

1 Robert R. Hager, NV State Bar No. 1482  
2 Treva J. Hearne, NV State Bar No. 4450  
3 HAGER & HEARNE  
4 245 E. Liberty - Suite 110  
5 Reno, Nevada 89501  
6 Tel: (775) 329-5811  
7 Fax: (775) 329-5819

8 *Counsel for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 JOSEFA S. LOPEZ, JOSE TRINIDAD  
12 CASAS, MARIA C. CASAS, LYNDON  
13 B.GRAVES, TYRONE EVENSON,  
14 MICHELLINA EVENSON, BRYAN GRAY,  
15 HELEN GRAY, PATRICK FRANKOSKI, and  
16 CHRISTOPHER PETERNELL, individually  
17 and on behalf of a class of similarly situated  
18 individuals,

19 Plaintiffs,

20 vs.

21 EXECUTIVE TRUSTEE SERVICES, LLC.;  
22 COUNTRYWIDE HOME LOANS, INC., a  
23 New York corporation; MERSCORP, INC., a  
24 Virginia corporation; MORTGAGE  
25 ELECTRONIC REGISTRATION SYSTEMS,  
INC., a subsidiary of MERSCORP, Inc., a  
Delaware corporation; RECONTRUST,  
SAXON MORTGAGE SERVICES, INC.,  
GALE GROUP dba T.D. FINANCIAL  
SERVICES dba T.D. SERVICE COMPANY,  
SECURITY UNION TITLE INSURANCE  
COMPANY, CAPITAL ONE dba CHEVY  
CHASE BANK, NATIONAL DEFAULT  
SERVICING CORPORATION, FEDERAL  
HOME LOAN MORTGAGE  
CORPORATION, a Virginia corporation;  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION, a District of Columbia  
corporation; GMAC MORTGAGE, L.L.C., a  
Delaware corporation; NATIONAL CITY  
MORTGAGE, a foreign company and a  
division of NATIONAL CITY BANK, a

Case No.: 3:09-cv-180-ECR-VPC

**FIRST AMENDED**  
**CLASS ACTION COMPLAINT**

1. **Violation of Fair Housing Act, 42 U.S.C. 3601, et seq.**
2. **Violation of Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq.**
3. **Violation of Nevada Uniform Lending Practices Act, N.R.S. 598D.100.**
4. **Conspiracy to Commit Fraud and Conversion**
5. **Conspiracy to Commit Fraud Related to MERS System**
6. **Unjust Enrichment**
7. **Intentional Infliction of Emotional Distress**
8. **Fraud in the Inducement**
9. **Injunctive Relief**
10. **Declaratory Relief**

1 subsidiary of National City Corporation;  
2 NATIONAL CITY CORPORATION, a  
3 Delaware corporation and a subsidiary of  
4 PNC Financial Services, Inc.; PNC  
5 FINANCIAL SERVICES, INC., a  
6 Pennsylvania corporation; J.P. MORGAN  
7 CHASE BANK, N.A., a New York  
8 corporation; CITIMORTGAGE, INC., a New  
9 York corporation; HSBC MORTGAGE  
10 CORPORATION, U.S.A., a Delaware  
11 corporation; AIG UNITED GUARANTY  
12 CORPORATION, a foreign corporation;  
13 WELLS FARGO BANK, N.A., a California  
14 corporation, dba WELLS FARGO HOME  
15 EQUITY and dba WELLS FARGO HOME  
16 MORTGAGE, a division of WELLS FARGO  
17 BANK, N.A., a California corporation; BANK  
18 OF AMERICA, N.A., a Delaware corporation,  
19 and GE MONEY BANK, an Ohio  
20 corporation; JOHN AND JANE DOES I-X;  
21 BLACK AND WHITE PARTNERSHIP I-X;  
22 AND ABC CORPORATION I-X,

23 Defendants.

24  
25 Plaintiffs, individually, and on behalf of a class of similarly situated individuals,  
through undersigned counsel, for Plaintiffs' complaint against Defendants, allege as  
follows:

STATEMENT OF THE CASE

This case arises because the Plaintiffs were the victims of fraudulent and predatory  
lending practices perpetrated on Plaintiffs by the actions of each of the Defendants in  
violation of federal laws. Further the Defendants have attempted to foreclose when they  
do not have a lawful right to foreclose. Plaintiffs bring this action on behalf of themselves  
and on behalf of all persons similarly situated. All of the Plaintiffs are at risk of losing  
their homes because of the acts of the Defendants.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JURISDICTION

1. Jurisdiction is founded upon 28 U.S.C. § 1331, as this matter presents issues of federal law, and this court has jurisdiction over the subject matter of this action pursuant to the laws of the United States, including but not limited to, 15 U.S.C. § 1601, et seq. and 42 U.S.C. § 3601.

2. This court also has jurisdiction pursuant to 28 U.S.C. § 1332 based on diversity of citizenship, as Plaintiffs are residents of the state of Nevada; Defendant Countrywide Home Loans, Inc. is a New York corporation; Defendant MERSCORP, Inc. is a Virginia corporation, and its subsidiary, Defendant Mortgage Electronic Registration Systems, Inc. is a Delaware corporation; and Defendants Executive Trustee Services, LLC, ReconTrust, Saxon Mortgage Services, Inc., Gale Group d/b/a TD Financial Services d/b/a T.D. Service Company, Capital One d/b/a/ Chevy Chase Bank, Security Union Title Insurance Company, National Default Servicing Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association; GMAC Mortgage, L.L.C.; National City Mortgage; National City Corporation; PNC Financial Services, Inc.; J.P. Morgan Chase Bank, N.A.; CitiMortgage, Inc.; HSBC Mortgage Corporation, U.S.A.; Bank of America, N.A.; AIG United Guaranty Corporation; Wells Fargo Bank, N.A. dba Wells Fargo Home Equity; Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A.; and GE Money Bank are foreign corporations, and because this matter is a class action with claims having a value in excess of \$5,000,000.00.

3. This court has pendent jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

1 4. Venue over this matter is appropriate in this court pursuant to 28 U.S.C. §  
2 1391(b). The acts complained of occurred, in substantial part, in the state of Nevada, the  
3 properties subject to this action is situated in the State of Nevada in the Northern Division  
4 of the District of Nevada, the owners of the property reside in Nevada, and, at all relevant  
5 times material hereto, the Defendants are or were doing business in Nevada.

6 Parties and Standing

7 5. Plaintiff, Josefa S. Lopez, is a resident of Washoe County, Nevada.

8 6. At all times relevant and material hereto, Plaintiff Lopez maintained  
9 Plaintiff's primary residence in Washoe County, Nevada with the legal description of:

10  
11 LOT 372 OLD STONE CREST PHASE 7 SUBDIVISION,  
12 ACCORDING TO THE MAP THEREOF, FILED IN THE  
13 OFFICE OF THE COUNTY RECORDER OF WASHOE  
COUNTY, STATE OF NEVADA ON NOVEMBER 10, 1998 AS  
FILE NO. 2273489 AS TRACT MAP NO. 3608.

14 Plaintiff's primary residence as described above is commonly referred to and  
15 located at 7423 Baroque Court, Sun Valley, Nevada

16 7. Plaintiffs Jose Trinidad Casas & Maria C. Casas are residents of Washoe  
17 County, Nevada.

18 8. At all times relevant and material hereto, Plaintiffs Casas maintained a  
19 primary residence in Washoe County, Nevada with the legal description of:

20 Lot 179 of the Vineyards Villages 2 and 3, according to the map thereof, filed  
21 in the office of the County Recorder of Washoe County, State of Nevada  
22 March 11, 2005, as filed No. 3181482, Tract Map No. 4453.

23 Plaintiffs' primary residence as described above is commonly referred to and  
24 located at 5071 Chevalier, Sparks, Nevada 89433.

25 9. Plaintiff, Lyndon B. Graves is a resident of Washoe County, Nevada.

1           10.    At all times relevant and material hereto, Plaintiff Graves had attempted to  
2 complete and maintain a primary residence in Washoe County, Nevada with the legal  
3 description of:

4                            Lot 11, in Block F. of Lightning W Ranch-Ranch Unit, according to the map  
5 thereof, filed in the office of the County Recorder of Washoe County, State of  
6 Nevada, on May 19, 1994, as File No. 1798672, as Tract Map No. 3043.

