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VENTURA  
SUPERIOR COURT  
FILED

NOV 21 2007

MICHAEL D. PLANET  
Executive Officer and Clerk  
Deputy

BY: Denise M. Lugo  
DENISE M. LUGO

D.C.M TRACK ASSIGNMENT  
 UNLAWFUL DETAINER  
 EXPEDITED  
 ECONOMIC  
 STANDARD  
 UNEMPLOYED MOTORIST  
 TRUCK LOGS TO NOTIFY

READ THE VENTURA COUNTY  
LOCAL RULES THAT GOVERN  
COMPLIANCE WITH FAST TRACK

ASSIGNED COURT 41

8 SUPERIOR COURT OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF VENTURA

11 LOURDES MELENDEZ, and JOSE  
12 MELENDEZ,

13 Plaintiffs

14 vs.

15 U.S. BANK NATIONAL ASSOCIATION  
16 AS TRUSTEE, by BARKLAYS CAPITAL  
17 REAL ESTATE INC., dba HOMEQ  
18 SERVICING, ITS ATTORNEY IN FACT;  
19 QUALITY LOAN SERVICE  
20 CORPORATION; MILLENIUM LOANS,  
21 INC. a California Corporation, NICKI  
22 BAHMANI; AZIMA INVESTMENTS, INC.,  
23 JOHN SPEAR; YEKTA AZEMA;  
24 COUNTRYWIDE HOME LOANS; Encore  
25 Credit Corp, a California Corporation; and  
26 DOES 1 through 30, inclusive,

27 Defendants.

Case No.  
56-2007-00307974-CU-OR-VTA

**VERIFIED COMPLAINT:**  
RESCISSION AND DAMAGES FOR  
VIOLATION OF THE TRUTH IN  
LENDING ACT; CALIFORNIA  
LANGUAGE DISCLOSURE  
REQUIREMENTS;  
BREACH OF FIDUCIARY  
RELATIONSHIP; FRAUD; UNFAIR  
BUSINESS PRACTICES

INJUNCTIVE RELIEF REQUESTED

JURY TRIAL REQUESTED

28 COMES NOW Plaintiff LOURDES MELENDEZ for causes of action against  
Defendants and state as follows:

**I. INTRODUCTION**

Plaintiff, LOURDES MELENDEZ, is a monolingual Spanish speaking homeowner.  
She and her husband purchased their home in 1995.

1 Both because of their regular loan payments and a rise in the real estate market, the  
2 Melendezes built up significant equity in their home. They became the target of the  
3 predatory mortgage agents, brokers and lenders that populate the sub-prime lending  
4 industry.

5 In 2001, the Melendezes were approached by an individual who was ostensible a  
6 mortgage broker who told them that mortgage rates were going down and that they should  
7 not miss the opportunity to refinance. The ride down the slippery slide began. In a matter  
8 of a little over four years, the Melendezes refinanced their home four times. The last 3  
9 refinancings occurred at the importunations of one "NICKI BAHMANI," Defendant in this  
10 matter.

11 As a result of the repetitive refinancings the Melendezes monthly mortgage payment  
12 has doubled, and will continue to increase as the new adjustable rate takes effect. The  
13 principal loan amount is three times the amount that the Melendezes borrowed to purchase  
14 their home. The equity that they had built has been stripped by the fees, costs, and  
15 prepayment penalties that went to the brokers, agents and lenders.

16 The Melendezes put their trust in real estate professionals that abused that trust for  
17 their own gain. The Melenedezes were not told of the true cost of transaction or the total  
18 loan terms of their adjustable loans. In all but one of these transactions, the initial lender  
19 was New Century Mortgage, the poster child of the sub prime lending crisis, now bankrupt.  
20 New Century sold these loans to willing investors. Everyone benefitted except for the  
21 borrower.

22 Without shame or conscience the current owner of the note is exerting its power of  
23 foreclosure as the loan terms slowly push the Melendezes from their home. Everyone from  
24 the agent to the current purchaser of the note is responsible in one way or another for the  
25 mortgage abuse that has occurred. For without each other, there would not be a market or  
26 an incentive for the others to act.

27 This Complaint is filed under several state and federal laws, including but not limited  
28 to the Truth in Lending Act, 15 U.S.C. § 1601 (hereinafter called "Act") and various

1 parallel California Disclosure Statutes, including California Business and Professions Code  
2 §§ 10131, 10240, and Civil Code §1632, to enforce the plaintiff's right to rescind a  
3 consumer credit transaction, to void the Defendant's security interest in the Plaintiff's home,  
4 and to recover statutory damages, reasonable attorney's fees and costs by reason of the  
5 Defendant's violations of the Act and Regulation Z, 12 C.F.R. § 226 (hereinafter called  
6 "Regulation Z").

