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FILED

JAN 04 2008

Clerk of the Napa Superior Court
By: W. Barwick
Deputy

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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF NAPA

13 WES WRIGHT, individually and on behalf)
14 of the general public,)
15 Plaintiff,)
16 vs.)
17 COUNTRYWIDE HOME LOANS, INC.,)
18 COUNTRYWIDE BANK, N.A., NAPA)
19 LAND TITLE COMPANY, AND DOES)
20 1-20, inclusive,)
21 Defendants.)

Case No. **26 - 40623**

COMPLAINT FOR DAMAGES FOR
VIOLATION OF FINANCIAL CODE §§ 4970,
et. seq.; RESCISSION AND DAMAGES FOR
VIOLATION OF THE FEDERAL TRUTH IN
LENDING ACT; VIOLATION OF B & P CODE
§ 17200, et. seq.; PRELIMINARY AND
PERMANENT INJUNCTION

[JURY DEMANDED]

CASE MANAGEMENT CONFERENCE
DATE: 6-12-2008
TIME: 8:30am A
PLACE: Courtroom
825 Brown Street, Napa CA 94559

22 Plaintiff, WES WRIGHT, hereby alleges:

23 INTRODUCTION

24 1. This action is brought by an unsophisticated homeowner who is facing the potential
25 foreclosure of his home pursuant to a loan with undisclosed, abusive and unlawful loan terms. This
26 predatory loan was generated by the defendants following false, inaccurate and incomplete
27 representations to Plaintiff and extended without the reasonable belief that Plaintiff would be able
28 to repay the obligation.

PARTIES

2. Plaintiff WES WRIGHT (hereinafter referred to as "WRIGHT") is, at all
times mentioned in this Complaint, a resident of Napa, Napa County, California.

1 3. Plaintiff WRIGHT was the owner of the real property located at, and commonly
2 known as, 2134 Main Street, Napa, California and unsophisticated in financial transactions.

3 4. Defendant, COUNTRYWIDE HOME LOANS, INC. (hereinafter referred to as
4 "Countrywide Loans") is, and at all times mentioned in this Complaint was, a company licensed to
5 do business in the State of California and doing business in Sonoma and Napa, California and an
6 agent for defendant COUNTRYWIDE BANK, N.A. This defendant is also hereinafter jointly
7 referred to with Countrywide Loans as "Countrywide".

8 5. Defendant, COUNTRYWIDE BANK, N.A. (hereinafter referred to as
9 "Countrywide Bank") is, and at all times mentioned in this Complaint was, a company licensed to
10 do business in the State of California and doing business in Sonoma and Napa, California and an
11 agent for defendant COUNTRYWIDE BANK, N.A. This defendant is also hereinafter jointly
12 referred to with Countrywide Loans as "Countrywide".

13 6. Defendant, NAPA LAND TITLE COMPANY (hereinafter referred to as
14 "Napa Land") is, and at all times mentioned in this Complaint was, a title company licensed to do
15 business in the State of California and doing business in Napa, California.

16 7. Unless otherwise alleged in this Complaint, Plaintiff is informed and believes, and
17 on the basis of that information and belief alleges that at all times mentioned in this Complaint,
18 defendants were the agents, employees, partner or joint venturer of each of the remaining
19 defendants, and in doing the things alleged herein this Complaint, were acting within the course
20 and scope of that agency and employment. Plaintiff is further informed and believes and thereon
21 alleges that each of the defendants consented to, ratified and /or authorized the acts and actions
22 herein alleged of each of the remaining defendants.

23 8. Plaintiff does not know the true name of Defendants DOES 1 thru 20, inclusive, and
24 therefore sues them by those fictitious names. Plaintiff will amend this Complaint to allege their
25 true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges,
26 that each of these fictitiously named defendants are responsible in some manner for the occurrences
27 herein alleged, and that plaintiff's injuries and damages as herein alleged were proximately caused
28 by the aforementioned defendants.

1 9. Plaintiff is informed and believes, and thereupon alleges that each of said fictitiously
2 named defendants, is responsible in some manner for the occurrences herein alleged, and that
3 plaintiffs' injuries as herein alleged, were proximately caused by the acts and or omissions of each
4 of them.