7 Plaintiff's primary residence as described above is commonly referred to and  
8 located at 2 Willow Bend, Carson City, Nevada.

9           11.    Plaintiffs, Tyrone Evenson & Michele Evenson are residents of  
10 Washoe County, Nevada.

11           12.    At all times relevant and material hereto, Plaintiffs Evenson  
12 maintained their primary residence in Washoe County, Nevada with the legal description  
13 of:

14                            Lot 501 of Triple Crown Subdivision Unit No. 5, according to  
15 the map thereof, filed in the office of the County Recorder of  
16 Washoe County, State of Nevada on September 3, 1996 under  
17 File No. 2026839 of Official Records, Tract Map No. 3304.  
18 APN: 516-081-05

19 Plaintiffs' primary residence as described above is commonly referred to and  
20 located at 1295 Cibola Dr., Sparks, Nevada.

21           13.    Plaintiffs Brian Gray & Helen Gray are residents of Washoe County, Nevada.

22           14.    At all times relevant and material hereto, Plaintiffs Gray maintained  
23 Plaintiffs' primary residence in Washoe County, Nevada with the legal description of:

24                            Lot 17, as shown on the map of Double Diamond Ranch  
25 village 9, Tract Map No. 4343, filed in the office of the  
County Recorder of Washoe County, State of Nevada,  
on May 19, 2004, as File No. 3040346, of Official  
Records.    APN : 161-313-06

1 Plaintiff's primary residence as described above is commonly referred to and  
2 located at 1545 Bethal Court, Reno, Nevada.

3 15. Plaintiff Patrick Frankoski is a resident of Washoe County, Nevada.

4 16. At all times relevant and material hereto, Plaintiff Frankoski maintained  
5 Plaintiff's primary residence in Washoe County, Nevada with the legal description of:

6 Lot 28, In Block J of Bridle Path Homes – Unit 5, According to  
7 the map thereof, filed in the office of the county recorder of  
8 Washoe County, State of Nevada, on April 21, 1994. Under  
9 filing No. 1789215, and as tract map No. 3030. Excepting  
therefrom all mines of gold, silver, copper, lead and other  
valuable minerals.

10 Plaintiff's primary residence as described above is commonly referred to and  
11 located at 333 Omni Drive, Sparks, Nevada.

12 19. Plaintiff, Christopher Peternell, is a resident of Washoe County, Nevada.

13 20. At all times relevant and material hereto, Plaintiff maintained Plaintiff's  
14 primary residence in Washoe County, Nevada with the legal description of:

15 Lot 31, as set forth on the map of Carson Meadows No. 3, filed  
16 for record in the Carson City recorder's office, on October 19,  
17 1972, in Book 2 of maps, page 386, as file no. 12271,  
18 Official Records.

19 Plaintiff's primary residence as described above is commonly referred to and  
20 located at 1305 Palo Verde Dr., Carson City, Nevada.

21 21. Upon information and belief, Defendant Executive Trustee Services, LLC  
22 (hereinafter "ETS") is a wholly owned subsidiary of GMAC and is a foreign limited liability  
23 corporation authorized to do business in and doing business in Washoe County, Nevada,  
24 and at all times material hereto was a member of the MERS system described herein and a  
25 shareholder in MERS.

1           22. Upon information and belief, Defendant MERSCORP, INC. was a Virginia  
2 corporation and doing business in the State of Nevada through its subsidiary, Defendant  
3 MERS, Inc., a Delaware corporation. Upon information and belief, MERSCORP, INC. was  
4 a director of MERS, Inc. Defendants MERSCORP, INC. and MERS, Inc. are hereinafter  
5 collectively referred to as “MERS.”

6           23. Upon information and belief, Defendant Federal Home Loan Mortgage  
7 Corporation (hereinafter referred to as “Freddie Mac”) is a Virginia corporation doing  
8 business in Nevada, and is a creator, originator, and shareholder in MERS. Upon  
9 information and belief, Freddie Mac was also, through its agents and employees, a  
10 director of MERS.

11           24. Upon information and belief, Defendant Federal National Mortgage  
12 Association (hereinafter referred to as “Fannie Mae”) is a District of Columbia corporation  
13 doing business in Nevada and, at all times material hereto, is, a creator, originator, and  
14 shareholder of MERS and a member of the MERS system described herein. Upon  
15 information and belief, Defendant Fannie Mae was also, through its agents and employees  
16 is a director of MERS.

17           25. Upon information and belief, Defendant GMAC Mortgage, L.L.C. was a  
18 Delaware corporation doing business in Nevada and, at all times material hereto, was a  
19 member of the MERS system described herein. Upon information and belief, Defendant  
20 GMAC Mortgage, L.L.C., through its affiliate or subsidiary, GMAC Residential Funding  
21 Corp., was a creator, originator, and shareholder in MERS, and through its employees or  
22 agents employed by its affiliate or subsidiary, GMAC Residential Holding Corp., was a  
23 director of MERS.  
24  
25

1           26. Upon information and belief, PNC Financial Services Group, Inc.  
2 (hereinafter “PNC”) is a Pennsylvania corporation and the parent company of National  
3 City Corporation, Inc. pursuant to a merger consummated in or around December 31,  
4 2008.

5           27. Upon information and belief, National City Corporation, (hereinafter  
6 “National City Corp.”) is a Delaware corporation wholly owned by PNC pursuant to a  
7 merger consummated in or around December 31, 2008.

8           28. Upon information and belief, National City Bank (hereinafter “National City  
9 Bank”), is an Ohio corporation wholly owned by PNC pursuant to a merger consummated  
10 in or around December 31, 2008.

11           29. Upon information and belief, Defendant National City Mortgage, a division  
12 of National City Bank, was a foreign company doing business in Nevada, and, at all times  
13 material hereto was a member of the MERS system described herein. Upon information  
14 and belief, Defendant National City Mortgage, through its agents and employees, was a  
15 director of MERS.  
16

17           30. Upon information and belief, Defendant J.P. Morgan Chase Bank, N.A. was  
18 a New York corporation doing business in Nevada and, at all times material hereto, was a  
19 member in the MERS system described herein. Upon information and belief, J.P. Morgan  
20 Chase Bank, N.A., through its affiliate or subsidiary, Chase Home Mortgage Corporation  
21 of the Southeast, was a creator, originator, and shareholder in MERS, and through its  
22 employees or agents employed by its affiliate, J.P. Morgan Chase Co., was a director of  
23 MERS.  
24  
25

1           31.    Upon information and belief, Defendant CitiMortgage, Inc. was a New York  
2 corporation doing business in Nevada and, at all times material hereto, was a member in  
3 the MERS system described herein and a shareholder of MERS.

4           32.    Upon information and belief, Defendant HSBC Mortgage Corporation,  
5 U.S.A. was a Delaware corporation and, at all times material hereto, was a member of the  
6 MERS system described herein. Upon information and belief, HSBC Mortgage  
7 Corporation, through its affiliate or subsidiary HSBC Finance Corp., was a creator,  
8 originator, and shareholder of MERS.

9           33.    Upon information and belief, Defendant Wells Fargo Bank, N.A. was a  
10 California corporation doing business in Nevada as Wells Fargo Home Equity and as  
11 Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., and, at all times  
12 material hereto, was a member of the MERS system described herein and a creator,  
13 originator, and shareholder of MERS.

14           35.    Upon information and belief, Defendant Bank of America, N.A. was a  
15 foreign corporation doing business in Nevada, and was a successor in interest to  
16 Countrywide Home Loans, Inc. and/or acquired Countrywide Home Loans, Inc. and its  
17 affiliates and subsidiaries, for the purpose of funding and/or managing the ongoing  
18 business activities of Countrywide Home Loans, Inc. Upon information and belief,  
19 Defendant Bank of America, N.A., at all times material hereto, was a member of the MERS  
20 system described herein.

21           36.    Upon information and belief, Defendant AIG United Guaranty Corporation  
22 was a foreign corporation and, at all times material hereto, a creator, originator, and  
23 shareholder of MERS and/or a member of the MERS system described herein.  
24  
25

1 37. Upon information and belief, Defendant GE Money Bank was an Ohio  
2 corporation and was a member of the MERS system described herein.

