officers, directors, employees, agents and/or representatives while they were acting within the actual or ostensible scope of their duties and authority which caused illegal acts or omissions to be carried out in California.

18. Each corporate or individual defendant who resided outside of California during the time period herein did have constant and continuous business communications and physical contacts with their agents throughout California.

19. At all times relevant hereto, each defendant committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Action; and some or all of the defendants acted as the agent of the other defendants, and each of the defendants acted within the scope of their agency if acting as an agent of another.

20. At all times relevant hereto, all defendants knew or realized that the other defendants were engaging in or planned to engage in the violations of law alleged herein; knowing or realizing other defendants were engaging in or planning to engage in illicit conduct, nonetheless, they each facilitated the commission of those illicit acts or omissions. Every defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, thereat aided and abetted the other defendants in the illegal conduct.

21. At all times relevant hereto, Defendants engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which was to engage in violations of law alleged herein. This conspiracy, common enterprise, and common course of conduct com-

menced prior to 2006, and continuously occurred throughout 2007, 2008 and up until 2009.

22. The violations of law occurred in the County of Santa Clara and throughout California and the United States. Venue is proper where the claims arose, Santa Clara County California.

III. SPECIFIC ALLEGATIONS AGAINST DEFENDANTS

23. Plaintiffs make the following allegations and claims (except those reflecting their direct experience) pursuant to F.R.Civ.P. Rules 8(d)(2) and 11, based on information and belief developed after diligent investigation, and hypothetically, in regard to those areas which are particularly within the control and care of Defendants, which are likely to have evidentiary support after an opportunity for discovery.

24. From at least January 2004 to the filing of this action, defendant Lewis has maintained minimum contacts with the state of California by personally travelling to the state for BofA business on more than 10 occasions; making over 100 phone calls to BofA personnel; transmitting over 200 e-mails and faxes and sending numerous mailings to and from the state.

25. From at least January 2004 to the filing of this action, defendant Stumpf has maintained minimum contacts with the state of California by maintaining official offices in San Francisco, personally travelling to the state for Wells Fargo business on more than 20 occasions; maintaining living quarters in the state for the purposes of residing; making over 100 phone calls from California to personnel nationwide on hundreds of occasions; transmitting over 200 e-mails and faxes and sending numerous mailings from the state to others throughout the country.

26. On or about 2000, defendants Mozilo, Sambol, CHL et al spoke about ways they could extract the equity out of the properties of borrowers whom they offered mortgages to. They each decided to employ adjustable rate mortgages (ARMS), which would trap borrowers in loans that either would not be possible to repay or transfer most future equity to Defendants. By 2003, these defendants built up CHL’s portfolio to be 18 percent of its loans and they recognized that the financial returns were greater than closing borrowers with FHA or prime mortgages, and effectively enslaved borrowers to pay CHL much, if not all, of their consistent-

ly accumulating or growing equity.

27. Since CHL's start, it had relied principally on customary fixed-rate mortgages. During a series of talks in 2003, among themselves, Mozilo, Sambol et al discussed increasing CHL's market-share by originating a greater number of ARM's. They talked about different ways to achieve this goal, with Mozilo and Sambol insisting that they would have to enlist the cooperation of thousands of loan officers, not only within CHL itself, but through contracted loan brokers, who would be willing to steer borrowers to subprime loans instead of prime loans, regardless of whether (i) they would qualify for prime loan, or (ii) would not be able to sustain the payments of subprime loan and disregard traditional underwriting standards and not perform proper analysis of the suitability of such loans to the borrowers' situation.

28. During 2003, defendants Mozilo and Sambol instructed unnamed staff to push their field office managers to encourage staff and local brokers to aggressively target Americans to finance or re-finance their mortgages via them with ARMs which had lower "teaser" rates, while focusing borrowers' attention on "minimum" monthly installments and to conceal the true nature of ARMs. I.e. transferring equity from owners to them, and how their monthly payments will ultimately more than double.

29. Defendants Mozilo and Sambol instructed unnamed staff during 2003 to hire marketing firm(s) and publicity agencies to orchestrate nationwide television, radio, internet, newspaper, telephone and mail campaigns to falsely inform Americans or otherwise manipulate them into believing that CHL were offering safe, secure and honest loans for borrowers, implying that borrowers would be missing a great opportunity if they did not use CHL.

30. Defendants Mozilo and Sambol instructed unnamed staff to develop training manuals, pamphlets or guidelines which instructed CHL personnel on how to use United States mailings and telecommunication systems to contact Americans in order to falsely representing that CHL and its affiliates offered the best mortgages they could possibly obtain. And personnel was prohibited from revealing such to borrowers and instructed to conceal that they may qualify for prime loan or should not consider any mortgage at that time.

31. Defendants Mozilo and Sambol directed unnamed staff to develop and distribute

through U.S. Mail, sales guidelines and scripts for its own and contracted brokers throughout the United States to steer borrowers into subprime loans for the goal of selling as many as possible to bundle and sell on the secondary market, even if they qualified for FHA or prime loans, and would ultimately end up by defaulting on such loan. And to conceal from borrowers that salespersons/brokers were paid more to push subprime versus safety loans. This sales pitch was reinforced to borrowers on CHL's website where borrower was assured "Countrywide can help you obtain the best possible rate…." And now adopted by defendants Lewis and BofA. *See* www.countrywide.com/purchase/r_today.asp.

32. These sales pitches emphasized "best loan possible," "You can use your equity for your advantage and pay bills or get cash out," "We'll give you a low monthly payment with some of the lowest rates in the industry" "you only have to make this [minimum] payment." While concealing it will grow into the highest rates in the industry and transfer their equity to CHL. Mozilo and Sambol promulgated guidelines throughout CHL and affiliate brokers to work out loans that would be a disadvantage to borrowers and advantage only to themselves and to "sell the payment." They knew that "It's easy to confuse borrowers with option ARM numbers. A recent Federal Reserve study showed that one in four homeowners is mystified by basic adjustable-rate loans. Add multiple payment options into the mix, and the mortgage game can be utterly baffling." *See* BusinessWeeks, *Nightmare Mortgages*, www.businessweek.com/magazine/content/06_37/B4000001.htm.

33. During 2003, some CHL personnel had questioned these new efforts by taking notice of the rising of hundreds, then thousands of complaints being made by borrowers, foreclosures and bankruptcies resulting from CHLs subprime loans. Some CHL staffers took note that many of the borrowers would increase, not decrease, their debt with CHL and would have to pay on their loans *ad infinitum.* These complaints were reported and tracked by defendants Mozilo and Sambol through lower level VP's et al. Defendants Mozilo and Sambol then told one another that they had to quiet staff concerns by bribing and encouraging them with higher commissions, trips to Las Vagas etc and instill a culture that pressured them to go along with plans to transfer Americans equity to themselves.

34. On May 14, 2008, the Honorable Mariana R. Pfaelzer made public her meticulous finding in *In re Countrywide Financial Corp. Derivative Litigation,* Lead Case No. CV-07-06923, 2008 WL 2064977 (C.D. Cal.)(heretofore, “Derivative Action Order”), that the “lowest level [CHL] employees report that the impetus to ‘push’ loans through came from above…. They also allege that the compensation structure promoted these practices by rewarding Company employees – from executives and management down to the underwriters – for increasing loan volume, but not for generating quality loans.” *Ibid* at 11.

35. CHL internal and publicly announced records reflects that its ARM loans increased to 49 of all its loans in 2004 and its subprime loans increased from 4.6 to 11 percent.

36. From on or about January to November 2004, defendants Sambol and Mozilo, made several calls to defendants Lewis and Stumpf (as well as other undisclosed persons) in order to secure the support of BofA and Wells Fargo on Countrywide’s plans to manipulate millions of additional home buyers into buying subprime loans that could be sold to BofA, Wells Fargo and packaged into mortgage-backed securities that could be sold on the secondary market. They explained to Lewis and Stumpf their rapid growth and profits, and then promised to increase BofA and Wells Fargo presence in the mortgage market if they positioned their respective Banks to buy mortgages or mortgage-back securities from CHL.

37. From on or about January 2004, through January 2005, Defendants Sambol and Mozilo personally spoke with defendants Lewis in his Virginia office, as well as during his trips to California and other states, on at least 4 occasions where they laid out their entire efforts thus far, and their plans to target additional minorities with subprime loans *as well as* lesser-educated Whites, who had little understanding about such. They intimated that they would increase CHL’s marketing campaigns through telemarketing, Junk mailings and other ways to represent to ever more Americans that Countrywide would provide them with the best financial advice for financing or refinancing homes and give them the best mortgages.

38. Defendants Mozilo and Sambol explained to defendants Lewis and Stumpf that they had a way of extracting the equity out of targeted American communities and redistributing it, in the form of millions and billions of dollars (in cash and real estate), to their

institutions, themselves and anyone else who supported them.

39. That they were unofficially training and encouraging their home loan agents to pad finance charges beyond the amounts authorized by State or Federal laws and do what they could to distract Buyers attention from such details and avoid making mandated disclosures in a clear timely manner.

40. They explained that they needed defendants Lewis, Stumpf and others to take actions which would, inter alia, position their respective companies to purchase individual, bundled or mortgage-backed securities from defendant CHL.

41. Within these meetings, defendants Sambol and Mozilo stated that they have trained their lending officers and entered into agreements with contracted brokers to disregard many Truth and Lending and other Federal and State laws in order to steer borrowers into subprime mortgages (in many cases even if they qualified for prime lending as Plaintiffs did) by disregarding proper analyses of the suitability of such loans for Borrowers. They emphasized to Lewis, Stumpt et al, that this plan would reward their companies with greater profits, sharing their 2004 monetary data of CHL’s growth.

42. Defendants Mozilo and Sambol told Lewis, Stumpf et al that they would lure consumers into Countrywide offices by advertising through television, junk mailings and other forms of media that CHL is a trustworthy lender who is number one in helping Americans finance or refinance mortgages, and neither BofA or Wells Fargo would be seen as part of it.

43. Defendants Mozilo and Sambol asked Lewis, Stumpf et al whether they would be willing to influence their banking staff throughout the country to direct some borrowers who come to them for mortgages, to instead go to CHL or its affiliates.

44. During these meetings defendant Lewis told Sambol and Mozilo that he fully supported their efforts and would commit BofA to participate by purchasing certain loans from CHL that his staff deemed appropriate for their goals, and would do so either at or after CHL loans closed.

45. On or about 2005, defendant Lewis instructed undisclosed BofA personnel to direct BofA field office managers to identify certain borrowers to defendant CHL based on an

undisclosed criteria in order to encourage them buy subprime loans thereat.

46. From at least January 2004 to January 2005, defendants Sambol and Mozilo spoke with defendant Stumpf multiple times in his California office, explaining their plans to target minorities and lesser-educated Whites with subprime loans and how they have trained lending officers to disregard Truth and Lending and other Federal and State laws.

47. Defendant Stumpf learned in detail from Sambol and Mozilo, that they wished to lure Americans into loans that they may never actually be able to pay off, and which would generate thousands of dollars above what prime loan lending would generate.

48. Defendants Sambol and Mozilo plainly informed Stumpf that they would be manipulating borrowers to perceive ARMs as the best loan option for them, withhold key disclosures from them, provide false or misleading data, padding the finance charges of buyers, along with other revenue generating techniques that would ensure Wells Fargo would obtain a healthy return on its investment.

49. Defendants Sambol and Mozilo told Lewis and Stumpf that they were trying to Monopolize the sub-prime home loan market, in order to transfer as much real estate equity from Americans to themselves and whoever partnered with them, promising them high returns on their investments for supporting CHL's plans.

50. Defendants Mozilo and Sambol further explained that not only would they all make money for their Companies through the borrowers payments, but ultimately the borrower will have to default on their loans and those foreclosed properties could be sold to their partners or affiliates who will make good profits on selling and finding a fresh borrower again.

51. Defendants Sambol and Mozilo stated to Lewis and Stumpf during their 2005 discussions that they were training or encouraging Countrywide staff to hide right to rescind dates from borrowers by leaving blank copies with them after getting them to sign one copy for CHLs records; hide certain charges from minorities and was in fact charging them greater fees for financing than they charged knowledgeable White Americans, by burying such charges in massive amounts of data which few laypersons could discern. And by steering them to ARMs versus prime or no loan at all.

52. Defendants Lewis and Stumpf asked Sambol and Mozilo whether they could commit CHL and its affiliates into servicing most of loans that they purchased from them under the auspices of CHL in order to limit their exposure to buyers and public scrutiny, so buyers and the public would not identify them as partners with CHL's predatory campaign.

53. Defendants Sambol and Mozilo agreed in their California offices, and on or about 2004 directed subordinates to apply such.

54. Defendants Wells Fargo and BofA, under the leadership of defendants Lewis and Stumpf, developed practices of influencing its managers to encourage their subordinates to direct certain minorities and uneducated Whites, who they did not wish to process with mortgages, due to their class or race, over to defendant CHL in order to set them up with Predatory, sub-prime loans that they could purchase from CHL then buy back.

55. From 2004 to 2007, defendants Wells Fargo and BofA referred numerous persons, seeking mortgages, over to defendant CHL in order to supply them with borrowers who could be placed in high risk mortgages which earned greater than normal revenue through interest, and which were purchased by Wells Fargo and BofA pursuant to the agreements between these entities CEOs, Presidents and other staff.

56. In the Derivative Action Order, 2008 WL 2064977, at 10, Judge Pfaelzer reported that "numerous confidential witnesses … support a strong inference of a Company-wide culture that, at every level, emphasized increasing loan origination volume in derogation of underwriting standards…. These 'riskier' loans often violated the Company's own loan underwriting policies. The Complaint offers the accounts of numerous confidential witnesses, who are mostly former employees such as underwriters and loan officers, relating how Countrywide departed from its strict underwriting standards by generating large numbers of loans without proper regard for their quality…. The Complaint also provides the accounts of several former vice presidents at Countrywide who similarly attest that Countrywide was simply pushing through loans without adherence to underwriting standards."