## 7 II. PARTIES

8 1. Plaintiff, LOURDES F. MELENDEZ (hereafter "LFM") was and is a resident  
9 of California residing in her home, which is the subject of this lawsuit, at 641 Florence Ave.,  
10 Port Hueneme, CA 93041. The legal description of the property (hereafter, "The Subject  
11 Property") is as follows:

12 Lot 6, Pleasant Valley Homes Tract, in the City of Port Hueneme, as per map  
13 recorded in Book 9, page 71 of Miscellaneous Records, in the office of the  
County Recorder of said County.

14 2. Plaintiff JOSE MELENDEZ, until November 30, 2005, was a co-owner in  
15 The Subject Property with his wife Plaintiff LFM. He is a Plaintiff in this matter as against  
16 Defendants MILLENIUM LOANS, INC. a California Corporation, NICKI BAHMANI;  
17 AZIMA INVESTMENTS, INC., JOHN SPEAR; YEKTA AZEMA, all for having provided  
18 legal advice removing him from title on his own home; and against COUNTRYWIDE  
19 HOME LOANS and for rescission of his November 2004, loan.

20 3. LFM is informed and believes, and thereupon alleges that Defendant U.S.  
21 BANK NATIONAL ASSOCIATION AS TRUSTEE, by BARKLAYS CAPITAL REAL  
22 ESTATE INC., dba HOMEQ SERVICING, ITS ATTORNEY IN FACT (hereinafter US  
23 BANK), business form unknown, has been assigned the beneficial rights under the Deed of  
24 Trust described herein, pursuant to an Assignment of Deed of Trust recorded June 18, 2007,  
25 document number 20070618-00121471-0 in the Recorders Office for the County of  
26 Ventura, and controls the Trustee, Defendant QUALITY LOAN SERVICE  
27 CORPORATION, for purposes of charging it with the responsibility to proceed to a non-  
28 judicial foreclosure of Plaintiff's home, the Subject Property.

1           4.     Defendant QUALITY LOAN SERVICE CORPORATION, a California  
2 Corporation doing business in Ventura County, is the current trustee under the Deed of Trust  
3 encumbering the Subject Property by virtue of the loan at issue in this case. It has set the  
4 non-judicial foreclosure sale of the Subject Property, and in the absence of a Temporary  
5 Restraining Order, said Defendant will sell the Subject Property at a public auction.  
6 Attached hereto as "Exhibit A" is the Notice of Sale indicating a sale date of October 2,  
7 2007. Said sale date has been postponed twice, and is now scheduled for December 3, 2007,  
8 at 11:00 a.m. at the main entrance to the Government Center Hall of Justice, in Ventura,  
9 California

10           5.     Defendant, MILLENNIUM LOANS, Inc., (hereinafter "MILLENNIUM")  
11 a California Corporation doing business in Ventura County, was the loan broker in the  
12 November 2005 subject transaction. As a corporation, MILLENNIUM is a licenced real  
13 estate broker operating under real estate license number 01278216. The licensed officers for  
14 the corporation are Alfred Babayan, and Ryan Stevens (Lic 00994406).

15           6.     AZIMA INVESTMENTS, INC. ("AZIMA"), at the time of the November 30,  
16 2005 transaction more fully set forth below, was a California Corporation, which although it  
17 had been suspended, was nonetheless doing business in California. It is the alter-ego of  
18 Defendants JOHN SPEAR and YEKTA AZEMA, the individuals who organized and  
19 furthered the joint venture of enticing unsuspecting persons, including Plaintiff, with large  
20 equities in their homes to take out unnecessary loans associated with exorbitant fees and  
21 interest rates for the purpose of stripping the equity from the homes for the profit of  
22 MILLENNIUM, AZIMA, SPEAR, AZEMA and NICKI BAHMANI. Said Defendants, and  
23 each of them, either intentionally or negligently authorized Defendant NICKI BAHMANI,  
24 an unlicensed person, to act as a solicitor of loans, and each and all of them took  
25 commissions for referring Plaintiff's November 30, 2005 loan application to and through  
26 Defendant MILLENNIUM, despite knowing that the solicitations had been made and  
27 consummated by an unlicensed person for an improper purpose.