3 38. Upon information and belief, Defendant ReconTrust is a wholly owned  
4 subsidiary of Defendant Countrywide Home Loans, Inc.

5 39. Upon information and belief, Defendant National Default Servicing  
6 Corporation is a company located in Phoenix, Arizona.

7 40. Upon information and belief, Defendant Saxon Mortgage Services, Inc., is  
8 Texas corporation.

9 41. Upon information and belief, Defendant T.D.Service Company is an Arizona  
10 corporation and “a preferred provider for MERS.”

11 42. Upon information and belief, Chevy Chase Bank is a foreign corporation that  
12 services loans.

13 43. Upon information and belief, Defendant Security Union Title Insurance  
14 Company is a part of Chicago Title family of companies, an Illinois corporation.

15 44. Defendants John and Jane Does I-X are fictitious names for affiliates,  
16 agents, or successors or assigns of the named Defendants whose true names are not  
17 known to Plaintiffs at this time. Plaintiffs will seek leave of court to amend this complaint  
18 to assert the true names of these Defendants at such times as their true names are  
19 discovered to assert this complaint against such parties with the same effect as if such  
20 names had been set forth herein.

21 45. Defendants Black and White Partnership I-X are fictitious names for  
22 affiliates, partners, or successors or assigns of Defendants whose true names are not  
23 known to Plaintiffs at this time. Plaintiffs will seek leave of court to amend this complaint  
24  
25

1 at such times as their true names are discovered to assert this complaint against such  
2 parties with the same effect as if such names had been set forth herein.

3 46. Defendants ABC Corporation I-X are fictitious names for affiliates, partners,  
4 or successors or assigns of Defendants whose true names are not known to Plaintiffs at  
5 this time. Plaintiffs will seek leave of court to amend this complaint to assert the true  
6 names of these Defendants at such times as their true names are discovered to assert this  
7 complaint against such parties with the same effect as if such names had been set forth  
8 herein.

9  
10 GENERAL ALLEGATIONS

11 (as to all Plaintiffs)

12 47. In the United States, home purchases are typically financed by mortgages or  
13 loans that are secured by a deed of trust and a note.

14 48. "Subprime mortgages" is a term coined in recent history for loans offered to  
15 borrowers who don't meet the credit standards for borrowing in the prime market.  
16 Generally, these subprime loans are more expensive for borrowers with rates higher than  
17 prevailing prime rates of interest for the loan.

18 49. Between the years 1994 and 2007 subprime mortgages steadily expanded the  
19 underwriting parameters and deemed more borrowers qualified for mortgages than had  
20 been historically approved.

21 50. In 2005, the number of homeowners defaulting on their subprime mortgages  
22 began to soar.

23 51. Estimates by consumer agencies forecasted that as many as 2.2 million of the  
24 nearly 70 million homeowners in the U.S. are at risk of defaulting beginning in 2008,  
25 while a reported 3 million foreclosures occurred in the U.S. in 2008. Upon information

1 and belief, foreclosures to date during calendar year 2009 are at a higher rate than that  
2 which occurred during 2008.

3 52. The United States Office of the Currency Comptroller and the Office of Thrift  
4 Supervision issued a report in January 2008 that estimated the number of foreclosures to  
5 be more than 60% of those in the subprime market.

6 53. From 2003 through 2007, the Defendants continued to lend money while  
7 intentionally making knowingly false or reckless representations to borrowers that the  
8 Defendants would later refinance the loans or that the borrowers' homes would continue  
9 to increase in value in order to induce the borrowers to enter into mortgages.

10 54. The lenders and investors in mortgage-backed securities including some of  
11 the Defendants have sought bail out money from the United States government leaving  
12 the Plaintiffs with the threat of losing their homes, devalued homes, and payments too  
13 large in comparison to their actual income in an economy that is depressed because of the  
14 speculation by the lenders and investors in mortgage backed securities.

15 55. The lenders and investors in mortgage backed securities including some of the  
16 Defendants have not used the bail out funds from the United States government to help  
17 persons retain their homes, but instead, have adopted a policy to force persons from their  
18 homes in order to purge their companies or the investors of the toxic and fraudulent  
19 mortgages. The entities that have foreclosed on the homes of the borrowers have sold the  
20 homes to third parties for available cash that is substantially less than that owed by the  
21 borrowers who are residents of the homes.

22 56. The Defendant Mortgage Electronic Registration Service was created by the  
23 Defendants identified herein as co-conspirators in relation to the MERS system with the  
24  
25

1 specific intent that MERS would be named the beneficiary as the nominee of the lender on  
2 the deeds of trust which Plaintiffs were induced into signing.

3 57. The foreclosure were initiated against the Plaintiffs by parties with no  
4 standing to commence or maintain any foreclosure proceeding and who were strangers to  
5 the purported loan transactions and which parties were and are unknown to the Plaintiffs.

6 58. The foreclosures on Plaintiffs' homes complained of herein were initiated by  
7 Defendants who had and have no lawful right to initiate, advance or maintain any  
8 foreclosure against the Plaintiffs or their homes.

9 59. All Defendants participated in a conspiracy to cause the Plaintiffs to enter into  
10 instruments that would result in the foreclosure of their homes.

11 **(Facts as to Plaintiff Josefa Lopez.)**

12 60. On or about October 26, 2005, Josefa Lopez refinanced her home referred to  
13 herein in Washoe County, Nevada, by executing a Note and Deed of Trust in favor of The  
14 Mortgage Store Financial, Inc. ("The Mortgage Store"), with MERS, Inc. listed as the  
15 nominee of "beneficiary" under the Deed of Trust in the principal amount of \$243,525.00.

16 61. Josefa Lopez did not sign the application nor was any application furnished  
17 to her as a part of the closing documents nor was any income information sought by The  
18 Mortgage Store since Josefa Lopez had informed The Mortgage Store that she was  
19 unemployed and had no income at the time she applied for the mortgage. Josefa Lopez's  
20 credit score and the appraisal of the home were the only criteria used by The Mortgage  
21 Store to qualify Plaintiff for the refinance loan on her residence. Josefa Lopez's brother  
22 and sister, who had been on the title and loan of Josefa Lopez's residence at the time of  
23 the refinance, were required by The Mortgage Store to deed their interests to Josefa  
24 Lopez, and The Mortgage Store would not allow Josefa Lopez's brother or sister to sign as  
25

1 borrowers on the loan, Note or Deed of Trust, despite the fact that both Josefa Lopez's  
2 brother and sister had proof of employment and had provided income information that  
3 reflected some ability to repay the loan.

4 62. On the deed of trust the Mortgage Store Financial, Inc., a California  
5 Corporation which, upon information and belief, was not registered to do business in  
6 Nevada, was listed as the lender, the trustee was listed as Stewart Title of Northern  
7 Nevada, with MERS, Inc. listed as the nominee of the "beneficiary," in the principal  
8 amount of \$243,525.00.

9  
10 63. The Mortgage Store, before and at the time the Josefa Lopez executed the  
11 documents related to the First Mortgage, represented to Plaintiff that the interest rate on  
12 the loan secured by the First Deed of Trust would be a fixed rate of 5.25% for the entire  
13 period of the loan and that the monthly payments would be \$1,065.42.

14 64. The Mortgage Store had solicited Josefa Lopez by mail to enter into the  
15 refinance loan, and The Mortgage Store originated the loan to Plaintiff with full  
16 knowledge that the Mortgage Store had deliberately failed to obtain any information  
17 about Plaintiff's ability to make payments as provided under the terms of the loan.

18 65. Josefa Lopez was assured when she entered into the mortgage that the payment  
19 would not change and Josefa Lopez relied upon that representation prior to executing the  
20 documents for the loan.

21 66. Josefa Lopez was given this loan by The Mortgage Store based only upon the  
22 equity in her home and her credit score, which loan underwriting criteria and guidelines  
23 were consistent with the business practices and policies of each Defendant bank herein to  
24 cause loans on primary residences in the United States to be originated, transferred,  
25 securitized and sold, all at a profit to the Defendant lender banks and their co-

1 conspirators as alleged herein, and without regard for the ability of the borrower to repay  
2 the loan or the loss of the borrower of his/her residence.