57. Judge Pfaelzer also enunciated that the plaintiffs presented a "cogent and compelling inference" that defendant CHL's top brass had misled the public about the "rigor of

Countrywide's loan origination process, the quality of its loans, and the Compnay's financial situation – even as they realized that Countrywide had virtually abandoned its own loan underwriting practices." Id at 9.

58. Defendants Mozilo, Sambol, Lewis, Stumpf et al, not only concealed this massive scheme from the public from at least 2000 to 2008, but they made it a matter of policy to conceal these and other things from their borrowers. Mara Der Hovanesian publicly reported that: "there was plenty more going on behind the scenes [that subprime borrowers] didn't know about, either: that their broker was paid more to sell option ARMs than other mortgages; that their lender is allowed to claim the full monthly payment as revenue on its books even when borrowers choose to pay much less; that the loan's interest rates and up-front fees migh not have been set by their bank but rather by a hedge fund; and that they'll soon be confronted with the choice of coughing up higher payments or coughing up their home." *Nightmare Mortgages*, BusinessWeek, www.businessweek.com/magazine/content/06_37/b4000001.htm.

59. Defendants Lewis and Stumpf directed their undisclosed staff to call, e-mail, fax or otherwise communicate to their field managers throughout the United States, to turn away certain people who sought loans through BofA or Wells Fargo, and steer them to defendant CHL or its affiliates, even if these borrowers had a credit score that ranged 620 or better, which would make them eligible for prime loan.

60. From 2004 to at least 2009, Wells Fargo and BofA steer thousands of borrowers to defendant CHL et al, who ended up by being sold subprime loans that they could not afford, and to which transferred much, if not all of their equity to defendants Mozilo, Stumpf, Lewis, Sambol and others.

61. From January 2005 to March 2006, Plaintiffs received over ten (10) mailings from Defendants claiming that they were America's #1 home lender and could be trusted to provide them with the best financing or refinancing possible.

62. From January 2005 to March 2006, Plaintiffs received over 5 telephone calls from Defendants' agents who solicited them from other states, to consider defendant CHL as the most trustworthy Company to finance any future home they were considering.

63. As of January 2006, almost 80% of ARM borrowers were encouraged by Mozilo, Sambol, Colyer et al to make only the minimum payment on their loans, through a systemic official or unofficial policy directing personnel to emphasize minimum-payments, and for CHL monthly installment mailings to be sent with only the minimum listed or high-lighted in order to influence borrowers to pay only the minimum. *See* Mara Der Hovanesian, *Nightmare Mortgages,* Business Week, Sept. 11, 2006 at www.businessweek.com/magazine/content/06_37/b4000001.htm as of June 2008.("Most … borrowers aren't paying down their loans; they're underpaying them up.")

64. From October 2005 to March 2006, Plaintiffs looked at numerous Duplexes and Single Family homes in order to purchase their first home.

65. In February 2006, Plaintiffs found their current home being sold by defendant Chen who told them that he was selling the home for a client who was asking $729,000.

66. Defendant Chen stated that no one had ever resided in this home and if Plaintiffs purchased it they would in fact be its first occupants and he could sell it below what developer would charge them (some 12 months later they learned that others paid $580,000-660,000).

67. Plaintiffs liked the floor plan; however, expressed a dislike of the carpet and the plain beige color of the walls and defendant Chen stated that if they were willing to offer $719,000, and get financed for $729,000 that they would have $10,000 to make some, if not all, of the changes they desired if they had the right lender.

68. Plaintiffs stated that they were planning to get financing through their agent Earl Taylor, who was based out of San Diego, and providing a lender that he worked with.

69. Defendant Chen replied, "Why do you have agent so far away? I can do whole deal for you cheaper with less commission and savings to you." But Plaintiffs stated that they were satisfied with Taylor, but would look into what Chen suggested having no idea at the time that Chen was contravening Department of Real Estate regulations.

70. Defendant Chen told Plaintiffs, "I believe I can convince the sellers to accept an offer of $719,000 if you made it in the next three days for $719,000. In fact I will almost guaranty you that it will be accepted and this way you can think of getting a loan for $729,000

and use the $10,000 to take up the carpet and paint the place like you want it and if your agent is not able to do this then you need to see what I can work out for you.… Not much money is coming from this sale, because it was purchased for $710,000, so you're getting a very good deal."

71. Defendant Chen portrayed himself as *only* the Selling Agent, not an actual owner (as he actually was), and he convinced the Plaintiffs to enter escrow in order to purchase property and on February 24, 2006, they sent first formal offer for 719,000 to which defendant Chen orally agreed.

72. Plaintiffs told their Buying Agent that they would like for him to present an offer for $719,000 if he could work out a way to replace the carpet with wooden floors. He told them that it would not be possible to do so through his loan officer.

73. Plaintiffs then informed defendant Chen about their Agent's reply, and he told them that if Plaintiffs would terminate their agreement with Taylor and let him handle entire deal that he would ensure that the home modifications took place at no additional cost to them and that he was open to negotiate directly with Plaintiffs instead of their agent.

74. From on or about February 18 to March 26, defendant Chen and Plaintiffs communicated nearly every day with each other to work out the details of the purchase.

75. Once Plaintiffs told defendant Chen that they were willing to buy the home for $719,000 and that they would seek a loan for $730,000 in order to make modifications, Chen would later report to them that he was not able to convince the sellers to sell for $719,000 and they would only accept $729,000.

76. When Plaintiffs asked their Buying agent to seek a loan for $739,000, in the hopes of getting 10,000 for home modifications, he informed them that his lender would not be able to afford them money back that would pay for such.

77. On or about March 6, 2006, Plaintiffs spoke to defendant Doe 2, who was a loan officer at their Wells Fargo Mt View office, about whether they could obtain a mortgage through defendant Wells Fargo with such an outcome.

78. Defendant Doe 2 told Plaintiffs, "I could put you in for one of our loan products;

however, I would recommend that you contact Countrywide and get one of their products, because, base on what you told me about your credit status, Countrywide may be able to offer you loan products that would better suit your needs….” Referring Plaintiffs pursuant to defendants Stumpf, Mozilo, Sambol, Lewis et al agreement herein.

79. She then gave Plaintiffs the phone number to Defendants Menlo Park office and contacted Colyer saying, “I am referring two new buyers to you and one of them is a Black guy and the other an Indian woman. Neither of them has any experience with buying a home and I believe you can sell them one of your loan products designated for minorities without them knowing what you’re selling them and pad the loan to make yourself some extra money…”

80. Plaintiffs contacted defendant Colyer and told him about their agent’s inability to secure a loan which allowed for modifications and Colyer stated that he could provide such.

81. Defendant Colyer told them that he would like to schedule a full consultation so he could determine whether there were any other things he could do in order to take advantage of the full services CHL offered.

82. From February through March 2006, defendant Colyer initiated and conducted numerous calls with Plaintiffs pursuant to Defendants’ overall practice of pressuring, cajoling and otherwise manipulating them into believing that Defendants’ had their best interest at heart.

83. From 2004 through 2008, defendants Sambol, Mozilo, Colyer, Lewis, Stumpf, BofA and Wells Fargo processed thousands of loans of White Americans with similar credit scores and income as the Plaintiffs, but placed them in prime or non-ARM type loans or processed them with lower finance charge fees.

84. Defendants Colyer and Does repeatedly told Plaintiffs, in mantra-like fashion, that, “We at Countrywide do more loans per month than some mortgage companies do in a year… With this type of record we cannot afford to make mistakes by our customers and it should indicate to you that if millions of Americans trust us there is no reason why you shouldn’t.”

85. These Defendants continuously told Plaintiffs that, “You really don’t want to get into a 30 year fixed. That’s how our parents bought homes. In the 21st Century it’s all about

using other people money so you can keep your own in order to invest it elsewhere or simply have a good time….It would take a longer time to process a conventional loan for you and you guys do not actually qualify for one."

86. During one or more of defendants Sambol and Mozilo training of defendant Colyer and other loan/office managers, they influenced them to discourage certain home buyers from putting 5 or more percent of their own money as down-payment to purchase their homes.

87. During 2005, Countrywide, through the practices and instructions of defendants Mozilo and Sambol, trained managers to discourage adequate down-payments in order to encourage Buyers to take out more funds then they needed for buying the home so the Defendants could generate even more money than they would have otherwise earned.

88. On or about March 4, 2006, Plaintiffs informed defendant Colyer that another lender was willing to put them in a 30 year conventional loan which would require them to pay approximately $2,200 per month. Defendant Colyer then contacted defendants Sambol and Mozilo offices asking for approval to falsely tell Plaintiffs that they, Countrywide, would be able to do a loan for $1,800 per month or better if they committed themselves to letting Defendants do their loan.

89. Defendant Colyer then told Plaintiffs, "I have spoken to my bosses in Southern California and I can pretty much guaranty you that we can get you in your new home for $1800 per month and possibly even as low as $1,500 if everything works out like I believe…."

90. The Plaintiffs was willing to secure money from family and themselves in order to provide five or ten percent as a down payment; however, defendant Colyer, pursuant to Defendants Mozilo, Sambol et al instructions, told them: "Just hold on to your money. You work too hard for it. I'm telling you, we have cutting-edge loan products that frees the mortgage buyer from traditional lending issues, just trust me I'm going to take care of you."

91. On or about February 19, defendant Chen called Plaintiff Merritt saying that if he did not commit to buying the home right then that he would no longer consider them as serious buyers and persuaded Plaintiffs to commit to offering $729,000.

92. On or about March 4, 2006, Defendant Colyer contacted CHL corporate offices

about the Plaintiffs and received authorization to treat them in accordance with subprime lending practices disproportionately reserved for minorities and others not educated in real estate dealings, and not attempt to sell them conventional loan products.

93. During March 2006, Defendant Colyer portrayed himself as a very caring honest loan officer who would never cheat anyone and he secured the trust and confidence of the Plaintiffs due to this, as well as their own ignorance about mortgage standards and process.

94. Defendant Colyer told Plaintiffs that the seller did not accept their $719,000 offer and wanted $729,000 for the home and so they reasoned that they would have to apply for $739,000 if they wanted to get credit to make the home improvements they wanted. “but don’t worry,” he insisted, “I will make it so you won’t have to pay a dime for it.” And he would not elaborate further about this when they questioned him.

95. Defendants Sambol, Mozilo and Countrywide trained and encouraged their managers to identify and use appraisers who would be open to inflating the values of homes above the real-market value that they intended on financing in order to maximize their profits.

96. From as early as 2000, defendants Sambol and Mozilo agreed to encourage their staff to only use real estate appraisers who were willing to appraise a given borrowers home at the value which CHL staff wished to close the loan on. Defendant Benson was one such appraiser.

97. On or about March 15, 2006, defendants Chen and Colyer spoke about getting Chen’s home appraised. Chen told Colyer that he was part owner of the home and had an appraiser who he had previously worked with who would be fully willing to inflate the value of the home above the $690,000 or so it was actually possibly worth, in order to generate higher revenue from the sell and if Plaintiffs knew this they would not have bought home.

98. Defendant Colyer told Chen that although he, as the lender, normally decides which appraiser to use, that since Countrywide has also used defendant Benson previously in various loan transactions, and Chen was assured of his acquiesce to the $739,000 loan value, that he would accept Chen selecting Benson as this loan’s appraiser.

99. Defendant Benson began appraising real estate in the San Francisco Bay area on

or about 1997. Within five years he learned that the way he would be called to appraise homes more frequently, and thereby make more money, was to learn what the dollar amount was that the lender/seller was seeking to close on, and match that value with his calculations and findings. He developed a technique which would weigh seemingly sound data, and return an amount that would meet the lender's desires.

100. From at least 2002 to 2006, defendant Benson falsified or misrepresented the values of many homes which were not worth the appraised amount he reported and so by 2006 he became a preferred Appraiser of defendants CHL, as well as Wells Fargo and BofA.

101. On or about March 5, 2006, defendant Colyer, through Johnny Chen, contacted defendant Benson through a phone call, asking him whether he was willing to do an appraisal on his home.

102. Defendant Benson affirmed that he was open to conducting an appraisal and asked what was the value defendants Chen and CHL was seeking to close the loan on.

103. Defendant Chen then told Benson about Plaintiffs home, telling him that he was part owner and asked Benson whether he was willing to inflate the value of the home so it could justify a loan of $739,000.

104. Defendant Benson, although he had not reviewed the property nor conducted comparables, told Chen, that if he hired him for the job, that he would ensure that the appraisal would come in for enough to justify a $739,000 loan amount.

105. Defendant Benson then used the internet and other sources to identify properties in Sunnyvale, which he could make a facial justification for $740,000 of Plaintiffs property and he concluded his report, signed it and forwarded it to defendant Chen and Colyer's offices.

106. Defendant Benson has made it a routine practice to inflate the values of homes in order to receive more work from defendants.

107. During the second week or March 2006, Plaintiffs had daily teleconferences with Defendant Colyer regarding finalizing their loan points, credit score and related matters. Defendant Colyer originally told Plaintiffs, "I was able to calculate your first mortgage for just over $5,200 per month and your second would be around $1,600."

108. Plaintiffs expressed clear disappointment with these numbers, protesting that Defendants had promised $1,800 monthly mortgage or better, then defendant Colyer declared: “Yes, yes I know, but it turns out that your credit score makes that impossible, so we need to do some things to get it higher.” And he had Plaintiffs write letter to defendant BofA to clear a up an erroneous debt it reported them as owing then had one of the Doe defendants to do a “rapid rescore with the credit bureaus to increase your credit score.”

