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16 [Additional counsel appear on signature page.]

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 \_\_\_\_\_ )  
IN RE: COUNTRYWIDE )  
20 FINANCIAL CORP. MORTGAGE ) MDL No. 1988  
MARKETING AND SALES )  
21 PRACTICES LITIGATION ) Lead Case No. 3:08-md-01888-DMS-  
LSP  
22 \_\_\_\_\_ )

23 \_\_\_\_\_ ) CLASS ACTION  
THIS DOCUMENT RELATES TO: )  
24 ) **FIRST AMENDED CONSOLIDATED**  
ALL PRIVATE ACTIONS ) **CLASS ACTION COMPLAINT**  
25 )  
26 )  
27 \_\_\_\_\_ )

1 Plaintiffs make the following allegations on information and belief, except  
2 where specifically noted, based on the investigation of counsel, which allegations are  
3 likely to have evidentiary support after an opportunity for discovery:

4 1. This is a proposed class action brought by Plaintiffs (listed below), on  
5 behalf of themselves and other similarly situated borrowers, against Countrywide  
6 Financial Corp., Countrywide Bank, FSB, Countrywide Home Loans, Inc.,  
7 Countrywide KB Home Loans, LLC, Countrywide Tax Services Corp., LandSafe,  
8 Inc., LandSafe Appraisal Services, Inc., LandSafe Credit, Inc., LandSafe Flood  
9 Determination, Inc. (collectively “Countrywide” or “Defendants” or “the Company”)  
10 and Bank of America Corp. under the Racketeer Influenced and Corrupt  
11 Organizations Act (“RICO”), 18 U.S.C. §§ 1961, *et seq.*, and California law, including  
12 the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*  
13 (“UCL”), and the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*  
14 (“FAL”), seeking redress for the illegal acts of the Defendants which have resulted in  
15 a loss of their property, and for declaratory and injunctive relief to end those practices  
16 and prevent further losses to the class and future borrowers.

17 **NATURE OF THE CASE**

18 2. As described herein, Defendants and their network of authorized,  
19 contracted brokers have defrauded countless borrowers across the nation in an  
20 undisclosed, systematic scheme designed to steer borrowers into subprime mortgages  
21 and loans irrespective of whether (i) the borrower would have qualified for a “prime  
22 loan” or (ii) the borrower was unable to meet the financial terms of the subprime  
23 mortgage. Indeed, Defendants have placed these borrowers in these mortgages  
24 without performing an appropriate analysis of the suitability of such loans to the  
25 borrowers’ situation. This has been done to maximize Countrywide’s ability to make  
26 huge profits in the secondary market in which subprime mortgages are bundled into  
27 securities and sold as investments. As set forth in a recent decision by the Honorable  
28 Mariana R. Pfaelzer, in *In re Countrywide Financial Corp. Derivative Litigation*,

1 Lead Case No. CV-07-06923, 2008 WL 2064977 (C.D. Cal. May 14, 2008)<sup>1</sup>  
2 (hereinafter the “Derivative Action Order”), “The lowest level [Countrywide]  
3 employees report [in the Derivative Action complaint] that the impetus to ‘push’ loans  
4 through came from above. . . . They also allege that the compensation structure  
5 promoted these practices by rewarding Company employees – from executives and  
6 management down to the underwriters – for increasing loan volume, but not for  
7 generating quality loans.” Derivative Action Order, at \*11.

8 3. Defendants and their co-conspirators have systematically steered  
9 borrowers into inappropriate subprime loans with excess charges and inadequately  
10 disclosed risks, including drastic and unexpected increases in required monthly  
11 payments that have caused a flood of foreclosures and financial woes among the  
12 Class. Defendants have done so through a variety of fraudulent means, for the sole  
13 purpose of maximizing Defendants’ own profitability, and without any regard for the  
14 financial consequences to the borrower.

15 4. Countrywide and its co-conspirators have developed and executed their  
16 scheme because more subprime loans have meant that Countrywide have made higher  
17 profits in interest rates, in origination fees and other fees, and in packaging the  
18 mortgage-backed securities that are at the heart of the financial woes now plaguing  
19 our economy. Countrywide has steered many borrowers into subprime loans when  
20 they have qualified for conventional financing with lower rates. It has provided  
21 incentives such as increased commissions and all-expense-paid trips to Las Vegas for  
22 employees and brokers to place borrowers into abusive subprime loans, and has  
23 trained and instructed them to do so without explaining the complex terms or  
24 disclosing the grave hidden risks of such loans. It has pushed dangerous products

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25  
26 <sup>1</sup> The foregoing decision is an “Order (1) Granting in Part and Denying in Part  
27 Nominal Defendant Countrywide’s Motion To Dismiss; (2) Granting in Part and  
28 Denying in Part Individual Defendants’ Motion To Dismiss; and (3) Granting  
Defendant Dougherty’s Motion To Dismiss.”

1 such as “pay option ARM” loans, wherein borrowers could afford only to make what  
2 Countrywide called the “minimum payment,” which was actually *less* than the interest  
3 owed on the loans, thus *increasing* their outstanding principal every month and  
4 triggering an automatic resetting of the payments, resulting in the minimum monthly  
5 payments increasing dramatically after only a short amount of time to a level that  
6 guaranteed the flood of foreclosures that we are seeing today. Indeed, as of  
7 September of 2006, up to 80% of all option ARM borrowers were making only the  
8 minimum payment each month, according to Fitch Ratings. As one commentator  
9 noted, “Most of these borrowers aren’t paying down their loans; they’re underpaying  
10 them up.” See Mara Der Hovanesian, *Nightmare Mortgages*, BusinessWeek, Sept. 11,  
11 2006, available at [www.businessweek.com/magazine/content/06\\_37/b4000001.htm](http://www.businessweek.com/magazine/content/06_37/b4000001.htm)  
12 (last visited on June 13, 2008).

13         5. Under Countrywide’s pay option ARM loan, a borrower is given three  
14 different payment options to choose from each month. The top-tier option, “amortized  
15 payment” encompasses payments of interest and a portion of the principal of the loan.  
16 The middle option is the “interest only payment,” which covers only the interest for  
17 the month and does not decrease the principal amount of the loan. The third, and  
18 lowest, payment option is what Countrywide calls the “minimum payment.” When a  
19 borrower makes the “minimum payment” on a pay option ARM loan, he or she is in  
20 fact paying *less* than the interest owed on the principal loan, and the unpaid interest is  
21 added to the principal amount owed. Once the principal amount reaches 115% of the  
22 original loan amount, the repayment structure resets to significantly higher monthly  
23 payments.

24         6. Thus, when a borrower receives his or her monthly statement from  
25 Countrywide, it shows that the borrower has the option of paying the “amortized  
26 payment,” the “interest only payment,” or the “minimum payment.” Unbeknownst to  
27 the borrower, by choosing to make the “minimum payment” each month – which is in  
28 fact the only payment many borrowers who are placed in such loans can afford to pay

1 at the time they enter into the loan – the borrower is in fact being ground deeper into  
2 debt by Countrywide. Once loan payments reset, or are “recast,” to encompass the  
3 increased principal amount, many borrowers face “payment shock” and can no longer  
4 even afford the new “minimum payment,” which is now significantly higher than at  
5 the outset of the loan. Borrowers are then faced with making significantly higher  
6 monthly payments they cannot afford, or going into foreclosure. According to one  
7 commentator, George McCarthy, a housing economist at New York’s Ford  
8 Foundation, the pay option ARM is “like the neutron bomb. It’s going to kill all the  
9 people but leave the houses standing.” See Mara Der Hovanesian, *Nightmare*  
10 *Mortgages*, BusinessWeek, available at [www.businessweek.com/magazine/content/  
11 06\\_37/b4000001.htm](http://www.businessweek.com/magazine/content/06_37/b4000001.htm).

12 7. Defendants and their co-conspirators have established a scheme designed  
13 to induce borrowers to enter into subprime loans by, *inter alia*, making false  
14 representations to borrowers, as set forth in standardized sales scripts, that they were  
15 offering the best loans available to the borrowers. Indeed, the specific representations  
16 made to a particular borrower prior to signing the loan documents, including (as  
17 particularized below) the class representatives in this Action, have consistently  
18 conveyed that message. Tellingly, Countrywide has never disclosed to such  
19 borrowers its overarching scheme to steer as many borrowers as possible into as many  
20 subprime loans as possible, irrespective of their suitability to the borrowers’ financial  
21 situation, *i.e.*, their ability to make the monthly payments on the loan, or their ability  
22 to qualify for a prime loan with better terms. Indeed, Countrywide has made countless  
23 subprime loans without any regard for the suitability or unsuitability of the loans  
24 for such borrowers. Countrywide’s failure to disclose its scheme and the resulting  
25 policy of issuing dangerous subprime loans without any attempt to ascertain their  
26 suitability to a given borrower is the underlying fraudulent conduct at issue in this  
27 action.

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1           8.     Indeed, Judge Pfaelzer noted that the allegations of “numerous  
2 confidential witnesses” contained in the complaint filed in the Derivative Action  
3 “support a strong inference of a Company-wide culture that, at every level,  
4 emphasized increasing loan origination volume in derogation of underwriting  
5 standards.” Derivative Action Order, 2008 WL 2064977, at \*10.

6           9.     Specifically, in the Derivative Action Order, the court noted that  
7 witnesses quoted in the complaint supported the plaintiffs’ allegations that “in  
8 practice, the origination of these ‘riskier’ loans often *violated the Company’s own*  
9 *loan underwriting policies*. The Complaint offers the accounts of numerous  
10 confidential witnesses, who are mostly former employees such as underwriters  
11 and loan officers, relating how Countrywide *departed from its strict underwriting*  
12 *standards* by generating large numbers of loans *without proper regard for their*  
13 *quality*. . . . The Complaint also provides the accounts of several former vice  
14 presidents at Countrywide who similarly attest that *Countrywide was simply*  
15 *pushing through loans without adherence to underwriting standards.*” *Id.* at \*3  
16 (emphasis added). Said the Court, “Strikingly, [the witnesses] tell what is  
17 essentially the same story – *a rampant disregard for underwriting standards* –  
18 from markedly different angles.” *Id.* at \*10 (emphasis added).

19           10.    Notably, the Derivative Action Court stated that the plaintiffs had  
20 presented a “cogent and compelling inference” that the defendant Countrywide  
21 executives had misled the public about the “rigor of Countrywide’s loan  
22 origination process, the quality of its loans, and the Company’s financial situation  
23 – even as they realized that *Countrywide had virtually abandoned its own loan*  
24 *underwriting practices.*” *Id.* at \*9 (emphasis added).

25           11.    Just as the Countrywide executives have concealed from the public  
26 their scheme to place as many subprime loans as possible without any regard to  
27 the normal standards used for determining the suitability of such loans, so too  
28 have they concealed this scheme from the borrowers to whom they made such

1 loans. This material omission is at the heart of the fraudulent conduct here.  
2 Irrespective of any individual “disclosures” that may or may not have been made  
3 to any individual borrower, what has never been disclosed is that Countrywide  
4 was not placing loans pursuant to any analysis of normal underwriting criteria,  
5 because Countrywide has had a larger goal in mind – maximizing the number of  
6 subprime loans that were made.

7 12. As one reporter noted, “There was plenty more going on behind the  
8 scenes [subprime borrowers] didn’t know about, either: that their broker was paid  
9 more to sell option ARMs than other mortgages; that their lender is allowed to claim  
10 the full monthly payment as revenue on its books even when borrowers choose to pay  
11 much less; that the loan’s interest rates and up-front fees might not have been set by  
12 their bank but rather by a hedge fund; and that they’ll soon be confronted with the  
13 choice of coughing up higher payments or coughing up their home.” See Mara Der  
14 Hovanesian, *Nightmare Mortgages*, BusinessWeek, available at  
15 [www.businessweek.com/magazine/content/06\\_37/b4000001.htm](http://www.businessweek.com/magazine/content/06_37/b4000001.htm).

16 13. Countrywide has developed and used a number of different mechanisms  
17 through which its scheme, policy and practice have been implemented. For example,  
18 Countrywide has used an automated, computerized underwriting program that was  
19 designed to maximize the number of subprime loans that have been issued, as  
20 described below.

21 14. Countrywide has also directed and induced its authorized, contracted  
22 brokers to direct borrowers into subprime loans even when borrowers have been  
23 qualified for loans on far more favorable terms. While a borrower with a credit score  
24 of 620 or better is generally considered to be qualified to obtain a “prime” loan,  
25 borrowers with credit scores well above 620 have nevertheless been steered into  
26 subprime loans by Countrywide and its brokers.

27 15. In addition, as further described herein, Countrywide and its network of  
28 brokers have issued subprime mortgages to borrowers who were identifiable credit

1 risks, or at rates and loan amounts well beyond the borrowers' means for repayment  
2 (e.g., requiring monthly mortgage payments that left insufficient disposable income  
3 for borrowers and their families to live on). At the time the loans were entered into, it  
4 has been concealed from these borrowers that they were being placed in these loans  
5 not because Countrywide had conducted any analysis of reasonable, objective criteria  
6 to determine their appropriateness for the borrower, but because of an overarching  
7 scheme whereby Countrywide had abandoned its underwriting criteria in favor of  
8 pushing subprime loans on as many borrowers as possible. It also has not been  
9 adequately disclosed to these borrowers that their required monthly payments would  
10 suddenly and unexpectedly increase to dangerously high amounts, or that their  
11 outstanding principal could actually increase even if they made what Countrywide  
12 referred to as the minimum monthly payments. Countrywide and its brokers have  
13 intentionally failed to adequately disclose and explain the complex terms and serious  
14 risks of the loans.

15         16. Countrywide's scheme to indiscriminately push subprime loans on  
16 borrowers has been highly effective, as evidenced by the fact that the number of  
17 subprime loans it issued more than doubled from 2003 to 2004 alone.

18         17. Countrywide has steered borrowers into unsuitable subprime loans  
19 because subprime loans are far more profitable for Countrywide than prime loans. In  
20 addition to having higher interest rates as well as dramatic and unexpected increases  
21 in required monthly payments within a short amount of time, Countrywide's subprime  
22 loans also contain numerous fees and penalties that produce significant amounts of  
23 revenue to Countrywide.

24         18. Moreover, as is described more fully below, Countrywide has steered  
25 borrowers into subprime loans in order to maximize the profits it would earn from the  
26 securitization of these loans, as subprime mortgages command far higher prices than  
27 prime loans in the lucrative secondary market, wherein investors purchase mortgage-  
28 backed securities.

1           19. Countrywide could not have reaped such huge rewards from the  
2 securitization of its subprime loans without a network of brokers across the country  
3 pushing borrowers into as many subprime loans as they could. A single broker or a  
4 few brokers could never have generated the volume of subprime loans needed to  
5 bundle the loans into securities, which is where the real money lay for Countrywide.  
6 Countrywide thus needed thousands of brokers to work with a single goal in mind – to  
7 make as many subprime loans as possible, to bundle and sell on the secondary market,  
8 irrespective of their suitability for the borrowers. To accomplish this goal,  
9 Countrywide has entered into “Wholesale Broker Agreements” with brokers who have  
10 submitted a Mortgage Broker Application and then entered into a contract with  
11 Countrywide. Countrywide and its contracted brokers have engaged in an  
12 undisclosed, systematic scheme in which neither the brokers nor Countrywide have  
13 adequately disclosed the terms of these dangerous and destructive loans, and in which  
14 both Countrywide and its brokers have concealed Countrywide’s goal of issuing as  
15 many subprime loans as possible without regard to the appropriateness of such loans  
16 to the borrowers.

17           20. Unlike traditional lenders – banks and thrifts – that finance their loans  
18 with deposits and have an interest in taking pains to ensure that borrowers are able to  
19 make the payments on their loans, most subprime lenders like Countrywide are  
20 financed by investors on Wall Street who buy packages of loans called mortgage-  
21 backed securities. Because Countrywide makes its money bundling and selling loans  
22 to investors, any incentive to ensure that borrowers can repay their loans that might  
23 otherwise exist is outweighed by the incentive to make as many subprime loans as  
24 possible, to command a hefty price in the secondary market.

25           21. Furthermore, under the old model of mortgage lending, banks previously  
26 had a strong incentive to ensure that borrowers had the ability to repay the amounts  
27 borrowed because the loans were kept by the bank. Thus, lenders did a thorough  
28 analysis to ensure that the loans offered actually were suitable to the borrower.

1 Borrowers could trust the supposedly superior expertise, judgment and experience of  
2 the banks that were lending them the money, because they knew banks had an  
3 incentive to ensure that the loan would be repaid.

4 22. However, the practice of bundling up loans into securities to be sold in a  
5 secondary market reduced the incentive for lenders to ensure that borrowers could  
6 repay their debts. Thus, Countrywide has made loans to people it knew could not  
7 repay it, because it knew it could make a huge profit selling the bundled mortgages as  
8 securities.

