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14 UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF CALIFORNIA

16 GUILLERMO NAVA, On Behalf Of
17 Himself And All Others Similarly Situated,

18 Plaintiff,

19 v.

20 VIRTUALBANK, LYDIAN TRUST
21 COMPANY, LYDIAN PRIVATE BANK,
22 AND DOES 1-10,

23 Defendants.

Civil Case No.:

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

24 Plaintiff Guillermo Nava (“Plaintiff”) brings this action against Virtualbank, Lydian Trust
25 Company, Lydian Private Bank, and DOES 1-10 (collectively “Defendants”), for violations of the
26 Truth in Lending Act (“TILA”), 15 U.S.C. §1601, *et seq.*, California’s Unfair Competition Law
27 (“UCL”), Bus. & Prof. Code § 17200, *et seq.*, and other statutory and common law, individually
28 and on behalf of all others similarly situated (“Class Members”) and alleges on information and
belief as follows:

I. INTRODUCTION

1. As home mortgage lenders, Defendants are required to clearly and

1 conspicuously disclose to consumers material information regarding any Adjustable Rate
2 Mortgage (“ARM”) sold pursuant to the Truth In Lending Act (“TILA”). TILA mandates
3 disclosure of essential facts any consumer would need to assess the affordability and desirability
4 of any given loan, including but not limited to the actual interest rate to be paid on the loan and
5 whether the loan will result in negative amortization.

6 2. Despite their legal obligations, throughout the relevant time period,
7 Defendants failed to clearly and conspicuously disclose and/or actively concealed material
8 information regarding the ARM loans at issue here to lure Plaintiff and the Class Members into
9 purchasing loans that would result in negative amortization, loss of equity and, in some cases,
10 foreclosure on borrowers’ homes.

11 3. Rather than notify borrowers of the true facts, Defendants provided
12 Plaintiff and Class Members with intentionally confusing and misleading information and
13 consistently failed to disclose in a clear and conspicuous manner material information about the
14 loans, including but not limited to (a) the actual interest rate on the loans, (b) that loan payments
15 based on the quoted “teaser” rate result in negative amortization, such that the principal balance
16 increases with each monthly payment, (c) that when borrowers adhere to the payment schedule
17 explicitly provided by Defendants, their payments are too small to cover all of the interest due on
18 the principal balance, resulting in negative amortization, and (d) that the initial “teaser” rate was
19 discounted and did not reflect the actual interest that Plaintiff and Class Members would have to
20 pay, or that the “teaser” rate would only apply for a very limited time, in many cases no more
21 than thirty (30) days. Such loans are frequently referred to as “Option ARM” loans. However,
22 defendants failed to clearly disclose to Plaintiff and Class Members, and fraudulently omitted,
23 that there were payment options, instead providing Plaintiff and Class Members with a deceptive
24 payment schedule that indicated borrowers would enjoy low payments without negative
25 amortization.

26 4. As a result of their unlawful conduct, Defendants have profited mightily at
27 the expense of Plaintiff and Class Members who purchased ARM loans that resulted in negative
28 amortization, loss of equity, and, in some cases, foreclosure on their homes.

1 **II. THE PARTIES**

2 5. Plaintiff is, and at all times relevant was, an individual residing in Tracy,
3 California. On or about October 25, 2006, Plaintiff refinanced his existing home loan and entered
4 into an ARM loan agreement with Defendants. The ARM loan was secured by Plaintiff's
5 primary residence. Attached hereto as Exhibit 1 is a true and correct copy of the ARM Note and
6 the TILA Disclosure Statement Defendants provided to Plaintiff.

7 6. Defendant VirtualBank is an internet banking company based in Palm
8 Beach County, Florida. VirtualBank transacts significant business in California and in San
9 Joaquin County, California by distributing and selling ARM loans to Plaintiff and Class
10 Members.

11 7. Defendant Lydian Trust Company is a financial services and banking
12 corporation with its primary place of business in Palm Beach Gardens, Florida. Defendant
13 VirtualBank is the internet banking subsidiary of Lydian Trust Company. Lydian Trust Company
14 transacts significant business in California and in San Joaquin County, California by distributing
15 and selling ARM loans to Plaintiff and Class Members.

16 8. Defendant Lydian Private Bank is a subsidiary of Lydian Trust Company
17 with its principal offices in South Beach, Florida. Defendant VirtualBank is a division of
18 Defendant Lydian Private Bank. Lydian Private Bank transacts significant business in California
19 and in San Joaquin County, California by distributing and selling ARM loans to Plaintiff and
20 Class Members.

21 9. DOES 1 through 10, inclusive, are securitized trusts, equity funds,
22 collateralized debt obligations (CDO), CDO underwriters, CDO trustees, hedge funds or other
23 entities that acted as additional lenders, loan originators and/or are assignees to the loans which
24 are the subject of this action. Plaintiff will seek leave of Court to replace the fictitious names of
25 these entities with their true names when they are discovered by herein.

26 10. The true names and capacities, whether individual, corporate, associate or
27 otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are unknown to at this
28 time, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff alleges, on

1 information and belief, that each Doe defendant is responsible for the actions herein alleged.

2 11. At all times mentioned herein, Defendants, and each of them, were
3 engaged in the business of distributing and selling the ARM loans that are the subject of this
4 Complaint, throughout California and the United States.

5 12. At all times material hereto, each of the Defendants (both named and DOE
6 defendants) sued herein were the agent, servant, employer, joint venturer, partner, division,
7 owner, subsidiary, alias, assignee and/or alter-ego of the other remaining Defendants and were at
8 all times acting within the purpose and scope of such agency, servitude, joint venture, division,
9 ownership, subsidiary, alias, assignment, alter-ego, partnership or employment and with the
10 authority, consent, approval and ratification of the remaining Defendants.

11 13. At all times herein mentioned, each Defendant was the co-conspirator of
12 the remaining Defendants and was acting within the course and scope of said conspiracy and with
13 the permission and consent of the other Defendants.

14 14. At all times mentioned herein, each Defendant was acting in concert or
15 participation with the other Defendants, or was a joint participant and collaborator in the acts
16 complained of herein.

17 **III. JURISDICTION AND VENUE**

18 15. This Court has subject matter jurisdiction pursuant to 15 U.S.C § 1601 *et*
19 *seq.* and 28 U.S.C. § 1331.

20 16. This Court has personal jurisdiction over the parties in this action by the
21 fact that Defendants conduct significant business in California and/or have purposely targeted
22 California residents in the distribution and/or sale of the ARM loans at issue here.

23 17. Venue is proper within this District and Division pursuant to 28 U.S.C.
24 §1391(b) because a substantial part of the events and omissions giving rise to Plaintiff's claims
25 occurred in this district, and because there is personal jurisdiction in this district over the named
26 Defendants because they regularly conduct business here.