IV. DEFENDANT BANK OF AMERICA FALSELY HOLDING DEBT

109. In 2002, defendant BofA illegally gave Enterprise Rent a Car access to Plaintiff’s David Merritt’s bank account, where they transferred over $2,000 to the Car Company to fulfill a fraudulent transaction, causing his account into overdraft status by extending credit to Plaintiff without his authorization and paying such to Enterprise.

110. Plaintiff immediately informed BofA that this was a fraudulent transaction and it refunded his monies to account, at which time Plaintiff closed out his account due to the unethical nature BofA behaved in extending his money out.

111. Plaintiff did not authorize BofA nor Enterprise to transfer such funds, but BofA accepted the fraudulent request of Enterprise, and again, paid Enterprise.

112. Defendant BofA then attempted to coerce Plaintiff Merritt into paying part of the money that it had given to Enterprise and when he refused, sent it to collection agency and reported it to Credit Bureaus.

113. In 2005, Plaintiff Merritt filed Small Claims action entitled: Merritt v. BofA et al, 2-05-SC-002268 where BofA representative entered into mediation and promised Plaintiff and the court that it would cease and desist all collection efforts and nullify the amount it had claimed was owed by him and send letter to Credit Bureaus to clear his record. This would be in exchange for Plaintiff dismissing the action against BofA.

114. The court ruled in Plaintiff’s favor, ordering Enterprise to repay him monies that it had fraudulently taken out of his account and dismissed claim against BofA pursuant to the agreement worked out with the Plaintiff.

115. In March 2006, defendant Colyer reported to the Plaintiffs that their credit report

reflected a negative mark from defendant BofA.

116. Upon investigation, Plaintiffs learned that BofA had not cleared credit report and he had to send copy of court judgment and history to agencies and collection business who temporarily cleared the negative mark for approximately 12 months until it resurfaced in 2007.

117. Defendant Colyer had Countrywide staff elsewhere do a “rapid rescore” in order to have Plaintiffs credit report eliminate the negative item, and found that Plaintiffs scored in a “good” credit range, making them eligible for Prime, not subprime loan.

118. Defendant Colyer then told the Plaintiffs that they had a good score and that he would be able to afford them a loan “better than anyone else.” i.e. other loan Companies. Plaintiffs score was in high 600’s and would not have agreed to loan if they knew it was false.

119. Defendant Colyer then held multiple talks with the Plaintiffs in order to work out the details of their loan, and during them he instructed them to take certain acts “in order to be better positioned for getting the best loan.”

120. Defendant Colyer knew that the Plaintiffs had 45 days to close Escrow, and so he dragged the loan process on until they would have no other option but to go with whatever loan he worked out or suffer the loss of their money left in escrow.

121. One of the principle things that defendant Colyer insisted on was, “I can do a special favor for you guys by saying that Salma is still working for Siemens instead of being on disability. If we make the paperwork look like she is not still working, I’ll never be able to get you lower rate and no other lender would be willing to take this risk for you.” Not telling them that is was illegal under state and federal laws and he falsified their loan documents.

122. Defendant Colyer continuously claimed, “I’m really looking out for you guys best interest… There is no one in this business that would pay so much attention to your loan so you can get the absolute best deal around…” and other confidence boosting statements to give a sense that he was truly on their side and could be trusted.

123. Defendant Colyer had Plaintiffs provide their banking statements and instructed them to put at least $10,000 more into the account and for them to generate a letter that gave a credible explanation where the money came from and how it was theirs out on loan to.

124. When Plaintiff Salma hesitated about lying, defendant Colyer assured them both that, "this is standard practice in the industry and not actually viewed as a lie."

125. Defendant Colyer along with his office's staff went about customizing a loan package for Plaintiffs that charged them finance fees on items that TILA laws prohibit to be included as finance charges and at finance rates higher than those charged to educated Whites.

126. During March 2006, defendant Colyer conferred with defendant Doe 1 asking her, as the underwriter, to not apply strict State or Federal finance laws when assessing the documents he had put together for Plaintiffs loan because Plaintiffs were being processed pursuant to Countrywide policies reserved for minorities and less educated Whites.

127. Defendant Colyer did not conduct any discussion nor referenced any documents that disclosed to Plaintiffs, at the time of their loan application or at closing, mark up costs for various items in the loan or the overall finance costs nor were they provided any settlement booklet describing to them the process or charges.

128. Defendant Doe 1 agreed with defendant Colyer, disregarded multiple loan policies and approved the loan.

129. On or about March 24, 2006, defendants Mozilo and Sambol, through their respective southern California offices, approved defendants Colyer and Doe 1's final loan package customized for Plaintiffs.

130. After several more discussions Colyer stated: "It doesn't matter who you go to I have worked out the best possible deal you will get anywhere from anyone. I have done every trick of the trade to get you the lowest possible points, and if you just go along with my plan, I promise you that in one year's time or less, I shall personally refinance you so that you have a much lower monthly payment and more cash to play with."

131. Defendant Colyer went on to state: "I have given you a loan where the first mortgage will be fixed for five years at about $3,200 monthly and what we call a second or HELOC which no one in today's market can live without, will be for about $1,200. The beauty of the HELOC is that it allows you put all your savings and paychecks in it, while it works as both a checking account that you pay all of your bills out of as it also acts as a tax equalizer by

letting you take tax write offs for everything you pay through it." And he went on to show how HELOCs would charge more interest, but would allow Plaintiffs to save more of their money in the long run, emphasizing that it was "the lowest monthly you can get from anyone…."

132. Plaintiffs were very much surprised at this and complained about how much higher this was over his $1,800 monthly promise and initially said that they were unwilling pay so much, yet it was lower than what Colyer said they were eligible for with others. Defendant Colyer wrote out other payment amounts more than $7000 which he related them if they went the customary lending way, and concealed from them that they qualified for an FHA or prime loan and concealed from them that if the loan increased to an amount equaling 115% of the original lent amount—and that this was assured to happen—that they would be obligated to pay double or more the amount being paid.

133. Defendant Colyer then pointed out that they had a very short amount of time to close Escrow and that it would take any loan broker 3 to 4 weeks at the quickest to go through everything that he went through and that they would end up by paying more or they would lose their Good Faith money secured in Escrow.

134. Defendant Colyer explained that the market had "shifted" since he made that initial promise and that "everyone" was charging even more for loans because they were in so high demand, as he began to inadequately recite some of the charges and other costs he was billing Plaintiffs for—knowing that they did not understand any of his financial terminologies.

135. Defendant Colyer reassured them, "I am not putting taxes in your loan so you can use that money for other things and control your money better…" Not informing them that it was normal to include taxes into the loan since they would have refused this loan.

136. Defendant Colyer told them, "Believe me when I tell you, your payments are the lowest that you'll find anywhere and if you just make the payments I'll have you refinanced and feeling a lot better in a year's time." Not telling them that the $4,400 in payments would not go towards the principle of the loan and that this was a "teaser rate" and that this was only the right loan for them, but the *best* that they could possibly get anywhere.

137. The Plaintiffs had never purchased a home, nor had any training in financing or

Banking or Real Estate. Defendant Colyer, pursuant to his training promulgated by Sambol, Mozilo et al, concealed from Plaintiffs that he, along with other CHL defendants are paid more for steering them into the ARM and HELOC than if they sold them an FHA or prime loans.

138. Defendant Colyer also concealed from Plaintiffs that the loans were very risky and "toxic" in that they would never be able to retain any equity, but would forever transfer it over to defendant CHL and its future partners. Pursuant to instructions developed by defendants Sambol, Mozilo et al, Colyer intentionally avoided doing any reasonable, objective inquiry with a criteria that would have indicated whether Plaintiffs could afford the loan or whether they would qualify for a less risky loan, he was solely focused on transferring money and equity from them and into his own and defendants Mozilo, Sambol, CHL et al pockets.

139. For every argument and fear that Plaintiffs had, defendant Colyer countered with promises, half-truths and lies that was unofficial company policies promulgated by defendants Mozilo and Sambol which manipulated Plaintiffs into believing that they were dealing with an honest trustworthy entity, using their naivety to trick them into accepting a loan program totally unsuitable for them, a loan they would not have agreed to if the truth was disclosed to them.

140. Unbeknownst to Plaintiffs at the time, defendant Colyer had implemented Sambol, Mozilo and Countrywide's unofficial policy of falsifying the loan documents to reflect certain finance, but which charged more for unsuspecting Buyers.

141. On March 27, 2006, Defendants sent a person to Plaintiffs home to deliver over 2 inches of loan documents printed in 8 or so font size and the person stated: "I will not have time to wait for you to read any of the documents, but just need you to sign these and if you have any questions or concerns afterwards, you can contact your loan agent."

142. Plaintiffs signed her documents and began reading the documents however, could not make out what the documents were saying due to the very small print and the confusing language employed; and they did not receive any clear indication that broke down their payments, how much they would have to pay for the loan, or that their payments would not being going towards principle and only interest nor anything that clearly cited what their rights were as a borrower and received a blank copy of right to rescind HELOC and Mortgage.

143. Plaintiffs did not know what the real cost of their loan would be and was relying on the representations that Colyer, Doe 1, television, radio, telemarketing and mailing information was conveying to them about Countrywide being a place they could trust.

144. On March 28, 2006, Plaintiffs called defendant Colyer about their documents being too complex and difficult to read or understand and he stated: “Don’t worry, just let me know what you want to know about them and I’ll clarify it for you.”

145. Plaintiffs told him that there were no documents showing them how much they would have to pay for this loan and he promised to send them the documents showing such.

146. Defendant Colyer promised Plaintiffs if they just accepted the loan that he prepared for them, that “I promise you on everything that I own that if you guys made payments on time for one straight year, I will be able to refi you at a much lower interest rate and get your payments down as I agreed to do originally, it’s just that I did not know your case would present such obstacles….” He never sent them filled in documents.

147. The loan issued for $739,000, and Defendants withheld key disclosures from the Plaintiffs. E.g. option to “Shop Around,” advanced copy of HUD settlement statement; TILA documents on both 1st and Heloc loans; historical index values; credit score info; dates for their Right to Rescind, that they qualified for FHA or prime loans, among other things.

148. Defendants CHL and BofA, pursuant to defendants Mozilo, Sambol, Lewis and Stumpf agreement then sold Plaintiffs loan to Wells Fargo, who authorized CHL to service loan for certain charges. Defendant Stumpf authorized this through his previous directions made to subordinates and he accepted CHL and these other defendants practices of concealing from Plaintiffs and like borrowers that they qualified for FHA or prime loan and was in fact in a very risky and bad loan.

149. From 2004 to 2007, defendant Stumpf contacted defendants Mozilo and Sambol more than 5 times over the telephone, to gather some substantive knowledge about their subprime lending practices in order to help him develop better techniques in Wells Fargo in steering minorities and others into defendant Wells Fargo’s own subprime lending plans.

150. Defendant Stumpf explained to Mozilo and Sambol, that he wished to increase

Wells Fargo profitability by coming out with its own subprime mortgages that could be targeted towards African-Americans and other minorities and less educated Whites, who may qualify either for no loan or for a prime loan.

151. Defendants Mozilo and Sambol explained repeatedly to Stumpf that he must ensure that personnel must be encouraged to conceal certain key information from borrowers in order to run a successful subprime lending program. For example, that there is no better loan in the industry for them; that they only had to pay the "minimum" payment of the ARM; little or no mention about initial payment being "teaser" rate; that ultimately they would have to pay twice or greater amounts in the future et cetera.

152. Defendant Stumpf, through a series of directions over this period of time, directed Wells Fargo staff to steer African Americans who came to Wells Fargo for mortgages "to less favorable credit products than they qualified for on the basis of race." *See* Original Class Action Complaint, NAACP v. Wells Fargo Bank et al, CV09-1758 (CD Cal. Mar. 2009).

153. As one year was approaching, Plaintiffs contacted Colyer and defendants Mozilo, Sambol and Stumpf about refinancing their loan, and was told that it would be worked on and led on with promises that they would refinance them. At the end of 2007 Colyer again promised them that he would work out a refinancing, that business was just so busy that he could not get to them earlier and sent them to work with "Brandon" his assistant who never fulfilled the agreed upon promise.

154. During 2006, defendants Mozilo, Sambol, Countrywide et al generated 47.7 billion in subprime mortgage and equity loans, an increase of more than 50% from 2004

155. Neither defendant Colyer nor others explained to Plaintiffs that their monthly payments that exceeded $4,000 were going only towards interest payments and that they would have to pay more in order to pay down the principle, and that he, Doe 1 et al had violated laws by structuring payments so they would ultimately be nearly 3 quarters of Plaintiffs income.

156. In 2007, they learned of such and began to pay down their HELOC and to use it as their principle form of banking and bill payment system based on the contractual promise that they would always be able to access their funds.

157. Plaintiffs also began to meet Real Estate persons who began to explain to them the complexities of Escrow and other closing document and that they had a teaser rate loan.

158. During this time they learned, inter alia, that defendant Chen was in fact an owner of the home he portrayed as belonging to another and that he falsified state records at the purchase, claiming that he and his 2 business partners were buying the home as a principle residence and living therein.

159. Defendants Colyer et al had sold Plaintiffs on the idea that a HELOC was the best possible thing for them because they could pay bills with it and use the payments as a tax write off. He guarantied them orally and in writing that they would always be able to put their savings into the HELOC and draw on it anytime.

160. On or about April 2008, defendants Sambol, Mozilo, Wells Fargo, Stumpf and Does held a series of meetings in which they discussed the falling prices of homes on the eastern seaboard and Midwest and agreed that they were going to violate their contract agreements with certain borrowers who were minorities or those not likely to know or exercise their contractual rights in regard to HELOCs.

161. At no time had Plaintiffs violated their end of the HELOC agreement and their home's value had not decreased by 5 or more percent.

162. These defendants then directed Countrywide personnel to identify any African-American, minorities and others who would probably not contest them in court and freeze their accounts. And the Plaintiffs HELOC account was frozen in order to deny them access to their own personal funds.

