

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

RANDY EBERENZ and ANGELA )  
EBERENZ, individually and on behalf )  
of all others similarly situated, )

Plaintiffs, )

vs. )

ST. LOUIS FINANCIAL SERVICES )  
LLC d/b/a ST. LOUIS FINANCIAL )  
SERVICES, )

Serve: )

Registered Agent )  
Joseph Hart )  
7375 Delmar, Apt. 3 )  
St. Louis, MO 63130 )

CURTIS GRAHAM d/b/a ST. LOUIS )  
FINANCIAL SERVICES, )

Serve: )

Curtis Graham )  
10820 Sunset Office Dr., #224 )  
Sunset Hills, MO 63127 )

and )

COUNTRYWIDE HOME LOANS, INC., )  
individually and on behalf of all others )  
similarly situated, )

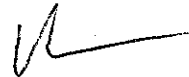
Serve: )

Registered Agent )  
Prentice-Hall Corp. Systems, Inc. )  
221 Bolivar Street )  
Jefferson City, MO 65101 )

Defendants. )

075L-0000992

Cause No.



Division:

11

JURY TRIAL DEMANDED

**PETITION FOR INDIVIDUAL AND CLASS ACTION RELIEF**

Plaintiffs Randy Eberenz and Angela Eberenz ("Borrowers"), pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and Section 407.025, RSMo.,

individually and on behalf of all others similarly situated (jointly, “Borrowers”), and for their petition against Defendant St. Louis Financial Services LLC d/b/a St. Louis Financial Services, or alternatively, Curtis Graham d/b/a St. Louis Financial Services (“St. Louis Financial”), and Defendant Countrywide Home Loans, Inc. (“Countrywide”), individually and, pursuant to Section 407.025.2, RSMo., on behalf of a defendants’ class (the “Defendants’ Class”) consisting of all other lenders from whom St. Louis Financial receives rate sheets and with whom it arranges home loans at interest rates above the lender’s par rate without disclosing the par interest rates and additional interests costs to Borrowers, doing business in the State of Missouri similarly situated (Countrywide and the members of the proposed Defendants’ Class are referred to herein jointly as “Lenders”) states:

### **Introduction**

1. St. Louis Financial and Lenders are engaged in the business of brokering or making home loans in the State of Missouri. Some of the home loans are extensions of credit for the purchase of residential property; others are extensions of credit to refinance existing debt.

2. St. Louis Financial is a mortgage broker who arranges home loans for borrowers. As a broker, St. Louis Financial owes a fiduciary duty to obtain the least expensive loan available to its customers. As a general business practice, St. Louis Financial relies on par rate quotes or rate sheets issued by Lenders. The term “par rate” is the interest rate Lender offers to a broker through the Lender’s quotes or rate

sheets at which Lender will fund Borrower's loan with no premiums or discounts to the broker.

3. Countrywide and the other members of the proposed Defendants' Class are mortgage lenders. Each time the broker arranges a home loan where the interest rate on the loan exceeds the par rate, the Lenders, as a general business practice, accept the benefit of the higher interest rate and compensate the mortgage brokers. This compensation is commonly known as a "yield spread premium."

4. A Lender's payment of a yield spread premium to a mortgage broker is ordinarily shown on the borrower's settlement statement.

5. This action is brought by Borrowers against St. Louis Financial and Lenders to recover for themselves and for all other similarly situated (hereinafter, the "Plaintiffs' Class") damages resulting from St. Louis Financial's practice of not placing its customers in loans which are not the least expensive loans available to such customers and failing to disclose the par rate, and St. Louis Financial's agreement with the Lenders to accept compensation for steering its customers to these more expensive loans. Borrowers contend that such practice is a breach of St. Louis Financial's fiduciary duty to Borrowers and that Lenders are also liable for agreeing with St. Louis Financial to engage in this course of action and thereby conspiring to unlawfully assist it in its breach of fiduciary duty. Borrowers also contend that Lenders are liable for failing to disclose the par rate. Borrowers further contend that damages to Borrowers and to the other members of Plaintiffs' Class are the present value of the difference between the amount of interest due under each Class member's home loan with

Lenders and the amount of interest due at the Lender's par rate and the amount of such excess interest paid to date.

6. For the reasons stated in more detail below, this case is properly brought as a class action.

### **The Parties**

7. Borrowers are citizens of the State of Missouri residing in St. Louis County.

8. Defendant St. Louis Financial is a Missouri limited liability company with its principal place of business in St. Louis County or, alternatively, Defendant Curtis Graham, on information and belief, is an individual residing and doing business as St. Louis Financial Services in St. Louis County.