27 **IV. FACTUAL ALLEGATIONS**

28 18. Defendants are in the business of selling a variety of home loans to

1 consumers, including the residential ARM mortgages that are the subject of this Complaint. As
2 home mortgage lenders, Defendants are required by law to clearly and conspicuously disclose
3 certain information to consumers, in writing, regarding the terms of the loans to protect the
4 integrity of the home lending industry and shield consumers from predatory lending practices.

5 19. Throughout the relevant time period, Defendants have not met their legal
6 obligations due to their failure to clearly and conspicuously disclose pertinent information
7 regarding the ARM loans sold to Plaintiff and Class Members and by misleading Plaintiff and
8 Class Members regarding the terms of the loans.

9 **The ARM Loans Sold To Plaintiff And Class Members**

10 20. The ARM loans at issue here are sold with the promise of a low, fixed *loan*
11 *payment*, based on a low “teaser” interest rate. However, the loan payments result in negative
12 amortization because, once signed on to Defendants’ loan, the “teaser” interest rate is
13 immediately and significantly increased (while the payments, based on the “teaser” rate and
14 provided in the loan payment schedule, remain the same for three (3) to five (5) years). If the
15 home owner adheres to the payment schedule provided by Defendants, the loan will
16 *unquestionably* result in negative amortization and loss of equity. Defendants failed to disclose,
17 and through omission, failed to inform the borrower of that fact, however. As a result, Plaintiff
18 and others similarly situated did not receive the benefit of the low rate promised to them. Further,
19 once lured into these loans, consumers are not able to easily extricate themselves because
20 Defendants include an onerous prepayment penalty.

21 21. Defendants represented to Plaintiff and Class Members, and Plaintiff and
22 Class Members reasonably believed, that if they made payments based on the promised low
23 interest rate – which were the payments reflected in the written payment schedule provided by
24 Defendants – the payments would be applied to both principal *and* interest and that the loans
25 would not result in negative amortization.

26 22. Plaintiff and Class Members reasonably believed, based on the
27 representations contained in the documents Defendants provided to Plaintiff and the Class
28 Members, that after the three (3) to five (5) years of fixed payments, they would be able to

1 refinance their loan before their scheduled payments increased. However, the payment schedule
2 provided by Defendants failed to clearly and conspicuously disclose, and by omission, failed to
3 inform, consumers that due to the negative amortization that was purposefully built into these
4 loans, Plaintiff and the Class Members would be unable to refinance their homes as there would
5 be little or no equity left to refinance.

6 23. During the loan application process, in each case, Defendants intended
7 Plaintiff and Class Members to believe that by entering into these loan contracts that they would
8 have low mortgage payments. Defendants initiated this scheme in order to maximize the number
9 of the loans sold to consumers and to maximize their profits.

10 24. In stark contrast to reality, Defendants, through the standardized loan
11 documents supplied to Plaintiff and Class Members, stated that negative amortization was only a
12 mere *possibility*. Defendants failed to disclose and omitted the objectively material fact that
13 negative amortization was *absolutely certain to occur* based on the payment schedule in the TILA
14 Disclosure Statement. This information was critical for consumers because disclosure would
15 have revealed that the loan's principal balance would increase if the payment schedule was
16 followed, thereby rendering it impossible to refinance the loan at or around the time the
17 prepayment penalty expired and/or by the time the interest and payment rates reset.

18 25. The ARM loans Defendants sold and continue to sell to Plaintiff and Class
19 Members share the following uniform characteristics:

20 a. They boast an initial low "teaser" rate, between one and three
21 percent, used to entice Plaintiff and Class Members into entering into the loan;

22 b. They include a corresponding payment schedule that leads
23 borrowers to believe the interest rate will not significantly increase in the first three years of the
24 loan or longer;

25 c. They fail to disclose that the fixed payments will not be enough to
26 cover the interest charged;

27 d. They include a modest capped annual increase on the payment
28 amount, usually 7.5 percent; and

1 e. They include a prepayment penalty preventing consumers from
2 securing a new loan for a period of up to three (3) years.

3 **Defendants' Conduct Violates the Truth in Lending Act, 15 U.S.C. §1601, et seq.**

4 26. The purpose of TILA is to assure a meaningful disclosure of credit terms so
5 that the borrowers will be able to compare more readily the various credit terms available to them
6 and avoid the uninformed use of credit, and to protect consumers against inaccurate and unfair
7 credit billing practices. TILA states in pertinent part:

8 **§226.1 Authority, purpose, coverage, organization, enforcement
9 and liability. . .**

10 (b) Purpose. The purpose of this regulation is to *promote the*
11 *informed use of consumer credit by requiring disclosures*
12 *about its terms and costs. The regulation also gives*
13 *consumers the right to cancel certain credit transactions that*
14 *involve a lien on a consumer's principal dwelling . . .*

15 12 C.F.R. § 226.1 (emphasis added).

16 27. TILA is thus designed to allow borrowers to make an informed use of
17 credit. An informed use of credit means being able to make decisions, as well as being able to
18 plan an individual's finances.

19 28. The Federal Reserve Board of Governors implements TILA through
20 Regulation Z (12 C.F.R. §226). Compliance by lenders with Regulation Z has been mandatory
21 since October 1, 1982. Additionally, Official Staff Commentary issued by the Federal Reserve
22 Board is binding on all lenders.

23 29. Regulation Z requires a creditor to make all mandated disclosures "*clearly*
24 *and conspicuously in writing, in a form that the consumer may keep.*" 12 C.F.R. §226 (emphasis
25 added). Further, the disclosures must be grouped together, segregated from everything else, and
26 may not contain any information not directly related to the required disclosures.

27 30. Residential home loans require very specific disclosures:

28 **§226.19. Certain residential mortgage and variable-rate
transactions. . . .**

(b) Certain variable-rate transactions. If the annual percentage rate
may increase after consummation in a transaction secured by the
consumer's principal dwelling with a term greater than one year,

1 the following disclosures must be provided at the time an
2 application form is provided or before the consumer pays a non-
3 refundable fee, whichever is earlier. . . (vii) *Any rules relating to*
4 *changes in the index, interest rate, payment amount, and*
5 *outstanding loan balance including, for example, an explanation of*
6 *interest rate or payment limitations, negative amortization, and*
7 *interest rate carryover.*

8 12 C.F.R. § 226.19 (emphasis added).