9 23. But while Countrywide and its brokers have been operating under a  
10 whole new set of rules, they have concealed from unwary borrowers that they have  
11 been employing rules that would not determine the suitability of the loan, as well as  
12 their scheme to cash in under those new rules. Not having been apprised that the  
13 game has changed, borrowers have continued to rely on the supposed expert opinions  
14 of Countrywide and its brokers that they in fact qualified for a given mortgage, and  
15 that such mortgage was the “best available” to the borrower, or “ideal” for that  
16 borrower. They did not know that under the new regime, when Countrywide and its  
17 brokers have said a borrower qualified for a loan, it has meant nothing except that  
18 Countrywide had found another mark for its fraudulent scheme.

19 24. Unfortunately for borrowers, many of the subprime loans Countrywide  
20 and other subprime lenders have pushed on them for the purposes of making a killing  
21 in the secondary market are extremely complicated and loaded with hidden risks for  
22 the borrowers. Indeed, one commentator said that loans like Countrywide’s pay  
23 option ARM loan “might be the riskiest and most complicated home loan product ever  
24 created.” See Mara Der Hovanesian, *Nightmare Mortgages*, BusinessWeek, available  
25 at [www.businessweek.com/magazine/content/06\\_37/b4000001.htm](http://www.businessweek.com/magazine/content/06_37/b4000001.htm). And yet,  
26 Countrywide and its contracted brokers have steered countless borrowers into these  
27 complex and risky loans without any analysis of any reasonable, objective criteria that  
28 would have indicated whether the borrower could afford the loan, or whether the

1 borrower might have qualified for a less risky loan, all the while maximizing  
2 Countrywide's and its broker's own profit and commissions.

3 25. Countrywide and its co-conspirators have intentionally concealed and  
4 misrepresented the risks of such loans, and have foisted these loans onto borrowers  
5 irrespective of whether they were appropriate for the borrowers, all the while telling  
6 borrowers that the loans were not only an appropriate choice, they were the  
7 borrower's *best* choice.

8 26. As a consequence of Countrywide's scheme to issue subprime loans that  
9 were entirely unsuitable to the borrower, many borrowers have entered into loans in  
10 amounts far greater than what they could actually afford, and/or loans with very risky  
11 terms that had been concealed or inadequately explained to them. Furthermore, any  
12 purported disclosures of specific loan terms in the loan documents themselves does  
13 not undo the half-truths, misrepresentations, and false reassurances of the  
14 appropriateness of such loans that Countrywide and its brokers systematically used to  
15 push unwary borrowers into subprime loans. Countrywide has never disclosed its  
16 scheme to push as many borrowers as possible into taking out as many subprime loans  
17 as possible, regardless of the suitability of such loans to borrowers. As a result, a  
18 significant percentage of borrowers from Countrywide have defaulted or are in default  
19 on their loans.

20 27. Moreover, even as to those borrowers who have not defaulted on their  
21 loans, a huge percentage is in danger of doing so. As acknowledged by Countrywide  
22 in its corporate filings, as of June 30, 2007, approximately one quarter of all subprime  
23 loans serviced by Countrywide are delinquent.

24 28. Borrowers who have been steered into subprime loans when they were  
25 actually qualified for loans on better terms, such as prime mortgages, suffer losses to  
26 their property in the form of unnecessarily having to pay much higher interest rates  
27 and fees than they would otherwise pay on such loans.

28 ///

1           29. Borrowers who have been steered into loans that they clearly cannot  
2 afford are placed in the precarious situation wherein they have to forgo other financial  
3 obligations in order to meet the ever-increasing burden of these high-interest loans.  
4 Were it not for Countrywide's false assurances that these borrowers could in fact  
5 afford such large and risky loans, and its concealment of the dangerous terms  
6 hidden in such loans, these borrowers either would have borrowed smaller  
7 amounts that they could realistically afford, taken out loans with more appropriate  
8 terms and fewer risks, or taken out no loans unless or until they could realistically  
9 afford them.

10           30. Instead, persuaded by Countrywide and its brokers that these loans are  
11 appropriate and manageable, these borrowers have taken out loans in amounts  
12 and/or with interest rates or other terms that they simply cannot afford, and find  
13 themselves sinking deeper and deeper into debt every month.

14           31. Furthermore, Countrywide and its brokers have told borrowers that they  
15 will be able to refinance their loans when their loan payments increase. However,  
16 borrowers who later do seek to refinance their loans on more favorable terms are often  
17 hindered or prevented from doing so by severe prepayment penalties that are built into  
18 the loans. Even when Countrywide admits to a borrower that the borrower has  
19 entered into a loan that is unsuitable and was inadequately explained to the borrower,  
20 Countrywide either refuses to waive the prepayment penalty or refuses altogether to  
21 refinance the loan on better terms. Accordingly, borrowers trying to refinance,  
22 pursuant to the representations of Countrywide and their brokers, either suffer injury  
23 by being forced to pay a substantial prepayment penalty that they would not otherwise  
24 have to pay, or suffer injury by being forced to remain in an unsuitable loan and  
25 continue to pay inflated interest rates and fees after being told they would be able to  
26 avoid such inflated interest rates and fees by refinancing.

27           32. All borrowers who have been steered into loans whose complex terms  
28 have been misrepresented or inadequately disclosed to them suffer injury in that they

1 take on financial burdens that they would not otherwise have taken on and suffer the  
2 destructive impact on their financial well-being of having to make monthly payments  
3 they cannot afford, sometimes leading to significant prepayment penalties when they  
4 seek to refinance their mortgages at a more favorable rate, increases in the principal  
5 owed under certain types of loans, defaults on their loans, loss of their homes,  
6 destruction of their credit, bankruptcy, or financial ruin. Borrowers who experience  
7 unanticipated, dramatic rate increases, as in the case of adjustable rate mortgages that  
8 have a short fixed-rate period, or in the case of pay option ARM loans, where the  
9 borrower's minimum monthly payment inevitably causes the loan to "recast" to a  
10 significantly higher monthly payment based on the negative amortization of the loan,  
11 suffer harm from the unexpected and onerous burdens created by their suddenly  
12 having to make monthly payments in amounts that greatly exceed what they  
13 committed to and can afford. These borrowers are also injured when, as a result of  
14 their inability to keep up with monthly payments that are far greater than what was  
15 represented to them, they are charged late fees that they otherwise would not have  
16 incurred. Additionally, all borrowers who are charged inflated loan costs and other  
17 fees suffer injury in increased out-of-pocket costs over what they should have paid.  
18 Borrowers who refinance from more traditional loans or take riskier loans than they  
19 otherwise could have obtained elsewhere, in the false belief that they are obtaining a  
20 loan on favorable terms, are injured by having to pay the difference between fees and  
21 interest rates charged by Countrywide and those another lender would have charged.  
22 Borrowers who are forced to pay large pre-payment penalties in order to extricate  
23 themselves from the destructive and dangerous loans Countrywide has steered them  
24 into are injured by the out-of-pocket costs of the penalties, which they would not  
25 otherwise have had to pay.

## 26 **JURISDICTION AND VENUE**

27 33. This Court has jurisdiction over the subject matter of this action pursuant  
28 to 18 U.S.C. §§ 1961, 1962 and 1964, 28 U.S.C. §§ 1331, 1332 and 1367, and 15

1 U.S.C. §15. This Court has personal jurisdiction over the Defendants pursuant to 18  
2 U.S.C. §§ 1965(b) and (d). Diversity jurisdiction is also conferred over this class  
3 action pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, § 7, 119  
4 Stat. 13 (“CAFA”). The CAFA amended 28 U.S.C. §1332 to add subsection (d)  
5 which, as here, confers diversity jurisdiction upon this Court because various  
6 members of the Class are citizens from a state different from the Defendants’  
7 states, and the aggregate amount in controversy exceeds five million dollars  
8 (\$5,000,000). It is appropriate to apply the California UCL and FAL to protect a  
9 class of nationwide borrowers because the wrongdoing alleged herein occurred in  
10 significant part in California, and Defendants have their principal place of  
11 business within the state. The Court has personal jurisdiction over the Defendants  
12 because they have their principal places of business within California, and the  
13 conspiracy and misconduct occurred in significant part in California.

14 34. Venue is proper in this district pursuant to the Transfer Order of the  
15 Judicial Panel on Multidistrict Litigation dated October 14, 2008.

16 35. During all or part of the period in which the events described in this  
17 Complaint occurred, each of the Defendants has participated in a scheme to defraud  
18 Plaintiffs and other members of the Class in a continuous and uninterrupted flow of  
19 interstate commerce.

20 36. The activities of Defendants and their co-conspirators, as described  
21 herein, have been within the flow of, and have had a substantial effect on, interstate  
22 commerce.

## 23 **PARTIES**

### 24 **Plaintiffs**

25 Francis G. and Rebecca G. Sizemore

26 37. Plaintiffs Francis G. Sizemore and Rebecca G. Sizemore (“the  
27 Sizemores”) are homeowners who reside at 26 Third Avenue, Bluffton, South  
28 Carolina 29910. On May 19, 2006, the Sizemores received a subprime loan in the

1 form of a “pay option” adjustable rate mortgage from Countrywide Home Loans,  
2 Inc., in order to refinance the mortgage on their primary residence. As set forth in  
3 greater detail herein, at the time of the loan, Countrywide did not disclose to the  
4 Sizemores that: (a) their monthly payments would increase soon after taking out  
5 the loan; (b) if they made the “minimum payment,” the principal amount of the  
6 loan would actually *increase* each month (in what is referred to as “negative  
7 amortization”); and (c) they would be charged a prepayment penalty if they  
8 refinanced within the first three years of the loan, even if they refinanced with  
9 Countrywide. To the contrary, in April 2006, prior to agreeing to refinance their  
10 loan with Countrywide, the Countrywide loan officer, Cortney Lanktree, told the  
11 Sizemores over the telephone the complete opposite: Ms. Lanktree told them that  
12 (a) their payment would be \$1,046 for three years (when, in fact, by January 1,  
13 2007 – less than seven months after completing the loan – the minimum monthly  
14 payment had already increased to \$1,250), (b) if the Sizemores paid the monthly  
15 minimum there would *not* be charges added to the rear of the loan (when, in fact,  
16 since the start of their loan with Countrywide, the amount of principal owed by  
17 the Sizemores has increased by approximately \$9,000.00, and is still increasing  
18 due to their inability to make anything but the “minimum payment,” which is less  
19 than the interest owed), (c) their monthly payments were so low because the loan  
20 was spread out over forty years, and (d) there would not be a prepayment penalty  
21 fee if they refinanced with Countrywide within the first three years. The foregoing  
22 representations to the Sizemores are all part of a larger, systematic scheme,  
23 encompassing Countrywide’s entire lending process, to steer borrowers into the  
24 loans that were the most lucrative to Countrywide on the secondary market by  
25 representing to borrowers that it was the best loan for the borrower, without  
26 having performed any appropriate analysis that would have indicated the  
27 unsuitability of the loans for such borrowers. Countrywide’s failure to disclose  
28 this scheme and the resulting policy of issuing dangerous subprime loans without

1 any attempt to ascertain their suitability to a given borrower is the underlying  
2 fraudulent conduct.

3 38. The Sizemores requested that the “no prepayment fee” term be put in  
4 writing and Ms. Lanktree did so, in a letter dated April 25, 2006. When the  
5 Sizemores sought to refinance in July 2007, the Countrywide Loan Department  
6 refused to honor Ms. Lanktree’s letter, telling the Sizemores that the “rule” is that  
7 they couldn’t refinance or sell the house within three years or there would be a  
8 prepayment penalty. Sometime between mid-August and mid-September 2007,  
9 the Sizemores contacted the Office of the President at Countrywide, who offered  
10 to honor the refinance letter; however, sometime in September 2007, the  
11 Refinance Department said they would not honor it. Mrs. Sizemore called in to  
12 Customer Service and became involved in a conference call between the  
13 Refinance Department and the Office of the President; the two departments fought  
14 over whether to honor the letter and told her they would get back to her.  
15 However, no one has been in touch with her since that conversation. Each time  
16 the Sizemores called Countrywide, if they were not specifically told that the call  
17 was being recorded, they requested that Countrywide record the call.  
18 Furthermore, the Sizemores have received a “Significant Payment Increase Alert”  
19 letter from Countrywide dated June 5, 2007, indicating that the required monthly  
20 payment on their mortgage will soon increase significantly, based on the negative  
21 amortization of their loan. That is because of an undisclosed acceleration  
22 provision in the terms of the loan that provides, if the outstanding principal  
23 amount ever grows to an amount greater than 115% of the original principal  
24 amount through negative amortization, the Sizemores will be required to start  
25 making payments on both the principal and the interest – as calculated based upon  
26 the new, greatly increased principal amount – every month for the remainder of  
27 the life of the loan. Ms. Lanktree did not inform the Sizemores that this provision  
28 existed, let alone explain how it could work to their severe detriment. Had the

1 Sizemores been informed that their principal would increase as a result of making  
2 the “minimum payment” on their loan, and that as a result they would soon be  
3 required to make payments significantly larger than what they were told would be  
4 their minimum required payments, they never would have entered into the loan  
5 with Countrywide. The Sizemores have thereby suffered injury in the form of the  
6 increase to the principal amount of their loan and the increases in the monthly  
7 payments on their loan from the original low payments they were told they would  
8 be making, as well as their payment of the difference between the fees and interest  
9 rates charged by Countrywide and what another lender would have charged.

10 Edward Marini

11 39. Plaintiff Edward Marini (“Marini”) is a homeowner who resides at  
12 109 North Spinnaker Drive, Little Egg Harbor Township, New Jersey 08087. On  
13 or about February 2005, Marini entered into a subprime loan with another lender  
14 that was soon sold to Countrywide. Within a few months, sometime during  
15 February or March 2005, Marini, a disabled Vietnam veteran on a fixed income,  
16 was contacted by Countrywide via telephone about refinancing his loan. Marini  
17 does not remember who he spoke to four years ago, though he did write down the  
18 information at one point. Prior to agreeing to the loan refinancing, in March 2005,  
19 Marini was told over the telephone by numerous Countrywide customer service  
20 representatives that it would be a fixed rate for five years with an increase of one  
21 hundred dollars (\$100) per month; different Countrywide representatives  
22 continuously reiterated to him in March 2005 that “he would be safe for five  
23 years.” Marini kept track of all the customer service representatives with who he  
24 spoke. However, on February 14, 2007, during the process of replacing his roof,  
25 the tarp put on Marini’s house by the roofers blew off in a storm and the house  
26 and its contents were flooded and destroyed. The records of with whom Marini  
27 spoke at Countrywide during those time periods were destroyed in the flood.  
28 Given the fact that during the course of his loan, Marini has received over sixty

1 calls from Countrywide representatives, he is not able to recite the names of the  
2 individual representatives without the written record he created four years ago.  
3 The foregoing representations to Marini are all part of a larger, systematic  
4 scheme, encompassing Countrywide's entire lending process, to steer borrowers  
5 into the loans that were the most lucrative to Countrywide on the secondary  
6 market by representing to borrowers that it was the best loan for the borrower,  
7 without having performed any appropriate analysis that would have indicated the  
8 unsuitability of the loans for such borrowers. Countrywide's failure to disclose  
9 this scheme and the resulting policy of issuing dangerous subprime loans without  
10 any attempt to ascertain their suitability to a given borrower is the underlying  
11 fraudulent conduct.

12         40. Marini refinanced his mortgage with Countrywide Home Loans, Inc.  
13 in the form of a "pay option" adjustable rate mortgage on his primary residence.  
14 As set forth in greater detail herein, at the time of the loan, Countrywide did not  
15 disclose to Marini that (a) his monthly payments would increase soon after taking  
16 out the loan, and (b) if he made the monthly "minimum payment," the principal  
17 amount of the loan would actually *increase* each month. Since he refinanced his  
18 loan with Countrywide, the amount of principal owed by Marini has increased by  
19 approximately \$17,000.00. Furthermore, Marini has received a "Significant  
20 Payment Increase Alert" letter from Countrywide dated August 6, 2007,  
21 indicating that the minimum payment on his mortgage will soon increase by more  
22 than double what he is currently paying, based on the negative amortization of his  
23 loan. This is due to the undisclosed acceleration provision in his loan, which  
24 operates as described in paragraph 38, above. As a result, Marini filed for  
25 bankruptcy on July 10, 2008, as he could not make his monthly payments.  
26 Marini's bankruptcy proceedings closed on November 12, 2008, however, a  
27 motion to reopen the case has been filed and is scheduled to be heard on March  
28 23, 2009. Should the bankruptcy proceeding be reopened, the bankruptcy Trustee,

1 Thomas Orr will be substituted for Marini and will retain special counsel to  
2 pursue the matter on behalf of the bankruptcy estate and the Class. Had Marini  
3 known that making his monthly “minimum payments” would result in the  
4 principal of his loan increasing every month, and that he would soon be required  
5 to make monthly payments significantly larger than what he was told would be his  
6 minimum payments for the first five years of the loan, he never would have  
7 entered into the loan with Countrywide. Marini has thereby suffered injury in the  
8 form of the increase to the principal amount of his loan and the increases in the  
9 monthly payments on his loan from the original low payments he was told he  
10 would be making, as well as his payment of the difference between the fees and  
11 interest rates charged by Countrywide and what another lender would have  
12 charged.