5 **GENERAL ALLEGATIONS**

6 10. In late December, 2005, Plaintiff spoke by telephone with Kevin O'Neill, Branch
7 Manager and Senior Loan Consultant with Defendant Countrywide Loans. During the course of
8 this telephone conversation, Mr. O'Neill represented that Plaintiff could refinance his residence and
9 realize a monthly payment almost half of what Plaintiff was then paying.

10 11. Mr. O'Neill scheduled an appointment for Plaintiff at his office located in Sonoma,
11 CA.

12 12. Plaintiff made the appointment and brought the wage and income verification
13 information requested by Mr. O'Neill. At this meeting, Plaintiff was informed that his existing
14 loan and other debts could be consolidated into a single, new Countrywide loan, that would have a
15 monthly principal and interest payment of approximately \$ 1700 per month. Plaintiff was further
16 informed that this principal and interest payment amount would increase approximately \$ 100
17 annually.

18 13. Shortly thereafter Plaintiff received a packet from Defendant Countrywide Loan
19 with documents dated December 29, 2006. Upon receipt, Plaintiff contacted this Defendant to
20 inquire about the packet and was he didn't need to do anything with it that it was just "a formality"
21 in that they were required to send the packet to Plaintiff. Contained in this documentation was a
22 good faith estimate for a single jumbo loan with an estimated monthly principal and interest
23 payment of \$ 1, 759.57.

24 14. An agent of Defendant Countrywide Loan notified Plaintiff the week of January 5,
25 2007, that the loan documents were ready to be signed at the offices of Defendant Land Title.

26 15. On or about January 5, 2007, Plaintiff entered into a contract for a loan with
27 Defendants Countrywide Loans and Countrywide Bank at the Napa offices of Defendant, NAPA
28 LAND TITLE COMPANY.

1 16. During the course of signing the loan documents, Plaintiff objected to a document.
2 Ms. Tinsley, the agent for Defendant Land Title took this document, disappeared and upon her
3 return had altered and changed the information on the loan document. Based on this information
4 and belief, Plaintiff believes Ms. Tinsley and her employer, Defendant Land Title were not only
5 acting as title agents but also as agents of Defendant Countrywide Loans.

6 17. The loan documents signed on January 5, 2007 were different than those dated
7 December 29, 2006 and previously provided to Plaintiff. Among other differences, rather than one
8 loan, there were now two loans, a first and a second, although the first still reflected an estimated
9 principal and interest payment of approximately \$ 1,700 per month.

10 18. Prior to signing these loan documents, defendants Countrywide had not explained
11 the terms of the loan(s) with Plaintiff, other than confirming that his principal and interest payment
12 would be in the range of \$ 1,700, and would increase annual by about \$ 100.00. The interest and
13 principal payment was also pointed out to Plaintiff by Ms. Tinsley during the execution of the loan
14 documents.

15 19. Prior to the execution of the loan documents, Plaintiff was not provided the required
16 truth in lending information for the two loans to be extended to Plaintiff by Defendants
17 Countrywide, when Countrywide changed from a single loan as reflected on the December 29,
18 2006 truth in lending documents to a set of loans - a first and second - in an amount and terms
19 different from that in the initially proposed loan.

20 20. Defendant Napa Land Title, through Ms. Tinsley, explained to Plaintiff that his
21 principal and interest payment would be approximately \$ 1,700.

22 21. Neither at the time Mr. Wright executed the Notice of Right to Cancel, nor when a
23 copy of this document was provided to him on January 5, 2007 by Ms. Tinsley on behalf of the
24 Defendants, was the date of the transaction and the date by which Mr. Wright could cancel the
25 transaction filled in; Mr. Wright was provided with an incomplete document.

26 22. Following the execution of the loan documents, Plaintiff received a notice from
27 Defendants Countrywide informing him that his principal and interest payment would be \$ 1,741,
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1 and instructing Plaintiff where to send this payment should the payment coupons not be received in
2 time for the March, 2006 loan payment.

3 23. The loan coupons were received in February, 2007 and stated that the principal and
4 interest payment would be \$ 3,441.11. This was the first time Plaintiff had received information
5 showing the loan payments would be greater than those he was making with his prior loan, as well
6 as double what had been promised and represented to him by Defendants. This amount was
7 increased further by the payment required on the second loan - a sum that had been included in the
8 originally quoted loan and payment amount.

9 24. Immediately upon receipt of the payment coupons, Plaintiff began calling Mr.
10 O'Neill, but none of Plaintiff's messages or calls were returned by Mr. O'Neill or anyone else at
11 Countrywide.