163. Plaintiffs had written HELOC checks to pay some bills and the check was rejected, charging them a fee for insufficient funds, they had been one of the minorities who Defendants decided to not honor HELOC agreement with.

164. Plaintiffs contacted defendants Colyer, and those in southern California, and was told that their account would not be unfrozen unless Plaintiffs proved that their property had not fallen below 5% of what was owed and they did not offer Plaintiffs any hearing or notification of this decision to deny them access to their personal funds.

165. During 2008, Plaintiffs began to speak with lawyers and was hearing that they had fallen victim of Predatory lending practices.

166. It was pointed out to Plaintiffs that neither their 1st or 2nd loan documents contain TILA documents which clearly depicted the amount of loan, interest to be paid and total payback amount; that over $10,000 was lent, and $5,000 Good Faith money used to pay for points to defendants so they could decrease the overall interest rate charge; that Plaintiffs could have been placed in a conventional loan if they had an honest lender handle their loan.

167. During January and February 2009, Defendants finally sent Plaintiffs the loan documents they had been asking for since 2006, and they learned that defendants had documents that were not issued to Plaintiffs regarding money paid out and owed.

168. There was over $14,000 paid to others, including an agent Diablo, which was not disclosed to the Plaintiffs along with broker and other fees that they were not informed about and to which they would never had agreed to if disclosers were properly made.

169. Plaintiffs learned for the first time that they would have to pay close to 2 million dollars for a $591,000 loan, which they found shocking and would not have agreed to if they were told the truth of this at the closing. They had already paid more than $200,000 to Defendants in 3 years, which prevented them from using that money for medical and other critical affairs.

170. Plaintiffs then began to take their documents to lawyers and were told that they were victims of predatory lending practices which Defendants BofA, Wells Fargo and Countrywide swept the country with.

171. Plaintiffs also had a former underwriter review their documents and was told that there were multiple Federal and State lending law violations in their loan and that they needed to find someone to audit their loan in order to generate a detailed report.

172. As Plaintiffs began to look for a credible forensic Loan Auditor, they learned that they had limited time to meet the 3 year statute of limitations and hurriedly drafted this action and filed it.

173. From 2006 to 2009, Defendants continuously sent monthly billing statements

which cited a minimum payment, and did not specify that Plaintiffs could pay more, *and should*, if they wanted to pay down the principle of the loan. These mailings were sent through the United States Postal Service from Texas and other CHL locations and they each concealed from Plaintiffs that they were being preyed upon with the worst possible loan which was transferring their equity to defendants Mozilo, Sambol, Colyer, Stumpf, Wells Fargo et al.

174. Not until 2007 did Plaintiffs begin to understand that they were locked in a loan that was paying only the interest and that it would never actually go towards principle. Defendant Colyer concealed this from them and never adequately explained it pursuant to the instructions of defendants Sambol, Mozilo, Stumpf, Wells Fargo et al.

175. During August 2008, Plaintiffs lost disability payments from Metlife which severed their income in half, with their living expenses being between 2 to 4 thousand per month and their mortgage above $4,000. And so they could no longer afford to make their mortgage payments after paying over $120,000 in payments to Defendants for their 1st and 2nd interest only mortgages.

176. From September 2008 to May 2009, Plaintiffs have failed to make payments and began repeatedly asking defendants Colyer et al in southern California to refinance their loan or modify it so they can finally get into a conventional loan at an amount which they could afford throughout the duration of the loan that would pay down their principle.

177. From on or about July 2007 and throughout 2008, the American media and other sources reported throughout the Banking and financial world about Countrywide's predatory lending practices and that Mozilo and Sambol may have been committing fraud on unsuspecting minorities and others. Defendant CHL's own corporate filings were turned over to Defendant Lewis on or about July, 2007, reporting that about ¼ of CHL's subprime loans were delinquent and that thousands of borrowers were contacting Mozilo and Sambol about being misled into subprime loans.

178. Defendants Lewis and Stumpf were constant recipients of this news and they continued to authorize their respective personnel to work with Defendants Sambol and Mozilo in order to continue the Predatory Loan practices herein. For example, they heard or read

reports about defendant CHL option ARM loans "might be the riskiest and most complicated home loan product ever created." *See* BusinessWeek's *Nightmare Mortgages*, www.businessweek.com/magazine/content/06_37/b4000001.htm. And they continued to steer borrowers to CHL, its affiliate brokers to place them into these complex and dangerous loans without any analysis of reasonable, objective criteria that would indicate whether borrower could afford the loan or qualified for less risky loan.

179. Defendants Lewis and Stumpf encouraged their managers to disregard evidence found in Countrywide loans which showed that TILA and other Federal and State laws where constantly being violated in the loans that BofA and Wells Fargo were buying or otherwise participating in.

180. From on or about July 2004, through 2009, defendants Mozilo and Sambol discussed the growing delinquencies by CHL borrowers and identified this to their policies of ignoring the suitability of ARMs for them. They then told each other that they had to begin to divest themselves of Countrywide stock in order to transfer a good portion of Plaintiffs and other Americans equity over to them. During 2004, 2005, 2006, 2007 and 2008, as these defendants took note that CHL was headed towards disaster, they directed their financial agents to sell millions of dollars in stock so they could collect money before CHL went under. On or about October 2006, Mozilo, Sambol et al raised the number of shares executives could sell from 350,000 to 580,000, encouraging top officials to develop and implement the scheme alleged in this Complaint.

181. During 2007, defendants Lewis, Mozilo and Sambol met in several teleconferences between California and Virginia, as well as additional face-to-face meetings where they informed Lewis about their divesting themselves of ownership of CHL due to the growing toxicity of its assets, and Lewis expressed interest in taking over CHL's predatory loan system and to keep Sambol on payroll to help guide BofA to become proficient in this area.

182. Defendant Lewis explained to Mozilo and Sambol, that he wanted BofA to acquire CHLs subprime loans so it could become America's number one predatory lender and servicer of subprime loans and to position him to petition the Federal government for billions

of tax payer funds so he and his BofA close colleagues could make billions for themselves and partners.

183. Defendants Mozilo and Sambol agreed and in July 2008, defendant Lewis, through BofA, purchased defendant CHL and continued their Predatory loan practices and policies against Plaintiffs, African-Americans and others.

184. As of March 2009, Plaintiffs lost over $200,000 on the value of their home in addition to suffering losses to their property in the form of unnecessary higher interest rates and fees and debt than they would otherwise pay with a prime or FHA mortgage that they rightfully qualified for.

185. Defendants CHL, Wells Fargo and BofA had multiple talks from September 2008 to February 2009 about Plaintiffs failure to make any payments on their 1st and 2nd mortgages, and they each agreed to treat them as they treat other minorities throughout the United States by not modifying their loan in a conventional loan, but to keep it as an interest only where they can continue to defraud them of their earnings.

186. On or about January 2009, defendant Lewis contacted defendant Stumpf and other Wells Fargo staff informing them that he had received a communiqué from Plaintiffs asking for a conventional loan, and asked Stumpf what he wanted to do about such.

187. Defendant Stumpf stated that since Plaintiffs were minorities that they, defendants, should continue to treat them as such in order to maximize their profits against them.

188. Defendant Lewis agreed, and directed his Countrywide subordinates in southern California to not refinance Plaintiffs loan or modify it into conventional loan, but to make certain they remain in Predatory type loan.

189. From January to March 2009, Defendants CHL, Wells Fargo, BofA, Lewis, Stumpf et al, refinanced or modified thousands of loans for White Americans who were in similar ARM's and income as Plaintiffs, but gave them more favorable modifications or refinancing then afforded to Plaintiffs.

190. During February 2009, Plaintiffs notified defendants that they were exercising

their right to rescind and requested the more than $200,000 they invested in transaction and property. Defendants ignored their notice by trying to modify loan with other predatory loans.

191. Defendants defaulted and refused to reply to Plaintiffs rescission communiqué or to refund them their monies owed them on HELOC or elsewhere.

192. From January 2007 to January 2009, Plaintiffs sent 4 communiqués to defendant Sambol, 3 to defendant Mozilo and several others to Colyer and others who each read the transmissions and directed their subordinates to not take any actions which would cease the discriminatory practices against them, but to maintain practices in order to produce more money from them.

193. From January to March 2009, Plaintiffs sent 2 communiqués to defendants Lewis and BofA; and 3 to defendants Wells Fargo and Stumpf, requesting that they intervene and direct CHL to refinance Plaintiffs under prime lending principles or otherwise rectify their loans, and these defendants contacted their California staff as well as Defendants CHL and others to take no action other than to redo Plaintiffs loans pursuant to predatory lending practices.

194. During 2008-2009, defendants each sought for and took billions of dollars from the Federal Government, and promised to work with it to ameliorate the American home mortgage market. These funds were called “TARP.”

195. During March 2009, President Obama released policies and guidelines for dealing with home owners who are unable to afford interest only loans and or are “upside down” in their mortgages, calling on defendants’ et al, to modify or refinance home owners into conventional loans that did not exceed 38% of their earnings, which would include taxes and be a traditional 30 year fixed-rate mortgage that the government will make up the difference so the mortgage is no more than 31% of their income to do so at current market rates. Any institution that accepted TARP funds were mandated to modify loans in accordance with these guidelines.

196. Defendants Lewis and Stumpf petitioned our Federal Government for billions of dollars and promised, in part, to work with all buyers who they hold loans for who are in

distress or otherwise victim of predatory loans or "upside down" in their mortgage; and provide refinancing or modification which would give them a good chance to survive the economic downturn. According to government records they are recipients of TARP funds.

197. During January 2009, defendant Lewis met with undisclosed BofA subordinates to discuss the TARP bailout funds, and whether they should or should not help distressed home owners. During these talks defendant Lewis stated that the TARP money should be accepted and kept; however, personnel should not freely help borrowers, but set up a lot of hurdles for them to secure any modification, and even when they do, to do their best to kept them in ARMs or other predatory type loans.

198. On or about January 2009, defendant Lewis contacted Stumpf and asked him whether he disagreed with him on this point and Stumpf stated that he concurred.

199. On or about February 2009, defendants Lewis and Stumpf instructed their subordinates to continue to steer borrowers into ARMs or other subprime loans in order to maximize their ability to generate revenue and transfer equity to BofA and Wells Fargo.

200. Plaintiffs have spent numerous hours speaking to unresponsive customer service reps of Lewis to gain this modification. In March of 2009, pursuant to defendants Lewis and Stumpf instruction, BofA staff modified Plaintiffs loan into another ARM which would reset in 3 years; have minimum payment; not include property taxes; transfer equity to BofA and Wells Fargo; and cause them to head towards bad credit, lost of more cash, and ultimately foreclosure and bankruptcy.

201. Defendants BofA, Wells Fargo, Lewis and Stumpf have refused to apply such towards Plaintiffs and have instructed their staff to cease working out any real solution for them in order to allow their situation to go from bad to worst.

V. DEFENDANTS' BUSINESS ACTS AND PRACTICES

202. The Defendants Mozilo, Sambol, Lewis, Stumpf et al have engaged in false or misleading advertising and unfair competition in the origination of residential mortgage loans and home equity lines of credit ("HELOCs) and were motivated to steer and support the steering of Plaintiffs and other Americans into subprime loans because: 1) it would transfer

equity and properties to them; 2) give their organizations a greater market share and 3) allow them to steal from Plaintiffs and others without any or little criminal prosecution consequences.

203. As early as June 1, 2005, Kathleen Pender reported to nation and apprised defendants Stumpf and Lewis that ARM mortgages led to increased mortgage defaults and foreclosures. *See Hazards of Option ARMs*, San Francisco Chronicle, p.D-1.

204. The Defendants originated mortgage loans and HELOCs through several channels, including a wholesale origination channel and a retail origination channel. Countrywide employees who marketing, sold or negotiated the terms of mortgage loans and HELOCs in any of its origination channels, either directly to consumers or indirectly by working with mortgage brokers, are referred to infra as “loan officers.”

205. Through Defendants wholesale channel, loan officers in its Wholesale Lending Division (“WLD”) and specialty Lending Group (“SLG”)(now merged into WLD), worked closely with a nationwide network of mortgage brokers to originate loans. In its wholesale channel, Defendants often did business as “America’s Wholesale Lender,” a fictitious business named owned by CHL. Through Defendants retail channel, loan officers employed via Defendants Consumer Markets Division (“CMD”) sold loans directly to consumers. Furthermore, loan officers sold loans to consumers through Full Spectrum Lending Division (“FSLD”).

206. Defendants maintained elaborate databases developed for defendants Mozilo, Sambol, Colyer and other management to track loan production, the types of loan products, number and dollar amounts, underwriting analysis for individual loans and loans that were approved with underwriting exceptions. Defendants used this data with data of secondary market trends, to create and modify their loan products offered and the underwriting criteria it would apply.

207. One of Defendants chief goals was to originate above-market interest rated loans with other terms that would attract premium prices on the secondary market.

208. In 2004, Defendants planned to double their share of the national mortgage market to 30% through a deceptive scheme to mass produce loans for sale on the secondary

market. Defendants saw borrowers as only a means for producing more loans, originating loans with little or no regard to borrowers' long-term ability to afford them or to sustain homeownership. This scheme was created and maintained with the knowledge, approval and ratification of defendants Mozilo, Sambol and Does.

209. Defendants deployed this deceptive scheme with misleading marketing practices designed to sell risky and costly loans to homeowners and to ensure that they did not understand the terms and dangers of loans, including but not limited to: (a) advertising that it was the nation's largest lender and could be trusted by consumers; (b) encouraged borrowers to finance or refinance with complicated mortgage instruments like hybrid adjustable rate mortgages or payment option adjustable rate mortgages that were difficult for consumers to understand; and, (c) using marketing tactics which highlighted very low "teaser" or "fixed" rates while obfuscating or misrepresenting the later steep monthly payments and interest rate increases or risk of negative amortization.