3 67. The Mortgage note included an "Adjustable Rate Rider" whereby  
4 the initial rate of interest was set at 5.25% from the Closing Date (October 16, 2005) until  
5 12/01/2007 (the "First Change Date"), when it would increase, increasing the payment to  
6 \$1,674.23. Thereafter, the rate of interest would be subject to change on June 1, 2008,  
7 when the payment would increase to \$1,877.17, and subject to another change in 2015  
8 increasing the payment to \$2,230.36.

9 68. Upon each successive change date, the adjustment in the rate of interest was  
10 to be calculated but could not exceed 11.25%.

11 69. This payment schedule resulted in negative amortization of the loan because  
12 it was an interest only loan and Josefa Lopez had no reasonable anticipation of paying  
13 down the loan thus Josefa Lopez owed more at the date of the foreclosure than was  
14 initially borrowed.

15 70. The Annual Percentage Rate (hereinafter APR) was estimated at 7.410%  
16 with the total amount of finance charges estimated at \$231,803.60 over the life of the First  
17 Mortgage.

18 71. Upon information and belief, no Final HUD-1 form was ever translated to  
19 the Plaintiff so that the Josefa Lopez could understand the terms, conditions, and costs of  
20 her loan, nor was she informed in her native language that she could rescind the loan as  
21 required by federal law. Furthermore, Josefa Lopez primarily speaks Spanish, and none  
22 of the closing documents were translated into Spanish so that she knew and understood  
23 very little other than the amount of her initial payment and the amount of the cash out to  
24 her to make payments from the equity in her home.  
25



1 mortgage that the payment would not change and Jose and Maria Casas relied upon that  
2 representation prior to executing the documents for the loan.

3 77. The payments were increased within one year and increased every six months  
4 after the first adjustment.

5 78. On or about February 25, 2009, Jose and Maria Casas received a Notice of  
6 Default and Election to Sell under Deed of Trust from National Default Servicing  
7 Corporation.

8 **(Specific facts as to Plaintiffs Lyndon B. Graves)**

9  
10 79. On December 13, 2007, Lyndon Graves entered into a mortgage deed of trust  
11 and note with Countrywide Bank, FSB for 980,000.00.

12 80. The Trustee on the deed of trust was ReconTrust Company and the nominee  
13 for the lender and beneficiary was Defendant MERS.

14 81. Lyndon Graves did fill out the application for the loan and would not have  
15 agreed that his income on the date of the execution of the documents was \$16,500 per  
16 month. Mr. Graves had furnished a signed release for his IRS information so that his true  
17 and correct income would be available for the lender.

18 82. The First Mortgage note included an "Adjustable Rate Rider" whereby the  
19 initial rate of interest was set at 5.875% from the Closing Date (December 13, 2007) until  
20 January 1, 2008, (the "First Change Date"), when it would increase. The interest rate  
21 could increase to 10.875%.

22 83. Lyndon Graves was given this loan by Countrywide based only upon stated  
23 income which was not actually stated by the borrower, which loan underwriting criteria  
24 and guidelines were consistent with the business practices and policies of each Defendant  
25 bank herein to cause loans on primary residences in the United States to be originated,

1 transferred, securitized and sold, all at a profit to the Defendant lender banks and their  
2 co-conspirators as alleged herein, and without regard for the ability of the borrower to  
3 repay the loan or the loss to the borrower of his/her residence.

4 84. Lyndon Graves was not able to sell his home nor to maintain his income and  
5 fell behind in his payments.

6 85. A forensic loan audit was performed on this loan and that Countrywide  
7 underdisclosed the annual percentage rate by 2.345% and under disclosed the finance  
8 charge by \$821,176.35 in the document disclosures required by the Real Estate Settlement  
9 Procedures Act.

10 **(Specific facts for Plaintiff Michelleta and Tyrone Evenson)**

11 86. Tyrone Evenson is disabled and has been permanently disabled since 2005.

12 87. Tyron Evenson executed a release for Countrywide to view his IRS returns at  
13 the time of application for the loan in September 2006.

14 88. The application for the loan stated that Mr. Evenson made a base income of  
15 \$7300 per month. Mr. Evenson would not have agreed with that amount and was not  
16 asked to verify that amount nor agree that he made that income on a monthly basis. Mr.  
17 Evenson has been disabled since 2005 on a fixed income of approximately \$1500 per  
18 month.

19 89. Michellina Evenson is unemployed and has been unemployed since 2005.

20 90. On or about Octboer 26, 2006, the Evensons refinanced their home referred  
21 to herein in Washoe County, Nevada, by executing a Note and Deed of Trust in favor of  
22 Countrywide Home Loans, with MERS, Inc. listed solely as the nominee of "beneficiary"  
23 under the Deed of Trust in the principal amount of \$288,000. The Evensons owed  
24 \$102,000 on their home on October 26, 2006.  
25



1           97. Bryan and Helen Gray entered into a mortgage and note on August 11, 2006,  
2 with First Magnus Financial Corporation, an Arizona Corporation.

3           98. The Trustee was First Centennial Title Company of Nevada, and MERS was  
4 stated to be acting solely as a nominee for the Lender.

5           99. The mortgage and note was for Five Hundred and Ninety Eight Thousand  
6 Dollars.

7           100. The interest rate began at 7.625 % and adjusted on the first day of October  
8 2006 and could be adjusted each and every month thereafter not to exceed 19.9%

9           101. The Grays were never shown an application and the income stated on the  
10 application. The loan was based upon stated income that was never stated by Mr. or Mrs.  
11 Gray nor was it verified by the lender. The Grays were not given their loan documents  
12 because First Magnus closed and locked their doors and made the loan documents  
13 unavailable to borrowers.

14           102. The Grays were given this loan by First Magnus based upon stated income  
15 that was not stated by the borrower and was not verified by the lender, which loan  
16 underwriting criteria and guidelines were consistent with the business practices and  
17 policies of each Defendant bank herein to cause loans on primary residences in the United  
18 States to be originated, transferred, securitized and sold, all at a profit to the Defendant  
19 lender banks and their co-conspirators as alleged herein, and without regard for the  
20 ability of the borrower to repay the loan or the loss of the borrower of his/her residence.

21           103. The Grays were unable to make their payments in full to the servicer Chevy  
22 Chase Bank and Defendant T.D. Service Company initiated a Notice of Default and  
23 Election to Sell Under Deed of Trust on January 1, 2009.  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**(Facts specific to Christopher Peternell)**

110. On February 18, 2005, Christopher Peternell entered into a deed of trust and note with Accredited Home Lenders, Inc., a California corporation, for \$187,500.00, which note included an Adjustable Rate Rider” whereby the initial rate of interest was set at 7.750% from the Closing Date (February 18, 2005) until March 1, 2007, (the “First Change Date”), when it would increase, thereafter, the rate of interest would be subject to change every six months, to 14.750%.

111. The application indicated that the base employment income of Mr. Peternell was \$5,500.00 per month which was incorrect and had the lender verified the income of Mr. Peternell with the 2004 IRS documents that the lender was given a release for, the lender would have seen that Mr. Peternell’s income was \$18,887 for the year 2004.

112. Plaintiff Peternell was given this loan by Accredited Home Lenders, Inc. based upon incorrect stated income in the application for the mortgage, such loan underwriting criteria and guidelines were consistent with the business practices and policies of each Defendant bank herein to cause loans on primary residences in the United States to be originated, transferred, securitized and sold, all at a profit to the Defendant lender banks and their co-conspirators as alleged herein, and without regard for the ability of the borrower to repay the loan or the loss of the borrower of his/her home.

113. The servicing of this loan was taken over by Defendant Countrywide and on or about March 9, 2009, Defendant ReconTrust recorded a notice of default and election to sell the home of Plaintiff Peternell.

114. The Defendants Countrywide and ReconTrust have begun and stopped the foreclosure process on two occasions for unknown reasons, but the notice of default and election to sell remains recorded on the home of the Plaintiff Peternell.

1 //  
2 //  
3 //  
4 //  
5 //

6  
7 **FIRST CLAIM FOR RELIEF**  
8 **(Violation of the Fair Housing Act, 42 U.S.C. § 3601, et seq.)**  
9 **(as to Plaintiffs Lopez, Jose Casas, Maria Casas, and Tyrone Evenson,**  
10 **As to all Defendants)**

11 115. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
12 set forth in this claim.