13 Kimberly and Philip D. Menichetti

14 41. Plaintiffs Kimberly Menichetti and Philip D. Menichetti (“the  
15 Menichettis”) are homeowners who reside at 66 Atlantic Avenue, Waretown, New  
16 Jersey 08758. On August 18, 2006, the Menichettis received a subprime loan in  
17 the form of a “pay option” adjustable rate mortgage from Countrywide Bank,  
18 N.A., using a broker named Don Cutler at Mid Atlantic Capital (“Mid Atlantic”)  
19 who first contacted them by letter between July and August 2006, in order to  
20 refinance the mortgage on their primary residence. As set forth with greater  
21 particularity herein, during the two months prior to setting up the loan, neither  
22 Countrywide nor Mid Atlantic disclosed to the Menichettis that (a) their monthly  
23 payments would increase soon after taking out the loan, and (b) if they made the  
24 monthly “minimum payment,” the principal amount of the loan would actually  
25 *increase* each month. To the contrary, Mr. Cutler told the Menichettis over the  
26 telephone on numerous occasions between July and August 2006, that he was  
27 providing a “good mortgage option” to their previous thirty year fixed mortgage,  
28 and that the Menichettis would now only have to pay a “low monthly payment;”

1 Mr. Cutler told them it was “the best loan he could think of.” The Menichettis  
2 never met Mr. Cutler; Mr. Cutler only contacted the Menichettis by telephone and  
3 sent someone else from his office to handle the in-person closing. The foregoing  
4 representations to the Menichettis are all part of a larger, systematic scheme,  
5 encompassing Countrywide’s entire lending process, to steer borrowers into the  
6 loans that were the most lucrative to Countrywide on the secondary market by  
7 representing to borrowers that it was the best loan for the borrower, without  
8 having performed any appropriate analysis that would have indicated the  
9 unsuitability of the loans for such borrowers. Countrywide’s failure to disclose  
10 this scheme and the resulting policy of issuing dangerous subprime loans without  
11 any attempt to ascertain their suitability to a given borrower is the underlying  
12 fraudulent conduct.

13         42. Soon after the Menichettis began receiving their new monthly  
14 statements, they saw that the principal balance, what they understood to be the  
15 “cost of their house,” was actually *increasing*. They immediately called  
16 Countrywide seeking assistance in getting out from under the mortgage.  
17 Countrywide made false offers to help, including billing the Menichettis an  
18 additional \$500.00 to “process an FHA loan” that would get them out of the  
19 Countrywide loan, though that loan surprisingly never went through. In or around  
20 November, 2006, when Mr. Menichetti called Countrywide representatives for  
21 assistance, a Customer service representative told Mr. Menichetti that “many  
22 people were calling in with complaints that they were not told about negative  
23 amortization or what would happen if they just made the ‘minimum payment.’”  
24 When Countrywide began airing commercials advertising relief to customers with  
25 loan problems, Mr. Menichetti called Countrywide again, seeking assistance with  
26 his loan. Another customer service representative told him that the people referred  
27 to in the television ad were getting “special letters” to help them, but that Mr.  
28 Menichetti’s situation was not “bad enough *yet*” – he would need to wait

1 approximately a year before he was in a bad enough situation for Countrywide to  
2 help him. Since the start of their loan with Countrywide, the amount of principal  
3 owed by the Menichettis has increased by approximately \$6,000.00. On  
4 November 25, 2008, Philip Menichetti filed for bankruptcy, however, the  
5 bankruptcy Trustee, Daniel E. Straffi, does not intend to pursue the claims raised  
6 by this class action and will file a stipulation with this Court to that effect. As  
7 such, Philip Menichetti has standing to pursue this action. Had the Menichettis  
8 known that their monthly “minimum payments” would cause their principal to  
9 increase, they never would have entered into the loan with Countrywide. The  
10 Menichettis have thereby suffered injury in the form of the increase to the  
11 principal amount of their loan and the increases in the monthly payments on their  
12 loan from the original low payments they were told they would be making, as well  
13 as the difference of their payment of fees and interest rates charged by  
14 Countrywide and what another lender would have charged.

15 Sequesta L. Washington

16 43. Plaintiff Sequesta L. Washington (“Washington”) is a homeowner  
17 who resides at 1566 Hunters Chapel Road, Bamberg, South Carolina 29003. On  
18 November 20, 2004, Washington received a subprime mortgage from Full  
19 Spectrum Lending, Inc., a former subsidiary of Countrywide Financial Corp. that  
20 was merged into Countrywide Home Loans, Inc. at the end of 2004. As set forth  
21 in greater detail herein, at the time of the loan, Countrywide did not disclose to  
22 Washington that her loan was only a fixed-interest loan for the first three years,  
23 and would become an adjustable rate loan in 2008. Furthermore, immediately  
24 leading up to the loan closing, between October and November 2004, Washington  
25 expressed to Fred Aghili, her Countrywide loan officer, doubts that she would be  
26 able to make the monthly payments, but was simply told by Mr. Aghili that she  
27 could refinance at any time. Washington only communicated with Mr. Aghili  
28 over the phone – they never met in person. Washington spoke with Mr. Aghili

1 over the telephone numerous times during the two months prior to her closing on  
2 November 20, 2004. The foregoing representations to Washington are all part of  
3 a larger, systematic scheme, encompassing Countrywide's entire lending process,  
4 to steer borrowers into the loans that were the most lucrative to Countrywide on  
5 the secondary market by representing to borrowers that it was the best loan for the  
6 borrower, without having performed any appropriate analysis that would have  
7 indicated the unsuitability of the loans for such borrowers. Countrywide's failure  
8 to disclose this scheme and the resulting policy of issuing dangerous subprime  
9 loans without any attempt to ascertain their suitability to a given borrower is the  
10 underlying fraudulent conduct.

11 44. As she had feared, and as she had warned her loan officer, Mr. Aghili,  
12 Washington indeed experienced difficulty in making her monthly payments.  
13 When she tried to refinance, as she had been told she could if she could not make  
14 her payments, she was first told that she could not refinance because she did not  
15 yet have enough equity in her home. Later, when she had established some equity  
16 and found herself still struggling to keep up with the payments, she was told that  
17 she could not refinance because she was delinquent in her payments. Had  
18 Washington been informed that her loan would have an adjustable interest rate in  
19 2008, or if she had not been assured that she could refinance at any time if the  
20 payments became a problem, she never would have entered into the loan with  
21 Countrywide. Washington has thereby suffered injury in the form of the charges  
22 to her of late payment fees that she would not have incurred had she been offered  
23 a loan she could afford to make payments on, as well as her payment of the  
24 difference between the fees and interest rates charged by Countrywide and what  
25 another lender would have charged.

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1 Symone and John Leyvas

2 45. Plaintiffs Symone and John Leyvas (“Mr. and Mrs. Leyvas”) have been  
3 harmed by Defendants’ unlawful conduct. Mr. and Mrs. Leyvas obtained a home loan  
4 from Countrywide on or about August 31, 2007.

5 46. In July of 2007, Mr. and Mrs. Leyvas began looking to refinance their  
6 then-existing mortgage, seeking to reduce their debts and lower their existing interest  
7 rate and obtain up to \$15,000 cash.

8 47. Mr. and Mrs. Leyvas were promised by their broker, Equity Capital  
9 Group, Inc., that Countrywide would provide them with a 30-year fixed-rate loan,  
10 with an interest rate between 7.0% and 8.50%.

11 48. Further, prior to closing, when the appraiser arrived to appraise the  
12 Leyvas’s home, he informed them that he already knew what the home was “supposed  
13 to appraise for.”

14 49. For their loan closing, a notary was sent to their home. Mr. and Mrs.  
15 Leyvas were instructed by the notary to sign multiple copies of the same disclosure  
16 documents, indicating different terms and different dates. At closing, upon  
17 information and belief, Mr. and Mrs. Leyvas were also instructed to backdate certain  
18 disclosure documents with respect to their loan. For example, some of their disclosure  
19 documents have a computer-generated preparation date of August 15, 2007, yet were  
20 signed and “dated” August 13, 2007. Mr. and Mrs. Leyvas were instructed as to what  
21 dates needed to be on the paperwork in order to make the loan go smoothly.

22 50. At closing, Mr. and Mrs. Leyvas were confused and surprised by their  
23 loan terms. First, the amount of the cash-out that they had been promised had been  
24 reduced from nearly \$13,959 to \$1,294. They were provided with a document that  
25 indicated that they would receive \$13,959, a well as another document that indicated  
26 that they would receive from the refinance cash in the amount of \$9,677.62 and  
27 indicated a 30-year loan term. However, as their final settlement statement indicates,  
28 they actually received only \$1,294.31 in cash from the refinance loan. Second, they

1 were presented with conflicting amortization schedules—one that showed a 30-year  
2 term with an interest rate of 9.80% and one that showed a 40-year term with an  
3 interest rate of 10.25%. Third, they learned that the loan was actually a hybrid ARM  
4 with an initial rate of 10.25%. The Leyvases did not learn until closing that their loan  
5 was for a term of 40 years, rather than 30 years.

6 51. Countrywide paid Mr. and Mrs. Leyvas’s broker a fee of \$5,130.00 after  
7 the broker had already charged them a \$645 application fee.

8 52. Mr. and Mrs. Leyvas did not receive copies of all of the signed  
9 documents.

10 53. Immediately following closing, Mrs. Leyvas attempted to contact  
11 Countrywide to complain about her loan, but received no assistance. Mrs. Leyvas’s  
12 calls to her broker were not returned.

13 54. Since their loan closing, Mr. and Mrs. Leyvas have been contacted by  
14 Countrywide on numerous occasions with generalized solicitations to refinance with  
15 Countrywide and, essentially, reward the Company with additional revenue. As  
16 Countrywide knows, Mr. and Mrs. Leyvas’s loan is saddled with a prepayment  
17 penalty, increasing their costs of refinancing within the first three years following  
18 closing.

19 55. When Mr. and Mrs. Leyvas fell behind on their mortgage and complained  
20 to Countrywide that they could not afford their monthly mortgage payment,  
21 Countrywide responded by offering to them a modification that actually *increased*  
22 their monthly mortgage payment.

23 56. Mr. and Mrs. Leyvas have been harmed by the conduct alleged herein  
24 and seek redress for themselves and the members of the proposed Class.

25 June Harding Brown

26 57. Plaintiff June Harding Brown (“Brown”) has also been harmed by  
27 Defendants’ unlawful conduct. Plaintiff Brown, a senior citizen on a fixed income,  
28 had a good credit score at the time of her loan. She obtained a home loan from

1 Countrywide on or about August 17, 2007, secured by her residence located at 7913  
2 Pompey Place, Philadelphia, PA.

3 58. Plaintiff Brown was contacted by a third party broker named Arthur  
4 Ustayev of Capital Icon Inc., via a solicitation letter. In response to the letter, Plaintiff  
5 Brown called Mr. Ustayev. During this initial telephone conversation, which Plaintiff  
6 Brown believes occurred in or about mid-July 2007 (approximately one month prior to  
7 her loan closing), Mr. Ustayev promised to save her money.

8 59. According to Plaintiff Brown, during this same conversation, the broker  
9 told Plaintiff Brown that Countrywide had a “special program” for her that would save  
10 her money. During this same conversation, Plaintiff Brown told Mr. Ustayev that she  
11 believed that she would likely be better off keeping her current loan. However, Mr.  
12 Ustayev promised her that she would benefit from Countrywide’s “special program.”

13 60. One or two weeks following her initial conversation with her broker,  
14 Plaintiff Brown received, by mail, paperwork for her loan. During a telephone  
15 conversation that Plaintiff Brown believes took place within two weeks prior to her  
16 loan closing, Mr. Ustayev told Plaintiff Brown that the “special program” was being  
17 discontinued within a matter of days and that she needed to act quickly in order to  
18 avoid missing out.

19 61. Plaintiff Brown spoke with her broker over the telephone 3-4 times prior  
20 to closing.

21 62. According to Plaintiff Brown, during one of her telephone conversations  
22 with her broker prior to closing, her broker told her that her monthly payments would  
23 decrease from those of her prior loan by several hundred dollars, and that her new  
24 payment would be a total of \$1157 and that her loan payment may eventually  
25 increase, but only by a small amount. When Plaintiff Brown questioned the possible  
26 increase in her payment, her broker told her “not to worry about it” and that she  
27 should focus only upon the minimum monthly payment. Mr. Ustayev further told  
28 Plaintiff Brown that “this will save you money.”

1           63. For her loan closing, on August 17, 2007, a notary public came to  
2 Plaintiff Brown’s home. Neither Mr. Ustayev nor a representative from Countrywide  
3 was present. During the loan closing, Plaintiff Brown was confused by her loan  
4 documents as they were not consistent with what Mr. Ustayev had told her regarding  
5 her payments and what she had agreed to. During closing, before signing the  
6 documents, Plaintiff Brown called her broker and told him that the documents did not  
7 comply with what he had promised her. In response, Mr. Ustayev told Plaintiff  
8 Brown that she was reading the documents incorrectly and that all the terms were just  
9 as he had promised. Mr. Ustayev told Plaintiff Brown she should sign the documents  
10 and offered to come to her home the following day—*after* the closing-- to show her  
11 how she was mistaken about what the documents said.

12           64. On the day after the closing, Plaintiff Brown’s broker met with her,  
13 purportedly to explain the loan terms. He alleviated her concerns by focusing her  
14 attention on the amount of the minimum payment and failing to explain that paying  
15 this amount would result in negative amortization.

16           65. Following her closing, after making several payments, upon examining  
17 her statements, Plaintiff Brown discovered that the amount of her outstanding balance  
18 was actually increasing and called Countrywide to complain and to inquire as to why  
19 this was happening.

20           66. When inquiring about her increasing outstanding balance about two-three  
21 months following her loan closing, Plaintiff Brown reached a Countrywide employee  
22 named “Marybelle” (Plaintiff Brown believes that this is the correct spelling of the  
23 employee’s name). The employee’s contact information was: (800) 669-6607,  
24 extension 6021. Marybelle admitted to Plaintiff Brown that she should never have  
25 been placed into the loan product that she received, and informed Plaintiff Brown that  
26 she actually must pay an amount higher than her “minimum payment” each month,  
27 based upon a 30-year amortization schedule and including both principal and interest,  
28 in order to avoid negative amortization. The amount that Plaintiff Brown was actually

1 required to pay, in order to include principal and interest and avoid negative  
2 amortization was over \$1700—more than what she had been paying under her prior  
3 loan. Thus, following her loan closing, Plaintiff Brown found herself having to  
4 *increase* her monthly payment—to an amount that she could not afford—in order to  
5 avoid negative amortization.

6 67. Plaintiff Brown was placed into a “pay option” ARM, one of the most  
7 risky, harmful loans that Countrywide offered. Under the terms of her loan, she has  
8 four options each month, with respect to her payment, one of which is to make a  
9 minimum monthly payment calculated according to a rate significantly lower than the  
10 actual loan rate. According to Plaintiff Brown, prior to closing, no one explained to  
11 her that this would cause negative amortization. However, paying only the “minimum  
12 payment”—used to lure her into the loan—would cause Plaintiff Brown to owe  
13 approximately \$14,000 more than she borrowed, after only five years.

14 68. Additionally, her loan payment would almost double during the life of  
15 her loan. Countrywide and Plaintiff Brown’s broker knew that this loan product was  
16 absolutely unsuitable for a senior citizen on a fixed income.

17 69. To make matters worse, Plaintiff Brown did not even receive a low initial  
18 rate for her pay option ARM. Plaintiff Brown’s initial interest rate under her pay  
19 option ARM was 9.750%—higher than the rate of the prior loan that she was  
20 refinancing.

21 70. As for her broker, Mr. Ustayev was paid a yield spread premium of  
22 \$3,240.00 by Countrywide outside of closing. Following his meeting with Plaintiff  
23 Brown following her loan closing, Mr. Ustayev refused to return Plaintiff’s Brown  
24 telephone calls.