28           7.     NICKI BAHMANI (Hereinafter, "BAHMANI") is an individual who on

1 information and belief and thereupon allege, was an employee of Defendant AZIMA, alter  
2 ego for Defendants SPEAR and AZEMA at the time of the November 30, 2005, transaction,  
3 as alleged herein. Although not a licensed real estate professional, BAHMANI performed  
4 duties on behalf of AZIMA, SPEAR, and AZEMA that only a licensed real estate  
5 professional can perform. BAHMANI was the only individual that met with and had  
6 contact with the Plaintiff in reference to the November 30, 2005, transaction. On  
7 information and belief, and thereupon alleged, BAHMANI acted in the capacity of an agent  
8 or employee of Defendants MILLENNIUM, AZIMA, SPEAR and AZEMA in the subject  
9 transaction.

10 8. ENCORE CREDIT CORP., "ENCORE" upon information and belief and  
11 thereupon  
12 allege is a California Corporation doing business in Ventura County. ENCORE was the  
13 original lender on the \$402,000 note and was the beneficiary of the deed of trust, which was  
14 later assigned to COUNTRYWIDE HOME LOANS.

15 9. Defendant COUNTRYWIDE HOME LOANS, (hereinafter  
16 "COUNTRYWIDE), is a foreign corporation doing business in Ventura County, California.  
17 COUNTRYWIDE purchased the November 2004 \$402,000 note and deed of trust and  
18 became the assignee under the Truth in Lending Act.

19 10. Plaintiff does not know the true names of defendants DOES 1 through 30,  
20 inclusive, and therefore sues them by those fictitious names. Plaintiffs are informed and  
21 believe, and on the basis of that information and belief allege, that each of those defendants  
22 was in some manner legally responsible for the events and happenings alleged in this  
23 complaint and for Plaintiffs' damages. The names, capacities and relationships of DOES 1  
24 through 30 will be alleged by amendment to this complaint when they are known.

### 25 III. JURISDICTION

26 11. This Court has jurisdiction over the parties and subject matter herein, because  
27 the subject property is located in the State of California. Venue is properly in the County of  
28 Ventura because the Subject Property is in the County of Ventura and the non-judicial

1 foreclosure sought to be restrained is scheduled in the County of Ventura.

2 12. This Court has jurisdiction over all of the matters alleged herein controlled by  
3 California statutes, and also has jurisdiction of the Federal Claims pursuant to 15 USC  
4 §1601 *et. seq.*

#### 5 IV. FACTS

6 13. Plaintiff LFM lives in the subject property with her husband, Plaintiff JOSE  
7 MELENDEZ and their family. Plaintiffs together with LFM's sister purchased the Subject  
8 Property in or about August 1995 for the price of approximately \$167,000. Title was  
9 subsequently transferred to Plaintiffs.

10 14. Plaintiffs LFM and Jose Melendez (The Melendezes) are both monolingual  
11 Spanish speaking individuals. They can not read, write, speak, or understand the English  
12 language.

13 15. The Melendezes are not highly educated, and possess limited understanding  
14 of financing and mortgage lending principals, making them susceptible to unscrupulous and  
15 predatory lenders and their agent, enhancing the necessity for strict compliance with the  
16 beneficial terms of the California and Federal statutes designed to protect all consumers.

17 16. In March 2001, the Melendezes for the first time refinanced their home in the  
18 amount of \$174,000. The loan was a two year adjustable loan. The initial monthly  
19 payments were \$1,246.56. The lender in this transaction was New Century Mortgage  
20 Company. The loan contained a two year prepayment penalty.

21 17. In August 2002, the Melendezes refinanced their home for a second time in  
22 the amount of \$200,000. The loan was a two year adjustable loan, with an initial interest  
23 rate of 7.75 percent, and a maximum rate of 14.75 percent. The initial monthly payments  
24 were \$1,432.83. The lender in this transaction was New Century Mortgage Company. The  
25 loan contained a two year prepayment penalty.

26 18. In or about April 2004, the Melendezs refinanced their home for a third time  
27 in the amount of \$331,200. The loan was a two year adjustable loan, with an initial interest  
28 rate of 7.5 percent, and a maximum rate of 14.5 percent. The initial monthly payments were

1 \$2,315.80. The lender in the transaction was New Century Mortgage Company. The loan  
2 contained a two year prepayment penalty.

3 19. In November 2004, the Melendezes refinanced their home for a fourth time  
4 in the amount of approximately \$402,000. The loan was a two year adjustable loan. The  
5 lender in the transaction was Encore Credit Corp. The loan contained a two year  
6 prepayment penalty. That loan was later sold to Defendant COUNTRYWIDE HOME  
7 LOANS, and has been by correspondence and through this litigation rescinded according to  
8 the terms of the Truth in Lending Act.