13 116. The making of a loan, such as the loans to Plaintiffs Josefa Lopez, Jose  
14 Casas, Maria Casas, and Tyrone Evenson are “real estate related transactions” subject to  
15 the Federal Fair Housing Act.

16 117. The Defendants, by alleging rights subject to the mortgage transaction, were  
17 lenders subject to the federal Fair Housing Act, and were prohibited from discriminating  
18 against, or providing disparate treatment to individuals on the basis of race, color,  
19 religion, sex, familial status and national origin.

20 118. Plaintiffs are members of the class of individuals subject to protection from  
21 discrimination and/or disparate treatment under the Federal Fair Housing Act.

22 119. Upon information and belief, Defendants purposefully targeted and  
23 continued to target Plaintiffs Josefa Lopez, Trinidad Casas and Maria Casas, and others  
24 similarly situated, as borrowers based those Plaintiffs’ race and/or national origin and as  
25

1 to Josefa Lopez, also her gender, knowing that those Plaintiffs suffered from language  
2 barriers inherent to Plaintiffs' Hispanic origin, making those Plaintiffs vulnerable to  
3 predatory lending practices, including, but not limited to, violations of the Truth in  
4 Lending Act, the Home Ownership and Equity Protection Act and, the Fair Debt  
5 Collection Practices Act, and various statutes and common law torts.

6 120. Upon information and belief, Defendants purposefully targeted and  
7 continued to target Plaintiff Tyrone Evenson, and others similarly situated, as borrowers  
8 based their disability, knowing that those Plaintiffs suffered from physical disabilities,  
9 making those Plaintiffs vulnerable to predatory lending practices, including, but not  
10 limited to, violations of the Truth in Lending Act, the Home Ownership and Equity  
11 Protection Act and, the Fair Debt Collection Practices Act, and various statutes and  
12 common law torts.

13  
14 121. Upon information and belief, Defendants purposefully targeted and  
15 continued to target Plaintiff Josefa Lopez and others similarly situated, as borrowers  
16 based those Plaintiff's sex, knowing that those Plaintiffs were women, making those  
17 Plaintiffs vulnerable to predatory lending practices, including, but not limited to,  
18 violations of the Truth in Lending Act, the Home Ownership and Equity Protection Act  
19 and, the Fair Debt Collection Practices Act, and various statutes and common law torts.

20 122. Upon information and belief, Defendants' predecessors in interest offered  
21 Plaintiffs named in this claim for relief, and others like those Plaintiffs, a less-than-  
22 favorable loan than would have been offered to a white borrower or a male borrower, all  
23 other things being equal, in violation of the Federal Fair Housing Act based on the  
24 disparity between the loan terms which were available to Hispanic borrowers and the loan  
25 terms available to white borrowers or male borrowers.

1           123. Defendants' violation of the Federal Fair Housing Act as alleged herein has  
2 caused the Plaintiffs named in this claim for relief to suffer damages, including but not  
3 limited to, financial losses, damage to reputation and credit standing, embarrassment,  
4 humiliation and emotional distress and those Plaintiffs have incurred attorneys' fees and  
5 costs in this matter.

6           124. Defendants' violation of the Federal Fair Housing Act alleged herein was  
7 reckless, willful and wanton, entitling the Plaintiffs named in this claim for relief to an  
8 award of punitive damages against Defendants.

9           125. Upon information and belief, Defendants' violation of the Federal Fair  
10 Housing Act as alleged herein is and/or has been a continuing violation whereby each  
11 Defendant has engaged in a pattern or extended practice of exploiting the market of  
12 Hispanics, the disabled and women in the State of Nevada and the United States.

13           126. The predatory and fraudulent lending practices of Defendants of which the  
14 Defendants were aware of at the time they were assigned the servicing of the loan of the  
15 Plaintiffs named in this claim for relief, made or will make those Plaintiffs' homes  
16 unavailable to them because they will not be able to continue in their homes because of  
17 the practices and violations of the Fair Housing Act by the Defendants in discriminating  
18 against them and preying upon them because of their disability, gender and because of  
19 being Hispanic.  
20

21           127. These predatory and fraudulent loan transactions directly affected the  
22 availability of housing for the Plaintiffs named in this claim for relief because the burden  
23 of debt imposed upon their homes by the purported mortgages would and did lead to  
24 foreclosure and threatened and/or loss of their homes and the collection on the loans and  
25 the increase in the payments demanded by these lenders would keep the Plaintiffs Josefa

1 Lopez, Jose Trinidad Casas, Maria Casas, and Tyrone Evenson from performing in  
2 accordance therewith.

3 128. Defendants knew that false information had been used by the loan  
4 originator, including but not limited to, complete lack of income and assets upon which  
5 the borrowers were qualified, which was used to process the loans of the Plaintiffs named  
6 in this claim for relief and the application for the loan, and that the lender intended to  
7 convert the equity in the home of the Plaintiffs to the Defendants and/or intended that the  
8 loan would result in foreclosure and loss of the home by these Plaintiffs.

9  
10 129. The Plaintiffs named in this claim for relief have suffered damages and will  
11 continue to suffer damages if they lose their homes, and are entitled to restitution and/or  
12 rescission.

13 130. The acts of the Defendants in violate of the Fair Housing Act were not a part  
14 of the course of normal economic activity.

15 131. Plaintiffs were required to retain counsel and expend costs to prosecute this  
16 claim.

17 **SECOND CLAIM FOR RELIEF**

18 **(Violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1601 et seq.)**

19 **(Against Defendants Countrywide, GMAC, ETS, MERS, T.D. Mortgage**  
20 **Services, Wells Fargo, dba America's servicing Company and Chevy Chase**  
21 **Bank)**

22  
23 132. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
24 set forth in this claim.  
25

1           133. Defendants Countrywide, GMAC, ETS, T.D. Mortgage Services, Chevy Chase  
2 Bank, Wells Fargo Bank, dba America's Servicing Company and MERS, and each of them  
3 are debt collectors as defined by 15 U.S.C. 1692 (a) (6) in that they are collecting or  
4 attempting to collect a debt, and they have engaged in abusive, deceptive, and unfair debt  
5 collection practices which contributed to the attempted foreclosures and the actual  
6 foreclosure complained of herein.

7           134. The debt collectors, the Defendants named in this Claim for Relief, used  
8 false, deceptive and misleading representations or means in connection with the  
9 collection of the debts stating that the Plaintiffs owed payments on a loan which those  
10 Defendants knew Plaintiffs had not been qualified to take out, and monthly payment  
11 amounts higher than those represented to them as the payment on the homes.  
12

13           135. Defendants sent deceptive coupons to the Plaintiffs stating that the payment  
14 due was in excess of the payment that had actually been agreed to at closing by the  
15 Plaintiffs.

16           136. Defendants sent coupons to the Plaintiffs with the intention of breaching the  
17 payment schedule within weeks of entering into the agreements.

18           137. The Defendants published written notice in the newspaper of general  
19 circulation in Washoe County that the property belonging to the Plaintiffs is in  
20 foreclosure, and knowingly falsely stating that those Defendants were proper parties to  
21 initiate foreclosure.

22           138. Defendants Countrywide and GMAC have used unconscionable means to  
23 attempt to collect debts from Plaintiffs by escalating the payment, contacting the Plaintiffs  
24 Lopez and Casas through their agents or otherwise make themselves understood to  
25 Plaintiff Lopez and Plaintiffs Casas by calling to speak to them only in English and by

1 calling them repeatedly threatening to sell their homes, and by making false  
2 representations to the Plaintiffs about the authority of GMAC and Countrywide to  
3 foreclose on the homes, with full knowledge by GMAC and Countrywide at the time it  
4 undertook those means of collection that the representations were false and were for the  
5 intention of collecting a debt.

6 139. All of these acts by the Defendants named in this Claim for Relief were  
7 intentional and had the purpose of collection of a debt for which Defendants, and each of  
8 them, knew that none of them had any right to attempt to collect by means of foreclosure.  
9

10 140. As a direct and proximate cause of the actions of the Defendants complained  
11 of in this claim for Relief, the Plaintiffs have suffered damages as alleged herein.

12 141. The Plaintiffs have been required to retain counsel and expend costs to  
13 prosecute this claim.

14  
15 **THIRD CLAIM FOR RELIEF**

16 **(Violation of Unfair Lending Practices, N.R.S. 598D.100)**

17 **(as to all Defendants)**

18 142. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
19 set forth in this claim.