9. Defendant Countrywide is a foreign corporation with its principal place of business in Calabasas, California.

### **Jurisdiction and Venue**

10. This Court has jurisdiction over each of the defendants because each transacts business within the State of Missouri, enters into contracts within the State of Missouri, and as alleged herein, has committed the acts which are the basis for each defendants' individual liability within the State of Missouri.

11. Venue is proper in this Court because many of the causes of action alleged accrued in St. Louis County and many of the defendants have or usually keep an office or agent for the transaction of their usual and customary business in St. Louis County. events giving rise to these claims occurred in St. Louis County.

## **Factual Allegations Related to Borrowers**

12. At all times relevant, St. Louis Financial had an agreement and understanding with Countrywide whereby St. Louis Financial arranged loans for borrowers at interest rates higher than Countrywide's par rate and without fully disclosing the par rate, and in exchange Countrywide accepted the benefit of the higher interest rate and agreed to compensate St. Louis Financial for steering the Borrower to more expensive loans.

13. On or about November 26, 2002, Borrowers borrowed money from Countrywide to refinance their home at 10095 Thorpe Avenue in St. Louis County, Missouri. In this transaction, St. Louis Financial as Borrowers' mortgage broker obtained a home loan from Countrywide with an interest rate higher than Countrywide's par rate without disclosing the par rate available to Borrowers and Countrywide made the loan at an interest rate above the par rate and paid St. Louis Financial a yield spread premium.

### **Class Action Allegations: Plaintiffs' Class**

14. At all times relevant, St. Louis Financial had agreements with the other Lenders under which St. Louis Financial arranged loans for borrowers at interest rates higher than the par rate and in exchange Lenders accepted the benefit of the higher interest rate and paid St. Louis Financial a portion of this benefit in the form of a yield spread premium.

15. St. Louis Financial acted as mortgage broker for members of Plaintiffs' Class and obtained home loans from Lenders with interest rates higher than Lender's

par rate without disclosing to the Class member the lower available rate and was paid a yield spread premium by Lenders.

16. Borrowers propose to represent a Plaintiffs' Class consisting of all persons within the State of Missouri for whom, during the five years prior to the filing of this lawsuit, St. Louis Financial acted as mortgage broker and (a) arranged a home loan with an interest rate higher than the Lender's par rate, (b) failed to disclose the par rate to Borrowers, and (c) was paid a yield spread premium by Countrywide or another member of the proposed Defendants' Class.

17. Upon information and belief, the Plaintiffs' Class consists of many thousands of individuals, and the members of the Plaintiffs' Class are so numerous that it is impractical to bring all of them before the Court in this action. Moreover, the amount of damages suffered by each member of the proposed Plaintiffs' Class is so small as to make suit for its recovery by each individual Plaintiffs' Class member economically unfeasible.

18. Borrowers are similarly situated to the members of the Plaintiffs' Class and will fairly insure adequate representation of all of the Plaintiffs' Class members.

19. There are common questions of law and fact applicable to the claims asserted on behalf of the Plaintiffs' Class and the defenses asserted on behalf of the Defendants' Class. Those questions include the following:

- a. Whether St. Louis Financial acted as mortgage broker for Borrowers and the other members of Plaintiffs' Class;
- b. Whether St. Louis Financial obtained home loans for Borrowers and the other members of Plaintiffs' Class with interest rates

higher than Lender's par rate and was paid a yield spread premium by a Lender;

- c. Whether St. Louis Financial as a mortgage broker owed Borrowers and the other members of Plaintiffs' Class a fiduciary duty;
- d. Whether St. Louis Financial's practice of obtaining home loans for Borrowers and the other members of Plaintiffs' Class with interest rates higher than the Lender's par rate is a breach of St. Louis Financial's fiduciary duty;
- e. Whether St. Louis Financial and Lenders had agreements and an understanding to perform the acts of St. Louis Financial's breach of fiduciary duty and performed acts in furtherance of the agreements;
- f. Whether this action is maintainable as a plaintiffs' class action;
- g. Whether this action is maintainable as a defendants' class action;
- h. Whether the members of the Plaintiffs' Class are entitled to recovery against St. Louis Financial for actual and punitive damages and an award of attorney's fees under the MDA, Section 407.025, RSMo.; and
- i. Whether the members of the Plaintiffs' Class are entitled to recovery against Lenders for actual and punitive damages and an award of attorney's fees under the MDA, Section 407.025, RSMo.