210. Defendants enacted various lending policies to further their deceptive scheme and to sell ever-increasing volume of loans, including: (a) the dramatic easing of Defendants' under- writing standards; (b) the increased use of low or no-documentation loans which allowed for little or no verification of stated income or assets or both, or no request for income or asset info at all; (c) urging borrowers to encumber their homes up to 100% of assessed value; and, (d) placing borrowers in "piggyback" second mortgages in the form of higher interest rate HELOCs while obscuring the total monthly payment obligations.

211. To further the deceptive scheme, Defendants created a high-pressure sales environment that influenced branch managers and loan officers to meet high production goals and close as many loans as they could with little or no regard to borrower ability to repay. Defendants' high- pressure sales environment also influenced loan officers to sell the riskiest types of loans, such as payment option and hybrid adjustable rate mortgages, because loan officers could easily sell them by deceptively focusing borrowers' attention on the low initial monthly payments or interest rates. Defendants made arrangements with a large network of mortgage brokers to procure loans for themselves and, through its loan pricing structure,

encouraged these brokers to place homeowners in loans with interest rates higher than those for which they qualified. This system of compensation aided and abetted brokers in breaching their fiduciary duties to borrowers by inducing borrowers to accept unfavorable loan terms without full disclosure of the borrowers' options and also compensated brokers beyond the reasonable, industry standard, value of the brokerage services they rendered.

212. Defendants received numerous complaints from borrowers claiming that they did not understand their loan terms, not knowing that they would be subject to higher payments and the other adverse aspects of the loan. Despite these complaints, Defendants turned a blind eye to the ongoing deceptive practices implemented by their loan officers and broker "business partners," as well as to the hardships created for borrowers by its loose underwriting practices. Defendants were only concerned about selling more loans at any cost, in order to maximize their secondary market profits.

213. On or about June 2004, defendants Stumpf, Sambol, Mozilo and others held a series of teleconferences where they discussed whether Wells Fargo would be interested in buying mortgages which manipulated borrowers into agreeing to loans which where predatory in nature, and placed them at high risk for default.

214. Defendant Stumpf agreed to implement practices where his subordinates would be instructed to evaluate certain Countrywide mortgages and buy the ones they deemed appropriate for investment.

215. After April 2006, Defendant Doe of Countrywide transmitted Plaintiffs loans over to defendant Stumpf's offices where it was decided to purchase their loan from Countrywide, but maintain defendant Countrywide as the servicers of the loans.

216. During January 2009, Plaintiffs learned for the first time that Defendants had transferred their loan over to defendant Wells Fargo and contacted defendant Stumpf about resolving their crisis. Defendant Stumpf refused to reply and told his staff to ignore communications from Plaintiffs pursuant to his agreement with Lewis et al.

217. In 2006, 2007 and 2008 defendants Colyer and other CHL personnel led Plaintiffs on as if they were really going to resolve their loan problems in order to run out the 3

year statute of limitations on rescinding HELOC; and each year made false or misrepresented statement to Plaintiffs in order to encourage them to hope and to not bring Action against them.

VI. THE PRIMARY PURPOSE OF DEFENDANTS' DECEPTIVE BUSINESS PRACTICES WAS TO MAXIMIZE PROFITS FROM THE SALE OF LOANS TO THE SECONDARY MARKET

218. Defendants' deceptive scheme had one primary goal—to supply the secondary market with as many loans as possible, ideally loans that would earn the highest premiums with no regard to ethics or the rule of law. From at least 2004 to 2008, Defendants constantly expanded their share of the consumer market for mortgage loans through a wide variety of deceptive practices, undertaken with the direction, authorization and ratification of defendants Sambol and Mozilo, to maximize its profits from the sale of loans on the secondary market.

219. Defendants retained ownership of some of the loans it originated and sold the majority of their loans on the secondary market, either as mortgage-backed securities or as pools of whole loans.

220. In the average securitization transaction, loans were pooled together and transferred to a trust controlled by the securitizer, such as Defendants. The trust then created and sold securities backed by the loans in the pool. Holders of the securities received the right to a portion of the monthly payment stream from the pooled loans, although they were not typically entitled to the entire payment stream. The securitizer or the trust it controlled often retained an interest in any remaining payment streams not sold to security holders. These securitizations could involve the pooling of hundreds of thousands of loans, and the sale of many thousands of shares.

221. Defendants generated massive revenues through these loan securitizations. Its reported securities trading volume grew from 647 billion dollars in 2000, to 2.9 trillion dollars in 2003, 3.1 trillion in 2004, 3.6 trillion in 2005 and 3.8 trillion in 2006. (These values are by the Defendants and investors).

222. For the sale of whole (i.e. unsecuritized) loans, Defendants pooled loans and sold them in bulk to third-party investors, often, but not limited to, Wall Street firms. The sale

of whole loans generated additional revenues for Defendants. Defendants often sold the whole loans at a premium, meaning that the purchaser paid Defendants a price in excess of 100% of the total principal amount of the loans included in the loan pool.

223. The prices varied and were based on whether loans were FHA, prime or subprime, have an adjustable or fixed interest rate or prepayment penalty.

224. Defendants communicated with investors to determine what prices they would pay for loans with certain characteristics or securities backed by certain types of loans, so they could determine what loans would best sell on the secondary market for highest premiums.

225. Defendants also sold loans "forward" before loans were even funded by examining what types of loans would best sell during given periods of time.

226. Forward selling loans had stipulations. Defendants would agree to deliver a set number of adjustable rate mortgage loans for a certain interest rate, with 50% or so subject to prepayment penalty. Negotiations would then take place between Defendants and investors to sell the loans above the face value of the loans. I.e. investor agrees in advance to pay the amount above face value.

227. Defendants sent all data regarding the terms and revenue earned for each loan product was sent to their production department.

228. Defendants also originated as many loans as possible in order to generate more revenue from servicing the mortgages they sold. Defendants often maintained the right to service the loans it sold as pools of whole loans, where they charged the purchasers a monthly fee for such.

229. As more and more revenue was made, Defendants grew bolder and increased the number and percentage of loans to sell on the secondary market. Defendants Mozilo et al publicly declared that they would capture at least 30% of all mortgage loans and HELOCs in America.

230. In 2006, Defendants transferred more than 2.9 trillion dollars of American property owners equity to themselves, up from its $62 billion transferred in 2000.

231. Defendants encouraged its branch managers, loan officers and brokers, directly

and indirectly, to market loans which would generate the highest premiums on the secondary market without regard to borrower ability to repay. The amount of loans produced by branches determined the branch manager compensation. Branch managers then pressured loan officers to sell loans to maximize profits which caused aggressive marketing to consumers.

232. Defendants relaxed its underwriting standards in order to close more loans, while maintaining direct access to data that provided transparency to the connections between secondary market transactions, the loan production process and managerial and sales incentives.

VII. DEFENDANTS USED DECEPTIVE PRACTICES TO SALE COMPLEX AND RISKY LOANS TO PLAINTIFFS AND OTHER CONSUMERS

233. Defendants Mozilo, Sambol, Stumpf and Lewis, designed several loan products which were financially risky and difficult for borrowers to understand, particularly payment option and hybrid adjustable rate mortgages and HELOCs. And although Plaintiffs qualified for FHA or prime loans, they improperly incentivized subordinates as Colyer to move them in subprime category to receive commission of at least 0.50% of the loans value, compared to 0.20% commission in the next highest loan category. Additionally giving an extra 0.25% for signing them up for a HELOC.

A. The Pay Option ARM

234. After 2003, Defendants aggressively marketed its payment option adjustable rate mortgage ("ARM") by the direction, approval and ratification of defendants Mozilo, Sambol and Does who classified it as a "best" product which was intentionally designed to be complicated and entice consumers with temporarily low rate, before increasing dramatically.

235. When the teaser rate expired, the loan becomes an adjustable rate loan where the interest could change every month resulting in it actually being the worst product possible.

236. Defendants usually tied the ARMs to either the "MTA," "LIBOR" or "COFT" index. The MTA index is the 12-month average of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board. The LIBOR (London Interbank Offered Rate) index is based on rates

that contributor banks in London offer each other for inter-bank deposits. Separate LIBOR indices are kept for one month, six-month, and one-year periods, based on the duration of the deposit. For instance, the one-year LIBOR index reported for June 2008 is the rate for a 12-month deposit in U.S. dollars as of the last business day of the previous month. The COFI (11th District Cost of Funds Index) is the monthly weighted average of the interest rates paid on checking and savings accounts offered by financial institutions operating in the states of Arizona, Nevada and California.

237. Borrowers with ARMs usually have several payment options during the first five years of their loan. First there is the minimum payment which is the lowest payment presented and emphasized to the borrower in order to influence them to make this, and not the higher payments. In may be below interest or the same as interest on the loan.

238. Once the fifth year is up, the payment will be “recast” to be fully amortizing, causing a substantial jump in the payment amount which causes “payment shock.”

239. Defendants ensured that Plaintiffs and other borrowers will be faced with payments that are two-and-a-half times or greater than the initial payment, knowing that they will be unable to make such payments and negates their ability to refinance unless their home appreciated in value commensurately with the increased loan balance.

240. Defendants ensured that their underwriting process did not consider whether Plaintiffs or other borrowers would be able to afford the payment shock and in most cases where evidence exist which showed that borrowers would not be able to afford increased payments, Defendants created atmosphere which encouraged managers and loan officers to disregard such evidence.

241. Nearly all Defendants borrowers have or will experience payment shock and as of December 2007 91% of Defendants portfolio consisted of ARMs, many of which were made in California.

242. Defendants had a gross profit margin of approximately 4%, as compared to 2% of FHA mortgages, by encouraging their agents to place borrowers in higher cost loans after deceptively marketing ARMs to consumers.

243. Defendants used TV commercials and print advertisements emphasizing that payment rate could be as low as 1% and afford borrowers extra cash. Defendants did not effectively distinguish between the "payment rate" and the interest rate on the loans.

244. By emphasizing teaser rates, Defendants distracted borrowers from the fine print in loan documents. Defendants used smaller, fine print precisely to discourage the borrower from readying loan documents and composed them with verbose jargon to inhibit adequate understanding of the terms and financial implications for those who did suffer to read them.

245. Defendants Mazilo, Sambol and others enacted policies to further deceive the Plaintiffs and other borrowers by sending bills which only cited interest only payments in order to discourage the paying down of the loans principle amount due. Thus, a borrower would basically owe the same amount of money after 5 years that they owed from the outset.

246. Defendants and their brokers ("business partners") misrepresented or obfuscated the true terms of the ARMs, including but not limited to the amount of time that the interest rate would be fixed, the risk of interest only payments and that the minimum payment would not apply for the life of the loan.

247. Defendants Mazilo and Sambol encouraged their managers, such as defendant Colyer, to misrepresent or obfuscate how difficult it might be for borrowers to refinance.

B. <u>Hybrid ARM Loans</u>

248. Defendants signed borrowers to "2/28," "3/27" and other ARMs which operated where the interest rate would be fixed for the first 2, 3 or, as in Plaintiffs case, 5 years until the rate expired. Then the rate would adjust every six months or once per year for the next 28 or so years typically indexed to LIBOR plus adding a margin.

249. Defendants promulgated underwriting policies which intentionally ignored whether Plaintiffs or other borrowers could afford payments after loans fixed period was complete and only considered the minimum payment required during the initial signing in order to ensure that they are subjected to a never ending increase in monthly payments as well as payment shock.

250. Defendants signed Plaintiffs and other borrowers to 5/1, 7/1 or 10/1 interest only

loans which they marketed as fixed interest rates, but obfuscated that it was for only portion of full loan term. Again, Defendants intentionally ignored the fact that Plaintiffs et al would not be able to afford these loans after its fixed period and planned for them to experience payment shock and never increasing monthly payments or the lost of their home.

251. Defendants aggressively marketed and influenced their managers as Colyer, to sign up borrowers for their 80/20 loans which was referred to as piggies or piggyback loans or combo loans. i.e. The first loan covered 80% of the property's value while the piggy covered 20% or more, encumbering 100% of the home's appraised value.

252. Defendants ensured that Plaintiffs and other borrowers' monthly bills reflected only the interest as being due each month under the guise of "minimum payment due," in order to encourage them from paying down the HELOC, to earn as much interest as possible.

253. Defendants also marketed HELOCs as a financial instrument which could be used in lieu of or as one uses their checking accounts. i.e. have paychecks or other income electronically transferred to HELOC and pay all bills there from. Additionally, Defendants marketed HELOCs' as an instrument where all retail and other purchases could be made in order to write off a portion via taxes.

254. A borrower with an interest-only loan faces more severe payment shock when Defendants also signed them to a HELOC since this would mean dual increases. Defendants obfuscated this fact from Plaintiffs and other borrowers. Furthermore, Defendants ensured that Plaintiffs and other borrowers with piggyback HELOCs and interest-only payments on 1st loan, was not told that they would not be able to refinance unless home value increased.

VIII. COUNTRYWIDE EASED AND DISREGARDED UNDERWRITING STANDARDS IN ORDER TO INCREASE ITS MARKET SHARE

255. From 2003 through 2006, Defendants Mozilo, Sambol and other CHL defendants communicated on ways that they could increase market share. They each agreed to disregard industry as well as their own minimal underwriting criteria. Defendants Mozilo, Sambol and Does encouraged managers, such as defendant Colyer, to ease underwriting standards and documentation requirements, and although they received reports that such was

increasing borrowers' risks for losing their homes, Defendants repeatedly reaffirmed maintain low underwriting standards through 2008.

A. Countrywide's Low- Or Misrepresented-Documentation Loans

256. The banking industry normally requires mortgage borrowers to document their income and assets and to do so accurately. Defendants on the other hand disregarded such requirements with respect to their riskiest loans and designed several reduced or no documentation loan programs to ease and quicken the loan origination process and to deceive Plaintiffs and the public at large.