25 71. Following her loan closing, throughout the spring and summer of 2008,  
26 Plaintiff Brown was contacted by Countrywide on numerous occasions with  
27 generalized solicitations to refinance with Countrywide and, essentially, reward the  
28 Company with additional revenue. After numerous calls, Plaintiff Brown eventually

1 received a modification of her loan; however, Countrywide attempted to charge  
2 Plaintiff Brown \$500 as a “modification fee.” After Plaintiff Brown objected to this  
3 fee, she was charged a \$250 “modification fee.”

4 Preston Givens and Paula Prezola

5 72. Plaintiffs Preston Givens and Paula Prezola (“Givens and Prezola”),  
6 husband and wife, have been harmed by Defendants’ unlawful conduct. Givens and  
7 Prezola obtained a home loan from Countrywide KB Home Loans on or about  
8 September 28, 2007.

9 73. In October 2006, Alexander Bejenaru, an onsite representative of KB  
10 Home, referred Givens and Prezola to Countrywide KB Home Loans. Mr. Bejenaru  
11 told them that he would have a Countrywide loan officer call them. In October 2006,  
12 Givens and Prezola were contacted by Chris McDonald, a Countrywide loan officer  
13 from a loan processing center in Texas.

14 74. During their first conversation with Chris McDonald, which Givens and  
15 Prezola believe took place during the month of October 2006, Givens told Chris  
16 McDonald to ensure sure that the loan was a fixed, rather than an adjustable rate  
17 mortgage (an “ARM”).

18 75. During the same conversation, according to Givens and Prezola, Chris  
19 McDonald told them not to worry and promised to provide them with a 30-year fixed-  
20 rate loan. During this same conversation, Givens expressed to Chris McDonald that he  
21 did not feel comfortable arranging the loan over the telephone and that he would like  
22 to meet with a Countrywide loan officer in person. However, Chris McDonald did not  
23 arrange such a meeting.

24 76. To their recollection, Givens and Prezola communicated with Chris  
25 McDonald twice per week, on average, between October 2006 and late May 2007.

26 77. Givens and Prezola were provided with a good faith estimate, dated  
27 November 17, 2006 and prepared by Joi Moran, that indicated an initial rate of  
28 9.625%, a 30-year loan term and zero loan discount points.

1           78. In late May or early June 2007, Chris McDonald sent to Givens and  
2 Prezola an email to inform them that he was moving to another department within the  
3 company and that their loan file would be turned over to another loan officer. The  
4 loan was then turned over to a loan officer in Countrywide's Diamond Bar, CA office.  
5 The loan officer's first name was "Nino." Givens and Prezola do not recall Nino's  
6 last name.

7           79. Several times throughout the months of June and July, Givens stated to  
8 Nino that he did not feel comfortable arranging the loan over the telephone and  
9 requested an in-person meeting. However, despite his close proximity to the  
10 applicants, Nino refused to meet with Givens and Prezola in person. Thus, Givens  
11 and Prezola's contact with Countrywide was solely through telephone, email and  
12 facsimile.

13           80. During the first two weeks of June 2007 and throughout July and August  
14 2007, Givens repeated to Nino his desire for a fixed-rate, than adjustable-rate loan.

15           81. Between September 15, 2007 and September 28, 2007, over several  
16 telephone conversations with Nino, Givens specifically again requested a fixed-rate  
17 loan. However, Nino attempted to persuade Givens him to enter into an ARM.  
18 Following this insistence, Nino again promised to provide Givens with a fixed-rate  
19 loan.

20           82. During the week prior to closing, Nino informed Givens and Prezola that  
21 he planned to provide them with an interest-only loan. After learning that the loan  
22 was going to be an interest-only product, Givens and Prezola called Nino and told  
23 them they did not want this type of loan, but wanted a 30-year fixed rate loan. During  
24 this conversation, during the last week of closing, Nino again promised them a fixed  
25 rate loan.

26           83. In response to their requests for this information, during the week prior to  
27 closing and even up to day of closing, Nino would tell them was that Countrywide  
28 was "still working on it." During the telephone conversations that occurred during the

1 week prior to closing, Givens repeatedly asked Nino to explain their loan terms;  
2 however, during these conversations during the week before closing, Nino repeatedly  
3 attempted to focus Givens and Prezola’s attention solely on the amount of the monthly  
4 payment.

5 84. During the telephone conversations that occurred during the week prior  
6 to closing, Nino told Givens and Prezola that they should accept an ARM because it  
7 would provide a lower payment. Nino told them that they should not worry about the  
8 ARM and promised that Countrywide would refinance their loan after three years.  
9 However, during the week prior to closing, Givens and Prezola told Nino that they  
10 wanted a fixed-rate loan, even if it meant having a slightly higher payment or having a  
11 longer term.

12 85. Givens and Prezola asked Nino to attend the closing. In response, Nino  
13 promised them that he would attend their closing; however, he failed to do so.

14 86. Givens and Prezola received a 5-year hybrid ARM with an initial interest  
15 rate of 11.250% (*after* the payment of loan discount points) and a 40-year loan term.  
16 They were also asked to pay 3 loan discount points, equal to \$13,631.28 at closing. A  
17 “loan origination fee” of \$4,543 was paid to Countrywide KB Home Loans outside of  
18 closing. Countrywide KB Home Loans also received a “processing fee” of \$1,105.  
19 The transaction also generated fees for other Defendants in this action, including the  
20 LandSafe entities described below.

21 87. Givens and Prezola were also provided with conflicting documents at  
22 closing. For example, one Truth-in-Lending Statement, dated September 28, 2007  
23 and marked “Final,” indicated an “amount financed” of \$392,331.97. An “Itemization  
24 of Amount Financed,” also dated September 28, 2007, also indicated an “amount  
25 financed” of \$392,331.97 and \$59,068.88 in prepaid loan discount points. Givens and  
26 Prezola were also provided with a different Truth-in-Lending Statement”—also dated  
27 September 28, 2007, and marked “Final”—that indicated an amount financed of  
28 \$437,789.57. Givens and Prezola were also provided with a different “Itemization of

1 Amount Financed”—also dated September 28, 2007, that indicated an amount  
2 financed of \$437,789.57 and \$13,631.28 in prepaid loan discount points. According  
3 to their promissory note and their final settlement statement, the actual loan amount  
4 was \$454,376.00, with \$13,628.28 in loan discount points.

5 88. Givens and Prezola were told by Countrywide KB Home Loans that their  
6 deposit, together with incentives from KB Home, would cover all of their closing  
7 costs, as well as their down payment. However, at closing, they were surprised with a  
8 demand for an additional \$13,000 in cash.

9 89. Givens and Prezola have been harmed by the conduct alleged herein and  
10 seek redress for themselves and the members of the proposed Class.

11 Kimberly A. Jackson

12 90. Plaintiff Kimberly A. Jackson (“Jackson”) is a homeowner who resides at  
13 244 Overlook Road, Louisville, KY 40229.

14 91. On or about January 9, 2004, Jackson received a 30-year fixed rate loan  
15 from Countrywide Home Loans, Inc. Jackson’s purchase price was \$91,500.00, of  
16 which she put \$21,000.00 down. Her rate was fixed at 6.85%.

17 92. Upon information and belief, employees of Countrywide monitored  
18 Jackson’s credit report after she entered into the 2004 loan and upon discovery of an  
19 outstanding medical bill in the amount of approximately \$1,500.00, targeted Jackson  
20 as a candidate for refinancing.

21 93. In August of 2005, Jackson began receiving frequent calls from  
22 Countrywide Home Loans, Inc. encouraging her to refinance her mortgage and  
23 receive cash to pay off her bills. On or about September 5, 2005, Jackson received a  
24 call from a different Countrywide representative and was told if she refinanced her  
25 mortgage, she could use the money to pay off her bills and do some home  
26 improvements to increase the value of her home. Jackson told the Countrywide  
27 representative that she could only afford to increase her mortgage payments by \$50 to  
28 \$75 a month, and he said that was “no problem,” so Jackson began sending him the

1 documents he requested. On or about September 16, 2005, another loan officer called  
2 and told Jackson her credit score was at 538 and going down with each day they  
3 delayed closing on her refinance, and they ran the risk of not being able to close if her  
4 score went below 500. He told Jackson her new loan payment would be \$650 per  
5 month, to which Jackson specifically asked “did that include everything?” and he said  
6 “yes.” Jackson told the loan officer that the monthly payment was little more than  
7 they had discussed, to which he responded “it’s only \$25 more than what we had  
8 agreed to” and again he brought up that “we need to hurry.” Jackson does not recall  
9 the specific names of the Countrywide loan officers she spoke with, nor does Jackson  
10 possess any records which would identify the name of the persons she spoke with. On  
11 September 28, 2005, Plaintiff refinanced with a subprime loan from Countrywide  
12 Home Loans, Inc.

13 94. Of the approximately \$11,000.00 that was added to her new principal,  
14 when the process was complete, Jackson only received approximately \$6,000 in cash,  
15 the remaining \$5,000.00 was paid in fees to the Countrywide network mortgage  
16 broker and several of the Defendant Countrywide subsidiaries. Then, on March 9,  
17 2006, Jackson received a \$600 bill for escrow shortage, which raised her monthly  
18 payments to \$847.37 per month. Jackson was never informed that Countrywide  
19 would not be putting any of her agreed upon monthly payments towards escrow.  
20 Furthermore, Countrywide later revealed to Jackson that due to her credit score going  
21 down she would not be getting her promised rate, but rather a new rate of 8.62%.

22 95. Had Jackson known that her monthly payments, principal and interest  
23 rate would increase, she never would have refinanced her loan with Countrywide.

24 **Defendants**

25 96. Defendant Countrywide Financial Corp. (“Countrywide Financial”) is  
26 a Delaware corporation headquartered at 4500 Park Granada, Calabasas,  
27 California. Countrywide Financial is engaged in mortgage lending and other real

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1 estate finance-related businesses, including mortgage banking, banking and  
2 mortgage warehouse lending, dealing in securities and insurance underwriting.

3 97. Defendant Countrywide Bank, FSB (“Countrywide Bank FSB”),  
4 formerly known as Countrywide Bank, N.A., is a federally chartered savings  
5 bank, headquartered in Thousand Oaks, California. Countrywide Bank FSB funds  
6 loans originated by the Company’s home loan division and through the  
7 Company’s Full Spectrum Lending Division.

8 98. Defendant Countrywide Home Loans, Inc. (“Countrywide Home  
9 Loans”) is a New York corporation headquartered at 4500 Park Granada Blvd.,  
10 Calabasas, CA 91302. Countrywide Home Loans is a subsidiary of Countrywide  
11 Financial, and engages in the business of originating mortgage loans.

12 99. Defendant Countrywide KB Home Loans, LLC (“Countrywide KB  
13 Home Loans”) is a Delaware limited liability company. Countrywide KB Home  
14 Loans is an operating subsidiary of Bank of America, N.A., and engages in the  
15 business of originating mortgage loans.

16 100. Defendant Countrywide Tax Services Corp. (“Countrywide Tax”) is a  
17 California corporation headquartered at 4500 Park Granada Blvd., Calabasas, CA  
18 91302. Countrywide Tax is a subsidiary of Countrywide Financial, and provides  
19 tax services in connection with mortgage loan closings.

20 101. Defendant LandSafe, Inc. (“LandSafe”) is a Delaware corporation  
21 headquartered at 4500 Park Granada Blvd., Calabasas, CA 91302. LandSafe is a  
22 subsidiary of Countrywide Financial, and provides loan closing products and  
23 services such as credit reports, appraisals, property valuation services and flood  
24 determinations.

25 102. Defendant LandSafe Appraisal Services, Inc. (“LandSafe Appraisal”)  
26 is a California corporation headquartered at 4500 Park Granada Blvd., Calabasas,  
27 CA 91302. LandSafe Appraisal is a subsidiary of Countrywide Financial, and  
28 offers appraisal services in connection with mortgage loan closings.



1 volume, but not for generating quality loans.” Derivative Action Order, 2008 WL  
2 2064977, at \*11. As the Derivative Action Order also noted, Countrywide executives  
3 concealed this scheme to increase loan volume irrespective of the suitability of the  
4 loans to the borrowers. *Id.* at \*9.

5 108. As a result of Defendants’ fraudulent scheme, and in reliance on and as a  
6 result of Defendants’ fraudulent misrepresentations and omissions, Plaintiffs and other  
7 Class members have been injured in a variety of ways. Borrowers who have been  
8 steered into subprime loans when they were actually qualified for loans on better  
9 terms, such as prime mortgages, suffer losses to their property in the form of having to  
10 pay much higher interest rates than they would otherwise pay on loans, which also  
11 sometimes leads to significant prepayment penalties when they seek to refinance their  
12 mortgage at a more favorable rate. All borrowers who have been steered into loans –  
13 whose complex terms have been misrepresented to them or inadequately disclosed –  
14 suffer injury in that they have taken on financial burdens that they would not  
15 otherwise have taken on and suffer the destructive impact on their financial well-being  
16 of having to make monthly payments they cannot afford, sometimes leading to  
17 significant prepayment penalties when they seek to refinance their mortgages at a  
18 more favorable rate, increases in the principal owed under certain types of loans,  
19 defaults on their loans, losses of their homes, destruction of their credit, bankruptcy,  
20 or financial ruin. These borrowers are also injured when, as a result of their inability  
21 to keep up with far greater monthly payments than what was represented to them, they  
22 are charged late fees that they otherwise would not have incurred.

23 109. Additionally, all borrowers who have been charged inflated loan costs  
24 and other fees have suffered injury in increased out-of-pocket costs over what they  
25 should have paid. Borrowers who have refinanced from more traditional loans or  
26 have taken riskier loans than they otherwise could have obtained elsewhere, in the  
27 false belief that they are obtaining a loan on favorable terms, are injured by having to  
28 pay the difference between fees and interest rates charged by Countrywide and those

1 another lender would have charged. Borrowers who are forced to pay large pre-  
2 payment penalties in order to extricate themselves from the destructive and dangerous  
3 loans Countrywide has steered them into are injured by the out-of-pocket costs of the  
4 penalties, which they would not otherwise have had to pay.

5 110. Defendants' scheme was created in order to induce as many borrowers as  
6 possible into expensive and dangerous subprime loans, because such loans are the  
7 most lucrative for Countrywide in a number of ways. Countrywide's contracted  
8 network of brokers have also gained from the scheme because of valuable incentives  
9 that Countrywide has paid to them to direct borrowers into the subprime loans – such  
10 as increased commissions, and even perks like the previously mentioned all-expense-  
11 paid trips to places like Las Vegas.

#### 12 **Countrywide and Its Network of Brokers**

13 111. Prior to July 1, 2008 when Countrywide was acquired by Bank of  
14 America Corp., Countrywide had hundreds of billions of dollars in loan production  
15 each year and a residential mortgage servicing portfolio in excess of \$1 trillion. Its  
16 mortgage lending segment has operated in a variety of sectors, including retail,  
17 wholesale, and correspondent lending.

18 112. In addition to over 15,000 field salespersons pursuing customer leads and  
19 originating home loans, Countrywide has sourced loans through a network of over  
20 30,000 contracted mortgage brokers.

21 113. According to its 2007 Form 10-K annual report, Countrywide's retail  
22 channel consisted of its Consumer Markets Division and the Full Spectrum Lending  
23 Division. The Company's Consumer Markets Division ("CMD") generally has  
24 originated loans through the Company's joint ventures. The Company has reached  
25 customers through call centers, the Internet, and retail branches.

26 114. The Company's Full Spectrum Lending Division has focused on new  
27 customer acquisitions through Internet, direct mail and mass media marketing  
28 channels and has specialized in refinance and home equity products.

1           115. Countrywide’s wholesale lending channel has underwritten and funded  
2 mortgage loans sourced by mortgage loan brokers and other financial intermediaries.

3           116. In 2004, Countrywide became the largest home mortgage lender in the  
4 United States, built on years of primarily offering customary fixed-rate mortgage  
5 loans to borrowers. By that time, Countrywide, led by its CEO and founder Angelo  
6 Mozilo, was intent on elbowing out competing lenders that tried to horn in on  
7 Countrywide’s marketshare by originating more exotic mortgage loans. As a result,  
8 Countrywide’s mortgage portfolio – and lending standards – changed dramatically.

9           117. Whereas in 2003, adjustable rate mortgages (“ARMs”) made up 18  
10 percent of Countrywide’s portfolio, by 2004, the number of ARM loans increased  
11 dramatically, to 49 percent of all loans. Subprime loans rose from 4.6 percent to 11  
12 percent of all loans during the same period. By offering these loans, and other non-  
13 traditional loans like interest-only loans and reduced documentation, Countrywide was  
14 not only able to maintain its marketshare, it also earned a significant profit off of the  
15 higher commissions that borrowers paid and the higher prices investors were willing  
16 to pay for these loans as securitized assets on the secondary market.