20. Proposed lead counsel for the proposed Plaintiffs' Class, Green Jacobson & Butsch, P.C., are experienced and knowledgeable concerning this type of litigation, and will fairly and adequately represent the interests of the proposed Plaintiffs' Class.

21. The questions of law and fact common to the members of the proposed Plaintiffs' Class predominate over any questions of fact affecting any individual member of the proposed Plaintiffs' Class, and a class action is superior to other

available methods for the fair and efficient resolution of this controversy. No unusual difficulties are anticipated in the management of this case as a class action.

22. This action is maintainable as a plaintiffs' class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and pursuant to Section 407.025.2, RSMo.

**Class Action Allegations: Defendants' Class**

23. This action is maintainable as a defendants' class action pursuant to Section 407.025.2, RSMo. Defendant Countrywide is similarly situated to the other Lenders not individually-named as defendants in this action, as Countrywide and the members of the proposed Defendants' Class each had an agreement and understanding with St. Louis Financial to arrange home loans between members of Plaintiffs' Class and the Lender at interest rates higher than the Lender's par rate in exchange for payment of a yield spread premium to St. Louis Financial. The grounds for liability and any defenses against liability are likely to be substantially the same.

24. Upon information and belief, Countrywide and the other Lenders engage in many hundreds of home purchase and home refinance loan transactions in Missouri each year.

25. On information and belief, Countrywide and the other Lenders who are members of the proposed Defendants' Class have for many years routinely and regularly agreed and had an understanding with St. Louis Financial to offer and arrange home loans between Lenders and members of the Plaintiffs' Class at interest rates higher than Lender's par rate without disclosing Lender's rate sheet or the lower



available rate to the Class and have accepted the benefits of the higher interest rates paid by Borrowers and have paid St. Louis Financial yield spread premium fees in furtherance of the agreement and understanding.

26. Countrywide represents a typical Lender who would be a member of the proposed Defendant Class, has experience as a defendant in consumer class actions, and will fairly and adequately represent the interests of the whole proposed Defendants' Class.

27. The acts done or omitted by Countrywide and the other Lenders who are member of the proposed Defendants' Class as alleged herein were not in good faith in conformity with any applicable rule, regulation or interpretation thereof.

### **Count I (Constructive Fraud)**

For their first and separate claim against defendant St. Louis Financial, Borrowers, individually and on behalf of the other members of Plaintiffs' Class, state:

28. Borrowers restate and incorporate by reference the preceding allegations as though fully restated herein.

29. Under Missouri law, mortgage brokers owe a fiduciary duty to their clients, and St. Louis Financial acting as mortgage broker for Borrowers and the other members of Plaintiffs' Class owed each of them a fiduciary duty to act with the utmost good faith, fidelity and loyalty in representing the interests Borrowers and the other members of Plaintiffs' Class and to exercise reasonable skill, diligence and care.

30. St. Louis Financial breached its fiduciary duty to Borrowers by:

- a. Failing to fully disclose Lenders' rate sheets and par rates to Borrowers;
- b. Placing Borrowers in mortgage loans with interest rates higher than the lowest rate for which Borrowers qualified;
- c. Failing to place Borrowers in a mortgage loan with the lowest interest rate available;
- d. Placing its financial interests before its duty to act in the Borrowers' best interests;
- e. Failing to fully provide Borrowers with all information available concerning Lender's rate sheets and par rate for which Borrowers qualify; and
- f. Failing to fully disclose to Borrowers the additional interest expense from having a loan at a rate higher than the lowest rate for which Borrower qualified.

31. St. Louis Financial's actions caused Borrowers to obtain loans from Lenders at interest rates that exceeded Borrowers' lowest available rates.

32. As a proximate result of St. Louis Financial's actions, Borrowers and the other members of Plaintiffs' Class were damaged.

33. Borrowers and each member of the Plaintiffs' Class are entitled to an award of punitive damages because St. Louis Financial intentionally ignored its duty to obtain home loans at the best interest rates available to Borrowers and purposefully engaged in a systematic and improper pattern of arranging loans for Borrowers with excessive interest rates that St. Louis Financial knew would result in Borrowers

paying additional and unnecessary interest on their home loans and therefore its actions were malicious, dishonest, outrageous, willful and fraudulent and were committed with evil motive and the intent of causing injury to Borrowers and with reckless indifference to and a disregard of Borrowers' rights.