9 31. In 1995, and continuing each time new Official Staff Commentary was
10 issued, the Federal Reserve Board made clear that when the loan is a variable rate loan with
11 payment caps, such as those that are the subject of this lawsuit, the disclosures must include a
12 definitive statement about negative amortization:

13 12 C.F.R. Part 226

14 [Regulation Z; Docket No. R-0863]

15 Monday, April 3, 1995

16 AGENCY: Board of Governors of the Federal Reserve System.

17 ACTION: Final rule; official staff interpretation.

18 For the program that gives the borrower an option to cap monthly
19 payments, the creditor must fully disclose the rules relating to the
20 payment cap option, including the effects of exercising it (such as
21 *negative amortization occurs* and that the *principal balance will*
22 *increase*)...

23 C.F.R. § 226.19 (emphasis added).

24 32. Variable rate loans are based on a “margin” and an “index.” The index is
25 often the Prime Rate or the LIBOR exchange rate. The margin is the amount the lender charges
26 over that rate, which is essentially the lender’s profit on the loan.

27 33. When loan payments are not based on these indexes and margins, a
28 separate disclosure is required. The disclosure must inform the borrower that the payment they
are making is not based on what the index and margin really should be in order to avoid negative
amortization. The disclosure must also inform that the interest rate and payment may go up and
clearly and conspicuously provide all circumstances under which the rate and payment may
increase. Further, the disclosure must inform the borrower of the true cost of the loan.

34. A lender must also disclose the frequency of interest rate and payment

1 adjustments to borrowers for variable rate loans. If interest rate changes will be imposed more
2 frequently or at different intervals than payment changes, a creditor must disclose the frequency
3 and timing of both types of changes.

4 35. Despite their clear legal obligations under TILA, Regulation Z and the
5 Official Staff Commentary, the ARM loans Defendants sold and continue to sell to Plaintiff and
6 Class Members are unlawful in the following ways: 1) the loans fail to disclose that negative
7 amortization will occur based on the payment schedule provided by Defendants, which, in turn,
8 guarantees that the principal balance will increase; 2) the loans fail to clearly and conspicuously
9 disclose the actual interest rates applied to the loans; 3) the loans fail to clearly and conspicuously
10 disclose that the initial interest rate is discounted; 4) the loans fail to clearly and conspicuously
11 disclose the composite interest rate; 5) the loans fail to clearly and conspicuously disclose the
12 legal obligation between the parties; and 6) the loans fail to clearly and conspicuously disclose the
13 effect of the payment cap on the true cost of the loan. Because the loan documents fail to provide
14 this extremely important and mandatory material information in a manner that did not obscure its
15 importance, Defendants' failed to meet TILA's requirements.

16 **Defendants Failed to Clearly and Conspicuously Disclose Negative Amortization.**

17 36. Defendants failed to disclose and/or concealed information relating to
18 negative amortization. Defendants' unlawful acts and omissions include, but are not limited to
19 the following:

20 a. Defendants failed to disclose to Plaintiff and Class Members that
21 the payment schedule published in their TILA Disclosure Statement results in negative
22 amortization and loss of equity; and

23 b. Defendants failed to disclose to Plaintiff and Class Members that
24 the payments set forth in the schedule of payments are insufficient to cover the interest charged
25 and without question will result in Plaintiff and Class Members losing equity in their homes; and

26 c. Defendants failed to disclose to Plaintiff and Class Members that
27 when the principal balance increases to a certain level, they no longer have the option of making
28 the fixed interest payment amount.

1 **Defendants Failed to Clearly and Conspicuously Disclose the Actual Interest Rate.**

2 37. Defendants failed to clearly and conspicuously disclose the actual interest
3 rates of the loans in the following respects:

4 a. While Defendants state that the promised low interest rate is the
5 rate until the “Interest Rate Change Date,” what rates will apply to the loan and when is
6 extremely difficult, if not impossible, to determine;

7 b. Defendants failed to disclose that the “Interest Rate Change Date”
8 corresponds to the first monthly payment Plaintiff and Class Members make on their loans;

9 c. Defendants’ ARM Note is deceptive in that the amount set forth as
10 the initial monthly payment is equal to what the payment would be if the low interest rate
11 promised was actually being applied to the principal balance on the loans, however, the real
12 interest rate charged on the loan is much higher;

13 d. Defendants’ TILA Disclosure Statements contain conflicting and
14 confusing information—listing a payment schedule based on the low “teaser” rate, while listing a
15 Annual Percentage Rate (“APR”) that is much higher, without explanation;

16 e. The payment schedule deceptively indicates that the “teaser” rate
17 will apply to for the first three years of the loan, or longer; and

18 f. Defendants failed to disclose in a clear and conspicuous manner
19 that the fixed “teaser” rate will actually never apply to the loans, or, at most, will apply for a
20 maximum of thirty (30) days.

21 **Defendants Failed to Clearly and Conspicuously Disclose That The Initial Interest Rate**
22 **On The Loan Is Discounted.**

23 38. Defendants failed to clearly and conspicuously disclose and/or concealed
24 that the initial interest rate was discounted. Defendants’ conduct violated TILA in multiple
25 instances, including, but not limited to, the following:

26 a. Defendants failed to disclose to Plaintiff and Class Members that
27 their payments were not based on the United States Treasury Security average as listed in the
28 promissory note;

1 b. Defendants failed to inform Plaintiff and Class Members that their
2 payments were not based on what the index and margin really should be in order to avoid
3 negative amortization;

4 c. Defendants failed to disclose in a clear and conspicuous manner
5 that the interest rates would certainly increase after thirty (30) days, instead merely stating that
6 the interest rate *may* increase at some undetermined time in the future;

7 d. Defendants failed to disclose in a clear and conspicuous manner
8 that the initial interest rate was discounted, creating the possibility of an increase even if the index
9 remained constant or declined;

10 e. Defendants failed to clearly and conspicuously provide information
11 to Plaintiff and Class Members regarding the circumstances under which their interest rates
12 and/or payments would increase; and

13 f. The TILA Disclosure Statement falsely led Plaintiff and Class
14 Members consumers to believe that their interest rate would remain stable for three years or
15 longer since the loan payments are based on the low “teaser” interest rate promised.

16 **Defendants Failed to Clearly and Conspicuously Disclose the Composite Interest Rate.**

17 39. The official staff commentary to 226 C.F.R. § 17(C)(8) states:

18 *Basis of disclosures in variable-rate transactions.* The disclosures
19 for a variable-rate transaction must be given for the full term of the
20 transaction and must be based on the terms in effect at the time of
21 consummation. Creditors should base the disclosures only on the
22 initial rate and should not assume that this rate will increase. For
23 example, in a loan with an initial rate of 10 percent and a 5
24 percentage points rate cap, creditors should base the disclosures on
25 the initial rate and should not assume that this rate will increase 5
26 percentage points. *However, in a variable-rate transaction with a
27 seller buydown that is reflected in the credit contract, a consumer
28 buydown, or a discounted or premium rate, disclosures should not
be based solely on the initial terms. In those transactions, the
disclosed annual percentage rate should be a composite rate based
on the rate in effect during the initial period and the rate that is the
basis of the variable-rate feature for the remainder of the term.
(See the commentary to section 226.17(c) for a discussion of
buydown, discounted, and premium transactions and the
commentary to section 226.19(a)(2) for a discussion of the
redisclosure in certain residential mortgage transactions with a
variable-rate feature.)*

1 time of the first adjustment, from changing to the rate determined by the index or formula at
2 consummation, the effect of that rate or payment cap should be reflected in the disclosures.”