17           118. Countrywide has publicly promoted its home financing expertise by  
18 means of nationwide advertising campaigns and through telemarketing. In its  
19 advertisements and telemarketing, Countrywide has solicited persons to apply for  
20 financing or refinancing with Countrywide, either in one of its offices or through one  
21 of the mortgage brokers whom Countrywide had authorized to accept applications on  
22 its behalf pursuant to a contract.

23           119. Countrywide also has made home mortgage loans arranged by its  
24 network of mortgage brokers. Brokers became authorized to become an approved  
25 Countrywide broker by submitting a Mortgage Broker Application and entering into a  
26 “Wholesale Broker Agreement” with Countrywide. These contracted brokers were  
27 provided access to Countrywide’s CLUES™ computer system, which was designed to  
28 allow the mortgage broker to submit loan information and receive a qualified

1 underwriting decision within minutes. The CLUES™ computer system purportedly  
2 automated the process of placing loans, and was pre-programmed to push as many  
3 borrowers as possible into risky subprime loans, irrespective of reasonable objective  
4 criteria that would indicate the appropriateness of such loans for a particular borrower.

5 120. Countrywide has incentivized its brokers to push subprime loans by  
6 offering larger commissions on subprime loans than on prime loans, and by offering  
7 special perks, such as all-expense-paid trips to Las Vegas, to brokers who successfully  
8 pushed a large number of subprime loans onto borrowers. Countrywide's mortgage  
9 brokers have induced borrowers to enter into loans via telemarketing and other sales  
10 efforts that have been carefully directed by Countrywide. Those loans are made in  
11 reliance on Countrywide's credit-granting policies and with the participation of  
12 Countrywide.

13 121. As described below, Countrywide and its network of authorized brokers  
14 together have engaged in a scheme whereby they have directed borrowers into  
15 subprime mortgages purely for the benefit of Defendants and its brokers, at the  
16 borrowers' expense.

17 122. Countrywide has needed its network of authorized brokers to accomplish  
18 its scheme, as Countrywide could not have reaped huge rewards from the  
19 securitization of its subprime loans without a network of brokers across the country  
20 pushing borrowers into as many subprime loans as they could. For instance, a single  
21 broker could never have generated the volume of subprime loans needed to bundle the  
22 loans into securities, which is where the real money lay for Countrywide.  
23 Countrywide has needed thousands of brokers to work with a single goal in mind – to  
24 make as many subprime loans as possible to bundle and sell on the secondary market,  
25 irrespective of their suitability for the borrowers. Together, Countrywide and its  
26 brokers have engaged in an undisclosed, systematic scheme that has had the effect of  
27 deceiving borrowers, both about the terms of these dangerous and destructive loans  
28 and about Countrywide's own goals and practices.

1                    **Defendants’ Standardized Misrepresentations and Omissions**

2                    123. Defendants and their co-conspirators have established a scheme designed  
3 to induce borrowers to enter into subprime loans by, *inter alia*, making false  
4 representations (as set forth in standardized sales scripts and as otherwise dictated  
5 from above by Countrywide) to borrowers, including the standardized  
6 misrepresentation that they were offering the best loans available to the borrowers.  
7 Regardless of the specific representations made to a particular borrower prior to  
8 signing the loan documents, it has been a strictly uniform practice that Countrywide  
9 and its contracted brokers have never disclosed to borrowers its overarching scheme to  
10 steer as many borrowers as possible into as many subprime loans as possible,  
11 irrespective of their suitability to the borrowers’ financial situation, *i.e.*, their ability to  
12 make the monthly payments on the loan, or their ability to qualify for a prime loan  
13 with better terms. Indeed, Countrywide has made countless subprime loans without  
14 any objective analysis that would have indicated the unsuitability of the loans for  
15 such borrowers.

16                    124. Countrywide’s failure to disclose its scheme and the resulting policy  
17 of issuing dangerous subprime loans without any attempt to ascertain their  
18 suitability to a given borrower is the underlying fraudulent conduct at issue in this  
19 action. Defendants have also concealed that their contracted brokers were paid  
20 more to sell subprime loans than other mortgages and received other incentives that  
21 induced brokers to push subprime loans over other loans. Defendants have also  
22 concealed that their contracted brokers used the automated CLUES™ computer  
23 system to make “underwriting” decisions on an automated basis without regard to any  
24 reasonable, objective criteria that would indicate the appropriateness of the loans in  
25 question to a given borrower, and that the CLUES™ system was pre-programmed to  
26 push borrowers into subprime loans.

27                    125. Defendants have systematically made standardized misrepresentations  
28 and omissions to push unsuspecting homeowners into subprime loans. For example,

1 Countrywide’s sales force has used standardized sales scripts in their sales pitches to  
2 homeowners and prospective homeowners.

3 126. Countrywide has encouraged its sales force to solicit customers over the  
4 telephone with a standardized sales pitch – “I want to be sure you are getting the best  
5 loan possible.”

6 127. This sales pitch has been reinforced on Countrywide’s website regarding  
7 home purchase loans, where the potential borrower is assured that “Countrywide can  
8 help you obtain the best possible rate. . . .” See [http://www.countrywide.com/  
9 purchase/r\\_today.asp](http://www.countrywide.com/purchase/r_today.asp) (last visited on June 13, 2008).

10 128. Members of Countrywide’s sales force have been required to adhere to  
11 the carefully prepared scripts in their telemarketing efforts. First, sales representatives  
12 are instructed in their sales manual to build rapport with the client by finding “points  
13 of common interest.” In one example, the loan officer for the Sizemores, Cortney  
14 Lanktree, told them that she personally has the type of loan offered to the Sizemores,  
15 as do all of her neighbors.

16 129. These scripts also set forth aggressive techniques for persuading  
17 homeowners to take on loans. For example, one marketing manual provided a script  
18 in which marketers were instructed, if a homeowner indicated that their mortgage was  
19 already paid off, to try to push a home equity loan. The script provided verbatim lines  
20 to be used in such sales pitches, including “Don’t you want the equity in your home to  
21 work for you?” and “You can use your equity for your advantage and pay bills or get  
22 cash out. How does that sound?”

23 130. The hard-sell is not limited to Countrywide’s own sales force;  
24 Countrywide’s commission structure and other incentives induce its contracted  
25 brokers to use deceptive practices, the inherently confusing and complex nature of  
26 the products they are pushing, and the automated CLUES™ computer system, to  
27 implement the overarching scheme of steering as many borrowers as possible into  
28 subprime loans without regard to any reasonable, objective criteria that would indicate

1 the appropriateness of such loans to a given borrower. As one observer noted, “[t]he  
2 problem, of course, is that many brokers care more about commissions than  
3 customers. They use aggressive sales tactics, harping on the minimum payment  
4 on an option ARM and neglecting to mention the future implications. Some even  
5 imply verbally that temporary teaser rates of 1% to 2% are permanent, even  
6 though the fine print says otherwise. It’s easy to confuse borrowers with option  
7 ARM numbers. A recent Federal Reserve study showed that one in four  
8 homeowners is mystified by basic adjustable-rate loans. Add multiple payment  
9 options into the mix, and the mortgage game can be utterly baffling.” See Mara  
10 Der Hovanesian, *Nightmare Mortgages*, BusinessWeek, available at  
11 [www.businessweek.com/magazine/content/06\\_37/b4000001.htm](http://www.businessweek.com/magazine/content/06_37/b4000001.htm).

12 131. Thus, rather than offering borrowers the “best loan possible,”  
13 Defendants’ scheme was designed to maneuver as many borrowers as possible into  
14 subprime loans, irrespective of whether borrowers qualified for loans on better terms,  
15 or whether borrowers were able to afford the monthly payments. Moreover, rather  
16 than offering loans that worked to the borrowers’ advantage, the loans worked to the  
17 advantage of Countrywide and its brokers, and injured Plaintiffs and other Class  
18 members. Very often these loans are wholly unsuitable for the borrowers, and indeed,  
19 Countrywide and its brokers do not even bother to do an objective analysis of their  
20 suitability. However, borrowers are nevertheless assured that these loans are not only  
21 suitable, they are ideal.

22 132. By the admission of Countrywide’s own employees, Countrywide and its  
23 brokers sell loan products that are extremely complicated and difficult to understand,  
24 and intentionally fail to explain the true nature of the loans to unsuspecting borrowers.  
25 For example, on October 23, 2007, John Buckner, a Countrywide Customer Service  
26 Representative, told the Sizemores, *after* they had entered into their loan and their  
27 payments began to go up, “This loan is complicated, and if you don’t understand it in  
28 and out, we are not going explain it to you.” Buckner went on to tell the Sizemores

1 that they were “lucky” that they had discovered the negative amortization aspect of  
2 their loan so early because he “constantly received calls” from numerous people who  
3 didn’t understand the loan until their mortgage principal had increased by thirty to  
4 forty thousand dollars. Also by the admission of Countrywide’s own employees,  
5 Countrywide trains its loan officers only on what they need to know to “get the loan  
6 done.”

7 133. Countrywide and its brokers tout their various products as being great  
8 opportunities to cut monthly payments and otherwise improve borrowers’ financial  
9 situations. What Countrywide and its brokers actively conceal are the true nature of  
10 the loans and the consequences of entering into such loans. For example, they conceal  
11 the fact that making the monthly minimum payment on pay option loans will actually  
12 *increase* the amount of the principal of the loan; the fact that monthly payments can  
13 and will increase significantly without warning; and the fact that large pre-payment  
14 penalties apply. Moreover, they falsely represent that borrowers can refinance at any  
15 time, leading borrowers to believe that if and when the loan payments become too  
16 onerous, they will be able to easily switch to a loan with more favorable terms.

17 134. Plaintiffs received similar misrepresentations from Countrywide loan  
18 officers and mortgage brokers. For instance, the Menichettis were told by their  
19 broker at Mid Atlantic Capital, Don Cutler, that he had “a good mortgage for  
20 [them]. You just pay a low monthly payment.” Likewise, Marini was told by his  
21 Countrywide loan officer that he was getting an “interest only” loan, misleading  
22 Marini into believing that the minimum payment amount quoted to him was the  
23 monthly interest amount. The Countrywide representative never informed Marini  
24 that the minimum payment was actually *less* than the monthly interest owed, and  
25 that by making the minimum payment Marini would fall deeper and deeper into  
26 debt each month. The Countrywide representative never explained to Marini the  
27 concept of “negative amortization” or the adjustable rate of his pay option ARM  
28 loan. Instead, Marini was told that the loan was “ideal” for him for the first five

1 years, based on his income, because the monthly payment would be fixed with an  
2 annual increase of only \$100, and that he could refinance after the first five years.  
3 Marini noticed soon after he began receiving statements that the monthly  
4 payments were increasing at a far greater rate than \$100 annually. When he called  
5 Countrywide for assistance, Countrywide representatives told him that it was “a  
6 terrible loan to be in,” but were never able to assist him in improving his situation.

7       135. As with Plaintiff Brown, Countrywide often and readily took advantage  
8 of the complex nature of the pay option and hybrid ARMs, in order to sell customers  
9 toxic mortgage loans. As noted above, Countrywide lured borrowers with the promise  
10 of reducing their debt and having lower monthly payments. Further, as discussed  
11 above, pay option ARM and hybrid ARM loans begin with lower monthly payments  
12 and interest rates than most other types of loan products. Thus, Countrywide was able  
13 to easily sell such loans to borrowers by purposefully focusing on the initial low  
14 monthly payments and/or rates and by obscuring or misrepresenting the true risks of  
15 such loans.

16       136. As in Plaintiff Brown’s situation, Countrywide’s common approach with  
17 respect to pay option ARMs was to focus the borrower’s attention on the low  
18 minimum payment—a payment that Countrywide knew, but shrouded from  
19 borrowers, would result in both negative amortization and payment shock.

20       137. For example, when presenting a borrower with various loan options,  
21 Countrywide would “sell the payment” by showing the borrower the “minimum  
22 payment” for the pay option ARM in comparison to other loan products with larger  
23 payments. Then, Countrywide would ask which payment the borrower preferred  
24 without discussing other differences between the loan products, including the fact that  
25 the “minimum payment” comprised less than the interest due and would, therefore,  
26 result in negative amortization. Naturally, in this situation, most borrowers chose the  
27 option with the lowest minimum payment, the pay option ARM, without realizing that

28 ///

1 it would be only a short time before the monthly payment would begin to increase  
2 dramatically.

3 138. As with Plaintiff Brown, another approach used by Countrywide was to  
4 present the pay option ARM alone and “sell the payment” by focusing the borrower’s  
5 attention on how much the borrower would “save” every month by making such the  
6 low monthly “minimum payment,” without discussing the payment increase and  
7 negative amortization that inevitably resulted when borrowers make minimum  
8 payments. Countrywide and its contracted brokers also represented that the payments  
9 would remain constant for the entire term of the loan, or for some period longer than  
10 that actually provided for by the loan’s terms. Given the complexity of pay option  
11 ARMs, such a presentation easily misled borrowers regarding the long-term  
12 affordability of their loans.

13 **The Truth About Countrywide’s Loans Are Only**  
14 **Revealed to the Borrower After the Fact**

15 139. Only after the borrower has entered into a loan with Countrywide and  
16 discovers that he has not, in fact, received “the best loan possible,” does Countrywide  
17 admit that they have not been acting in the borrower’s best interest.

18 140. Oftentimes, borrowers will call Countrywide customer service when they  
19 realize their monthly payments or their principal amounts are increasing. Only then  
20 are they told that they were not given the complete picture when they signed on for  
21 their loan.

22 141. For instance, when Plaintiff Brown called Countrywide to complain  
23 about her pay option ARM loan after making several payments, the representative  
24 with whom she spoke, Mary Bell, admitted that she should never have been placed  
25 into this loan product, and informed her that she must pay a higher amount each  
26 month, based upon a 30-year amortization schedule and including both principal and  
27 interest, in order to avoid negative amortization.

28 ///

1           142. An another example, when the Sizemores called customer service about  
2 their pay option ARM loan, they were told that “this loan is complicated, and if you  
3 don’t understand it in and out, we are not going explain it to you.” Significantly, the  
4 Sizemores were also told by customer service that Countrywide trains its loan officers  
5 only on what they need to know to “get the loan done.” After the fact, the Sizemores’  
6 loan officer, Cortney Lanktree, confessed that she obviously had not explained the  
7 terms of the loan well.

8           143. In fact, when the Sizemores took out their loan, they had specifically  
9 asked Ms. Lanktree whether there would be any charges added to the rear of the loan  
10 if they made only the minimum payments. Ms. Lanktree repeatedly told the  
11 Sizemores that there would not be any such charges.

12           144. When the Sizemores expressed the belief that this loan “sounds too good  
13 to be true,” they were told by Ms. Lanktree that the payments were so low because  
14 their loan was spread out over 40 years. Indeed, she never referred to their loan as a  
15 “pay option ARM” loan, only as a “40-year loan.” Moreover, the adjustable rate was  
16 never explained by Ms. Lanktree, nor even discussed with the Sizemores. They were  
17 only told that their payments would adjust on the fourth year of their loan. In fact, no  
18 other types of loans besides pay option ARMs were ever offered to the Sizemores.

19           145. The Sizemores were also told by Ms. Lanktree on April 25, 2006, in  
20 writing, that they would not need to pay any prepayment penalty if they refinanced  
21 with Countrywide. However, when the Sizemores attempted to refinance with  
22 Countrywide, they were told a prepayment penalty would indeed apply. When they  
23 explained that they had a written representation that they would not have to pay a  
24 prepayment penalty, the Countrywide loan department flatly refused to honor that  
25 promise. Even when the Office of the President at Countrywide stated that  
26 Countrywide would honor that promise and waive the penalty, the loan department  
27 still refused to refinance without a penalty.

28 ///

1 146. Similarly, when Marini called Countrywide after his monthly payments  
2 on his pay option ARM loan started increasing, he was told by numerous people that it  
3 was a “horrible” loan, or that it was a bad loan for him, and that he needed to get out  
4 of it. However, after repeated attempts at refinancing, Countrywide has not improved  
5 Marini’s financial condition, and he anticipates he will need to file for bankruptcy.

6 147. In fact, when Marini had first applied for the loan, he was always told by  
7 Countrywide that this was an “interest only” loan – they never mentioned the  
8 “minimum payment,” or that payment of the “minimum payment” would result in  
9 negative amortization. He was told that the loan was “ideal” for him for the first five  
10 years, based on his income. Indeed, Marini, who is a disabled Vietnam veteran on a  
11 fixed income, thought he was “safe” for at least the first five years of the loan, and  
12 would not have entered into the loan had he understood the ramifications of the  
13 “minimum payment.”

14 148. Tellingly, on one of several calls the Menichettis made to customer  
15 service after they had obtained their loan, they were told that Countrywide “has a lot  
16 of people complaining that the loan wasn’t explained.”