WHEREFORE, plaintiffs Randy Eberenz and Angela Eberenz, on behalf of themselves, and on behalf of each member of the proposed Plaintiffs' Class, pray that the Court grant the following relief:

a. Enter an order certifying this action as a plaintiffs' class action, and appointing the named plaintiffs as representatives of the Plaintiffs' Class;

b. Enter an order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;

c. Enter judgment in favor of plaintiffs and the members of the Plaintiffs' Class and against defendant St. Louis Financial Mortgage, Inc., for actual damages in the sum to be proven at trial and equal to the amount of excess interest paid and the present value of the difference between the amount of interest due under each Class member's home loan with Lenders and the amount of interest due at the Lender's par rate;

d. Enter judgment in favor of plaintiffs and the members of the Plaintiffs' Class and against defendant St. Louis Financial for punitive damages totaling the sum of three times each Class members' damages;

e. Enter judgment awarding class counsel from a common fund reasonable attorneys' fees and all expenses of this action and to require defendant St. Louis Financial to pay the costs and expenses of class notice and claim administration; and

f. Award plaintiffs and the members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief as to which they may be entitled.

**Count II**  
**(Civil Conspiracy)**

For their second and separate claim against defendant St. Louis Financial and Lenders, Borrowers, individually and on behalf of the other members of Plaintiffs' Class, state:

34. Borrowers restate and incorporate by reference the preceding allegations as though fully restated herein.

35. St. Louis Financial entered into agreements with each of the Lenders to arrange home loans between Borrowers and the Lender with interest rates above the Borrowers' par interest rate in exchange for payment of a yield spread premium from Lender.

36. At all times relevant, Lenders knew or should have known that in Missouri a mortgage broker owes a fiduciary duty to a client and that Borrowers were St. Louis Financial's clients.

37. St. Louis Financial and Lenders combined and conspired to wrongfully arrange home loans between Borrowers and Lenders with interest rates in excess of

Borrowers' par interest rates in contravention of St. Louis Financial's fiduciary duty to Borrowers.

38. In furtherance of this conspiracy, Lenders made loans to Borrowers at the inflated interest rates, accepted the benefits of the higher interest rates paid by Borrowers, and paid St. Louis Financial yield spread premiums.

39. Borrowers and each member of the Plaintiffs' Class are entitled to an award of punitive damages because St. Louis Financial and Lenders intentionally ignored St. Louis Financial's fiduciary duty to obtain home loans at the best interest rates available to Borrowers and purposefully engaged in a systematic and improper pattern of arranging loans with Borrowers carrying excessive interest rates that St. Louis Financial and Lenders knew would result in Borrowers paying additional and unnecessary interest on their home loans and therefore their actions were malicious, dishonest, outrageous, willful and fraudulent and were committed with evil motive and the intent of causing injury to Borrowers and with reckless indifference to and a disregard of Borrowers' rights.

WHEREFORE, plaintiffs Randy Eberenz and Angela Eberenz, on behalf of themselves, and on behalf of each member of the proposed Plaintiffs' Class, prays that the Court grant the following relief:

- a. Enter an order certifying this action as a plaintiffs' class action, and appointing the named plaintiffs as representatives of the Plaintiffs' Class;
- b. Enter an order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;

c. Enter an order certifying this action as a defendants' class action, and finding that the named defendant is representative of the Defendants' Class, and that the named defendant has been fairly chosen and adequately and fairly represents the interests of the Defendants' Class members not named as a defendant in this action;

d. Enter judgment in favor of plaintiffs and the members of the Plaintiffs' Class and against defendant St. Louis Financial Mortgage, Inc., and Lenders, jointly and severally, for actual damages in the sum to be proven at trial and equal to the excess interest paid and the present value of the difference between the amount of interest due under each Class member's home loan with Lenders and the amount of interest due at the Lender's par rate;

e. Enter judgment in favor of plaintiffs and the members of the Plaintiffs' Class and against defendants St. Louis Financial and Lenders, jointly and severally, for punitive damages totaling the sum of three times each Class members' damages;

f. Enter judgment awarding class counsel from a common fund reasonable attorneys' fees and all expenses of this action to be paid by defendants St. Louis Financial and Lenders, jointly and severally, and to require such defendants to pay the costs and expenses of class notice and claim administration; and

g. Award plaintiffs and the members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief as to which they may be entitled.