20 143. The Defendants continued to enforce mortgages secured by Plaintiffs'  
21 homes  
22 that included no evaluation of any commercially reasonable means or mechanism that  
23 would demonstrate the Plaintiffs' capacity to repay, especially since Plaintiffs had no  
24 income at the time of application, or no verified income or no stated income at the time of  
25

1 the application for the loan and were qualified only on the basis of credit score and  
2 collateral market value or stated income that was not verified.

3 144. Moreover, Plaintiff Lopez' brother and sister, who at the time of application  
4 were Plaintiff Lopez' sole source of repayment capacity and who were in joint title with  
5 Josefa Lopez to the property, were rejected as co-borrowers by The Mortgage Store's  
6 insistence that they deeded their interests in the property to Plaintiff Lopez in advance of  
7 settlement.

8 145. The Plaintiffs Casas were not given information in a manner that they could  
9 understand that their payment would increase since all documents were in English and  
10 the Casas primary language is Spanish. Further the Casas were told that their payment  
11 would remain the same as the date of the execution of the papers or the loan would be  
12 refinanced which promises were made by Pinnacle Financial Corporation which  
13 immediately transferred the servicing rights to another company and was no longer  
14 available to the borrower who had relied upon those promises by Pinnacle.

15 146. Plaintiff Graves was given a loan based upon the collateral in the home and  
16 his income was misstated on the application without his knowledge and to which he  
17 would have objected since it was not his true income and with no analysis of his ability to  
18 repay the loan and misrepresentations of the true percentage of interest and the true cost  
19 of financing on the loan.  
20

21 147. The Plaintiffs Gray were given a loan based upon income intentionally  
22 misstated by the lender and with no analysis of their ability to repay the loan.

23 148. The Plaintiff Frankoski was given a loan based upon no attempt by the  
24 lender to determine Plaintiff Frankosi's income and with no analysis of his ability to repay  
25 the loan.



1           156. As previously alleged herein, Defendants violated the Federal Fair Housing  
2 Act, and other Federal and State laws as alleged herein in procuring Plaintiffs' signatures  
3 on the loans.

4           157. Defendants' legal objective of packaging the loans made to Plaintiffs with  
5 other loans and selling the loans was accomplished by illegal means in procuring the  
6 loans because of Defendants' violation of the Federal Fair Housing Act, and other federal  
7 and state laws as alleged herein.

8           158. Upon information and belief, Defendants knew that the loan would be  
9 subject to foreclosure as a result of Plaintiffs' inability to make payments on the loan as  
10 the payments escalated during the term of the loan and/or as a result of Plaintiffs'  
11 inability to qualify to refinance the loans at a later date after the payments began to  
12 escalate because of changes in the interest rates and the arbitrary increase of payments by  
13 the servicers of the loan, and thus the Defendants committed acts which constitute  
14 unlawful equity stripping.  
15

16           159. Upon information and belief, the escalating payments and/or increases in  
17 the interest rate were not properly disclosed to Plaintiffs.

18           160. Defendants intended that Plaintiffs would default on the loan and  
19 Defendants would be in a position of seizing the homes of the Plaintiffs in foreclosure  
20 actions, unlawfully depriving Plaintiffs of their homes.

21           161. Defendants, and each of them, in furtherance of the conspiracy and  
22 agreement alleged herein, acted in a concerted manner to target Plaintiffs as borrowers,  
23 to misrepresent the loan terms and/or to misrepresent Plaintiffs' qualification for the  
24 loans, knowing that such action or actions would result in Defendant's ultimate  
25 possession of the homes of the Plaintiffs following foreclosure.



1 actions of the Defendant conspirators as part of the business policies and practices of each  
2 Defendant conspirators in participating in the MERS system.

3 166. Upon information and belief, the Defendant conspirators are or have been  
4 shareholders in MERS and/or members of the MERS system and, as to Defendant  
5 conspirators, Freddie Mac; Fannie Mae; GMAC Mortgage, L.L.C.; National City Mortgage;  
6 and J.P. Morgan Chase Bank, N.A., have, through their employees and agents, served as  
7 members of the Board of Directors of MERS, and participated in the design and  
8 coordination of the MERS system described in this complaint.

9 167. Upon information and belief, the Defendant conspirators have conspired  
10 among themselves and with other unknown parties to:

11 A. Develop a system of earning profits from the origination and  
12 securitization of residential loans without regard for the rights of Plaintiffs, and others  
13 similarly situated, by engaging in predatory and deceptive residential lending practices as  
14 alleged in this complaint above; and

15 B. In furtherance of the system referred to immediately above, the  
16 Defendant conspirators intentionally created, managed, operated, and controlled the  
17 Defendant MERS for the specific purpose of MERS being designated as a sham  
18 “beneficiary” in the original deeds of trust securing those loans, including the loan made  
19 to Plaintiffs and other similarly situated individuals by The Mortgage Store and each of  
20 the Defendants herein; and

21 C. Defendant conspirators intentionally created, managed, operated,  
22 and controlled the MERS system with the unlawful intent and for the unlawful purpose of  
23 making it difficult or impossible for Plaintiffs and other victims of such industry-wide  
24 predatory policies and practices to identify and hold responsible the persons and entities  
25 responsible for the unlawful actions of Defendants.

1           168. Upon information and belief, Defendant conspirators, through creation of  
2 the MERS system alleged herein, adopted and implemented residential lending  
3 underwriting guidelines for use in Nevada and in other states which:

4           A. Were intended to, and did, generate unprecedented profits for the  
5 Defendant conspirators and their co-conspirators at the expense of Plaintiffs and other  
6 persons who were fraudulently induced by the Defendant conspirators and their co-  
7 conspirators into taking out residential loans that were known by the Defendant  
8 conspirators and their co-conspirators, at the time the loans were originated, were likely  
9 to result in default; and,

10           B. Were likely to result in foreclosure on those loans and loss by  
11 Plaintiffs and other borrowers of their homes, with reckless disregard and intentional  
12 indifference by the Defendant conspirators and their co-conspirators of the likelihood of  
13 such foreclosure.

14           169. Upon information and belief, the MERS system was created for the unlawful  
15 purpose of hiding and insulating the brokers and originators of predatory toxic loans from  
16 accountability and liability by creating an entity which simultaneously informed all  
17 lenders who originated loans that named MERS as the beneficiary of the following:

18           A. MERS would never own or acquire any actual beneficial interest in  
19 any loan in which it was named as beneficiary under the deed of trust, and that

20           B. MERS could be named as beneficiary for purposes of public notice  
21 and notice to the borrower and would act in that capacity if so designated by the lender  
22 who originated the loan.

23           170. Upon information and belief, the intent and purpose of the Defendant  
24 conspirators and their co-conspirators in the creation, management, operation, and  
25 control of MERS was, without limitation, to make it impossible for the borrowers, their  
attorneys, the courts, the government, and anyone other than the Defendant conspirators

1 who created and controlled MERS, to identify the actual beneficial owner of any particular  
2 loan or the property which was the collateral securing that loan until such time, if any,  
3 that foreclosure action was initiated. As a result, Plaintiffs, and other similarly situated  
4 individuals, was deprived of the right to attempt to modify the toxic loan, as the true  
5 identity of the actual beneficial owner was intentionally hidden from Plaintiffs and other  
6 similarly situated individuals.

7 171. Upon information and belief, the Defendant conspirators' actions in  
8 creating the MERS system, which was dependent on fraudulent and deceptive practices  
9 that included, but were not limited to, making loans to consumers such as Plaintiffs in  
10 violation of the Fair Housing Act, the Truth in Lending Act, and the Home Ownership and  
11 Equity Protection Act, created a system to unlawfully deprive Plaintiffs of Plaintiff's  
12 interest in their homes.

13 172. Upon information and belief, Defendant conspirators utilized funds  
14 received as part of the Troubled Asset Relief Program payouts to further the conspiracy to  
15 defraud Plaintiffs, and others similarly situated, to deprive them of their money, to  
16 deprive them of their property, to unlawfully foreclose on loans made to putative class  
17 members, to pay investors in the mortgage-backed securities which were comprised of the  
18 loans made to Plaintiffs and others similarly situated, and to pay bonuses to employees  
19 and officers of the Defendant conspirators based on their devising the sub-prime  
20 mortgage-backed products which were securitized by loans of the type issued to Plaintiffs  
21 and others similarly situated, and collateralizing and selling such products in the United  
22 States and abroad.