17 **Countrywide’s Inducement of Brokers to Direct**  
18 **Borrowers Towards Subprime Loans**

19 149. Unbeknownst to borrowers, Countrywide’s brokers and sales  
20 representatives have been rewarded for making as many risky, high-cost loans as  
21 possible, pursuant to the Company’s commission structure.

22 150. Even where borrowers qualify for prime loans, Countrywide improperly  
23 incentivizes and encourages its brokers, through financial incentives, to move them  
24 into the subprime category. For example, Countrywide has paid commissions on a  
25 subprime loan of 0.50% of the loan’s value, while the commission on loans in the next  
26 highest category would be a mere 0.20% of the loan’s value.

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1           151. In addition, mortgage brokers' commissions would vary on loans in  
2 which the interest rate would increase after a short period with a low teaser rate; the  
3 higher the reset interest rate, the greater the commission earned.

4           152. The addition of penalties to the terms of a loan has also been strongly  
5 encouraged and incentivized by Countrywide. For example, on information and  
6 belief, adding a three-year prepayment penalty to a loan would generate an extra 1%  
7 of the loan's value in a commission to the salesperson. Nowhere, however, was this  
8 disclosed to prospective loan applicants.

9           153. Moreover, if a broker convinced a borrower to add a home equity line of  
10 credit to their loan, the broker would earn an extra 0.25% commission.

11           154. A broker's inducing borrowers to take out subprime loans was even  
12 rewarded, in some instances, by perks such as all-expense-paid trips to Las Vegas and  
13 other places.

14           155. In addition to the foregoing, Countrywide has utilized computer software  
15 which prevented sales representatives from inputting a borrower's cash reserves when  
16 calculating the type of loan the borrower is eligible for, which has resulted in the sales  
17 representative pitching a higher cost loan. Countrywide has utilized this software in  
18 order to increase its own profit on such loans, since a borrower who has more assets  
19 would normally be able to obtain a lower interest rate on their loan.

20                           **Subprime Loans Are More Lucrative to Countrywide**

21           156. Subprime loans are significantly more profitable for Countrywide than  
22 higher-quality prime loans. As set forth in Countrywide's 2006 regulatory filings, the  
23 company's profit margin on its sales to investors of subprime loans versus prime loans  
24 was 1.84% versus 1.07%, respectively. Two years earlier, in 2004, the profitability of  
25 sales of subprime mortgages versus prime mortgages was even greater, at a rate of  
26 3.64% versus 0.93%, respectively.

27           157. One reason subprime loans are more lucrative for Countrywide is that  
28 investors who bought publicly traded securities backed by mortgages were willing to

1 pay more for loans with prepayment penalties and interest rates that were going to  
2 reset at higher levels, because such pools of subprime loans were likely to generate a  
3 larger cash flow than prime loans that carried lower fixed rates.

4 158. Indeed, as explained in Countrywide's regulatory filings, the Company  
5 relies substantially on the secondary mortgage market as a source of long-term capital  
6 to support its mortgage banking operations. Most of the mortgage loans that  
7 Countrywide produces are sold in the secondary mortgage market, primarily in the  
8 form of mortgage-backed securities and asset-backed securities. A mortgage-backed  
9 security is an asset-backed security whose cash flows are backed by the principal and  
10 interest payments of a set of mortgage loans. Investors are willing to pay higher  
11 prices for securities backed by subprime loans because the prepayment penalties on  
12 these loans locked in the borrower and guaranteed the investor predictable income  
13 streams from the higher interest rates charged in these loans. At Countrywide,  
14 subprime loans are generally pooled into private-label asset-backed securities. During  
15 2006, Countrywide securitized \$47.7 billion in subprime mortgage and prime home  
16 equity loans.

17 159. In addition to higher interest rates on subprime loans and the potential for  
18 greater profits in the secondary mortgage market, subprime loans are more profitable  
19 to Countrywide because of a number of undisclosed features built into the structure of  
20 such loans, such as penalties and fees.

21 160. For example, when a borrower tries to reduce his or her debt on such  
22 loans, he or she must pay a large prepayment penalty. During the class period,  
23 Countrywide earned hundreds of millions of dollars in revenues from prepayment  
24 penalties—as much as \$268 million last year alone.

25 161. Moreover, late charges imposed on borrowers who had trouble making  
26 their payments also provide significant revenues for Countrywide. Revenues from  
27 late charges totaled approximately \$285 million in 2006. Clearly, these payments are

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1 used by Countrywide as a profit-center to increase its bottom line while causing its  
2 customers to pay increased and improper payments to it.

3 162. Countrywide also makes money from inflated fees that are charged at  
4 loan closings. Borrowers pay fees for things such as flood and tax certifications,  
5 appraisals, and document preparation at rates that far exceed what other lenders  
6 charge. For example, Countrywide's credit checks cost twice what others charge, and  
7 Countrywide charges \$26 for a flood certification, where others charge only \$12 to  
8 \$14. Countrywide charges as much as \$100 just to e-mail documents and \$45 for  
9 sending documents via Federal Express. Many of these fees go to Countrywide's loan  
10 closing services subsidiary, LandSafe, Inc.

11 163. Countrywide's subprime unit has also avoided offering borrowers the less  
12 risky Federal Housing Administration ("F.H.A.") loans, which are backed by the U.S.  
13 Government. These loans are well suited to low-income or first-time buyers, but were  
14 not offered because they do not generate the high fees subprime loans do.

15 **Defendants' Lending to Borrowers Who**  
16 **Cannot Afford Their Loans**

17 164. Countrywide has written policies providing that it will make loans to  
18 borrowers even where the monthly loan payment will leave very little disposable  
19 income for the borrower to live on.

20 165. For example, one Countrywide manual states that a borrower with a  
21 family of four may obtain a loan even if the monthly mortgage payment left the family  
22 with only \$1000 to live on for the month. A single borrower could obtain a loan  
23 whose payment left him only \$550 for food, clothing and other expenses for the entire  
24 month.

25 166. Sales representatives for Countrywide have even been permitted to lend  
26 \$500,000 to borrowers with a credit score of 500, even if the borrower made late  
27 payments on a mortgage in the prior year, had filed for bankruptcy or had been in risk

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1 of foreclosure, so long as the loan-to-property-value ratio was no more than 70  
2 percent.

3 167. Countrywide also has employed various lending policies to further its  
4 deceptive scheme and to boost its volume of loans, including (a) significantly easing  
5 its underwriting standards; (b) encouraging borrowers to encumber their homes up to  
6 100% (or more) of the assessed value; and (c) placing borrowers in “piggyback”  
7 second mortgages in the form of higher interest rate home equity lines of credit, while  
8 obscuring their total monthly payment obligations.

9 168. Countrywide also increased its use of low- or no-documentation loans—  
10 including allowing for no verification of stated income or stated assets or both, or no  
11 request for income or asset information at all. Stated income loans also encouraged  
12 the overstating of income by loan brokers and officers.

13 169. An example of the kind of risky and inappropriate loans Countrywide has  
14 offered is one of its most commonly issued products, the “option ARM loan” or a  
15 “pay option ARM.”

16 170. Borrowers with bad credit could easily obtain a pay option ARM loan for  
17 as much as 45% of their gross annual income.

18 171. As is described above, borrowers are given three payment options to  
19 choose from each month under the pay option ARM loan arrangement, as is reflected  
20 on their monthly statement from Countrywide: (1) they can make what Countrywide  
21 calls the “minimum” monthly payment, which is actually less than the amount of  
22 interest owed on the loan; (2) they can make a middle-tier payment called the “interest  
23 only payment” in which they pay only the interest due for that month; or (3) they can  
24 make the highest-tier payment, the “amortized payment,” which encompasses both the  
25 interest due and a portion of the principal of the loan.

26 172. Because they are paying less than the amount of interest they owed on  
27 their loans, borrowers who opt each month to make the minimum monthly payment  
28 actually see the principal amount of their loan *increase* over time, even though they

1 are making what Countrywide expressly tells them is the “minimum” monthly  
2 payment required on the loan. This is known as “negative amortization.”  
3 Countrywide and its brokers do not explain this to borrowers before they enter into  
4 these loans, but rather just tell them that they are only required to make a low monthly  
5 minimum payment on their loan. Borrowers enter into these loans believing that they  
6 are “interest only” loans or that the payments are low for other reasons. Thus  
7 borrowers enter into loans that are, in fact, fundamentally different from what they are  
8 told, in the belief that they are getting a good bargain.

9 173. Further, built into the pay option ARM loan is an obligation that, if the  
10 amount owed ever increases to an amount equaling 115% of the original loan amount,  
11 the entire amount becomes “recast” and resets the monthly payments to a significantly  
12 higher amount, allowing for full repayment of the principal and interest within the  
13 time remaining on the loan. Since the minimum payment was less than the interest  
14 due, and since Countrywide’s underwriting criteria provide for minimum payments at  
15 such a high percentage of gross income, the amount owed was certain to increase for  
16 borrowers, and the recast percentage was likely to be hit. Accordingly, many  
17 borrowers have defaulted on their pay option ARM loans.

18 174. Countrywide actively promoted the pay option ARM loan to borrowers,  
19 regardless of their income or credit ratings, as evidenced by an internal Countrywide  
20 sales document explaining what type of borrower would benefit from such a loan –  
21 “Anyone who wants the lowest possible payment!” In other words, Countrywide  
22 pushed the pay option ARM loan on everyone they could, irrespective of whether it  
23 was actually a favorable alternative over other types of loans for a given borrower.  
24 Countrywide’s marketing strategy had the desired effect. Between 2004 and 2005,  
25 Countrywide’s origination of pay option ARM loans increased from 6 percent to 19  
26 percent of all loans originated by the Company. In 2006, Countrywide was the  
27 leading originator of pay option ARM loans, originating \$70 billion in pay option  
28 ARM loans – nearly double of that of its closest competitors. Countrywide earned

1 gross profit margins over 4 percent on pay option ARM loans, as opposed to 2 percent  
2 on FHA-backed loans.

3 175. Commentators have noted that products such as Countrywide’s pay  
4 option ARM are among the most troublesome mortgage products in the market. For  
5 example:

6 For some borrowers, option ARMs are ticking time bombs.  
7 The loans are tempting because they give borrowers several  
8 payment choices each month, including a minimum  
9 payment that lets them pay no principal and only part of the  
10 interest normally due. When borrowers choose that option,  
11 the loan balance expands -- a phenomenon known in the  
12 mortgage trade as “negative amortization.”

13 After a specified period, often five years, borrowers must  
14 start repaying the principal and meeting the full interest  
15 payments. That can cause monthly payments to more than  
16 double. If the balance outstanding gets too high -- the  
17 ceiling generally is 110% to 125% of the original amount  
18 borrowed -- borrowers can face sharply higher payments  
19 even sooner.

20 James Hagerty and Ruth Simon, *Option ARMs Emerge as Home-Loan Worry*, The  
21 Wall Street Journal (April 19, 2007), *available at:*  
22 <http://www.realestatejournal.com/buysell/mortgages/20070419-hagerty.html>  
23 (accessed November 6, 2008). Pay option ARM mortgages are extremely problematic  
24 and have notoriously led to increased mortgage loan defaults among borrowers. *See,*  
25 *e.g.,* Kathleen Pender, *Hazards of Option ARMs*, San Francisco Chronicle, p. D-1  
26 (June 1, 2005).

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1           176. The Sizemores, Marini, Menichettis and Brown, all obtained such pay  
2 option ARM loans. These loans were inappropriate for and unsuitable to these  
3 borrowers.

4           177. At the time they obtained their loan from Countrywide, Francis Sizemore  
5 had a credit score of 700, and Rebecca Sizemore had a credit score of 690. Their  
6 combined monthly income was approximately \$4,000 to \$5,000 a month.  
7 Accordingly, while the Sizemores qualified for a prime loan, they were steered into a  
8 risky pay option ARM loan that was unsuitable to their circumstances.

9           178. Although Edward Marini had a high credit rating of 725 at the time of his  
10 loan, he is a disabled Vietnam veteran, living on a fixed income of \$3,250 a month,  
11 and was nonetheless given a pay option ARM loan without any explanation of the  
12 payment options.

13           179. The Menichettis also obtained a pay option ARM loan in the amount of  
14 \$183,000, despite the fact that Philip Menichetti was on workers' compensation at the  
15 time of the loan, and Kimberly Menichetti only worked three days a week, earning  
16 \$119 a week.

17           180. When she was placed into a pay option ARM loan, Plaintiff Brown was a  
18 senior citizen living on a low fixed income. She had a good credit score, but was  
19 placed into an entirely inappropriate loan, where her payment would increase and she  
20 would suffer negative amortization while her income clearly would remain fixed.

21           181. In addition to pay option ARM loans, Countrywide also offered, until just  
22 recently, "piggyback" loans, which called for no money down by the borrower, and  
23 loans for amounts greater than 95% of the appraised value of the home without any  
24 proof of the borrower's income.

25                           **Governmental Actions Relating to Countrywide's Practices**

26           182. Within the past year months, Countrywide and its officers have come  
27 under tremendous scrutiny for the practices alleged in this Complaint.

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1           183. On or about October 18, 2007, the U.S. Securities & Exchange  
2 Commission began informally investigating the insider stock sales of Countrywide’s  
3 Chief Executive Officer, Angelo Mozilo. Mr. Mozilo – who was paid \$142 million  
4 last year and was the seventh highest paid CEO in the United States – has sold nearly  
5 \$300 million in Countrywide shares since 2005 pursuant to the Company’s  
6 prearranged selling program. Further, after October 2006, when Mr. Mozilo put a  
7 new selling program in place at Countrywide, he raised the number of shares  
8 executives could sell, from 350,000 shares in October 2006, to 580,000 shares in  
9 February 2007, when shares were at a high of \$45.03 per share. These stock programs  
10 provided an incentive for the Defendants, and the top officials of Countrywide, to  
11 develop and implement the scheme alleged in this Complaint.

12           184. Additionally, within the past several months, Countrywide and its  
13 officers have been sued by multiple state attorneys general (the “AG Actions”).

14           185. On October 6, 2008, in response to criticism from regulators and  
15 advocacy groups, Countrywide announced a multi-state settlement of the AG Actions,  
16 pursuant to which it would offer certain prospective relief, including a limited loan  
17 modification program.

18           186. However, this program fails to adequately remedy the substantial harm  
19 caused by the conduct alleged herein.

20           187. As is noted above, the Derivative Action that was brought against  
21 Countrywide, in which it was alleged that Countrywide essentially abandoned its  
22 underwriting standards, recently survived a motion to dismiss, in an opinion in which  
23 Judge Mariana R. Pfaelzer found a “strong inference of a Company-wide culture that,  
24 at every level, emphasized increasing loan origination volume in derogation of  
25 underwriting standards.” Derivative Action Order, 2008 WL 2064977, at \*10. The  
26 Court noted that numerous confidential witnesses, mostly former employees of  
27 Countrywide, who had been quoted in the complaint presented a “striking[]” story of  
28 “rampant disregard for underwriting standards” at Countrywide in the interest of

1 pushing through as many loans as possible. *Id.* This scheme of pushing quantity over  
2 quality, including a lack of any analysis of reasonable criteria to ascertain the  
3 appropriateness of the loans Countrywide issued to its borrowers, was uniformly  
4 concealed from borrowers, just as it was concealed from the public. *Id.* at \*9 (holding  
5 that plaintiffs had presented a “cogent and compelling inference” that the defendant  
6 Countrywide executives had misled the public about the “rigor of Countrywide’s loan  
7 origination process, the quality of its loans, and the Company’s financial situation –  
8 even as they realized that *Countrywide had virtually abandoned its own loan*  
9 *underwriting practices.*”) (emphasis added).

### 10 **Numerous Borrowers Have Complained About Countrywide’s Practices**

11 188. Plaintiffs are far from alone. Numerous frustrated consumers have  
12 posted complaints on the internet, through various consumer complaint websites,  
13 describing their own experiences.

14 189. For example, on the consumer protection website ConsumerAffairs.com,  
15 numerous borrowers have provided details of their own negative experiences with  
16 Countrywide.

17 *See:* [http://www.consumeraffairs.com/finance/countrywide\\_mortgage.html](http://www.consumeraffairs.com/finance/countrywide_mortgage.html), accessed  
18 on November 21, 2008.

19 190. Plaintiffs and the Class have suffered damages as a result of  
20 Countrywide’s conduct. The experiences of Plaintiffs and the Class stem from  
21 common course of conduct in which Countrywide engaged. Plaintiffs and the Class  
22 have been injured by Countrywide’s conduct and seek redress, as described herein.

### 23 **CONSPIRACY**

24 191. Defendants have not undertaken the above practices and activities in  
25 isolation, but instead have done so as part of a common scheme and conspiracy, which  
26 includes not only the Defendants, but other mortgage brokers as well.