3 46. At all times relevant, Defendants’ ARM loans violated 12 C.F.R. §
4 226.17(c) in that the Notes and TILA Disclosure Statements did not disclose, and by omission,
5 failed to disclose, what Plaintiff and Class Members were legally obligated to pay. Defendants
6 accomplished this deception by only listing a partial payment in the TILA Disclosure Statements,
7 rather than a payment amount that was sufficient to pay what the borrowers were being charged
8 for their loans, and were legally obligated to pay.

9 47. As a direct and proximate result of Defendants’ omissions and failures to
10 clearly and conspicuously disclose Plaintiff’s and Class Members’ legal obligations under the
11 loans, Defendants took the partial payments and secretly added the deficit, each month, to
12 principal, thereby causing negative amortization to occur.

13 **Defendants Failed to Clearly and Conspicuously Disclose the**
14 **Effect of the Payment Cap on the True Cost of the Loan.**

15 48. The ARM loans at issue each contain a variable rate feature with an initial
16 teaser rate with payment caps. The payment cap limits how much the payment may be increased
17 annually. The loans issued by Defendants had a 7.5% payment cap, which means that a borrower
18 would only see their payment rise each year by a maximum of 7.5% (i.e., a \$1,000 monthly
19 payment in year one, could increase to a \$1,075 monthly payment in year two).

20 49. The Official Staff Commentary to 12 C.F.R. § 226.17(c)(1)(10)(iii) states
21 that “[i]f a loan contains a rate or payment cap that would prevent the initial rate or payment, at
22 the time of the first adjustment, from changing to the rate determined by the index or formula at
23 consummation, the effect of that rate or payment cap should be reflected in the disclosures.”
24 Thus, at all times relevant, Defendants had a duty to Plaintiff and the Class Members to disclose
25 the effect the payment caps would have on the loans in the TILA Disclosure Statements.

26 50. At all times relevant, Defendants failed to disclose, and by omission, failed
27 to inform Plaintiff and Class Members that the payment cap would cause hundreds, if not
28 thousands of dollars, each month, to be secretly added to their principal balances.

1 51. As a result, Defendants failed to disclose, and by omission, failed to inform
2 Plaintiff and the Class members of the effect of the payment cap in violation of 12 C.F.R. §
3 226.17.

4 52. Taken separately or in totality, the unclear and contradictory information
5 Defendants provided to Plaintiff and Class Members violated TILA in that it failed to provide the
6 clear and conspicuous disclosures as required under the Act.

7 **V. CLASS ACTION ALLEGATIONS**

8 53. Plaintiff brings this action on behalf of himself, and on behalf of all others
9 similarly situated (the “Class” or “Classes”) pursuant to Federal Rule of Civil Procedure, Rules
10 23(a), and 23(b). The Classes Plaintiff seeks to represent are defined as follows:

11 **The California Class:** All individuals who, within the four year
12 period preceding the filing of Plaintiff’s Complaint through the date
13 notice is mailed to the Class, received an ARM loan through
14 Defendants on their primary residence located in the State of
15 California.

16 **The National Class:** All individuals in the United States of
17 America who, within the four year period preceding the filing of
18 Plaintiff’s complaint through the date notice is mailed to the Class,
19 received an ARM loan through Defendants on their primary
20 residence located in the United States of America.

21 **The National Three Year Sub-Class:** All individuals in the
22 United States of America who, within the three year period
23 preceding the filing of Plaintiff’s Complaint through the date notice
24 is mailed to the Class, received an ARM loan through Defendants
25 on their primary residence located in the United States of America.

26 54. Excluded from the Classes are: (1) Defendants, any entity or division in
27 which any Defendant has a controlling interest, and its/their legal representatives, officers,
28 directors, assigns and successors; (2) the judge to whom this case is assigned and any member of
the judge’s immediate family; and (4) claims for personal injury, wrongful death and emotional
distress and claims of consequential property damage and loss.

 55. Plaintiff reserves the right to amend or otherwise alter the Class definitions
presented to the Court at the appropriate time, or propose or eliminate sub-Classes, in response to
facts learned through discovery, legal arguments advanced by Defendants, or otherwise.

1 56. **Numerosity:** The Classes are so numerous that the individual joinder of
2 all members is impracticable under the circumstances of this case. While the exact number of
3 Class Members is unknown at this time, Plaintiff is informed and believes that the Classes consist
4 of approximately tens of thousands of members.

5 57. **Commonality:** Common questions of law or fact are shared by Class
6 Members. This action is suitable for class treatment because these common questions of fact and
7 law predominate over any individual issues. Such common questions include, but are not limited
8 to, the following:

- 9 a. Whether Defendants’ acts and practices violate TILA;
- 10 b. Whether Defendants engaged in unfair business practices aimed at
11 deceiving Plaintiff and Class Members before and during the loan application process;
- 12 c. Whether Defendants failed to disclose that the interest rate actually
13 charged on these loans was higher than the rate represented;
- 14 d. Whether Defendants failed to properly disclose the process by
15 which negative amortization occurs, ultimately resulting in the recasting of the payment structure
16 over the remaining lifetime of the loans;
- 17 e. Whether Defendants’ failure to apply Plaintiff’s and Class
18 Members’ payments to principal as promised in the standardized form Notes constitutes a breach
19 of contract, including a breach of the covenant of good faith and fair dealing;
- 20 f. Whether Defendants’ conduct in immediately raising the interest
21 rate on consumers’ loans so that no payments were applied to the principal balance constitutes
22 breach of the covenant of good faith and fair dealing;
- 23 g. Whether Defendants’ marketing scheme misleadingly portrayed or
24 implied that these loans were fixed rate loans, when Defendants knew that only the periodic
25 payments were fixed (for a time) but that interest rates were not, in fact, “fixed;”
- 26 h. Whether Plaintiff and Class Members are entitled to damages,
27 including punitive damages; and
- 28 i. Whether Plaintiff and Class Members are entitled to rescission.