12 25. In an effort to make his loan payments, Plaintiff sold off some of his personal
13 property, as well as expending time earning additional money beyond his regular employment.
14 Plaintiff valued his credit rating and his residence, and had been greatly stressed in trying to make
15 the loan payments and not lose his house.

16 26. Only when showing the loan documents in mid 2007 to a third party did Plaintiff
17 discover that Defendants had greatly exaggerated his income far above the income documentation
18 Plaintiff provided to them.

19 27. Subsequently, despite making the loan payments timely and in person each month,
20 Plaintiff received notification that his payment was late. In contacting Defendants by telephone,
21 Plaintiff's call was sent to the foreclosure department, even though Plaintiff had not missed a
22 payment nor was otherwise in foreclosure. It is Plaintiff's information and belief that Defendants
23 Countrywide anticipated Plaintiff's default as of the time the loans were extended to Plaintiff.

24 28. Plaintiff had only sought to refinance his existing loan to reduce the monthly
25 payment. Plaintiff relied upon the representations of Defendants, and each of them, in agreeing to a
26 new loan with Countrywide. If Plaintiff had been informed of the actual terms, conditions and
27 monthly principal and interest payment, Plaintiff would not have accepted nor agreed to the
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1 Countrywide loan.

2 29. The defendants originated this loan without the reasonable belief that plaintiff
3 would be able to repay the scheduled payments and repay the obligation based upon a consideration
4 of plaintiff's current and expected income, current obligations, employment status and other
5 financial resources, other than the plaintiff's equity in the dwelling that secured the repayment of
6 the loan

7 30. Defendants intentionally chose to divide up the loan amount into two separate loans,
8 with the first loan of an amount large enough such that Defendants to avoid various mandatory
9 requirements geared to the protection of Plaintiff, with no explanation provided as to the basis for
10 the sudden creation of two, rather than one, loan.

11 31. Defendants chose to only consolidate a portion of Plaintiff's outstanding debts into
12 this refinancing, thus ensuring Plaintiff's inability to meet all of his outstanding payment and debt
13 obligations.

14 **FIRST CAUSE OF ACTION**
15 **(Violation of Financial Code Sections 4970, Et Seq.)**

16 32. Plaintiff incorporates the allegations contained in paragraphs 1 through 31, as though
17 fully set forth herein.

18 33. This cause of action is filed under provisions of the Financial Code Section 4970, et seq.
19 for statutory and punitive damages as well as declaratory relief.

20 34. The January 5, 2007 loan that is the subject of this action is a "covered loan" as defined
21 in Financial Code Section 4970.

22 35. This loan was a "consumer loan" as defined by Section 4970(d) because is was a consumer
23 credit transaction that was secured by real property located in the State of California and used as the
24 principal dwelling of plaintiff Wes Wright.

25 36. Defendants, as the originator of this covered loan, willfully and knowingly violated
26 Financial Code Sections 4973. Among other sections, Defendants violated Section 4973 because it
27 originated this loan without the reasonable belief that plaintiff would be able to repay the scheduled
28 payments to repay the obligation based upon a consideration of plaintiff's current and expected income,

1 current obligations, employment status and other financial resources, other than the plaintiff's equity
2 in the dwelling that secured the repayment of the loan. Defendants further violated Section 4973
3 because it never gave the required written disclosures to the plaintiff.

4 37. Injunctive relief is proper as plaintiff has no adequate remedy at law. Monetary damages
5 will not compel defendants to cease its violations of Financial Code Section 4970, et seq. described
6 in this action.

7 WHEREFORE, plaintiff prays for judgment as set forth herein below.

8 **SECOND CAUSE OF ACTION**
9 (Violation of the Truth In Lending Act)

10 38. Plaintiff incorporates the allegations contained in paragraphs 1 through 31, as
11 though fully set forth at this place.

12 39. At all times hereto, defendants Countrywide in the ordinary course of its business
13 regularly extended or offered to extend consumer credit for which a finance charge is or
14 may be imposed or by written agreement which is payable on more than four installments.

15 40. On or about January 5, 2007 defendants Countrywide claim to have entered into
16 consumer credit transactions with plaintiff wherein defendant Countryside extended
17 consumer credit which was subject to a finance charge.

18 41. Plaintiff is informed and believes and thereupon alleges that a promissory note is in
19 existence which purports to evidence this transaction.