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1           192. All of the practices described herein are the component parts of  
2 Defendants' larger scheme designed to maximize Defendants' profits, both from the  
3 loans themselves and from the secondary market for mortgage-backed securities.

4           193. Each Defendant and all members of the conspiracy, with knowledge and  
5 intent, agreed to the overall objective of the conspiracy, agreed to commit acts of  
6 fraud to wrongfully obtain money from Plaintiffs and members of the Class, and  
7 actually committed such acts.

8           194. Indeed, for the fraudulent scheme described above to be successful, each  
9 Defendant and other members of the conspiracy had to agree to enact and utilize the  
10 same devices and fraudulent tactics against Plaintiffs and members of the Class.

11           195. Numerous common facts and similar activities, which reflect the above  
12 reality and imply the existence of a conspiracy, exist among all of the Defendants and  
13 other members of the conspiracy, including: (a) statements made to borrowers by  
14 Countrywide brokers and other mortgage brokers authorized by Countrywide to sell  
15 its loan products, that they will obtain the "best loan" for the borrower, (b) the  
16 utilization of standardized sales manuals by Countrywide's brokers, (c) the utilization  
17 of a commission structure, instituted by Countrywide, for the determination of  
18 commission rates paid to Countrywide's brokers and other authorized brokers which  
19 resulted in borrowers being driven to subprime loans when they were qualified to  
20 receive loans on better terms, (d) the inclusion by Countrywide brokers and authorized  
21 brokers of certain closing fees payable to Countrywide's LandSafe subsidiaries, which  
22 were significantly higher than those charged by other companies, (e) Countrywide's  
23 failure to provide Form 1099s to the Internal Revenue Service for income paid to its  
24 authorized brokers, and (f) the utilization by Countrywide brokers and other  
25 authorized brokers of Countrywide's CLUES™ computer system, which is designed  
26 to allow the mortgage broker to submit loan information and receive a qualified  
27 underwriting decision within minutes.

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1           207. While all Defendants participate in and are members and part of the  
2 Countrywide Enterprise, they also have an existence separate and distinct from the  
3 enterprise.

4           208. In order to successfully steer as many borrowers as possible into  
5 inappropriate subprime loans, Defendants need a system that allows them to  
6 effectively promote these loans. The Countrywide Enterprise provides Defendants  
7 with that system and ability, and their control of and participation in it is necessary for  
8 the successful operation of their scheme. Furthermore, the participation by the  
9 LandSafe subsidiaries in the Countrywide Enterprise allows the enterprise to function  
10 more effectively, given that many of the functions provided by these entities, such as  
11 appraisals, would normally be conducted by independent entities. LandSafe's  
12 participation in the enterprise allows the normal checks and balances within the  
13 mortgage process to be eliminated, permitting Defendants to advance their scheme  
14 and conceal the fraudulent activity they have been engaging in.

15           209. The Defendants control and operate the Countrywide Enterprise as  
16 follows: (a) Defendants issue the standardized sales manual to be followed by all  
17 Countrywide loan officers when soliciting a borrower to obtain a Countrywide  
18 mortgage loan, (b) Defendants determine the commission structure to be paid to all  
19 Countrywide loan officers, rewarding and incentivizing them (with increased  
20 commissions, and rewards such as all-expense-paid trips to Las Vegas) to offer  
21 borrowers loans with less favorable terms than they would otherwise qualify for, (c)  
22 Defendants provide Countrywide loan officers access to its CLUES™ system, which  
23 has been utilized to steer borrowers to more costly loans, and (d) Defendants  
24 encourage Countrywide loan officers to utilize Countrywide's LandSafe subsidiaries  
25 for certain closing costs associated with the loan.

26           210. The Countrywide Enterprise has an ascertainable structure separate and  
27 apart from the pattern of racketeering activity in which the Defendants engage.

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1 **PREDICATE ACTS**

2 211. Section 1961(1) of RICO provides that “racketeering activity” includes  
3 any act indictable under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. §  
4 1343 (relating to wire fraud). As set forth below, Defendants have engaged, and  
5 continue to engage in, conduct violating each of these laws to effectuate their scheme.

6 **VIOLATIONS OF 18 U.S.C. § 1341 and 18 U.S.C. § 1343**

7 212. For the purpose of executing and/or attempting to execute the above  
8 described scheme to defraud or obtain money by means of false pretenses,  
9 representations or promises, the Defendants, in violation of 18 U.S.C. § 1341, placed  
10 in post offices and/or in authorized repositories matter and things to be sent or  
11 delivered by the Postal Service, caused matter and things to be delivered by  
12 commercial interstate carriers, and received matter and things from the Postal Service  
13 or commercial interstate carriers, including but not limited to promotional materials,  
14 applications, agreements, manuals, and correspondence.

15 213. For the purpose of executing and/or attempting to execute the above  
16 described scheme to defraud or obtain money by means of false pretenses,  
17 representations or promises, the Defendants, in violation of 18 U.S.C. § 1343,  
18 transmitted and received by wire, matter and things, including but not limited to  
19 promotional materials, applications, agreements, manuals, and correspondence, and  
20 made or caused to be made false statements over the telephone, electronic mail, and  
21 internet.

22 214. The matter and things sent by Defendants via the Postal Service,  
23 commercial carrier, wire, or other interstate electronic media included, *inter alia*,  
24 promotional materials, applications, agreements, manuals, correspondence, progress  
25 reports, loan application disclosures.

26 215. Other matter and things sent through or received via the Postal Service,  
27 commercial carrier, wire, or other interstate electronic media by Defendants included

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1 information or communications in furtherance of or necessary to effectuate the  
2 scheme.

3 216. Defendants' misrepresentations, acts of concealment and failures to  
4 disclose were knowing and intentional, and made for the purpose of deceiving  
5 Plaintiffs and the members of the Class and obtaining their property for Defendants'  
6 gain.

7 217. Defendants either knew or recklessly disregarded the fact that the  
8 misrepresentations and omissions described above were material, and Plaintiffs and  
9 the Class relied upon the misrepresentations and omissions as set forth above.

10 218. As a result, Defendants have obtained money and property belonging to  
11 the Plaintiffs and Class members, and Plaintiffs and the Class have been injured in  
12 their business or property by the Defendants' overt acts of mail and wire fraud.

13 **COUNTRYWIDE HAD A DUTY TO DISCLOSE**

14 219. As set forth herein, Countrywide made numerous misrepresentations and  
15 half-truths in furtherance of its fraudulent scheme. Such misrepresentations and half-  
16 truths created a false impression, necessitating full disclosure of all relevant facts  
17 necessary to correct Countrywide's misrepresentations and half-truths.

18 220. Countrywide's fraudulent scheme clearly deviated from traditional  
19 industry standards regarding underwriting of residential mortgages. Countrywide's  
20 deviation from traditional industry norms necessitated disclosure.

21 221. In order for Countrywide's fraudulent scheme to be successful, however,  
22 Countrywide created and maintained the appearance of a traditional underwriting  
23 process. In order to maintain this illusion, Countrywide deceived Plaintiffs and Class  
24 members by requesting and accepting materials and information from Plaintiffs and  
25 Class members. Countrywide also furthered its fraudulent scheme by communicating  
26 to Plaintiffs and Class members that Plaintiffs and Class members had, in fact,  
27 "qualified" for a Countrywide mortgage.

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1           222. As set forth above, Plaintiffs and Class members did not know and had  
2 no reason to know that Countrywide and its network of brokers were no longer  
3 working under the traditional model of lending and, in fact, had not conducted the  
4 necessary analysis. Accordingly, Countrywide’s deception, including Countrywide’s  
5 request for financial information and Countrywide’s indication that Plaintiffs and  
6 Class members had “qualified” for a given loan, furthered the deception that  
7 Countrywide had conducted an analysis to determine the borrower’s ability to make  
8 payments on the particular loan. Countrywide sought to create this impression  
9 through its statements but also through its actions. Countrywide’s deceptive conduct  
10 accordingly created a duty to fully disclose Countrywide’s underwriting and lending  
11 policies and procedures.

12           223. A duty to disclose also arose as a result of the relationship between the  
13 parties. Countrywide stood in a confidential relationship with Plaintiffs and Class  
14 members which gave rise to a duty to disclose.

15           224. Countrywide and its borrowers clearly were not on equal footing.  
16 Countrywide’s knowledge regarding mortgages and underwriting was far superior to  
17 that of Plaintiffs and Class members. In fact, Countrywide held itself out as an expert  
18 with regard to mortgages and underwriting.

19           225. Plaintiffs and Class members were vulnerable in their relationship with  
20 Countrywide and Countrywide knowingly exploited Plaintiffs’ and Class members’  
21 vulnerabilities and weaknesses for Countrywide’s own financial purposes.

22           226. Plaintiffs and Class members reposed trust and confidence in  
23 Countrywide with regard to determining the mortgage Plaintiffs and Class members  
24 could afford utilizing accepted and traditional underwriting principles.

25           227. Countrywide sought and accepted the trust and confidence of Plaintiffs  
26 and Class members and fostered such confidential relationships. For instance, as set  
27 forth above, Countrywide’s sales force are required to adhere to a carefully prepared  
28 script to build rapport with potential borrowers by finding “points of common

1 interest,” emphasizing that “I want to be sure you are getting the best loan possible”  
2 and falsely reassuring borrowers who raise concerns about their prospective  
3 mortgages.

4 228. As a result of its confidential relationship with Plaintiffs and Class  
5 members, Countrywide had a duty to fully disclose Countrywide’s underwriting and  
6 lending practices and policies.

7 **PATTERN OF RACKETEERING ACTIVITY**

8 229. The Defendants have engaged in a “pattern of racketeering activity,” as  
9 defined by 18 U.S.C. § 1961(5), by committing at least two acts of racketeering  
10 activity, *i.e.*, indictable violations of 18 U.S.C. §§ 1341 and 1343 as described above,  
11 within the past four years. In fact, each of the Defendants has committed thousands of  
12 acts of racketeering activity. Each act of racketeering activity was related, had a  
13 similar purpose, involved the same or similar participants and method of commission,  
14 had similar results and impacted similar victims, including Plaintiffs and Class  
15 members.

16 230. The multiple acts of racketeering activity that Defendants committed  
17 and/or conspired to commit were related to each other, and amount to and pose a  
18 threat of continued racketeering activity, and therefore constitute a “pattern of  
19 racketeering activity” as defined in 18 U.S.C. § 1961(5).

20 **RICO VIOLATIONS**

21 231. Section 1962(c) of RICO provides that it “shall be unlawful for any  
22 person employed by or associated with any enterprise engaged in, or the activities of  
23 which affect, interstate or foreign commerce, to conduct or participate, directly or  
24 indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering  
25 activity. . . .”

26 232. Through the patterns of racketeering activities outlined above, the  
27 Defendants have also conducted and participated in the affairs of the Countrywide  
28 Broker Enterprise, or in the alternative, the Countrywide Enterprise.



- 1 • The nature, scope and operations of Defendants’ wrongful policies;
- 2 • Whether Defendants conspired in furtherance of the unlawful acts
- 3 alleged herein;
- 4 • Whether Defendants have engaged in mail and wire fraud;
- 5 • Whether Defendants have engaged in a pattern of racketeering activity;
- 6 • Whether the Countrywide Broker Enterprise, or in the alternative, the
- 7 Countrywide Enterprise, is an enterprise within the meaning of 18 U.S.C.
- 8 § 1961(4);
- 9 • Whether Defendants conducted or participated in the affairs of the
- 10 Countrywide Broker Enterprise, or in the alternative, the Countrywide
- 11 Enterprise, through a pattern of racketeering activity in violation of 18
- 12 U.S.C. § 1962(c);
- 13 • Whether Defendants’ overt and/or predicate acts in furtherance of the
- 14 conspiracy and/or direct acts in violation of 18 U.S.C. §§ 1962(c)
- 15 proximately caused injury to the Plaintiffs’ and Class members’ business
- 16 or property;
- 17 • Whether Countrywide has a policy and practice of inducing its
- 18 authorized brokers and sales staff to push borrowers into subprime
- 19 loans, irrespective of their appropriateness to the borrower;
- 20 • Whether Countrywide’s brokers have a policy and practice of pushing
- 21 borrowers into subprime loans, irrespective of their appropriateness
- 22 to the borrower;
- 23 • Whether Defendants fraudulently concealed their scheme;
- 24 • Whether the Court can enter declaratory and injunctive relief; and
- 25 • The proper measure of damages.

26 240. The claims of the named Plaintiffs are typical of the claims of the Class  
27 and do not conflict with the interests of any other members of the Class in that both

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1 the Plaintiffs and the other members of the Class were subject to the same wrongful  
2 policies and practices by Defendants.

3 241. The individual named Plaintiffs will fairly and adequately represent the  
4 interests of the Class. They are committed to the vigorous prosecution of the Class’  
5 claims and have retained attorneys who are qualified to pursue this litigation and have  
6 experience in Class actions – in particular, RICO actions.

7 242. The prosecution of separate actions by individual members of the Class  
8 would create a risk of individual adjudications with respect to individual members of  
9 the Class which would, as a practical matter, be dispositive of the interests of other  
10 members of the Class who are not parties to the action, or could substantially impair  
11 or impede their ability to protect their interests.

12 243. The prosecution of separate actions by individual members of the Class  
13 would create a risk of inconsistent or varying adjudications with respect to individual  
14 members of the Class, which would establish incompatible standards of conduct for  
15 the parties opposing the Class. Such incompatible standards and inconsistent or  
16 varying adjudications, on what would necessarily be the same essential facts, proof  
17 and legal theories, would also create and allow to exist inconsistent and incompatible  
18 rights within the plaintiff Class.

19 244. The Defendants have acted or refused to act on grounds generally  
20 applicable to the Class, making final declaratory or injunctive relief appropriate.

21 245. The questions of law and fact common to members of the Class  
22 predominate over any questions affecting only individual members.

23 246. A class action is superior to other available methods for the fair and  
24 efficient adjudication of the controversies herein in that:

- 25 • Individual claims by the Class members are impractical as the costs of  
26 pursuit far exceed what any one individual Plaintiff or Class member has  
27 at stake.

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- 1 • As a result, individual members of the Class have no interest in
- 2 prosecuting and controlling separate actions.
- 3 • It is desirable to concentrate litigation of the claims herein in this forum.
- 4 • The proposed Class action is manageable.

5 **FRAUDULENT CONCEALMENT**

6 247. Although, pursuant to Countrywide’s policies and practices, borrowers  
7 are pushed into subprime loans irrespective of their appropriateness to the borrower,  
8 Countrywide’s advertisements, marketing materials, telemarketing scripts and  
9 financing documents universally create and foster the image that Countrywide offers  
10 the “best possible” loans available to borrowers based upon credit-risk and other  
11 objective factors.

12 248. Countrywide spent millions of dollars annually on advertising, marketing  
13 materials, and the creation and distribution of Countrywide financing documents that  
14 falsely create and foster the image that Countrywide offers the best possible loans  
15 available to borrowers at competitive rates that are objectively set based upon credit-  
16 risk and other objective standards. Countrywide never discloses the truth to its credit  
17 applicants that it has authorized and provided a financial incentive to its loan officers,  
18 authorized brokers and correspondent lenders to direct homeowners who are qualified  
19 for more favorable loans into subprime loans and other far less favorable loan  
20 products.

21 249. Countrywide’s customers, due to the inherent nature of Countrywide’s  
22 undisclosed system and due to Countrywide’s deception and concealment, have no  
23 way of knowing or suspecting (a) the existence of Countrywide’s wrongful practices;  
24 and (b) that they received a loan that is far less favorable than that which they were  
25 qualified to receive.

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1 **COUNT I**

2 **VIOLATION OF RICO 18 U.S.C. § 1962(c)**

3 250. Plaintiffs and Class members incorporate and reallege the preceding  
4 paragraphs above as if fully set out herein.

5 251. This claim for relief arises under 18 U.S.C. § 1964(c).

6 252. As set forth above, Defendants have violated 18 U.S.C. § 1962(c) by  
7 conducting, or participating directly or indirectly in the conduct of, the affairs of the  
8 Countrywide Broker Enterprise, or in the alternative, the Countrywide Enterprise,  
9 through a pattern of racketeering.

10 253. As a direct and proximate result, Plaintiffs and Class members have been  
11 injured in their business or property by the predicate acts which make up the  
12 Defendants' patterns of racketeering activity.