1 58. **Typicality:** Plaintiff’s claims are typical of the claims of Class Members.
2 Plaintiff and the other Class Members were subjected to the same kind of unlawful conduct and
3 the claims of Plaintiff and the other Class Members are based on the same legal theories.

4 59. **Adequacy:** Plaintiff is an adequate representative of the Class and Sub-
5 Classes because his interests do not conflict with the interests of the other members of the Class
6 and Sub-Classes Plaintiff seeks to represent. Plaintiff has retained counsel competent and
7 experienced in complex class action litigation and Plaintiff intends to prosecute this action
8 vigorously. The interests of members of the Class and Sub-Classes will be fairly and adequately
9 protected by Plaintiff and his counsel.

10 60. **Ascertainability:** The proposed Class and Sub-Classes are ascertainable
11 in that the members can be identified and located using information contained in Defendants’
12 mortgage lending records.

13 61. **Maintainability:** This case is brought and is maintainable as a class action
14 under Rule 23(b)(1), 23(b)(2), and 23(b)(3):

15 a. Risk of Inconsistent Judgments: The unlawful acts and practices of
16 Defendants constitute a course of conduct common to Plaintiff and Class Members. Prosecution
17 of separate actions by individual Class Members would create a risk of inconsistent or varying
18 adjudications which would establish incompatible standards of conduct for Defendants and/or
19 substantially impair or impede the ability of individual Class Members to protect their interests;

20 b. Injunctive and/or Declaratory Relief to the Class is Appropriate:
21 Defendants have acted or refused to act on grounds generally applicable to the Class, thereby
22 making final injunctive relief or corresponding declaratory relief with respect to the Class as a
23 whole appropriate; and

24 c. Common Questions of Law or Fact Predominate: Questions of law
25 or fact common to Class Members, including those identified above, predominate over questions
26 affecting only individual Class Members (if any), and a class action is superior to other available
27 methods for the fair and efficient adjudication of the controversy. Class action treatment will
28 allow a large number of similarly situated consumers to prosecute their common claims in a

1 single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and
2 expense that numerous individual actions would require. Further, an important public interest
3 will be served by addressing the matter as a class action. The cost to the court system of
4 adjudicating each such individual lawsuit would be substantial.

5 VI. CAUSES OF ACTION

6 FIRST CAUSE OF ACTION

7 (Violations of Truth in Lending Laws, 15 U.S.C. §1601, *et seq.*)

8 (On Behalf of All Classes)

9 62. Plaintiff incorporates by reference all preceding paragraphs as though fully
10 set forth herein.

11 63. Defendants failed to clearly and conspicuously disclose in writing the
12 interest rate Defendants actually applied to Plaintiff's and Class Members' loans, as mandated by
13 Regulation Z and the Official Staff Commentary issued by the Federal Reserve Board.

14 64. Defendants violated TILA by providing conflicting interest rate
15 information in their Notes and the TILA Disclosure Statement and the information was not
16 segregated as required.

17 65. Defendants failed to clearly and conspicuously disclose that the initial
18 interest rate was discounted.

19 66. Defendants failed to disclose in a clear and conspicuous manner that the
20 "teaser" rate promised only applies to the loan for a single month.

21 67. Defendants provided Plaintiff and Class Members with conflicting
22 information regarding the interest rates to be charged, setting forth one interest rate on the TILA
23 Disclosure Statement (which was different from the rate upon which the payment schedule was
24 based) and another on the ARM Note.

25 68. Defendants failed to clearly and conspicuously disclose the composite
26 annual percentage rate on the loans.

27 69. Defendants failed to clearly and conspicuously disclose that the ARM
28 loans were negative amortization loans and that negative amortization would occur based on the

1 payment schedule provided by Defendants.

2 70. Defendants failed to clearly and conspicuously disclose that the payment
3 schedule would result in unpaid interest is being added to principal.

4 71. Defendants failed to clearly and conspicuously disclose that the payment
5 schedules are not based on standard indices.

6 72. Defendants failed to clearly and conspicuously disclose that their payments
7 are not based on what the index should be in order to avoid negative amortization.

8 73. Defendants failed to clearly and conspicuously disclose all circumstances
9 under which the rates and payments may increase or change.

10 74. Defendants failed to clearly and conspicuously disclose that a substantial
11 interest rate increase after thirty (30) days was a virtual certainty.

12 75. As a direct and proximate result of Defendants' conduct in violation of
13 TILA, Plaintiff and Class Members have suffered injury an amount to be determined at time of
14 trial. If Defendants had not violated TILA and had instead properly disclosed the material terms
15 of Defendants' ARM loan product, as alleged herein, Plaintiff and Class Members would not
16 have entered into the loans.

17 76. WHEREFORE, Plaintiff and Class Members are entitled to an order
18 declaring that Defendants violated TILA, 15 U.S.C. §1601, *et seq.*, that Plaintiff and Class
19 Members have the right to rescind pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23, damages
20 pursuant to 15 U.S.C. § 1640, attorneys' fees, litigation costs and expenses and costs of suit, and
21 for an order rescinding Plaintiff's individual mortgage and those of any Class Member desirous of
22 such relief, and for an order awarding other relief as the Court deems just and proper.

23 **SECOND CAUSE OF ACTION**

24 **Violation of California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et. seq.***
25 **"Unlawful" Business Acts or Practices Predicated on Violations of TILA**

26 **(On Behalf of the California Sub-Class)**

27 77. Plaintiff incorporates by reference all preceding paragraphs as though fully
28 set forth herein.

1 78. Plaintiff brings this cause of action on behalf of himself, the California
2 Sub-Class, and in his capacity as a private attorney general against all Defendants for their
3 unlawful business acts and/or practices pursuant to California Business and Professions Code
4 Sections 17200 *et seq.*, which prohibits all unlawful business acts and/or practices.

5 79. Plaintiff asserts these claims as he is a representative of an aggrieved group
6 and as a private attorney general on behalf of the general public and other persons who have
7 expended funds that the Defendants should be required to pay or reimburse under the equitable
8 and restitutionary remedies provided by Business and Professions Code § 17200 *et seq.*

9 80. The unlawful acts and practices of Defendants alleged herein constitute
10 unlawful business acts and/or practices within the meaning of Business and Professions Code
11 Sections 17200 *et seq.*

12 81. Defendants' acts and practices are unlawful because they violate TILA, 15
13 U.S.C. §1601, *et seq.*, Regulation Z and the Official Staff Commentary issued by the Federal
14 Reserve Board.

15 82. Defendants' unlawful conduct as alleged herein gave Defendants an unfair
16 competitive advantage over their competitors.

17 83. As a direct and proximate result of the aforementioned acts, Defendants,
18 and each of them, received monies and continue to hold the monies expended by Plaintiff and
19 others similarly situated who purchased the ARM loans described herein.