9 20. In November 2005, the Melendezes refinanced their home for a fifth time  
10 in the amount of \$522,000. The loan was a two year adjustable loan, with an initial interest  
11 rate of 8.95 percent, and a maximum rate of 15.9 percent. The initial monthly payments  
12 were \$3,986.37. The lender in the transaction was New Century Mortgage Company. The  
13 loan contained a two year prepayment penalty. New Century received a deed of trust as  
14 security for this transaction. It is this transaction which, in addition to being the subject of a  
15 rescission according to the terms of the Truth in Lending Act, which gives rise to the  
16 additional liabilities set forth herein.

17 21. In a matter of just over 4 years, the Melendezes refinanced their home five  
18 times. Their monthly payments more than doubled. They paid four prepayment penalties  
19 equivalent to two years, or 24 months, of additional mortgage payments. In each of these  
20 transactions the mortgage broker and New Century received fees and commissions. In the  
21 last transaction it is believed that the total closing costs exceeded \$13,000. The industry  
22 terminology for predatory practices which result in multiple refinancings in a short period of  
23 time is "churning."

24 22. In or about October, 2005, Jose Melendez, Plaintiff's husband, cotenant in the  
25 Subject Property, and the person through whom each of the previous loans was  
26 accomplished, was approached by Defendant NICKI BAHMANI of Defendant "Azima  
27 Investments, Inc.," representing herself as a person who could arrange loans, and through  
28 whom several of the previous refinancing transactions had been arranged.

1           23. Ms. Bahmani told Mr. Melendez that the market conditions were changing and  
2 this was the last opportunity to use his home for financing. It was important, she  
3 emphasized, that he did not miss the opportunity.

4           24. Mr. Melendez was told that his payments for the November 2005 loan would  
5 be \$3,512.53 per months. He was not told that they would increase. For some unknown and  
6 unexplained reason, Defendant BAHMANI acting by and through her agency agreements  
7 with Defendants MILLENIUM, AZIMA, SPEAR, AZEMA gave legal advice to Plaintiffs  
8 and each of them that the loan had to be in his wife's name, Plaintiff LOURDES  
9 MELENDEZ, only, and that title to their home, the Subject Property, would have to be in  
10 her name, alone.

11           25. Mr. Melendez was not told that to get the Subject Loan he would have to pay a  
12 prepayment penalty in excess of \$9,000, or closing costs in excess of \$13,000.

13           26. On or about November 30, 2005, Lourdes Melendez was called by Ms  
14 Bahmani to meet in Oxnard, California to sign, what Ms. Bahmani referred to as, loan  
15 application documents. Mr. Melendez does not speak or read English. She was told to just  
16 sign the documents. The meeting took about 15 minutes.

17           27. In or about early December 2005, the Melendezes were called by Ms.  
18 Bahmani, to meet her in a gas station parking lot. Ms. Bahmani told them that the loan had  
19 been approved, and handed them the proceeds of the loan, and a sheaf of documents  
20 approximately 3 inches thick, copies of unsigned loan documents for the subject loan.

21           28. The packet of loan documents that the Melendezes received that day in early  
22 December, 2005, contained two differing Good Faith Estimates both dated November 30,  
23 2005; The first Good Faith Estimate did not list any charges for loan origination fees. The  
24 total prepaid finance charge calculated in this document totaled \$5,321.84; The second  
25 Good Faith Estimate did contain an item for Loan Origination Fee to the Broker in the  
26 amount of \$7,830. The total prepaid finance charge calculated in the second document total  
27 \$13,179.36.

28           29. The packet of loan documents that the Melendez received that day, also



1 contained two Federal Truth In Lending Disclosure Statements both dated November 30,  
2 2005. The first Truth in Lending Disclosure Statement listed an APR of 9.939 percent,  
3 amount financed as \$516,678.16, and initial monthly payments of \$3,512.53. The second  
4 Truth in Lending Disclosure Statement listed an APR of 10.387 percent, amount financed of  
5 \$508,820.64, and initial monthly payments of \$3,986.87.

6 30. The loan packet also contained several documents titled "notice of right to  
7 cancel," all in English. All of the notices were identical. The notices, however, were not  
8 filled out with dates designating the beginning and ending to the rescission period. It also  
9 did not specify which of the two loan terms reflected in the differing Disclosure Statements  
10 were incorporated in the rescission notice.

11 31. The loan packet provided in December 2005, also contained other curious and  
12 confusing documentation. For example, two adjustable rate balloon notes; The first  
13 containing a monthly payment amount of \$3,512.53, and the second containing a monthly  
14 payment of \$3,986.87. The packet also contained two closing instructions, *both* reflecting  
15 the lesser monthly payment amounts, which is different than the higher amount the  
16 Melendezes have been paying.