13 254. Specifically, Plaintiffs and Class members have been injured in their  
14 business or property in a variety of ways, including the following: All borrowers who  
15 are steered into loans whose complex terms have been misrepresented or inadequately  
16 disclosed to them suffer injury in that they take on financial burdens that they would  
17 not otherwise have taken on and suffer the destructive impact on their financial  
18 well-being of having to make monthly payments they cannot afford, sometimes  
19 leading to significant prepayment penalties when they seek to refinance their  
20 mortgages at a more favorable rate, increases in the principal owed under certain types  
21 of loans, defaults on their loans, loss of their homes, destruction of their credit,  
22 bankruptcy, or financial ruin. Borrowers who experience unanticipated, dramatic rate  
23 increases, as in the case of adjustable rate mortgages that have a short fixed-rate  
24 period, or in the case of pay option ARM loans, where the borrower's minimum  
25 monthly payment inevitably causes the loan to "recast" to a significantly higher  
26 monthly payment based on the negative amortization of the loan, suffer harm from the  
27 unexpected and onerous burdens created by their suddenly having to make monthly  
28 payments in amounts that greatly exceed what they committed to and can afford.

1 These borrowers are also injured when, as a result of their inability to keep up with  
2 monthly payments that are far greater than what was represented to them, they are  
3 charged late fees that they otherwise would not have incurred. Additionally, all  
4 borrowers who are charged inflated loan costs and other fees suffer injury in increased  
5 out-of-pocket costs over what they should have paid. Borrowers who refinance from  
6 more traditional loans or take riskier loans than they otherwise could have obtained  
7 elsewhere, in the false belief that they are obtaining a loan on favorable terms, are  
8 injured by having to pay the difference between fees and interest rates charged by  
9 Countrywide and those another lender would have charged. Borrowers who are  
10 forced to pay large pre-payment penalties in order to extricate themselves from the  
11 destructive and dangerous loans Countrywide has steered them into, are injured by the  
12 out-of-pocket costs of the penalties which they would not otherwise have had to pay.

13 **COUNT II**

14 **VIOLATION OF RICO 18 U.S.C. § 1962(d) BY**  
15 **CONSPIRING TO VIOLATE 18 U.S.C. § 1962 (c)**

16 255. Plaintiffs and Class members incorporate and reallege the preceding  
17 paragraphs as if fully set out herein.

18 256. This claim for relief arises under 18 U.S.C. § 1964(c).

19 257. In violation of 18 U.S.C. § 1962(d), Defendants have, as set forth above,  
20 conspired to violate 18 U.S.C. § 1962(c) by conducting, or participating directly or  
21 indirectly in the conduct of the affairs of the Countrywide Broker Enterprise, or in the  
22 alternative, the Countrywide Enterprise, through a pattern of racketeering.

23 258. As a direct and proximate result, Plaintiffs and Class members have been  
24 injured in their business or property by the predicate acts which make up the  
25 Defendants' patterns of racketeering.

26 259. Specifically, Plaintiffs and Class members have been injured in their  
27 business or property in a variety of ways, including the following: All borrowers who  
28 are steered into loans whose complex terms have been misrepresented or inadequately

1 disclosed to them suffer injury in that they take on financial burdens that they would  
2 not otherwise have taken on and suffer the destructive impact on their financial well-  
3 being of having to make monthly payments they cannot afford, sometimes leading to  
4 significant prepayment penalties when they seek to refinance their mortgages at a  
5 more favorable rate, increases in the principal owed under certain types of loans,  
6 defaults on their loans, loss of their homes, destruction of their credit, bankruptcy, or  
7 financial ruin. Borrowers who experience unanticipated, dramatic rate increases, as in  
8 the case of adjustable rate mortgages that have a short fixed-rate period, or in the case  
9 of pay option ARM loans, where the borrower's minimum monthly payment  
10 inevitably causes the loan to "recast" to a significantly higher monthly payment based  
11 on the negative amortization of the loan, suffer harm from the unexpected and onerous  
12 burdens created by their suddenly having to make monthly payments in amounts that  
13 greatly exceed what they committed to and can afford. These borrowers are also  
14 injured when, as a result of their inability to keep up with monthly payments that are  
15 far greater than what was represented to them, they are charged late fees that they  
16 otherwise would not have incurred. Additionally, all borrowers who are charged  
17 inflated loan costs and other fees suffer injury in increased out-of-pocket costs over  
18 what they should have paid. Borrowers who refinance from more traditional loans or  
19 take riskier loans than they otherwise could have obtained elsewhere, in the false  
20 belief that they are obtaining a loan on favorable terms, are injured by having to pay  
21 the difference between fees and interest rates charged by Countrywide and those  
22 another lender would have charged. Borrowers who are forced to pay large pre-  
23 payment penalties in order to extricate themselves from the destructive and dangerous  
24 loans Countrywide has steered them into are injured by the out-of-pocket costs of the  
25 penalties, which they would not otherwise have had to pay.

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**COUNT III**

**VIOLATION OF THE CALIFORNIA UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

260. Plaintiffs, except the Leyvases, Brown and the Menichettis, and Class members incorporate and reallege the preceding paragraphs as if fully set out herein.

261. California Business & Professions Code §§17200, *et seq.* (the “UCL”) prohibits Defendants from engaging in business acts and practices that constitute acts of “unfair competition,” which is defined to include any “unlawful, unfair or fraudulent business act or practice.” Defendants have engaged in “unlawful” business acts and practices, as set forth in detail above, by masterminding and participating in an undisclosed, systematic scheme to steer borrowers into the loans that were most lucrative to Countrywide on the secondary market by, *inter alia*, representing to borrowers that it was the best loan for the borrower, and placing Class Members in such loans without having performed any appropriate or expected analysis that would have indicated the unsuitability of the loans for such borrowers and/or the ability of Class Members to qualify for and obtain loans on more favorable terms, through conduct that violates California Business and Professions Code §§17500, *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961, *et seq.*, and the other laws identified herein at the present and to be identified in the future as circumstances warrant. Further, by virtue of Defendants’ conduct, as detailed above, which is also likely to mislead and deceive consumers with respect to the material facts regarding their loan transactions and the basis for their placement in the particular loans offered by Countrywide, Defendants have engaged in a “fraudulent” business act or practice.” Defendants’ conduct, as detailed above, has also caused deception of the public, misleading prospective and targeted borrowers as to the true characteristics and qualities of Defendants’ loan products and unnecessarily placing borrowers in perilous economic circumstance solely for the wrongful benefit of Defendants. The gravity of such conduct outweighs any justification therefor, is

1 immoral, unscrupulous and against public policy, and therefore, Defendants’ conduct  
2 constitutes an “unfair” business act or practice.

3         262. Defendants’ schemes and acts of unfair competition as detailed in this  
4 Complaint occurred in significant part in California. Because Defendants’ scheme for  
5 steering borrowers into subprime loans was devised, implemented and directed from  
6 Countrywide’s headquarters in California, including Countrywide’s training of loan  
7 officers and the creation of the incentive structures for payment of its mortgage  
8 brokers, the UCL applies to a class of borrowers, both within and outside of  
9 California, who have been harmed as a result of such acts and practices. Moreover,  
10 California has a substantial interest in preventing such illegal practices within the  
11 State where such acts and practices may have an effect both in California and  
12 throughout the rest of the country.

13         263. Plaintiffs and Class members have been injured in fact and suffered a loss  
14 of money or property in a variety of ways, including the following: All borrowers  
15 who are steered into loans whose complex terms have been misrepresented or  
16 inadequately disclosed to them suffer injury in that they take on financial burdens that  
17 they would not otherwise have taken on and suffer the destructive impact on their  
18 financial well-being of having to make monthly payments they cannot afford,  
19 sometimes leading to significant prepayment penalties when they seek to refinance  
20 their mortgages at a more favorable rate, increases in the principal owed under certain  
21 types of loans, defaults on their loans, loss of their homes, destruction of their credit,  
22 bankruptcy, or financial ruin. Borrowers who experience unanticipated, dramatic rate  
23 increases, as in the case of adjustable rate mortgages that have a short fixed-rate  
24 period, or in the case of pay option ARM loans, where the borrower’s minimum  
25 monthly payment inevitably causes the loan to “recast” to a significantly higher  
26 monthly payment based on the negative amortization of the loan, suffer harm from the  
27 unexpected and onerous burdens created by their suddenly having to make monthly  
28 payments in amounts that greatly exceed what they committed to and can afford.

1 These borrowers are also injured when, as a result of their inability to keep up with  
2 monthly payments that are far greater than what was represented to them, they are  
3 charged late fees that they otherwise would not have incurred. Additionally, all  
4 borrowers who are charged inflated loan costs and other fees suffer injury in increased  
5 out-of-pocket costs over what they should have paid. Borrowers who refinance from  
6 more traditional loans or take riskier loans than they otherwise could have obtained  
7 elsewhere, in the false belief that they are obtaining a loan on favorable terms, are  
8 injured by having to pay the difference between fees and interest rates charged by  
9 Countrywide and those another lender would have charged. Borrowers who are  
10 forced to pay large pre-payment penalties in order to extricate themselves from the  
11 destructive and dangerous loans Countrywide has steered them into are injured by the  
12 out-of-pocket costs of the penalties, which they would not otherwise have had to pay.

13 264. Plaintiffs' and Class members' claims involve questions of common and  
14 general interest as provided under Cal. Code Civ. P. §382.

15 265. For the reasons and based on the conduct detailed above, Plaintiffs and  
16 Class members have suffered losses of money and property as a result of Defendants'  
17 acts of unfair competition that constitute a strict liability violation of the UCL. As a  
18 result of Defendants' violations of the UCL, Plaintiffs and members of the Class  
19 named in this Count are entitled to bring this claim for disgorgement and restitution,  
20 reasonable attorneys' fees and costs pursuant to, *inter alia*, Cal. Code Civ. P. §1021.5,  
21 and other injunctive or declaratory relief as may be available.

22 **COUNT IV**

23 **VIOLATION OF THE CALIFORNIA FAL, BUSINESS AND**  
24 **PROFESSIONS CODE § 17500, *ET SEQ.***

25 266. Plaintiffs, except the Leyvases, Brown and the Menichettis, and Class  
26 members incorporate and reallege the preceding paragraphs as if fully set out herein.

27 267. California Business & Professions Code §§17500, *et seq.*, prohibits false  
28 or misleading statements, specifying, among other things, that it is unlawful "for any

1 person, firm, corporation or association, or any employee thereof with intent directly  
2 or indirectly to dispose of real or personal property or to perform services,  
3 professional or otherwise, or anything of any nature whatsoever or to induce the  
4 public to enter into any obligation relating thereto....”

5         268. Defendants violated California’s false advertising laws because their  
6 scheme involved deceptive, untrue and misleading advertising. In particular, because  
7 Defendants’ scheme for steering borrowers into subprime loans was devised,  
8 implemented and directed from Countrywide’s headquarters in California, including  
9 Countrywide’s training of loan officers and the creation of the incentive structures for  
10 payment of its mortgage brokers, the FAL applies to a class of borrowers, both within  
11 and outside of California, who have been harmed as a result. Moreover, California  
12 has a substantial interest in preventing fraudulent practices within the State which may  
13 have an effect both in California and throughout the rest of the country.

14         269. Specifically, Plaintiffs and Class members have been injured in their  
15 business or property in a variety of ways, including the following: All borrowers who  
16 are steered into loans whose complex terms have been misrepresented or inadequately  
17 disclosed to them suffer injury in that they take on financial burdens that they would  
18 not otherwise have taken on and suffer the destructive impact on their financial well-  
19 being of having to make monthly payments they cannot afford, sometimes leading to  
20 significant prepayment penalties when they seek to refinance their mortgages at a  
21 more favorable rate, increases in the principal owed under certain types of loans,  
22 defaults on their loans, loss of their homes, destruction of their credit, bankruptcy, or  
23 financial ruin. Borrowers who experience unanticipated, dramatic rate increases, as in  
24 the case of adjustable rate mortgages that have a short fixed-rate period, or in the case  
25 of pay option ARM loans, where the borrower’s minimum monthly payment  
26 inevitably causes the loan to “recast” to a significantly higher monthly payment based  
27 on the negative amortization of the loan, suffer harm from the unexpected and onerous  
28 burdens created by their suddenly having to make monthly payments in amounts that

1 greatly exceed what they committed to and can afford. These borrowers are also  
2 injured when, as a result of their inability to keep up with monthly payments that are  
3 far greater than what was represented to them, they are charged late fees that they  
4 otherwise would not have incurred. Additionally, all borrowers who are charged  
5 inflated loan costs and other fees suffer injury in increased out-of-pocket costs over  
6 what they should have paid. Borrowers who refinance from more traditional loans or  
7 take riskier loans than they otherwise could have obtained elsewhere, in the false  
8 belief that they are obtaining a loan on favorable terms, are injured by having to pay  
9 the difference between fees and interest rates charged by Countrywide and those  
10 another lender would have charged. Borrowers who are forced to pay large pre-  
11 payment penalties in order to extricate themselves from the destructive and dangerous  
12 loans Countrywide has steered them into are injured by the out-of-pocket costs of the  
13 penalties, which they would not otherwise have had to pay.

14 270. Defendants should be ordered to disgorge and make restitution to  
15 Plaintiffs and Class members from the excessive payments and profits obtained at  
16 their expense.

## 17 COUNT V

### 18 **UNJUST ENRICHMENT**

19 271. Plaintiffs and Class members incorporate and reallege the preceding  
20 paragraphs as if fully set out herein.

21 272. Defendants' deceptive scheme unjustly enriched Defendants, to the  
22 detriment of the Class, by causing Defendants to receive excessive monetary  
23 payments from Plaintiffs and the Class.

24 273. Specifically, Plaintiffs and Class members have been injured in their  
25 business or property in a variety of ways, including the following: All borrowers who  
26 are lured into loans whose complex terms have been misrepresented or inadequately  
27 disclosed to them suffer injury in that they take on financial burdens that they would  
28 not otherwise have taken on and suffer the destructive impact on their financial well-

1 being of having to make monthly payments they cannot afford, sometimes leading to  
2 significant prepayment penalties when they seek to refinance their mortgages at a  
3 more favorable rate, increases in the principal owed under certain types of loans,  
4 defaults on their loans, loss of their homes, destruction of their credit, bankruptcy, or  
5 financial ruin. Borrowers who experience unanticipated, dramatic rate increases, as in  
6 the case of adjustable rate mortgages that have a short fixed-rate period, or in the case  
7 of pay option ARM loans, where the borrower's minimum monthly payment  
8 inevitably causes the loan to "recast" to a significantly higher monthly payment based  
9 on the negative amortization of the loan, suffer harm from the unexpected and onerous  
10 burdens created by their suddenly having to make monthly payments in amounts that  
11 greatly exceed what they committed to and can afford. These borrowers are also  
12 injured when, as a result of their inability to keep up with monthly payments that are  
13 far greater than what was represented to them, they are charged late fees that they  
14 otherwise would not have incurred. Additionally, all borrowers who are charged  
15 inflated loan costs and other fees suffer injury in increased out-of-pocket costs over  
16 what they should have paid. Borrowers who refinance from more traditional loans or  
17 take riskier loans than they otherwise could have obtained elsewhere, in the false  
18 belief that they are obtaining a loan on favorable terms, are injured by having to pay  
19 the difference between fees and interest rates charged by Countrywide and those  
20 another lender would have charged. Borrowers who are forced to pay large pre-  
21 payment penalties in order to extricate themselves from the destructive and dangerous  
22 loans Countrywide has lured them into are injured by the out-of-pocket costs of the  
23 penalties, which they would not otherwise have had to pay.

24         274. Defendants' retention of funds paid by Plaintiffs and Class members  
25 violates the fundamental principles of justice, equity, and good conscience.

26         275. Accordingly, Defendants should be ordered to return any funds obtained  
27 as a result of their deceptive scheme to the Class.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Class  
3 demand judgment against Defendants as follows:

4 (a) Certification of the Class pursuant to Rule 23 of the Federal Rules of  
5 Civil Procedure, certifying Plaintiffs as the representatives of the Class, and  
6 designating their counsel as counsel for the Class;

7 (b) A declaration that Defendants have committed the violations alleged  
8 herein;

9 (c) An award of treble the amount of damages suffered by Plaintiffs and  
10 members of the Class as proven at trial plus interest and attorneys' fees and expenses  
11 pursuant to 18 U.S.C. § 1962(c) and (d);

12 (d) Ordering Defendants to disgorge the payments and profits they  
13 wrongfully obtained at the expense of Plaintiffs and Class members;

14 (e) Ordering that restitution be made to Plaintiffs and Class members for  
15 Defendants' unjust enrichment;

16 (f) Ordering that an accounting be made by Defendants of their wrongfully  
17 obtained payments and profits;

18 (g) An injunction preventing Defendants from engaging in future fraudulent  
19 practices, to the extent allowed by law;

20 (h) Costs of this action, including reasonable attorneys fees and expenses;  
21 and

22 (i) Any such other and further relief as this Court deems just and proper.

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**JURY DEMAND**

Plaintiffs demand a trial by jury on all claims so triable as a matter of right.

DATED: March 6, 2009

Respectfully submitted,

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