20 84. Plaintiff and Class Members would not have purchased these loans but for
21 Defendants' unlawful conduct, which was committed with willful and wanton disregard for their
22 legal obligations to disclose required information to Plaintiff and Class Members. At all relevant
23 times, Defendants possessed full and exclusive knowledge and information concerning the above
24 facts about the ARM loans.

25 85. In addition to the relief requested below, Plaintiff seeks the imposition of a
26 constructive trust over, and restitution of, the monies collected and realized by Defendants.

27 86. The unlawful acts and practices, as fully described herein, present a
28 continuing threat to members of the public to be misled and/or deceived by Defendants as

1 described herein. Plaintiff and other members of the general public have no other remedy of law
2 that will prevent Defendants' misconduct from occurring and/or reoccurring in the future.

3 87. As a direct and proximate result of Defendants' unlawful conduct alleged
4 herein, Plaintiff and Class Members suffered an injury in fact and lost money.

5 88. WHEREFORE, Plaintiff and members of the California Sub-Class are
6 entitled to equitable relief, including restitution, disgorgement of all profits accruing to
7 Defendants because of their unlawful and deceptive acts and practices, attorneys' fees and costs,
8 declaratory relief, and a permanent injunction enjoining Defendants from their unlawful activity.

9 **THIRD CAUSE OF ACTION**

10 **Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200 *et seq.*,**
11 **"Unfair" or "Fraudulent" Business Acts or Practices**

12 **(On Behalf of the California Sub-Class)**

13 89. Plaintiff incorporates by reference all preceding paragraphs as though fully
14 set forth herein.

15 90. Plaintiff brings this cause of action on behalf of himself, on behalf of the
16 California Sub-Class, and in his capacity as a private attorney general against all Defendants for
17 their unfair, fraudulent and/or deceptive business acts and/or practices pursuant to Business and
18 Professions Code § 17200 *et seq.*

19 91. Plaintiff asserts these claims as he is a representative of an aggrieved group
20 and as private attorney general on behalf of the general public and other persons who have
21 expended funds that the Defendants should be required to pay or reimburse under the equitable
22 remedies provided by Business and Professions Code § 17200 *et seq.*

23 92. Defendants violated the Unfair Business Practices Act, Business and
24 Professions Code § 17200, *et seq.*, when they misrepresented material facts to Plaintiff and Class
25 Members. Defendants entered into contracts with Plaintiff and the Class and, therefore, had a
26 duty to not misrepresent material facts and to refrain from unfair and deceptive business practices.

27 93. Defendants violated the Unfair Business Practices Act, Business and
28 Professions Code § 17200, *et seq.*, when they engaged in a pattern of deceptive conduct and

1 concealment aimed at maximizing the number of borrowers who would accept their ARM loan.

2 94. Defendants violated the Unfair Business Practices Act, Business and
3 Professions Code § 17200, *et seq.*, when they sold Plaintiff and Class Members a deceptively
4 devised financial product.

5 95. Defendants violated the Unfair Business Practices Act, Business and
6 Professions Code § 17200, *et seq.*, when they sold to Plaintiff and Class Members ARM loans as
7 products with a very low interest rate and included a payment schedule indicating that the low
8 interest rate would apply for a period of three years or more without disclosing that negative
9 amortization would occur. Defendants disguised from Plaintiff and Class Members the fact that
10 the ARM loan was designed to, and did, cause negative amortization to occur.

11 96. Defendants violated the Unfair Business Practices Act, Business and
12 Professions Code § 17200, *et seq.*, when they lured Plaintiff and Class Members into the ARM
13 loan with promises of low fixed interest and then, once Plaintiff and Class Members entered into
14 these loans switched the interest rate charged on the loans to a much higher rate than the one they
15 advertised and promised to Plaintiff and Class Members.

16 97. Defendants violated the Unfair Business Practices Act, Business and
17 Professions Code § 17200, *et seq.*, when they failed to disclose and concealed from Plaintiff and
18 Class Members that their interest rates were discounted and would increase substantially after
19 thirty (30) days.

20 98. Defendants violated the Unfair Business Practices Act, Business and
21 Professions Code § 17200, *et seq.*, when they failed to disclose or concealed that their interest
22 rates would increase substantially years before they could extricate themselves from the loan,
23 which was subject to an extremely burdensome prepayment penalty.

24 99. Defendants violated the Unfair Business Practices Act, Business and
25 Professions Code § 17200, *et seq.*, when they perpetrated a “bait and switch” scheme on Plaintiff
26 and Class Members.

27 100. Defendants’ conduct was likely to deceive members of the consuming
28 public and, at all times, Defendants’ failure to disclose and omissions of material facts was and

1 continues to be unfair, fraudulent, untrue and/or deceptive.

2 101. Defendants' misconduct gave Defendants an unfair advantage over their
3 competitors.

4 102. As a direct and proximate result of the aforementioned acts, Defendants,
5 and each of them, received monies and continue to hold the monies expended by Plaintiff and
6 others similarly situated.

7 103. In addition to the relief requested in below, Plaintiff seeks the imposition of
8 a constructive trust over, and restitution of, the monies collected and realized by Defendants.

9 104. The harm to Plaintiff, members of the general public and others similarly
10 situated outweighs the utility of Defendants' policies, acts and/or practices and, consequently
11 Defendants' conduct herein constitutes an unfair, unlawful or fraudulent business act or practice
12 within the meaning of Business & Professions Code § 17200 *et seq.*

13 105. The unfair, unlawful or fraudulent business practices of Defendants present
14 a continuing threat to members of the public to be misled and/or deceived by Defendants' ARM
15 loans as described herein. Plaintiff and other members of the general public have no other
16 remedy of law that will prevent Defendants' misconduct from occurring and/or reoccurring in the
17 future.

18 106. As a direct and proximate result of Defendants' unlawful, unfair or
19 fraudulent conduct alleged herein, Plaintiff and Class Members have suffered injury in fact and
20 lost money.

21 WHEREFORE, Plaintiff and members of the California Sub-Class are entitled to
22 equitable relief, including restitution, disgorgement of all profits accruing to Defendants because
23 of their unfair, fraudulent, and deceptive acts and/or practices, attorneys' fees and costs,
24 declaratory relief, and a permanent injunction enjoining Defendants from their unfair, fraudulent
25 and deceitful activity.

FOURTH CAUSE OF ACTION
Fraudulent Omission

(On Behalf of the California Sub-Class)

107. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

108. As alleged herein, pursuant to TILA, 15 U.S.C. §1601, *et seq.*, Regulation Z (12 C.F.R. §226) and the Federal Reserve Board’s Official Staff Commentary, Defendants had a duty to disclose to Plaintiff, and each Class Member, (i) the actual interest rate being charged on the Note(s), (ii) that negative amortization would occur and that the “principal balance *will* increase”; and (iii) that the initial interest rate on the note was discounted.