23 173. As a result of Defendant conspirators' conspiracy described herein,  
24 Plaintiffs has suffered injuries which include mental anguish, emotional distress,  
25

1 embarrassment, humiliation, loss of reputation, and a decreased credit rating which has,  
2 or will, impair Plaintiff's ability to obtain credit at a more favorable rate than before the  
3 decrease in credit rating, the loss or anticipated loss of the Residence, and other financial  
4 losses according to proof, including attorneys' fees and costs incurred in this matter.

5 174. Defendant conspirators' actions were wanton, willful, and reckless thereby  
6 justifying an award of punitive damages against Defendant conspirators, and each of  
7 them.

8 **SIXTH CLAIM FOR RELIEF**

9 **(Unjust Enrichment)**

10 **(As to All Defendants)**

11 175. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
12 set forth in this claim..

13 176. Defendants' deceptive scheme as alleged herein unjustly enriched  
14 Defendants, and each of them, to the detriment of Plaintiffs, and similarly situated class  
15 members, by causing Defendants, and each of them, to receive excessive monetary  
16 payments from Plaintiffs and the class members.

17 177. Specifically, Plaintiffs and class members have been injured in the property  
18 and right to peaceful enjoyment of their primary residence in a variety of ways, including  
19 but not limited to: All borrowers who were targeted for and lured into the mortgages sold  
20 by Defendants were handicapped in understanding the terms of those loans. This  
21 constituted a misrepresentation that caused Plaintiffs to make her monthly payment from  
22 the cash that represented the equity in her home to the Defendants. Moreover, upon  
23 information and belief, the variety of additional and separate payments charged for  
24 services and other items tangential to the loan were prohibitive. The result is that  
25 Plaintiffs, and each class member, assumed financial burdens that they would not  
otherwise have assumed, and paid Defendants more than they justly should have owed.

1 178. The loans made to Plaintiffs and to each class member were then  
2 repackaged, reassigned, and/or resold, each with a margin of profit for the assignee/buyer  
3 that would not otherwise have existed had Plaintiffs and all other members of the class  
4 not been deceived by the original terms of the loan and/or the lack of disclosures as  
5 alleged herein.

6 179. Plaintiffs and each class member have paid or continue to pay an inflated  
7 interest rate that, upon information and belief, would not have been agreed to but for the  
8 failure to understand the documents and otherwise disclose the true terms and costs of  
9 the loans, tangential services, and out-of-pocket costs.

10 180. Upon information and belief, Defendants, and each of them, retained and  
11 continue to retain these ongoing and escalating profits to the detriment of Plaintiffs and  
12 each class member, contrary to the fundamental principals of fairness, justice, and good  
13 conscience.

14 181. Accordingly, Defendants, and each of them, should be ordered to return all  
15 funds obtained as a result of their deceptive scheme to Plaintiffs and class members.

16 **SEVENTH CLAIM FOR RELIEF**

17 **(Intentional Infliction of Emotional Distress)**

18 182. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
19 set forth in this claim.

20 183. Defendant's actions in targeting Plaintiffs for loans, misrepresenting the  
21 terms and conditions of the loan, negotiating the loan, and closing the loan as alleged  
22 herein were intentional and/or reckless, wanton, and willful.

23 184. Defendants' actions as alleged herein were extreme and outrageous because  
24 of the Plaintiffs' vulnerability to the predatory lending practices described above and  
25 because the subject of the loan was the primary residences of the Plaintiffs, inherent with

1 the characteristics of providing shelter for Plaintiffs and a sense of pride and emotional  
2 security.

3 185. As a result of Defendants' actions alleged herein, Plaintiffs have suffered  
4 financial losses and the stress inherent with facing the loss of their Residences,  
5 embarrassment, and humiliation resulting from Plaintiffs' being put in the position of  
6 defaulting on the loan, and all of these factors have culminated to invade Plaintiffs' mental  
7 and emotional tranquility and to cause Plaintiffs, and each class member, severe  
8 emotional distress and humiliation that resulted in, inter alia, anxiety, worry, fear,  
9 desperation, a sense of hopelessness, sleeplessness, and headaches.

10 186. Because of the extreme and outrageous nature of Defendants' actions as  
11 alleged herein, and to deter such conduct in the future, Plaintiffs, and each of them, are  
12 entitled to an award of punitive damages.

13 **EIGHTH CLAIM FOR RELIEF**

14 **(Fraud in the Inducement)**

15 187. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
16 set forth in this claim.

17 188. Defendants, through its agents, failed to disclose the material terms of the  
18 loans and incidental services to Plaintiffs, and others similarly situated, by, inter alia,  
19 failing to explain the fact that Plaintiffs and others similarly situated were not qualified to  
20 enter the loans on the terms stated.

21 189. Defendant concealed the true terms of the loans, and the risks of the  
22 transactions, including, but not limited to, negative amortization, prepayment penalty  
23 provisions, the risk of default and the risk of foreclosure from Plaintiffs and similarly  
24 situated class members.  
25

1 190. Defendant misrepresented the ability of Plaintiffs, and others similarly  
2 situated, to qualify for the loans.

3 191. Defendant knew or should have known that had the truth been disclosed,  
4 Plaintiffs and others similarly situated would not have entered into the loans.

5 192. Defendant intended to induce Plaintiffs and similarly situated class  
6 members' into reliance upon these representations and failures to disclose.

7 193. Plaintiffs and similarly situated class members reasonably relied upon the  
8 misrepresentations to their detriment, particularly in light of their inability to read,  
9 understand, and therefore discern, those misrepresentations that conflicted with the  
10 terms of the transaction.

11 194. But for the failure to disclose the true and material terms of the transaction  
12 and the result of this transaction, that Plaintiffs would lose their homes, Plaintiffs and  
13 similarly situated class members could have read the agreements and additional  
14 documents and would have been alerted to issues of concern. Defendants' intentional  
15 misrepresentations, and the failure to translate or otherwise disclose the material terms of  
16 the transaction, induced Plaintiffs and similarly situated class members to enter into the  
17 loans as alleged herein.

18 195. As a direct and proximate result of the failure to translate and/or disclose,  
19 and the misrepresentations, Plaintiffs and similarly situated class members were  
20 damaged in an amount to be proven at trial, including but not limited to, increased  
21 interest rates, damage to their credit ratings and financial security, emotional distress,  
22 headaches, sleeplessness, the inability to refinance their homes as necessary, and  
23 Plaintiffs have  
24 incurred costs and attorney's fees.

25 **NINTH CLAIM FOR RELIEF**

**(Injunctive Relief)**

1           196. Plaintiffs incorporate each and every paragraph of this Complaint as if fully  
2 set forth in this claim.

3           197. On or about March 20, 2009, Plaintiff Lopez received notification from  
4 Defendant ETS that Defendant would sell Plaintiff Lopez' home at foreclosure.

5           198. Plaintiff Lopez has been unable to bring the payments current.

6           199. Plaintiff Lopez is faced with a clear and present danger of the loss of the  
7 Residence due to the threatened foreclosure and sale action related to Plaintiff's  
8 Residence.

9           200. Plaintiff Lopez will suffer irreparable harm if Defendants are not enjoined  
10 from advancing any foreclosure action as to Plaintiff's Residence, as Plaintiff will lose  
11 Plaintiff's interest in, and possession of, the Residence, which is Plaintiff's primary  
12 dwelling and is unique, and Plaintiff will have no adequate remedy at law.

13           201. Defendants GMAC, ETS and MERS, listed as the beneficiary under the First  
14 deed of trust, have no investment in the Residence, as the Notes on the Residence were  
15 transferred and MERS has no beneficial interest in the residence or the Deed of Trust, as  
16 alleged in the Fifth Claim for Relief above, and, therefore, Defendants will not suffer  
17 irreparable harm or any harm if the foreclosure action is enjoined.

18           202. Plaintiff Lopez is entitled to a preliminary and permanent injunction  
19 prohibiting Defendants GMAC, ETS and MERS, and their officers, agents, employees,  
20 servants, and attorneys, and those persons in active concert or participation with any of  
21 them or each of them, from advancing any foreclosure action as to Plaintiff Lopez'  
22 Residence.