17 32. The Melendezes, not being able to read English, and not having had the  
18 documents explained to them, had no idea what the documents provided in December, 2005,  
19 were or what the documents meant. Plaintiff, Lourdes Melendez, was never presented with  
20 any documents required by the federal Truth in Lending Act in her native language of  
21 Spanish, as is required by California law.

22 **FIRST CAUSE OF ACTION**

(for Violation of Truth in Lending Act and RESPA)

23 By LFM As Against Defendant U.S. BANK NATIONAL ASSOCIATON AS TRUSTEE  
24 (November 30, 2005 Loan)

25 33. Plaintiffs incorporate the allegations of Paragraphs 1 through 32 by reference  
26 as though fully set forth herein.

27 34. At all times relevant hereto, New Century regularly extended or offered to  
28 extend consumer credit for which a finance charge is or may be imposed or which, by

1 written agreement, is payable in more than four installments, and is the person to whom the  
2 transaction, which is the subject of this action was initially payable, making New Century a  
3 creditor within the meaning of TILA, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17).

4 35. On or about November 30, 2005 ("settlement date"), one written promissory  
5 note and one security agreement in favor of New Century were apparently executed ("the  
6 transaction"). The transaction extended consumer credit which was subject to a finance  
7 charge and which was initially payable to New Century. The transaction was for  
8 \$522,000.00 and was designated by Defendants as loan #1005181215.

9 36. As part of the consumer credit transaction, Defendants obtained a security  
10 interest in 641 Florence Ave., Port Hueneme, CA 93041, which is used as Plaintiffs'  
11 principal dwelling.

12 37. On information and belief, on or before May 30, 2007 New Century, for value  
13 received, assigned and transferred all beneficial interest in the subject Deed of Trust to U.S.  
14 Bank National Association as Trustee. Defendant US BANK became an assignee as defined  
15 within the meaning of TILA 15 U.S.C. § 1641.

16 38. Before the settlement date, neither New Century nor those acting on its behalf  
17 provided to Plaintiff: the preliminary disclosures required by Truth in Lending Act (TILA)  
18 at 12 CFR 226.17 and 18, 15 U.S.C. § 1638; a special information booklet for Adjustable  
19 Rate Mortgages (ARM) or any other preliminary disclosures as required by RESPA at 24  
20 C.F.R. §§ 3500.6 and 3500.7, which is commonly known as the Good Faith Estimate. Said  
21 failures infected the transaction and are the responsibilities of all assignees under both  
22 Federal and State law.

23 39. The consumer credit transaction herein alleged was and is subject to the  
24 Plaintiff's right of rescission as described by 15 U.S.C. § 1635 and Regulation Z § 226.23  
25 (12 C.F.R. § 226.23).

26 40. In the course of this consumer credit transaction, New Century violated 15  
27 U.S.C. § 1635(a) and Regulation Z § 226.23(b) by failing to deliver to the Plaintiff two  
28 copies of a notice of the right to rescind which, among others, and additionally, by failing to

1 provide significant and required documentation in Spanish as required by California Civil  
2 Code §1632, and related statutes contained in the Business and Professions Code and the  
3 Finance Code, which:

- 4 a. Clearly and conspicuously identified the transaction and disclosed the  
5 security interest in the Plaintiff's principal dwelling.
- 6 b. Clearly and conspicuously disclosed the Plaintiff's right to rescind the  
7 transaction.
- 8 c. Clearly and conspicuously disclosed the effects of rescission.
- 9 d. Clearly and conspicuously disclosed the date the rescission period  
10 expired.

11 41. In the course of this consumer credit transaction, New Century Creditor failed  
12 to deliver, in either English or in Spanish, all "material" disclosures required by the Act and  
13 Regulation Z, including the following:

- 14 a. By failing to properly, clearly and accurately disclose the "amount  
15 financed," using that term in violation of Regulation Z § 226.18(b) and  
16 15 U.S.C. § 1638(a)(2)(A).
- 17 b. By failing to properly, clearly and accurately disclose the "finance  
18 charge," using that term, in violation of Regulation Z §§ 226.4 and  
19 226.18(d) and 15 U.S.C. § 1638(a)(3).
- 20 c. By failing to properly, clearly and accurately disclose the "annual  
21 percentage rate," using that term, in violation of Regulation Z §  
22 226.18(e) and 15 U.S.C. § 1638(a)(4).
- 23 d. By failing to properly, clearly and accurately disclose the number,  
24 amounts, and timing of payments scheduled to repay the obligation, in  
25 violation of Regulation Z § 226.18(g) and 15 U.S.C. § 1638(a)(6).
- 26 e. By failing to properly, clearly and accurately disclose the "total of  
27 payments," using that term, in violation of Regulation Z § 226.18(h)  
28 and 15 U.S.C. § 1638(a)(5).