20 42. As part of this consumer credit transaction, defendant Countrywide retained a
21 security interest in the subject premises, which is the principal dwelling of plaintiff.

22 43. This consumer credit transaction is subject to the additional consumer protections
23 provided for in 15 U.S.C. § 1639 and Regulation Z 12 C.F.R. § 226.32(a) because the annual
24 percentage at consummation of the transaction will exceed by more that 10 percentage points
25 the yield on Treasury securities having comparable periods of maturity on the 15th day of the
26 month immediately preceding the month in which the application for the extension of credit
27 was received by the creditor.

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1 44. This consumer credit transaction was subject to the plaintiff's right to rescission as
2 described by 15 U.S.C. §1635 and Regulation Z § 226.23 (12 C.F.R. § 226.23).

3 45. In the course of this consumer credit transaction, defendant violated 15 U.S.C.
4 § 1635 (a) and Regulation Z 12 C.F.R. § 226.23 (b) by failing to deliver to plaintiff two copies
5 of the notice of right to rescind and one copy of the initial Regulation Z disclosure statement
6 for each of the loans extended.

7 46. In the course of this consumer credit transaction, defendant violated 15 U.S.C.
8 § 1639 (a) and Regulation Z 12 C.F.R. § 226.32(c) by failing to deliver to plaintiff a copy of
9 the disclosures for the two loans three business days prior to consummation of the transaction.

10 47. In the course of this consumer credit transaction, defendant violated 15 U.S.C. § 1639
11 (e) and Regulation Z 12 C.F.R. § 226.32(d)(1) where by the aggregate amount of the regular
12 periodic payments would not fully amortize the outstanding principal balance.

13 48. The plaintiff has a continuing right to rescind the transaction until the third business
14 day after he receives both the notices of right to rescind and disclosure statements, pursuant
15 to 15 U.S.C. § 1635(a) and Regulation Z 12 C.F.R. § 226.23(a)(3).

16 49. Plaintiff intends service of this complaint as a Notice of Rescission and hereby
17 rescinds the transaction.

18 WHEREFORE, plaintiff prays for judgment as set forth herein below.

19 **THIRD CAUSE OF ACTION**
20 **For Unfair Business Practices in Violation of Business**
21 **and Professions Code Section 17200 et seq.**
22 **(By Plaintiff Against Defendants Countrywide;**
23 **and Does 1 through 20)**

24 50. Plaintiff incorporates the allegations contained in paragraphs 1 through 49, as
25 though fully set forth herein.

26 51. Plaintiff is suing both in his individual capacity and on behalf of the general
27 public.

28 52. Plaintiff is are informed and believes and thereupon alleges that beginning at
an exact date which is unknown to Plaintiff, but from at least December 29, 2006, defendants

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committed unlawful, unfair and/or fraudulent business practices as defined by Business and Professions Code Section 17200, by engaging in the unlawful, unfair and fraudulent business practices which set forth below.

- a. Defendant violated Financial Code Section 4973(f)(1) because it originated this loan without the reasonable belief that plaintiff would be able to repay the scheduled payments to repay the obligation based upon a consideration of plaintiff's current and expected income, current obligations, employment status and other financial resources, other than the plaintiff's equity in the dwelling that secured the repayment of the loan.
- b. Defendant violated Financial Code Section 4973(k)(1) because it never gave the written disclosure required by Section 4973(k)(1) to the plaintiffs.
- c. Defendant violated Financial Code Section 4979.6 because the made this covered loan that financed points and fees in excess of \$1,000.00.
- d. Defendant violated 15 U.S.C. § 1635 (a) and Regulation Z 12 C.F.R. § 226.23 (b) by failing to deliver to plaintiff two copies of the notice of right to rescind and one copy of the initial Regulation Z disclosure statement for each loan.
- e. Defendant violated 15 U.S.C. § 1639 (a) and Regulation Z 12 C.F.R. § 226.32(c) by failing to deliver to plaintiff a copy of the disclosure three business days prior to consummation of the transaction for both loans.

53. The acts and practices described above were and are likely to mislead the general public and therefore constitute unfair or fraudulent business practices within the meaning of Business &

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Professions Code Section 17200.

54. Plaintiff is informed and believes that defendants' unlawful, unfair and fraudulent business practices described above present a continuing threat to members of the public and that defendants continue to engage in the unfair and unlawful acts described above.