**Count III**  
**(Violation of Section 407.010, *et seq.*, RSMo.)**

For their third and separate claim against defendants Countrywide and other members of the proposed Defendants' Class, Borrowers, individually and on behalf of the other members of Plaintiffs' Class, states:

40. Borrowers restate and incorporate by reference the preceding allegations as though fully restated herein.

41. This count is alleged against Countrywide and all members of the proposed Defendants' Class who are not under the direction and supervision of the director of the division of credit unions or the director of the division of finance.

42. By combining and conspiring to wrongfully arrange home loans between Borrowers and Lenders with interest rates in excess of Borrowers' par interest rates in contravention of St. Louis Financial's fiduciary duty to Borrowers, Countrywide and the other above-referenced members of the proposed Defendants' Class engaged in a deception and an unfair practice in connection with the sale of merchandise in trade or commerce, as those terms are used and defined in the Missouri Merchandising Practices Act, § 407.010, *et seq.*, RSMo.

43. Defendant Countrywide and the other members of the proposed Defendants' Class violated the Missouri Merchandising Practices Act by conspiring with St. Louis Financial to arrange home loans between Borrowers and the members of the Plaintiffs' Class at interest rates exceeding the par interest rate available.

44. Borrowers and each member of the Plaintiffs' Class have thereby been damaged.

45. Borrowers and each member of the Plaintiffs' Class are entitled to an award of punitive damages because Countrywide and the other above-referenced members of the proposed Defendants' Class intentionally conspired with St. Louis Financial to breach its fiduciary duty to obtain home loans at the best interest rates available to Borrowers and purposefully engaged in a systematic and improper pattern of arranging loans with Borrowers carrying excessive interest rates that St. Louis Financial and Lenders knew would result in Borrowers paying additional and unnecessary interest on their home loans and therefore their actions were malicious, dishonest, outrageous, willful and fraudulent and were committed with evil motive and the intent of causing injury to Borrowers and with reckless indifference to and a disregard of Borrowers' rights.

WHEREFORE, plaintiffs Randy Eberenz and Angela Eberenz, on behalf of themselves, and on behalf of each member of the proposed Plaintiffs' Class, pray that the Court grant the following relief:

- a. Enter an order certifying this action as a plaintiffs' class action, and appointing the named plaintiffs as representatives of the Plaintiffs' Class;
- b. Enter an order appointing Green Jacobson & Butsch, P.C. as counsel and lead counsel for the Plaintiffs' Class;
- c. Enter an order certifying this action as a defendants' class action, and finding that the named defendant is representative of the Defendants' Class, and that the named defendant has been fairly chosen and adequately and fairly represents the interests of the Defendants' Class members not named as a defendant in this action;



d. Enter judgment in favor of plaintiffs and the members of the Plaintiffs' Class and against defendant Countrywide Home Loans, Inc., and the other above-referenced members of the proposed Defendants' Class for actual damages in the sum to be proven at trial and equal to the excess interest paid and the present value of the difference between the amount of interest due under each Class member's home loan with Lenders and the amount of interest due at the Lender's par rate;

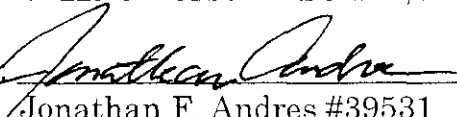
e. Enter judgment in favor of plaintiffs and the members of the Plaintiffs' Class and against Countrywide and the other above-referenced members of the proposed Defendants' Class, for punitive damages totaling the sum of three times each Class members' damages;

f. Enter judgment awarding class counsel and associate class counsel reasonable attorneys' fees and all expenses of this action to be paid by Countrywide and the above-referenced members of the proposed Defendants' Class and to require the named defendants and the members of the Defendants' Class to pay the costs and expenses of class notice and claim administration; and

g. Award plaintiffs and the members of the Plaintiffs' Class prejudgment interest, post-judgment interest, costs, and any further and additional relief as to which they may be entitled.

Respectfully submitted,

GREEN JACOBSON & BUTSCH, P.C.

By  \_\_\_\_\_

Jonathan F. Andres #39531

Fernando Bermudez #39943

Matthew R. Fields #50561

7733 Forsyth Blvd., Suite 700

Clayton, MO 63105

Tel: (314) 862-6800

Fax: (314) 862-1606

andres@stlouislaw.com

bermudez@stlouislaw.com

fields@stlouislaw.com