257. Defendants promulgated the policy: Stated Income Stated Assets ("SISA") where personnel were instructed to not verify borrowers' income and assets. Verbally confirm employment and in some cases, as in Plaintiffs, falsify or misrepresent their income.

258. Low- or Misrepresented-documentation programs as SISA allowed Defendants to process loans quicker and produce more. Defendants encouraged managers as defendant Colyer, loan brokers and officers to led borrowers' to "overstate" (falsify) their income or assets with- out explaining the risk of default that the borrower would face with a loan they could not afford. For instance, the loan officer would tell borrower that if they made X amount with their credit score, versus a higher X income amount, that their payments would be X amount higher.

259. Defendants promulgated unofficial policy directing loan officers, processors and underwriters to check www.salary.com to determine what income would be reasonable to cite.

B. Countrywide's Easing of Underwriting Standards

From on or about 2004 to 2008, Defendants communicated among each other about traditional underwriting standards used to decide acceptable versus unacceptable risk, and they agreed among themselves to relax such standards in order to produce more loans. As the market appetite increased for Countrywide's loans, Defendants relaxed their guidelines so that borrowers with a credit score of 680 or even less, could get a loan with 100% financing.

260. Defendants also relaxed qualifying interest rates (the rate used to determine whether borrowers can afford loans), loan-to-value ratios (the amount of the loan(s) compared

to lower of the appraised value or sale price of the property), and debt-to-income ratios (the amount of borrowers' monthly income compared to their monthly indebtedness).

261. Defendants Mozilo, Sambol, Colyer and others agreed with each other to underwrite loans without considering Plaintiffs and other borrowers' long-term financial circumstances. To and beyond 2007, Defendants approved ARMs and HELOCs despite the evidence that Plaintiffs and other borrowers' would not be able to afford the dramatic payment increases after the fixed rate period terminated or if they lost one income.

262. In 2003 defendants Mozilo, Sambol et al, authorized their agents to make the verification process more flexible so underwriters could approve loans faster. They approved a higher loan-to-value ("LTV") and combined loan-to-value (CLTV") ratios—the higher the ratio, the greater the risk that Plaintiffs will default and will be unable to refinance in order to avoid de- fault. Defendants also approved higher debt-to-income ("DTI") ratios—the higher ratio, the greater the risk Plaintiffs and other borrowers' will have cash-flow issues and miss mortgage payments.

C. <u>Countrywide's Exception Underwriting Compromised Standards</u>

263. Defendants approved loans known to have high risk and would end up in default once they agreed to disregard their own minimal underwriting standards as their own computerized underwriting system "CLUES" reported to them repeatedly.

264. CLUES was designed to issue loan analyses reports which rated borrowers' credit and ability to repay the loan and whether a loan was in accordance with Countrywide's underwriting guidelines. CLUES would recommend that the loan be declined, approved or sent for manual underwriting.

265. In this action CLUES flagged defendants that Plaintiffs credit score fell outside the guidelines for the loan product to which they provided them; however, defendants Colyer, with the full authorization of defendants Mozilo, Sambol and Does, directed their local underwriter (defendant Jane Doe) to disregard CLUES and Countrywide promulgated policies that were pertinent to financing a $739,000 home by borrowers with Plaintiffs income and credit, and do whatever was needed in order to circumvent CLUES report analysis.

266. Defendant Jane Doe was under intense pressure through policies and practices instituted by defendants Mozilo, Sambol and Does.

267. During March 2006, defendant Colyer asked defendant Jane Doe to assist him in falsifying Plaintiffs loan docs in accordance with Defendants' overall practice of falsifying borrowers loan documentation in order to ensure completion of risky loans.

268. Defendant Jane Doe informed Colyer that she would support him in his efforts to falsify Plaintiffs documentation, and she did so by adding on "compensating factors," to address the low FICO score and other issues affecting Plaintiffs credit status.

269. Defendants Mozilo, Sambol and others enforced unwritten policies that compelled underwriters to fund 50 and more loans per day, in order to ensure that careful consideration of borrowers' financial conditions and suitability of loan product for them would not occur.

270. At the same time, these defendants authorized branch managers, regional vice presidents et al to grant exceptions to Countrywide's minimal underwriting standards and to change the terms of a loan calculated by CLUES and create an environment where peer pressure would influence underwriters to disregard banking and finance codes on both federal and state levels.

271. Even if an underwriter got conscience, defendants Mozilo, Sambol and Does created Countrywide's Structured Loan Desk in Plano, Texas, to grant underwriting exceptions.

272. One of the manuals that defendants Mozilo, Sambol, Lewis, Stumpf et al promulgated or supported, states that a borrower with a family of four may obtain a loan even if the monthly mortgage payment left the family with only $1000 to live on for the month. A single borrower could obtain a loan even if they were left with only $550 for the month. Sales reps have been authorized to lend $500,000 to borrowers with a credit score of 500 and had late payments on a mortgage, filed for bankruptcy or otherwise been a known risk.

D. COUNTRYWIDE PUSHED "PIGGYBACK" LOANS TO DEVELOP LOANS WITH RISK-LAYERING

273. Defendants Mozilo, Sambol et al compromised underwriting standards further

by risk layering: i.e. combining high risk loans with relaxed underwriting standards that created a good likelihood that borrowers would lose their homes if the home did not appreciate.

274. The defendants promoted these loans to Plaintiffs and other borrowers which allowed for higher LTVs/CLTVs, less documentation and lower credit scores. Moreover, by accepting higher DTI ratios and combining Pay Option ARMs with second mortgages that allowed Plaintiffs to finance down payments, down payment, defendants qualified them with fewer resources and hence, a greater probability of default.

275. From 2007 to 2009, defendants Countrywide, BofA and Wells Fargo, have more than tripled the number of borrowers who have gone into default and foreclosures directly due to defendants practices herein. This is in addition to those going into default due to the economic down turn of 2008-09.

IX. COUNTRYWIDE OPENLY PRACTICED DECEPTIVE MARKETING STRATEGIES IN ORDER TO SELL INCREASING NUMBERS OF PREDATORY LOANS

276. Defendants Mozilo, Sambol and Does devised several deceptive marketing strategies in a concerted effort to produce greater market share.

A. Countrywide Used Public Deception To Lull Plaintiffs And Other Borrowers To Believe It Was "Trusted Advisor" Looking Out For Their Best Interests

277. These defendants sought to influence Plaintiffs and other borrowers that they were looking out for their best interest by certain solicitations produced through television, telemarketing, mail, radio and print advertisements: e.g. "the company you can trust" and touting "join the millions of home owners who have trusted Countrywide." Moreover, that they "had years to perfect [their] craft" and offered "industry leading expertise" with "over 35 years of service and one of the widest selections of loan programs, [they are] expert[s] at finding solutions for all kinds of situations." And promising they "would go the distance with you to help secure a loan program to fit your financial needs and goals."

278. During 2005 and 2006, Plaintiffs received over 15 telemarketing solicitations, more than 10 "Junk Mailings" and greater than 100 television advertisements presented by

defendants Mozilo, Sambol and others, designed to deceive them into believing Countrywide was the best financial option that they could take.

279. For example: defendant Colyer followed Companywide practice when he told Plaintiffs during February and March 2006 that "Countrywide goes out of its way to make certain that personnel like me are trained to be the best in the mortgage market… even if you are considering for someone else to do your loan, in this business you always want to get a second opinion, especially from someone who is honest because mortgages are so complicated."

280. Defendants Colyer, Sambol and Mozilo did not sell Plaintiffs and many other borrowers loans that were in their best interest or that was honest.

B. <u>Defendants' Promised And Often Did Serial Refinancing</u>

281. During 2006, 2007 and 2008, Plaintiffs had more than 20 communications with defendants Colyer and Does which promised and encouraged them to prepare for refinancing as part of their aggressive efforts to maintain a perpetual market for loans.

282. Pay Option and Hybrid ARMs were marketed to borrowers who could not afford the ultimate payment increase and would only afford such by refinancing which generated more pro- fits for defendants.

283. Defendants did all they could to not classify Plaintiffs and other borrowers as persons eligible for prime lending or FHA loan, and did all they could to classify them for subprime lending.

C. <u>Countrywide Misled Plaintiffs With Other Borrowers About The True Terms Of Pay Option And Hybrid ARM Loans By Emphasizing The Low Start Payments</u>

284. On or about January 2005, defendants Mozilo, Sambol and others held a series of meetings in Van Nuys, California and elsewhere to discuss how they would manipulate American consumers into buying deceptive loans from Countrywide; and during these meetings it was agreed by defendants to make every transaction as complicated as possible, train loan managers to motivate their loan officers to create excitement and urgency with borrowers and to draw borrowers attention exclusively to the initial low monthly payments and

rates the ARMs and Pay Option loans offered in order to obscure and misrepresent the actual risks that borrowers would be taking with such a loan.

285. Defendants adopted a sales tactic where personnel was to "sell the payment" by showing Plaintiffs other loan products that had larger payments compared to defendants minimum monthly. Defendants would then ask them which payment they desired, omitting any decision about the other differences between them.

286. Plaintiffs were told these things by defendant Colyer as well as how much they would save every month with the lower payment, while he avoided discussing payment shock, retend that their low payments would last for the entire term of the loan.

287. Defendant Colyer, following defendants Mozilo, Sambol et al practices, made deceptive representations by focusing Plaintiffs attention on the interest-only portion of ARM, not on how the payment would adjust to include principal and interest after the initial fixed-rate term. Defendants portrayed that payments would last for entire term of loan.

288. The defendants also deceptively focused Plaintiffs attention on the low interest rate they were providing for the first 3 and 5 years, without discussing that it would reset to a much larger rate which would last far longer period of time.

289.Defendants trained their loan officers to memorize scripts that focused borrowers attention on the low initial interest rate and minimum payment portion in order to induce dissatisfaction with loan products sold by other less deceptive mortgage companies.

290.Defendant Colyer claimed "I have helped hundreds of folks get from under bad mortgage companies who were charging them high interest rates which produced larger payments each month or gave new homebuyers such as yourselves [sic] the best loan they could find. I tell you what, I personally will guaranty to you that I can give you and your wife the lowest payment and rate. You just tell me your best offer and I'll beat it…." Colyer withheld the fact that Plaintiffs would not save money and that the ultimate payments would exceed anything other companies would have charged them.

291. Colyer also told Plaintiffs that they did not qualify for any other type of loan, but only subprime Option ARMs.

292. Defendants practice was to give borrowers a large stack of documents as they rushed them to sign them, in order to ensure that they did not read them, so they would not know that the initial rate would increase and become adjustable and that they were not paying off the principle and they performed this with the Plaintiffs as well.

293. Defendants received numerous complaints from borrowers reporting that they did not understand the terms of these ARMs, especially that the loan officers did not inform them about the rate increases and promised fixed-rate loans.

D. Defendants Misled Plaintiffs About Their Ability To Refinance In Order To Achieve Additional Savings On Loan Payments As Well As Before Rates Increased

294. Pursuant to practices or policies produced and promulgated by defendants Mozilo, Sambol and Does, defendant Colyer told Plaintiffs on more than 5 occasions from March to October 2006, that he and his organization guarantied the refinancing of their loan after one year, in order to give them "additional savings" on their mortgage.

295. When the Plaintiffs asked Colyer about the 3 year term limit of their HELOC and the 5 year fixed he emphatically told them several times, "don't worry about them, before they reach any of those dates we'll have you folks refinanced … I can guaranty that by next year this time we'll have you in the new conventional loan you want… Just make these payments for a year in order for your scores to go up which will make it a lot easier for us to give you a better loan product."

296. Colyer also represented to Plaintiffs that their home value would increase, "which would give you the equity needed to obtain a better loan and allow you to have extra cash to play around with… This is simply how the home market works."

E. Defendants Misled Plaintiffs About The Cost Of Reduced/No Document Loans

297. Defendants Mozilo, Sambol and Does encouraged defendant Colyer to urge Plaintiffs and other borrowers to "fastrack" their loans so they could catch the "deals" before they went away and secure their home quickly.

298. Plaintiffs were able to produce full documentation for a mortgage; however, once they submitted it to defendant Colyer, he claimed, "it's our policy at Countrywide to eliminate the

problems that normally occur with conventional loans by processing our loan products with little or no documentation… it really speeds up the loan process and if you really want to get in your new home, we have the quickest way for you to secure it."

299. Defendants Mozilo, Sambol and Does held monthly face-to-face and telephonic meetings from 2004 to 2006, where they developed all the practices and policies cited supra and targeted African-Americans and other minorities, elderly and women with these fastrack loans; however, concealed the fact that Plaintiffs and other borrowers qualified for lower rate or reduced fees if they applied for full documentation of income and assets.

F. Countrywide Misled Plaintiffs About HELOC Terms

300. All of the Defendants misrepresented the terms of HELOCs, such as in failing to inform Plaintiffs that by making only the minimum payment they would in fact be paying thousands of dollars of interest alone and none of the principle towards their home.

301. Additionally, that they would not have access to additional credit because they were at the full draw until they began to pay it down during 2007, or that they would not be able to draw funds at a later date because the term would end such.

302. Defendants also misrepresented or obfuscated the payment shock that Plaintiffs would face once the interest-only payment term was completed, as the large number of borrowers who called in to Defendants Call Center complaining how they did not understand how their payments only covered interest, or that their interest rates would adjust and increase.

303. Defendants Mozilo, Sambol, through Colyer, ensured that Plaintiffs would not receive a Right to Rescind notice that was filled in with any dates and when they repeatedly requested such throughout 2006, 2007 and 2008, were told that it was being sent and yet never was.

X. DEFENDANTS PRODUCED HIGH-PRESSURE SALES ENVIRONMENT REWARDING THOSE WHO SOLD AS MANY LOANS AS POSSIBLE WHERE BORROWERS ABILITY TO REPAY LOAN WAS IGNORED

304. Defendants' deceived Plaintiffs and other borrowers by bringing them into an environment they created which employed high-pressured sales tactics in order to mass produce loans without regard to their ability to repay and sustain homeownership, and supply defendants

Wells Fargo and BofA with an endless supply of loans that they supported by buying them on the secondary market.