1           42. Plaintiff has a continuing right to rescind the transaction until the third  
2 business day after receiving both the notice described in paragraph 35 and all "material"  
3 disclosures described in paragraph 33 and 36, pursuant to 15 U.S.C. § 1635(a) and  
4 Regulation Z § 226.23(a)(3), up to three years after consummation of the transaction.

5           43. On September 26, 2007, Plaintiff rescinded the transaction by sending the  
6 rescission letter to the original Creditor at New Century Mortgage Corporation, and to  
7 Defendant Assignee U.S. Bank National Association as Trustee, as well as the current  
8 Assignee's trustee and agent for the purposes of prosecuting a non-judicial foreclosure,  
9 QUALITY LOAN SERVICE CORPORATION, by U.S. Mail, postage prepaid, certified  
10 mail, return receipt requested, a notice of rescission. Said rescission, pursuant to Code is  
11 effective upon mailing.

12           44. A true and accurate copy of that notice of rescission is attached hereto as  
13 "Exhibit B," and by this reference is incorporated herein. By statute, the effect of said letter  
14 is to rescind in whole the security for the loan, leaving the Subject Property without a  
15 security interest in place on which a foreclosure could operate.

16           45. As a result of the aforesaid violations of the Act and Regulation Z, pursuant to  
17 15 U.S.C. §§ 1635(a), 1640(a), and 1641(c), Defendant U.S. BANK NATIONAL  
18 ASSOCIATION AS TRUSTEE is liable to Plaintiff LFM for:

- 19           a. Rescission of the Subject Loan.
- 20           b. Termination of any security interest in Plaintiff's property created  
21           pursuant to the Subject Loan
- 22           c. Return of any money or property given by the Plaintiff to anyone,  
23           including the Defendant, in connection with the Subject Loan
- 24           d. Statutory damages of \$2000 for the disclosure violations.
- 25           e. Statutory damages of \$2000 for Defendants' failure to respond properly  
26           to Plaintiff's rescission notice.
- 27           f. Forfeiture of repayment rights of the loan proceeds.
- 28           g. Actual damages in an amount to be determined at trial.

1 h. A reasonable attorney fee.

2 **SECOND CAUSE OF ACTION**  
3 (for Violation of Truth in Lending Act and RESPA)  
4 By Plaintiffs LOURDES MELENDEZ, and JOSE MELENDEZ As Against Defendant  
5 COUNTRYWIDE HOME LOANS and ENCORE CREDIT CORP.  
6 (November 2004 Loan)

7 46. Plaintiffs incorporate the allegations of Paragraphs 1 through 32 by reference  
8 as though fully set forth herein.

9 47. At all times relevant hereto, Encore Credit Corp. regularly extended or offered  
10 to extend consumer credit for which a finance charge is or may be imposed or which, by  
11 written agreement, is payable in more than four installments, and is the person to whom the  
12 November, 2004 loan was initially payable, making Encorp Credit Corp. a creditor within  
13 the meaning of TILA, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17).

14 48. On or about November 23, 2004 ("settlement date"), one written promissory  
15 note and one security agreement in favor of Encorp Credit Corp. were apparently recorded  
16 ("the transaction"). The transaction extended consumer credit which was subject to a  
17 finance charge and which was initially payable to Encore Credit Corp. The transaction was  
18 for \$402,000.00 and was designated by Encorp Credit Corp, and then by Defendant  
19 COUNTRYWIDE as loan # 088398471.

20 49. As a result of its purchase of the right to payment on the November 2004  
21 transaction, a consumer credit transaction, Defendant COUNTRYWIDE obtained a security  
22 interest in 641 Florence Ave., Port Hueneme, CA 93041, which is used as Plaintiffs'  
23 principal dwelling.

24 50. On information and belief, Encorp Credit Corp, for value received, assigned  
25 and transferred all beneficial interest in the subject Deed of Trust to COUNTRYWIDE  
26 HOME LOANS which became an assignee as defined within the meaning of TILA 15  
27 U.S.C. § 1641.