23           203. In March 2009, the Casas were told that GMAC would no longer negotiate  
24 with them and that their home was in foreclosure. They have received a Notice of Default  
25 and Election to Sell from National Default Servicing.

          204. The Plaintiffs Casas are unable to bring the payments current.

1           205. The Plaintiffs Casas are faced with a clear and present danger of the loss of  
2 their home due to the threatened foreclosure and sale action related to their home.

3           206. Plaintiffs Casas will suffer irreparable harm if Defendants Wells Fargo  
4 d/b/a/ Americas Servicing Co. and National Default Servicing and MERS are not enjoined  
5 from advancing any foreclosure action as to the Plaintiffs' home as Plaintiffs will lose their  
6 interest in, and possession of, the home, which is Plaintiffs' primary dwelling and is  
7 unique, and Plaintiffs will have no adequate remedy at law.

8           207. On or about April 4, 2009, the Plaintiffs Gray received notification that that  
9 T.C. Services Corporation had set a sale date of May 20, 2009 for the sale of their home in  
10 foreclosure.

11           208. The Plaintiffs Gray are unable to bring the payments current.

12           209. The Plaintiffs Gray are faced with a clear and present danger of the loss of  
13 their home due to the threatened foreclosure and sale action related to their home.

14           210. The Plaintiffs Gray will suffer irreparable harm if Defendants T.D. Services  
15 Corporation and Chevy Chase Bank are not enjoined from advancing any foreclosure  
16 action as to the Plaintiffs' home as Plaintiffs will lose their interest in, and possession of,  
17 the home, which is Plaintiffs' primary residence.

18           211. On or about January 2009, Plaintiff Peternell received notification from  
19 Defendant Countrywide that his house was in foreclosure through a telephone call.

20           212. Plaintiff Peternell has been unable to bring the payments current.

21           213. Plaintiff Peternell is faced with a clear and present danger of the loss of his  
22 home due to the threatened foreclosure and sale action related to Plaintiff's home.

23           214. Plaintiff Peternell will suffer irreparable harm if Defendants Countryside,  
24 ReconTrust and MERS are not enjoined from advancing any foreclosure action as to  
25 Plaintiff's home, as Plaintiff Peternell will lose his interest in, and possession of, the home,

1 which is Plaintiff's primary dwelling and is unique, and Plaintiff will have no adequate  
2 remedy at law.

3 215. Defendants Countrywide and ReconTrust and MERS have no investment in  
4 the home, and MERS has no beneficial interest in the residence or the Deed of Trust, as  
5 alleged in the Fifth Claim for Relief above, and, therefore, Defendants will not suffer  
6 irreparable harm or any harm if the foreclosure action is enjoined.

7 216. Plaintiff Peternell is entitled to a temporary restraining order, a preliminary  
8 and permanent injunction prohibiting Defendants Countrywide, ReconTrust and MERS,  
9 and their officers, agents, employees, servants, and attorneys, and those persons in active  
10 concert or participation with any of them or each of them, from advancing any foreclosure  
11 action as to Plaintiff Peternell's Residence.

12 217. On or about April 7, 2009, Plaintiff Frankoski received notification from  
13 Defendant Executive Trustee Services that Defendant would sell Plaintiff Frankoski's  
14 home at foreclosure on May 6, 2009.

15 218. Plaintiff Frankoski has been unable to bring the payments current.

16 193. Plaintiff Frankoski is faced with a clear and present danger of the loss of his  
17 home d219to the threatened foreclosure and sale action related to Plaintiff's home.

18 220. Plaintiff Frankoski will suffer irreparable harm if Defendants are not  
19 enjoined from advancing any foreclosure action as to Plaintiff's home, as Plaintiff will lose  
20 his interest in, and possession of, the home, which is Plaintiff's primary dwelling and is  
21 unique, and Plaintiff has no adequate remedy at law.

22 221. Defendants GMAC, Executive Trustee Services, and MERS have no  
23 investment in the Frankoski home and MERS has no beneficial interest in the residence  
24 or the Deed of Trust, as alleged in the Fifth Claim for Relief above, and, therefore,  
25 Defendants will not suffer irreparable harm or any harm if the foreclosure action is  
enjoined.





1 MERS system as alleged in the Conspiracy to Commit Fraud Related to the MERS System  
2 Claim for Relief.

3 Typicality

4 232. Plaintiffs' claims are typical of those of the members of the class. Plaintiffs  
5 and the class members were subjected to the same kind of unlawful conduct and the  
6 claims of Plaintiffs and the class members are based on the same legal theories.

7 Fair and Adequate Representation of Class

8 233. Plaintiffs will fairly and adequately protect the interests of the class  
9 Plaintiffs represent. Plaintiffs' interests do not conflict with the interests of the class, and  
10 Plaintiffs intend on prosecuting this action vigorously.

11 234. Plaintiffs have retained experienced counsel qualified in class litigation and  
12 counsel and is competent to assert the interests of the class.

13 Rule 23(b) Requirements

14 235. The unlawful acts of Defendants, as alleged herein, constitute a course of  
15 conduct common to Plaintiffs and each class member. Prosecution of separate actions by  
16 individual class members would create a risk of inconsistent or varying adjudications  
17 which would establish incompatible standards of conduct for Defendants and/or  
18 substantially impair or impede the ability of the individual class members to protect their  
19 interests.

20 236. Injunctive and/or declaratory relief to the class is appropriate because, upon  
21 information and belief, Defendants, and each of them, have acted or refused to act on  
22 grounds generally applicable to the class.

23 237. Questions of law and/or fact common to the class members, including the  
24 issues identified above, predominate over questions affecting only individual class  
25 members, and a class action is superior to other available methods for fair and efficient  
adjudication of the controversy. Class action treatment will allow a large number of  
similarly situated individuals to simultaneously pursue their common claims in a single

1 forum in an efficient manner, without unnecessary duplication of effort and expense that  
2 would be required if numerous individual actions were pursued.

3 WHEREFORE, Plaintiffs pray this court enter an order providing relief as follows:

- 4 1. For award of damages against Defendants and each of them on  
5 Plaintiffs' claims as applicable under federal law as alleged above in  
6 an amount to be shown at trial;
- 7 2. For an award of damages against Defendants, and each of them, on  
8 the Plaintiffs' state law claims, whether general, special or punitive as  
9 alleged above, in an amount to be shown at trial;
- 10 3. For an award of damages to Plaintiffs pursuant to NRS 598D.100
- 11 4. For an award of attorneys' fees and costs as provided by law;
- 12 5. For an order of rescission on behalf of named Plaintiffs;
- 13 6. For an order of restitution on behalf of Plaintiff and class members;
- 14 7. For a temporary restraining order and preliminary and permanent  
15 injunction prohibiting Defendants Executive Trustee Services, LLC  
16 GMAC, Countrywide, ReconTrust, T.D. Services Corporation, Chevy  
17 Chase Bank and MERS, and their officers, agents, employees,  
18 servants, and attorneys, and those persons in active concert or  
19 participation with any of them or each of them, as specifically alleged  
20 above from proceeding with any foreclosure action as to any of the  
21 Plaintiffs residence or proceeding with any collection action against  
22 the Plaintiffs, and from proceeding with foreclosure actions against  
23 the residences of similarly situated class members;
- 24 8. For a declaratory judgment holding that Plaintiffs' rights were  
25 violated as alleged above;
9. That Plaintiffs have and recover from the Defendants pre-judgment  
interest as may be determined by statute and rule;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- 10. That this action be certified as a Plaintiffs' class action: and
- 11. Pursuant to Federal Rules of Civil Procedure, Rule 38, Plaintiffs demand a trial by jury on all issues of fact in this action; and
- 12. That this Court grant such other and further relief as it deems just and proper.

DATED: May 1, 2009

HAGER & HEARNE

/s/ Robert R. Hager, Esq.

Robert R. Hager, Esq.  
Treva J. Hearne, Esq.  
Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**DEMAND FOR JURY TRIAL**

**Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury to the fullest extent permitted by law.**

DATED: May 1, 2009

HAGER & HEARNE

*/s/ Robert R. Hager, Esq.*  
\_\_\_\_\_  
Robert R. Hager  
Trevia J. Hearne  
Attorneys for Plaintiff