305. Defendants created pressure through a compensation system, that compelled employees to disregard minimal underwriting standards and to originate loans without regard to their sustrainability. Defendants compensation system motivated loan officers to engage in the deceptive marketing and processing practices described in the aforementioned sections.

306. Defendants incentivized managers to place intense pressure on their subordinates to sell as many loans as possible, as quickly as possible, at the highest prices possible. Branch managers received commissions on bonuses based on the net profits and loan volume generated by their branches. They were only eligible for bonuses and commissions if they reached certain levels of production and was the only way to supplement a low base salary.

307. Defendants supplied computer tools that allowed managers to monitor loan sales daily so they could pressure loan officers, processors, and underwriters correspondingly "sell! Sell! Sell!" and determine through tools how much profit any loan would give; their branch performance then overlook, authorize or condone the false, deceptive and risky information employees provided to Plaintiffs and other borrowers.

308. Defendants ensured that all management pressured staff below them to sell and approve more loans, at highest prices, as quickly as possible to minorities and those of lesser education or of older age, in order to maximize their profits and undermine the American economy and minority ownership of homes.

XI. DEFENDANTS CONSPIRED TO DENY PLAINTIFFS AND OTHER MINORITIES THEIR RIGHT TO ENFORCE CONTRACTS AS OTHERS <u>AND TO BE TREATED AS OTHERS SIMILARLY SITUATED AS THEM</u>

309. On or about May 2004, defendants Sambol, Mozilo and Does held a series of meetings in California discussing their plans to secure a significant share of the real estate mortgage market. They told each other that they would do whatever it took in order to accomplish this mutual goal and as they were laying out their plans they discussed who would be the best target market for them to focus on, and both Sambol and Mozilo stated that it should be, "African-

Americans, Hispanics, Elderly, those with less education in the real estate market and certain women.” (Heretofore cited as Communities).

310. From 2004 to 2008, the Defendants instituted and maintained a massive marketing campaign which focused on these aforementioned Communities, and they encouraged their managers and other personnel to view those in these Communities differently than how they viewed White Americans who had more education and established some basis of wealth.

311. Defendants sold more Predatory loans to the Communities than any other mortgage lender, and produced more minorities going through or heading for foreclosure, modification or otherwise at risk of losing their homes.

312. Plaintiffs had what would have been characterized as “good credit” which qualified for a normal loan; however, Defendants processed them as if they had poor credit. Additionally, Plaintiffs currently have what could be classified as good to excellent credit; however, defendants continue to process them as if they have poor credit, not making available to them the options defendants afford their White American borrowers.

313. Per capita, Defendants place a higher percentage of those in the Community into ARMs and other predatory loans, then they place their White borrowers.

314. In May 2008, about 20,000 Californians lost homes to foreclosure, and about 72,000 California homes (about 1 out of 183 homes) were in default. This represents an 81% increase from May 2007, which was 1 of 308 homes, while 2007 was a 350% increase from May 2006.

315. Defendants mortgages account for the largest share of these defaults in that as of December 2007, 27.29% of its non-prime mortgages were delinquent and 26% of their loans originate in California.

316. In April 2008, Defendants loans increased in delinquency and foreclosure percentages with the vast majority in Alameda, Fresno, Riverside and San Diego, Community borrowers and with each passing day and month more and more minorities and others are falling victim to the discriminatory practices of Defendants.

317. On or about October 2007, the U.S. Securities and Exchange Commission began investigating defendants Mozilo, Sambol et al for insider trading and fraud and not until June

2009 did they bring fraud charges against Mozilo, Sambol et al.

318. In conducting their research and investigation for this action, the Plaintiffs went to every County Court in the Bay Area, Los Angeles, several counties in North Carolina, Illinois, New York, and read numerous borrowers civil actions against defendants Mozilo, CHL et al for fraud, misrepresentation et cetera since at least 2001, which clearly notified Mozilo, Sambol, Stumpf, Lewis et al about the fraudulent representations being made by direct CHL personnel as well as affiliate agents. They contacted National Consumer Advocates, The Center for Responsible Lending, and purchasing The Center for Public Integrity's report: *Who's Behind the Financial Meltdown?* Law Foundation of Silicon Valley, www.consumeraffairs.com/finance/countrywide_mortgage.html, and many other national and local consumer centered organization and consistently learned that Defendant Countrywide and later BofA was being used to as the Number One front for defrauding Americans of their money, equity and property, and Defendant Wells Fargo was being used by Stumpf et al as the Eighth largest front for defrauding Americans, each concealing the facts alleged herein.

319. On October 6, 2008, in an effort to avoid further public and official scrutiny, defendants Lewis, Mozilo, Sambol et al entered into a multi-state settlement with AG's from various states, which included a limited loan modification program that continued to allow defendants to steer borrowers into subprime loans.

320. As the public and state and Federal governments uncovered their activities to defraud Americans, and borrowers begin filing lawsuits against them, defendants Lewis, Mozilo, Sambol, Stumpf et al began taking actions to avoid the service of lawsuits personally on them, by switching residences frequently, instructing personnel of their Companies to not allow Process Servers access to them and otherwise avoid facing charges.

321. Both defendants Mozilo and Lewis have been subpoenaed before the U.S. Congress who have repeatedly stated that their testimonies were not believable and that it sounded as if they were perjuring themselves in relation to the activities they took on mortgages and tax dollars.

XII. CLAIMS

<u>FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS</u>

(Federal Truth In Lending Act Violations)

322. Plaintiffs re-alleges and incorporates by reference paragraphs 1 through 321 as though fully set forth herein.

323. The consumer credit transactions at issue herein was subject to Plaintiffs right to be truthfully informed about the transaction or their right to rescind 1st Mortgage and or HELOC loans within 3 days of closing escrow found under 15 USC § 1601 et seq.

324. The Defendants repeatedly violated TILA by imparting false or misleading statements to Plaintiffs in order to induce them to enter into a loan agreement that any reasonable person would not have entered into if they were truthfully informed of all the facts and information.

325. Defendants did act as creditor who regularly engaged in issuing loans, payable by agreement in installments or for which the payment of a finance charge is or may be required, either in connection with loans, sales of property or services or otherwise.

326. As such, Defendants are subject to TILA and its regulations under Federal Reserve Board Z, where they acquired an interest in Plaintiffs home, securing the payment or performance of an obligation and had the duty to disclose documents which plainly informed them of the finance charges and other information about the loan and its process.

327. Defendants violated TILA by providing false or misleading information during the course of the consumer credit transaction described supra or failing to deliver to Plaintiffs any filled in copies of their right to rescind because they knew they would not have accepted the loan if the true terms and conditions were disclosed.

328. Plaintiffs had a continuous right to rescind the transaction until the third business day after receiving both the notice and all "material" disclosures, which period extends up to 3 years after consummation of transaction if proper notice was not afforded.

329. During February 2009, Plaintiffs exercised this right by sending certified notice of rescission to Defendants who improperly ignored notice and failed to return more than $200,000 of monies Plaintiffs invested in property, making Defendants liable to Plaintiffs for:

a) Rescission of transaction; b) termination of the security interest in their home; c) Return all money Plaintiffs gave to Defendants, their agents, and others in connection with the home; d) Statutory damages of $2,000 for failure to reply to rescission notice; e) Forfeiture or return of loan proceeds; and, f) Costs.

330. Defendants Lewis and Stumpf knew or should have known, that defendants Mozilo, Sambol and Countrywide as a whole was violating Federal and State laws when hundreds then thousands of home owner complaints were filed in courts, media and within BofA and Wells Fargo themselves.

331. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

(REAL ESTATE SETTLEMENT PROCEDURES ACT Violations)

332. Plaintiffs realleges and incorporates by reference paragraphs 1 through 331 as though they were each fully set forth herein.

333. The mortgage loan which was issued by Defendants to the Plaintiffs was subject to Federal Disclosure laws and RESPA's prohibition against "markups," title insurance, right to review HUD documents and other provisions therein.

334. When the defendants failed repeatedly to disclose to the Plaintiffs, nearly 3 years, of their TILA and other documents which would illustrate exactly how much they would have to pay for mortgaging their home; when defendants repeatedly hid the fact that Plaintiffs would have to pay more than the amount showed on their payment statements in order to pay into the principle; when defendants obfuscated the fact that the monthly billing statements that they were paying and other information that Defendants did not disclose, they did violate 12 U.S.C. § 2601 et seq.

335. Defendants violated RESPA by not disclosing right to review HUD statement.

336. When the Defendants charged the Plaintiffs more than $15,000 in finance charges, cost for copying, insurance and other costs associated with the loan, which cost Defendants

significantly less, they passed on charges which falls within the definition of “markups” and were charges not actually earned for any service, they violated 8(b).

337. When the Defendants forced Plaintiffs to purchase title insurance from its chosen provider, without informing them that they had the option to purchase it on their own, they violated section 9 of RESPA.

338. When Defendants failed to respond to Plaintiffs repeated requests’ about their loan such as providing documents as well as disputing why Defendants were not living up to their promise to refinance, and disputing why their payments were not being applied to the principle of the loan, did violate section 6 of RESPA.

339. When Defendants entered into the agreement to have BofA and Wells Fargo personnel refer clients to Countrywide, while knowing that fees would be paid out, they violated RESPA’s kickback or splitting of fees provisions.

340. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

GENDER AND OR RACIAL DISCRIMINATION

341. Plaintiffs re-alleges and incorporates by reference paragraphs 1 through 340 as though fully set forth herein.

342. The Defendants implemented certain practices that they employed throughout the State of California and throughout the country which targeted African-Americans, certain females and others with predatory loan products they knew to be inferior to those loan products that they designated for more educated White Americans.

343. Defendants repeatedly processed these loan products in a manner which mislead and falsely represented qualities about themselves which, if known to Plaintiffs and other borrowers, would have caused them to not transact business with Defendants.

344. Defendants continuously met and discussed their practices against American minorities and repeatedly agreed to continue and increase their efforts of discrimination against Plaintiffs and other minorities in the forms described above, including the condoning, authorization or

support of co-defendants who conduct such practices and advertising campaigns.

345. Defendants also worked in concert with each other to take actions which denied Plaintiffs their right to enforce contracts as White Americans enjoy, when they prevented them access to their HELOC funds which was in fact their savings.

346. Defendants repeated and continuous acts or inactions of treating Plaintiffs differently than White Americans similarly situated, did violated their Equal Protection Rights.

347. Defendants knew or should have known that their discriminatory practices of targeting Plaintiffs for predatory loans, as they had targeted other minorities, was unlawful under U.S. laws and are liable for damages thereunder pursuant to 28 USC § 1343 and 42 USC §§ 1981 & 1985.

348. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17500 & 15 U.S.C. § 1125

(UNTRUE OR MISLEADING STATEMENTS)

349. Plaintiffs re-alleges and incorporates by reference paragraphs 1 through 348 as though fully set forth herein.

350. Defendants have violated and continues to violate Business and Professions Code **§** 17500, by making or disseminating untrue or misleading statements, or by causing untrue or misleading statements to be made or disseminated to Plaintiffs and other borrowers, with the intent to induce them to enter into or continue to accept mortgage loan and or HELOC transactions secured by their primary residences. These untrue and misleading statement include but are not limited to national and local advertising campaigns and personnel saying:

a. That Countrywide was a mortgage loan expert that could be trusted to help borrowers obtain loans that were appropriate to their financial circumstances;

b. Representations about the terms and payment obligations of the ARMs which obfuscated the fact that it would only go towards interest and not principle of the loan; and statements obfuscating the risks associated with such loans;

c. Statements misleading Plaintiffs to not understand that they were hiding for shock payments and victim America's chief Predatory lender who had no interest in seeing them as permanent homeowners, but were bent on defrauding them of their hard earned savings and earnings and undermine the American economy.

d. Promises that Plaintiffs would be able to refinance in one year into conventional loan and or lower interest rate loans.

e. Statements regarding the benefits and costs of reduced or no documentation loans and HELOCs.

351. Each of the Defendants knew, or by the exercise of reasonable care, should have known, that these statements, along with others, were untrue or misleading at the time they were made to the Plaintiffs and other borrowers.

352. Defendants Lewis and Stumpf knew or should have known, that defendants Mozilo, Sambol and Countrywide as a whole was violating Federal and State laws when hundreds then thousands of home owner complaints were filed in courts, media and within BofA and Wells Fargo themselves.

353. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200

(UNFAIR COMPETITION)

354. Plaintiffs realleges and incorporates by reference paragraphs 1 through 353 as though fully set forth herein.

355.Defendants Lewis and Stumpf knew or should have known, that defendants Mozilo, Sambol and Countrywide as a whole was violating Federal and State laws when hundreds then thousands of home owner complaints were filed in courts, media and within BofA and Wells Fargo themselves.

356. Defendants have engaged in, and continue to engage in, acts or practices that constitute unfair competition, as that term is defined in § 17200 of the Business and Professions Code. Such acts or practices include, but are not limited to:

a. Creating and maintaining deceptive scheme to mass produce loans for sale to defendants Wells Fargo, BofA and others on the secondary market;

b. Making untrue or misleading representations that Countrywide could be trusted to sell Plaintiffs loans that were appropriate for their financial circumstances;

c. Representations about the terms and payment obligations of the ARMs which obfuscated the fact that it would only go towards interest and not principle of the loan; and statements obfuscating the risks associated with such loans;

d. Statements misleading Plaintiffs to not understand that they were hiding for shock payments and victim America's chief Predatory lender who had no interest in seeing them as permanent homeowners, but were bent on defrauding them of their hard earned savings and earnings and undermine the American economy.

e. Promises that Plaintiffs would be able to refinance in one year into conventional loan and or lower interest rate loans.

f. Statements regarding the benefits and costs of reduced or no documentation loans and HELOCs.

g. Making loans and extending HELOCs without regard to Plaintiffs ability to afford payments after expiration of initial interest only terms, or the draw periods;

h. Aiding and abetting the breach of the fiduciary duty owed by mortgage brokers and lenders to California borrowers;

i. Failing to provide Plaintiffs with documents sufficient to inform them of their payment obligations with respect to fully drawn HELOCs;

j. Paying compensation to mortgage brokers, managers et al that was not reasonably related to the value of the services rendered;

k. Violating the Federal and state laws as described in the first 3 causes of actions.

357. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

15 U.S.C. § 1125 & CALIFORNIA CIVIL CODE § 1572 ET SEQ & 1709 ET SEQ

(FALSE ADVERTISING/MARKETING & DECEIT AND FRAUD)

358. Plaintiffs re-alleges and incorporates by reference paragraphs 1 through 356 as though fully set forth herein.

359. Defendants Lewis and Stumpf knew or should have known, that defendants Mozilo, Sambol and Countrywide as a whole was violating Federal and State laws when hundreds then thousands of home owner complaints were filed in courts, media and within BofA and Wells Fargo themselves.

360. Defendants have engaged in, and continue to engage in, acts or practices that constitute deceit, fraud or misrepresentations, as defined in 15 U.S.C. § 1525; California Civ. Code §§ 1572, 1573, 1709 and 1710. Such acts or practices include, but are not limited to the local and national advertising or personnel statements:

a. Creating and maintaining deceptive scheme to mass produce loans for sale to defendants Wells Fargo, BofA and others on the secondary market;

b. Making untrue or misleading representations that Countrywide could be trusted to sell Plaintiffs loans that were appropriate for their financial circumstances;

c. Representations about the terms and payment obligations of the ARMs which obfuscated the fact that it would only go towards interest and not principle of the loan; and statements obfuscating the risks associated with such loans;

d. Statements misleading Plaintiffs to not understand that they were hiding for shock payments and victim America's chief Predatory lender who had no interest in seeing them as permanent homeowners, but were bent on defrauding them of their hard earned savings and earnings and undermine the American economy.

e. Promises that Plaintiffs would be able to refinance in one year into conventional loan and or lower interest rate loans.

f. Statements regarding the benefits and costs of reduced or no documentation loans and HELOCs.

g. Making loans and extending HELOCs without regard to Plaintiffs ability to afford payments after expiration of initial interest only terms, or the draw periods;

h. Aiding and abetting the breach of the fiduciary duty owed by mortgage brokers and lenders to California borrowers;

i. Failing to provide Plaintiffs with documents sufficient to inform them of their payment obligations with respect to fully drawn HELOCs;

j. Paying compensation to mortgage brokers, managers et al that was not reasonably related to the value of the services rendered;

k. Promising the United States Congress and the President that they would honestly work with home loans under their care and refinance them or modify them in a way that will not be predatory or a burden to buyers, then taking billions of dollars of tax payer dollars with such assurances and instructing their staff to not make honest changes to home loans, for those in trouble such as Plaintiffs.

l. Violating the Federal and State laws as described in the first 5 and subsequent Causes of Actions supra and infra.

361. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATION OF CALIFORNIA CIVIL CODE §§ 3300 ET SEQ

(BREACH OF CONTRACT AND FIDUCIARY DUTY)

362. Plaintiffs re-alleges and incorporates by reference paragraphs 1 through 361 as though fully set forth herein.

363. On March 26, 2006, Plaintiffs entered into several agreements in writing and orally with Defendants directly or through their agents and all conditions precedent have been performed by Plaintiffs or have occurred.

364. Defendants have failed and neglected to perform the agreement, and continue to engage in, acts or practices that constitute Breach of Contract and Breach of Fiduciary Duty, as that term is defined in California Civil Code §§ 3300 et seq. when they took repeated acts or omissions including, but not limited to the following:

a. Promised orally and in writing to allow Plaintiffs to use the HELOC as a financial instrument which they could use as a Savings/Checking account throughout its term, and unilaterally rescinded the agreement without them Violating any part thereto;

b. Promised to treat Plaintiffs fairly by providing them with the best possible loan that existed on the market, then sold them one of the worst possible loans that anyone could have had and predatory in nature;

c. Promised to refinance Plaintiffs loans in one-year into a conventional 30-year fixed which would have dramatically lowered their rates and payments, then refused to do so as recently as January 2009;

d. Promised to initially give Plaintiffs a rate and payments that would range below $2,500 and gave them one twice the amount which would ultimately ballon to 3 or more times what was promised;

e. Established a relationship of trust in order to convince them to blindly commit to working with them, then misled and deceived him to overcharge them and otherwise charge them for services either not rendered, excessive or not disclosed clearly and openly.

f. Terminated Plaintiffs access to HELOC funds based on a false or fraudulent cause.

g. Plaintiffs having fulfilled all their promised obligations did not give cause to defendants to breach both the oral and written contracts.

365. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(DEBT COLLECTION PRACTICES)

366. Plaintiffs adopts and incorporates by reference paragraphs 1 through 365 as if they were fully set forth herein.

367. Plaintiff Merritt maintained within the safekeeping of defendant BofA, his funds which were to be paid out only upon his explicit authorization through signature.

368. That defendant BofA knew or should have known that Plaintiff's money and or credit was protected by Federal law and that no debt could be incurred on his behalf unless he so authorized.

369. As a result of defendant BofA's payment to Enterprise of monies it fraudulently sought, Plaintiff was forced to spend numerous hours and days arguing and pleading with Defendant to rectify the illegal payments and extension of credited funds to Enterprise, and ultimately bringing a Small Claims Action to do so himself.

370. Defendant BofA then began debt collection process from 2002 until 2009,

repeatedly compelling Plaintiff to spend over 1000 hours back and forth with credit bureaus, BofA personnel et al to repeatedly delete adverse marks on his report et cetera.

371. BofA's debt collection practices has been fraudulent and harassing Plaintiff for a debt that he does not owe and to which only BofA is responsible for.

372. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE

(Failure To Provide Disclosures)

373. Plaintiffs re-alleges and incorporates by reference paragraphs 1 through 372 as though fully set forth herein.

374. Defendants knowingly and willfully withheld certain key documents or information which should have been filled in documents, from Plaintiffs in order to ensure that they did not come to understand the predatory nature of the loan that was being provided them.

375. Defendants Lewis and Stumpf knew or should have known, that defendants Mozilo, Sambol and Countrywide as a whole was violating Federal and State laws when hundreds then thousands of home owner complaints were being reported in the courts, media and within BofA and WellsFargo.

376. Defendants did violate California Business and Professions Code 10240-10248.3, 12 CFR 226.23(a)(3), FDIC 6500 226.19 and 15 U.S.C. 1601.

377. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE

(Debt-To-Income Ratio)

378. Plaintiffs realleges and incorporates by reference paragraphs 1 through 377 as though fully set forth herein.

379. Each Defendant involved in structuring the Countrywide system to mass

produce predatory loans, processing Plaintiffs through such system as well as supporting this system by purchasing or otherwise participating in the loan process herein, they knew or should have known that they were violation California Civil Code 1920 (a) which prohibits lenders from structuring and affording a debt-to-income ratio where the likelihood of the Buyer being able to afford the loan is questionable.

380. Every Defendant knew or should have known that Plaintiffs were not able to afford the loan throughout its life, and were duty bound to either not approve, modify or otherwise rectify this once they became aware that all Countrywide predatory loans were done in such fashion.

381. Defendants violations were intentional, willful and wanton, justifying treble and punitive damages as well expenses and other costs.

ELEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

RICO VIOLATIONS – 18 U.S.C. § 1961 et seq.

382. Plaintiffs realleges and incorporates by reference paragraphs 1 through 381 as though fully set forth herein.

383. Defendants Mozilo, Sambol, Lewis, Stumpf, Colyer, Benson, Chen, along with defendants CHL, CFC, Wells Fargo, BofA and Does 1 to 100, make up “BofA Enterprise” whose activities affected interstate commerce and they also have an existence separate and distinct from the enterprise.

384. The BofA Enterprise was initially headed by defendant Mozilo and later turned over to defendant Lewis in July 2008. Its existence was based on steering as many borrowers as possible into inappropriate subprime loans in order to transfer the funds, equity and properties to BofA Enterprise and its agents. This enterprise would never been able to exist without the cooporation of lower-level defendants such as Chen, Colyer, Benson, Doe 1 et al.

385. BofA Enterprise was controlled by these defendants issuance of loan officers sales manuals; paying higher commissions for subprime versus FHA or prime loans and trips to Las Vegas; falsifying or misrepresenting loan documents and information told to borrowers; using CLUES system for processing loans; creating a Companywide culture that encouraged

personnel to see borrowers as Marks who could be preyed upon; massive mail, television, telephone and other marketing campaign efforts and to have a front Company name that was branded as a trustworthy place for borrowers to come.

386. Through the use of United States mail, telephones, faxes, financial wire transfers, defendants have engaged in racketeering activities which transferred billions of dollars from Plaintiffs and other American borrowers, and into the hands of themselves and their BofA Enterprise.

387. To execute or attempting to execute the fraud described herein, or to obtain money/equity by false pretenses, misrepresentations or false promised, the Defendants, in violation of 18 U.S.C. § 1341, placed or caused to be placed via their agents, into post offices and or authorized repositories, matter and things from the Postal Service or commercial interstate carriers, including but not limited to loan application, agreements, manuals, promotional materials and correspondence.

388. To execute or attempting to execute the fraud described herein, or to obtain money/equity by false pretenses, misrepresentations or false promised, the Defendants, in violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things, including but not limited to loan application, agreements, manuals, promotional materials and correspondence.

389. Other matter and things sent through or received via the Postal Service, commercial carrier, wire, or other interstate electronic media by Defendants included information or communications in furtherance of or necessary to effectuate the scheme.

390. Defendants' misrepresentations, acts or omissions of concealment and failures to disclose were knowing and intentional, and made for the purpose of deceiving Plaintiffs and other Americans to obtain equity and property for their gain.

391. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material, and Plaintiffs relied upon them as set forth supra and was injured severely and repeatedly through the arduous financial

and emotional sacrifices they had to make for 3 years, only to learn they owe more on their loans then they started out with.

392. Defendants engaged in a pattern of racketeering activity as defined by 18 U.S.C. § 1961(5), by committing at least two acts of racketeering activity, i.e. indictable violations of 18 U.S.C. § 1341 and 1343 as aforementioned. In fact hundreds of acts has been committed with each being related with a similar purpose in mind, involving the same or similar participants and method of commission, producing similar results repeatedly from 2006 to 2009.

393. The multiple acts of racketeering activity that Defendants committed and or conspired to commit were related to each other, and amount to and pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5).

394. Alternatively, 18 U.S.C. § 1962© of RICO mandates that it "shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity…."

395. Through the allegations above, the Defendants have also conducted and participated in the affairs of BofA Enterprise.

396. Section 1962(d) makes it illegal "for any person to conspire to violate any of the provisions of subsection (a), (b) or (c), of this section."

397. Defendants' conspiracy to secure money from Plaintiffs through the fraudulent scheme articulated above violates section 1962(d).

398. Every defendant agreed to participate, directly or indirectly, in the conduct of the affairs of the BofA Enterprise, or in the alternative, the BofA Enterprise through a pattern of racketeering activity comprised of numerous acts of mail and wire fraud, and each Defendant so participated in violation of 18 U.S.C. § 1962©.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment as follows:

1. That all the Defendants, their employees, agents, representatives, successors, assigns, and all persons who act in concert with them be permanently enjoined from taking any more discriminatory acts, intentional or otherwise, against the Plaintiffs.

2. That all the Defendants, their employees, agents, representatives, successors, assigns, and all persons who act in concert with them be permanently enjoined from making further untrue or misleading statements to Plaintiffs.

3. That all the Defendants, their employees, agents, representatives, successors, assigns, and all persons who act in concert with them be ordered to make restitution to Plaintiffs for the financial, emotional and other damages they incurred from the experience in amounts they paid out from the outset to defendants.

4. Enjoin defendants BofA and Lewis to clear its books of debt assigned to Plaintiff and to cease and desist from any further collection attempts and ensure that the Credit Bureaus erase any and all mention of negative reports in connection with BofA debt.

5. That all the Defendants, their employees, agents, representatives, successors, assigns, and all persons who act in concert with them be directed to return all monies Plaintiffs invested in their property (more than $200,000), and effect the rescission of the loan in a manner which would restore Plaintiffs to pre-loan status and allow Defendants to take full ownership and control of property; or, alternatively, afford Plaintiffs a Prime loan at current market rates, then retroactively calculated from origination date of March 27, 2006, and reimburse them the extra funds that has been paid to Defendants.

6. Order that Defendants compensate Plaintiffs an additional $250,000 for the lost they incurred in having their time and funds tied up or invested in Defendants predatory and deceptive practices.

7. Order Defendants to pay punitive damages of $2,000,000 for the racial or other discrimination they inflicted upon Plaintiffs as well as for the pain and suffering which caused emotional distress.

8. Pursuant to Business and Professions code 17536, that each Defendant be ordered to pay a civil penalty of $2,500 for each violation of section 17500.

9. Pursuant to Business and Professions code 17536, that each Defendant be ordered to pay a civil penalty of $2,500 for each violation of section 17200.

10. To pay treble damages for those statutes calling for such.

11. To either take back the home they purchased, or refinance it at current market value.

12. That Plaintiffs recover its costs of suit, including costs of investigation and other expenses.

13. Afford trial by jury.

14. Order any other and further relief that the Court deems just, proper and equitable.

Respectfully submitted,

Dated: June 19, 2009

Salma Merritt, Pro se

David Merritt, Pro se