28 51. Before the settlement date, neither Encorp Credit Corp nor those acting on its  
behalf provided to Plaintiffs or either of them: the preliminary disclosures required by Truth  
in Lending Act (TILA) at 12 C.F.R. 226.17 and 18, 15 U.S.C. § 1638; a special information

1 booklet for Adjustable Rate Mortgages (ARM) or any other preliminary disclosures as  
2 required by RESPA at 24 C.F.R. §§ 3500.6 and 3500.7, which is commonly known as the  
3 Good Faith Estimate. Said failures infected the transaction and are the responsibilities of all  
4 assignees under both Federal and State law.

5 52. The consumer credit transaction herein alleged was subject to the Plaintiffs'  
6 right of rescission as described by 15 U.S.C. § 1635 and Regulation Z § 226.23 (12 C.F.R. §  
7 226.23).

8 53. In the course of this consumer credit transaction, Encorp Credit Corp violated  
9 15 U.S.C. § 1635(a) and Regulation Z § 226.23(b) by failing to deliver to the Plaintiffs or  
10 either of them two copies of a notice of the right to rescind which, among others, and  
11 additionally, by failing to provide significant and required documentation in Spanish as  
12 required by California Civil Code §1632, and related statutes contained in the Business and  
13 Professions Code and the Finance Code, which:

- 14 a. Clearly and conspicuously identified the transaction and disclosed the  
15 security interest in the Plaintiff's principal dwelling.  
16 b. Clearly and conspicuously disclosed the Plaintiff's right to rescind the  
17 transaction.  
18 c. Clearly and conspicuously disclosed the effects of rescission.  
19 d. Clearly and conspicuously disclosed the date the rescission period  
20 expired.

21 54: In the course of this consumer credit transaction, ENCORE, as Creditor, failed  
22 to deliver, in either English or in Spanish, all "material" disclosures required by the Act and  
23 Regulation Z, including the a complete and accurate right to rescission, a Good Faith  
24 Estimate, and other required

25 55. Plaintiffs have a continuing right to rescind the transaction until the third  
26 business day after receiving both the notice described in paragraph 35 and all "material"  
27 disclosures described in paragraph 33 and 36, pursuant to 15 U.S.C. § 1635(a) and  
28 Regulation Z § 226.23(a)(3), up to three years after consummation of the transaction.



1 documents explaining the loan transaction such as the Good Faith Estimate or documents  
2 required under the TILA, and California law.

3 62. On September 24, 2007, Plaintiff rescinded the transaction by sending the  
4 rescission letter to Defendant Assignee and to Assignee's trustee and agent for the  
5 purposes of prosecuting a non-judicial foreclosure, QUALITY LOAN SERVICE  
6 CORPORATION, by U.S. Mail, Said rescission, pursuant to Code is effective upon  
7 mailing.

8 63. A true and accurate copy of that notice of rescission is attached hereto as Exhibit  
9 B, and by this reference is incorporated herein. By statute, the effect of said letter is to  
10 rescind in whole the security for the loan, leaving the Subject Property without a security  
11 interest in place on which a foreclosure could operate.

12 64. PLAINTIFF is entitled to Rescind the loan and any other remedies provided  
13 under the law.

14 **FOURTH CAUSE OF ACTION**

15 (Breach of Fiduciary Obligations)

16 Plaintiffs JOSE MELENDEZ and LOURDES F. MELENDEZ as Against Defendants  
17 MILLENIUM, AZIMA, SPEAR, AZEMA and NICKI BAHMANI.

18 65. Plaintiffs MELENDEZ incorporates the allegations of Paragraphs 1 through  
19 32 by reference as though fully set forth herein.

20 66. By agreeing to perform the duties of a mortgage broker, including, finding a  
21 lender and preparing the documents necessary to refinance the PLAINTIFFS' home,  
22 DEFENDANT BAHMANI became PLAINTIFFS' agent and undertook a fiduciary  
23 responsibility to the PLAINTIFF LFM.

24 67. Defendants MILLENIUM, AZIMA, SPEAR, AZEMA are or were licensed  
25 real estate brokers. Said Defendants allowed or instructed DEFENDANT BAHMANI, as  
26 their employee or agent, to perform duties under its licenses that only a licensed mortgage  
27 broker or agent is allowed to perform. The same defendants knew that BAHMANI was not  
28 a licensed agent but allowed her to perform such duties even though it is against accepted  
real estate practices and unlawful. As the licensed Brokers, who gained a monetary benefit



1 in the subject transaction, Defendants MILLENIUM, AZIMA, SPEAR, AZEMA and  
2 NICKI BAHMANI and each of them undertook a fiduciary responsibility to Plaintiffs  
3 MELENDEZ. That fiduciary responsibility was enhanced by undertaking to give legal  
4 advice regarding the form of title necessary to be held by Plaintiffs.