55. Plaintiff seeks injunctive relief enjoining defendants from engaging in the unfair business practices described above.

56. Injunctive relief is proper as plaintiff has no adequate remedy at law. Monetary damages will not compel defendants to cease to engage in the unfair business practices described in this action. Plaintiff alleges that the benefit to the public good, as well as to the plaintiff, far outweighs the inconvenience to the defendant of ceasing to engage in the unfair business practices.

WHEREFORE, plaintiff prays for judgment as set forth below.

**FOURTH CAUSE OF ACTION
PRELIMINARY AND PERMANENT INJUNCTION
(By Plaintiff Against Defendants Countrywide and Does 1 through 20)**

57. Plaintiff incorporates the allegations contained in paragraphs 1 through 49, inclusive, as though fully set forth at this place.

58. Defendant Countrywide, designated as the beneficiary under the Deeds of Trust executed for these loans.

59. Due to the wrongful actions and conduct of Defendants, Plaintiff has been unable to make his loan payments, as said payments are in excess of Plaintiff's available income and ability to pay, as was known to Defendants at the time they extended said loans to Plaintiff.

60. Plaintiff anticipates that Defendants' will institute a default and seek a non-judicial foreclosure on Plaintiff's home.

61. Any attempted foreclosure wrongful conduct of Defendants unless and until enjoined and restrained by order of this Court will cause great irreparable injury to plaintiff in that plaintiff will suffer loss of his home which will cause personal suffering, including potential homelessness, which cannot be compensated for by monetary damages.

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62. Plaintiff has no adequate remedy at law for the threatened conduct by defendants.

WHEREFORE, plaintiff prays for judgment against defendant, as follows:

AS TO THE FIRST CAUSE OF ACTION:

- a. Statutory damages in the amount of \$15,000.00, as provided in §4978(a);
- b. For an injunction compelling reform of the loan contract to comply with the provisions of Section 4979.6;
- c. Punitive Damages, as provided in §4978(b)(2);
- d. For an Order compelling reform of this loan by declaring the interest rate and payment terms unenforceable and to comply with the provisions of §4973(b) as provided in §4978(b)(1)

AS TO THE SECOND CAUSE OF ACTION:

- a. Rescind the loan transactions;
- b. Order defendant to take all actions necessary to terminate any security interest in plaintiff's property created under the transaction and that the Court declare the security interest void;
- c. Order the return to plaintiff of any money given by plaintiff to anyone, including defendant, in connection with the transaction.
- d. Actual Damages as provided under 15 U.S.C. § 1640(a)(1);
- e. Statutory Damages as provided under 15 U.S.C. § 1640(a)(2);
- f. An amount equal to the sum of all finance charges and fees as provided under 15 U.S.C. § 1640(a)(4);
- g. Award plaintiff costs and reasonable attorney's fees as provided under 15 U.S.C. § 1640(a)(3);
- h. Award such other and further relief as the Court deems just and proper.

AS TO THE THIRD CAUSE OF ACTION

WHEREFORE, plaintiff prays for judgment as follows:

- a. That this Court enter a preliminary and permanent injunction restraining and enjoining

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defendants and their agents, servants, employees, representatives, and anyone acting on his behalf or at his direction from engaging in, committing, permitting, or performing, directly or indirectly, any of the unfair, unlawful, or deceptive business practices described above pursuant to Business & Professions Code Section 17203;

- b. For restitution;
- c. For reasonable attorneys' fees pursuant to Code of Civil Procedure Section 1021.5;
- d. For costs of suit;

AS TO THE FOURTH CAUSE OF ACTION:


a. For a preliminary and permanent injunction restraining and enjoining defendants COUNTRYWIDE and their agents, servants, employees, representatives, and anyone acting on their behalf or at their direction from committing, permitting, or performing, directly or indirectly, any of the following acts regarding the premises:

- (1) Proceeding to hold any foreclosure sale or taking any steps to hold a foreclosure sale;
- (2) Taking any steps to foreclose upon the subject premises.
- (3) Assigning, selling, deeding, and/or granting the Deeds of Trust and Promissory Notes;

- b. For costs of suit;
- c. For such other and further relief as this Court deems just and proper

DATED: January 4, 2008

BARWICK LAW FIRM


JILL E. BARWICK
Attorney for Plaintiff
WES WRIGHT