109. Defendants were and continue to be under a duty to Plaintiff and Class Members to disclose these facts because:

a. Defendants are in a superior position to know the truth about the terms of the ARM loans sold to Plaintiff and Class Members;

b. Defendants made partial disclosures the loans while not revealing the true interest rates to be charged, that the interest rate was discounted, and that negative amortization would occur; and

c. Defendants actively concealed from Plaintiff and Class Members the negative amortization, the true interest rate to be charged and that the interest rate would in fact dramatically increase after thirty (30) days.

110. The facts concealed and/or not disclosed by Defendants to Plaintiff and Class Members are material facts that a reasonable person would have considered important in deciding whether or not to purchase or agree to the terms set forth in the ARM loans.

111. Plaintiff and Class Members justifiably acted or relied upon, to their detriment, the misrepresentations and/or concealed or non-disclosed facts, as evidenced by their purchase of the loans. Had Defendants disclosed the true character of loans, including, but not limited to true interest rate to be charged, that the interest rate would increase dramatically after thirty (30) days, and that negative amortization would occur, Plaintiff and Class Members would

1 not have purchased or agreed to the terms of the ARM loans in question here.

2 112. The aforementioned omitted material information was not known to
3 Plaintiff and Class Members. At all times relevant, Defendants failed to disclose and/or actively
4 concealed this material information by making such statements and partial, misleading
5 representations to Plaintiff and all others similarly situated.

6 113. From the inception of Option ARM loan scheme, until the present,
7 Defendants have engaged in a purposeful and fraudulent scheme to omit material facts known
8 solely to them, and not reasonably discoverable by Plaintiff or Class Members, regarding the true
9 facts concerning the actual interest rate charged on the loans, the negative amortization that was
10 certain to occur, and that the initial interest rate, in fact, was discounted, all of which Defendants
11 were duty-bound to clearly and conspicuously disclose to Plaintiff and the Class members in the
12 TILA Disclosure Statements. As a direct and proximate result of Defendants' failures to disclose
13 and omission of material facts, Plaintiff and Class Members have suffered actual damages, which
14 include, but are not limited to the loss of equity Plaintiff and Class Members had in their homes
15 prior to entering these loans.

16 115. The wrongful conduct of Defendants was willful, oppressive, immoral,
17 unethical, unscrupulous, substantially injurious, malicious and in conscious disregard for the well
18 being of Plaintiff and Class Members. Accordingly, Plaintiff and Class Members seek punitive
19 damages against Defendants in an amount to deter similar conduct in the future.

20 116. WHEREFORE, Plaintiff and members of the California Sub-Class are
21 entitled to all legal and equitable remedies provided by law, including but not limited to actual
22 damages, exemplary damages, attorneys' fees, prejudgment interest and costs.

23 **FIFTH CAUSE OF ACTION**

24 **Breach of Contract**

25 **(On Behalf Of The California Sub-Class)**

26 117. Plaintiff incorporates by reference all preceding paragraphs as though fully
27 set forth herein.

28 118. Plaintiff and Class Members entered into written contracts, *i.e.*, a written

1 home loan or Note, with Defendants. The Note was drafted by Defendants and could not be
2 modified by Plaintiff or Class Members. The Note describes terms and respective obligations
3 applicable to the parties herein.

4 119. Due to Defendants' superior bargaining position, the Notes were offered on
5 a take it or leave it basis and were contracts of adhesion.

6 120. Defendants' loans include a promise of a low, fixed interest rate, when in
7 fact Plaintiff and Class Members were charged a different, much greater interest rate than
8 promised.

9 121. The payment schedule Defendants provided represents that Plaintiff's and
10 Class Members' monthly payment obligations are the exact payments necessary to pay off all
11 principal and interest during the terms of the loans *if the interest rate actually charged by*
12 *Defendants was the low interest rate promised.*

13 122. As such, Defendants led Plaintiff and Class Members to believe that their
14 monthly payment obligations would be sufficient to pay both the principal *and* interest owed on
15 the loans. Defendants breached their implicit agreement and never applied any of Plaintiff's and
16 Class Members' payments to principal.

17 123. Defendants' loans indicate that negative amortization would occur only if
18 Plaintiff and Class Members deviated from the payment schedule set forth in the TILA Disclosure
19 Statement. However, Defendants' loans were designed such that negative amortization was
20 certain to occur even though Plaintiff and Class Members paid the designated monthly payments.

21 124. Defendants' loans indicate that Plaintiff's and Class Members' monthly
22 payments "will be applied to interest before Principal." See Exh. 1, section 2. However,
23 Defendants did not apply, and never intended to apply, any of the monthly payments to principal,
24 as the monthly payments are designed to be insufficient to cover the interest and principal.

25 125. In contrast, Plaintiff and Class Members did everything the contract
26 required of them. Plaintiff and Class Members made monthly payments in the amount required
27 by the terms of the Notes and reflected in the payment schedule prepared by Defendants.

28 126. At all times relevant, there existed a gross inequality of bargaining power

1 131. Defendants represented to Plaintiff and Class Members that they would
2 provide loans secured by Plaintiff's and Class Members' homes at a low interest rate and
3 indicated through their payment schedule that the low interest rate would apply for a period of
4 three or more years.

5 132. Defendants fraudulently omitted the fact that the loans would result in
6 negative amortization.

7 133. Plaintiff and Class Members had a right to receive the benefit of the Notes,
8 *i.e.*, monthly payments in the prescribed amounts that would not result in negative amortization.

9 134. Defendants unfairly interfered with Plaintiff's and Class Members' rights
10 by the acts alleged herein, including but not limited to immediately raising the interest rates,
11 applying no part of the payment to the principal, and providing Plaintiff and Class Members with
12 a payment schedule that was insufficient to cover the interest that Defendants charged, which
13 unfairly resulted in an increase in the amount of principal Plaintiff and Class Members owed on
14 their homes.

15 135. Plaintiff and Class Members did not receive the fixed low interest rate
16 home loan promised them by Defendants.

17 136. Plaintiff and Class Members, on the other hand, did all of those things the
18 contract required of them. Plaintiff and Class Members made monthly payments in the amount
19 required by the terms of the Notes and reflected in the payment schedule prepared by Defendants.

20 137. Defendants' breaches as alleged herein were committed with willful and
21 wanton disregard for whether or not Plaintiff or others similarly situated would receive the
22 benefits of the home loan promised. Defendants' conduct, as alleged herein conduct was
23 malicious, oppressive, and/or fraudulent.