5 68. The Defendants and each of them breached their role as fiduciaries to the  
6 Plaintiffs by, among other acts, failing to disclose the terms of the loan including the true  
7 costs of the loan; failing to disclose and explain the facts necessary for the Plaintiff to make  
8 an informed and intellegent decision; personally profiting at the expense of and to the  
9 detriment of the Plaintiff, and giving advice causing Plaintiff JOSE MELENDEZ to lose the  
10 title to his home.

11 69. The breach of said fiduciary responsibilities has caused Plaintiffs damages, in  
12 an amount to be proved at trial, but on information and belief in excess of \$100,000.

13 **FOURTH CAUSE OF ACTION**

14 For FRAUD

14 Plaintiffs JOSE MELENDEZ, and LOURDES F. MELENDEZ As Against Defendants  
15 MILLENIUM, AZIMA, SPEAR, AZEMA and NICKI BAHMANI

16 70. Plaintiffs MELENDEZ incorporates the allegations of Paragraphs 1 through  
17 32 and 66 through 69 by reference as though fully set forth herein.

18 71. DEFENDANTS induced an unsophisticated and trusting homeowner to rely  
19 on representations they made, or which were made in the course and scope of the agency  
20 that they knowingly created, regarding the benefits and need to refinance Plaintiffs' then  
21 existing loans. The representations were purposely deceptive and were made strictly for the  
22 purpose of churning the Plaintiffs' loans so the Defendants could receive commissions and  
23 fees. Plaintiffs did not and could not know the truth of the matters conveyed to them in  
24 order to deceive them, and were entitled to rely and did reasonably rely on the professional  
25 advice provided to them by Defendants and each of them through their agents. Had they  
26 known the truth and had the loans explained to them as was the responsibility of Defendants  
27 and each of them, holding a fiduciary relationship to Plaintiffs, Plaintiffs would not have  
28 refinanced in November, 2004, nor in November, 2005.



1 likelihood of prevailing on the merits. Plaintiffs requests that this Court grant a Preliminary  
2 Injunction and Temporary restraining order and injunctive relief under CCP §527 and Cal.  
3 Rules of Court §3.1150, first as to the sale of their home, and secondly a permanent  
4 injunction precluding Defendants from engaging in the wrongful conduct identified herein  
5 in the future.

6 *WHEREFORE*, having set forth various causes of action against Defendants, Plaintiff  
7 prays for the following relief:

- 8 1. That the foreclosure or attempted foreclosure of Plaintiffs' home be deemed illegal  
9 and void and the same be permanently enjoined;
- 10 2. That the November 30, 2005 transaction be deemed void as result of the Defendants'  
11 various fiduciary breaches;
- 12 3. That judgment be entered against all of the Defendants awarding Plaintiff damages in  
13 an amount to be proven at the time of trial but in excess of \$100,000;
- 14 4. That the actions of all of the Defendants be determined to be unfair and deceptive  
15 business practices in violation of California Law and that this Court award all such relief to  
16 Plaintiffs as they may be entitled to, including treble damages and an award of costs and  
17 attorney's fees;
- 18 5. That the actions of the Defendants be determined to be in violation of the Truth in  
19 Lending Act, for the non-compliance with 15 USC §1635(a), which in turn triggers  
20 rescission as to both the November 2004 and the November 2005 loans; and non-  
21 compliance with 15 USC §1635(b), which in turn causes the November 2005 loan to be  
22 rescinded without the Plaintiffs having to pay for it, and the Court grant rescission as to both  
23 the November 2004 and the November 2005 loans in accordance with 15 USC §1635(b)  
24 including return of all finance charges and payments and award other damages provided by  
25 15 USCA §1640.
- 26 6. That the Plaintiffs be awarded \$8000.00 statutory penalty for the violations of the  
27 Truth in Lending Act for both the 2004 and 2005 transaction;
- 28 7. That the Plaintiffs be awarded consequential damages, including attorney's fees

1 incurred to bring this action, in an amount to be fully proved at the time of trial but in excess  
2 of \$150,000;


3 8. That the Plaintiff be awarded his fees and costs pursuant to the written loan  
4 agreements which bind the Defendants;

5 9. A permanent injunction precluding Defendants and each of them from engaging in  
6 the wrongful conduct identified herein; and

7 10. That the Court award such other relief as it deems just and proper.

8 Respectfully Submitted.

9 November 20, 2007

Law Offices of Richard L. Francis &  
Associates, P.C.  
By:   
Charles W. Oaks,  
Attorney for Plaintiffs