24 138. As a result of Defendants' conduct, Plaintiff and Class Members have
25 suffered harm. Plaintiff and Class Members have incurred additional charges to their principal
26 loan balance. Plaintiff and Class Members have incurred and will continue to incur additional
27 interest charges on the principal loan balance and surplus interest added to Plaintiff's and Class
28 Members' principal loan balance. Furthermore, Defendants' breach has caused and/or otherwise

1 placed Plaintiff and Class Members in danger of losing their homes through foreclosure and, as a
2 direct and proximate result of said misconduct, caused Plaintiff's and Class Members' principal
3 loan balances to increase, limiting these consumers' ability to make their future house payments
4 or obtain alternative home loan financing.

5 139. WHEREFORE, Plaintiff and Class Members are entitled to declaratory
6 relief, all damages proximately caused by Defendants breach of the implied covenant of good
7 faith and fair dealing as alleged herein, punitive damages, pre-judgment interest, costs of suit and
8 other relief as the Court deems just and proper.

9 **SEVENTH CAUSE OF ACTION**

10 **Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200, *et seq.*,**
11 **"Unlawful" Business Acts or Practices**
12 **Predicated on Violations of Cal. Financial Code § 22302**

13 **(On Behalf Of The California Sub-Class)**

14 140. Plaintiff incorporates by reference all preceding paragraphs as though fully
15 set forth herein.

16 141. Plaintiff brings this cause of action on behalf of himself, on behalf of the
17 California Sub-Class, and in his capacity as a private attorney general against all Defendants for
18 their unlawful business acts and/or practices pursuant to California Business and Professions
19 Code § 17200 *et seq.*, which prohibits all unlawful business acts and/or practices.

20 142. Plaintiff asserts these claims as he is a representative of an aggrieved group
21 and as a private attorney general on behalf of the general public and other persons who have
22 expended funds that Defendants should be required to pay or reimburse under the equitable and
23 restitutionary remedies provided by California Business and Professions Code § 17200 *et seq.*

24 143. Defendants' acts and practices are unlawful because they violate the
25 California Financial Code § 22302.

26 144. The loans in question are consumer loan contracts.

27 145. The loans prepared by Defendants and entered into between Plaintiff and
28 Class Members and Defendants were, and are, unconscionable pursuant to Section 1670.5 of the
California Civil Code.

1 146. The loan contracts were unconscionable and unlawful because the relative
2 bargaining power between Plaintiff and Class Members and Defendants was unequal. Plaintiff
3 and Class Members could not negotiate or change any of the particular terms related to the loan
4 and drafted by Defendants. Moreover, Defendants did not disclose pertinent information
5 regarding the terms of the loan to Plaintiff and Class Members. To secure the loan, Plaintiff and
6 Class Members were given no choice but to make payments as described in the payment schedule
7 and to accept and sign all the associating documents, which number over a hundred pages.
8 Defendants drafted these loan documents for use on thousands of individuals. The documents
9 evidencing the loan were delivered to Plaintiff and Class Members at the time of signature. The
10 loan process offered by Defendants did not permit for any meaningful negotiation of terms or
11 even review of the loan documents at the time of execution.

12 147. The loan contracts were unconscionable and unlawful because the period
13 of time where Defendants offered Plaintiff and Class Members a low interest rate, often was for
14 only one month, although Defendants packaged the documents in such a manner as to lead
15 Plaintiff and Class Members to believe that they had a low interest rate and therefore low
16 payments for three years or more.

17 148. The loan contracts were unconscionable and unlawful because Defendants
18 inserted into the loan documents a prepayment penalty that has as its sole purpose to cause
19 Plaintiff and Class Members to continue under the terms of these loans or lose thousands of dollars
20 if Plaintiff and Class Members try to refinance the loans.

21 149. The loan contracts were unconscionable and unlawful because they were so
22 “one-sided” that they could only lead Plaintiff and Class Members to one result, which was a
23 significant loss of money.

24 150. As a direct and proximate result of the aforementioned acts, Defendants,
25 and each of them, received monies and continue to hold the monies expended by Plaintiff and
26 others similarly situated who purchased the ARM loans as described herein.

27 151. In addition to the relief requested in the Prayer below, Plaintiff seeks the
28 imposition of a constructive trust over, and restitution of, the monies collected and realized by

1 Defendants.

2 152. The unlawful acts and practices present a continuing threat to members of
3 the public to be misled and/or deceived by Defendants as described herein. Plaintiff and other
4 members of the general public have no other remedy of law that will prevent Defendants'
5 misconduct from occurring and/or reoccurring in the future.

6 153. As a direct and proximate result of Defendants' unlawful conduct alleged
7 herein, Plaintiff and Class Members have suffered injury in fact and lost money.

8 154. WHEREFORE, Plaintiff and members of the California Sub-Class are
9 entitled to equitable relief, including restitution disgorgement of all profits accruing to Defendants
10 because of their unlawful, unfair and fraudulent, and deceptive practices, attorneys' fees and
11 costs, declaratory relief, and a permanent injunction enjoining Defendants from their unlawful
12 activity.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff and all Class Members pray for judgment against each
15 Defendant, jointly and severally, as follows:

- 16 A. An order certifying this case as a class action and appointing Plaintiff and their
17 counsel to represent the Class;
- 18 B. Actual damages according to proof;
- 19 C. Compensatory damages as permitted by law;
- 20 D. Consequential damages as permitted by law;
- 21 E. Statutory damages as permitted by law;
- 22 F. Punitive damages as permitted by law;
- 23 G. Rescission;
- 24 H. All equitable relief permitted by law, including restitution;
- 25 I. Disgorgement of all profits Defendants obtained as a result of their unfair
26 competition;
- 27 J. Pre and post-judgment interest as permitted by law;
- 28 K. Declaratory Relief;

1 L. A mandatory injunction requiring Defendants to permanently include in every
2 ARM loan and disclosure statement: (i) clear and conspicuous disclosure of the actual interest
3 rate on the Note(s) and disclosure statement(s) as required under 12 C.F.R. § 226.17 by; (ii) clear
4 and conspicuous disclosure in the Note(s) and the disclosure statement(s) that payments on the
5 variable interest rate loan during the initial period at the teaser rate will result in negative
6 amortization and that the principal balance will increase as required under 12 C.F.R. § 226.19;
7 and (iii) clear and conspicuous disclosure that the initial interest rate provided is discounted and
8 does not reflect the actual interest that Plaintiff and Class Members would be paying on the
9 Note(s).

10 M. Reasonable attorneys' fees and costs; and

11 N. All such other relief as this Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of himself and Class Members, demands a jury trial in this action for
14 all of the claims so triable.

1
2 DATE: January 11, 2008

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3 By: 

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