

1 III. Summary of Pleadings.

2 1. This is a putative class action. Plaintiffs filed
3 their Class Action Complaint (the "Complaint") on August 12,
4 2008, which asserts numerous causes of action, including claims
5 for violations of the Truth in Lending Act ("TILA"), 15 U.S.C.
6 § 1601, et seq., violations of California's Unfair Competition
7 Law ("UCL"), Bus. & Prof. Code § 17200, et seq., fraudulent
8 omissions, breach of contract, and tortious breach of the implied
9 covenant of good faith and fair dealing. The Court recently
10 dismissed the breach of contract and tortious breach of the
11 implied covenant of good faith and fair dealing claims. The
12 Complaint seeks a variety of equitable remedies and damages.

13 Plaintiffs' Statement

14 1. Plaintiffs, individually and on behalf of the proposed
15 classes, allege that Defendants failed to disclose important
16 material information in connection with the Option Adjustable
17 Rate Mortgage loans ("Option ARM") Defendants sold to Plaintiffs
18 and other consumers. Plaintiffs allege that the loan documents
19 Defendants used to sell the Option ARM loans violate TILA.
20 Plaintiffs contend that TILA requires all lenders, including
21 Defendants, to make certain disclosures to borrowers concerning
22 the terms and conditions of their home loans in a clear and
23 conspicuous manner. Plaintiffs allege that Defendants failed to
24 clearly and conspicuously disclose, in their loan documents and
25 in the federally required TILA disclosure statements: (i) the
26 actual interest rate Defendants charged Plaintiff and consumers
27 on their loans; (ii) that payments on the notes at the initial
28 low interest rate would absolutely result in negative

1 amortization and that the principal balance absolutely would
2 increase as a result; and (iii) that the initial interest rate
3 provided was discounted and does not reflect the actual interest
4 that Plaintiffs and others, were paying on the loans. Defendants
5 also failed to provide to Plaintiffs the low interest rate in the
6 manner agreed to by the Parties.

7 2. Plaintiffs, individually and on behalf of the Class,
8 seek an order declaring that Defendants violated TILA, 15 U.S.C.
9 § 1601, et seq.; that Plaintiffs have a right to rescind pursuant
10 to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23; and for an order
11 rescinding Plaintiffs' individual mortgage; and for an order
12 awarding other relief as the court deems just and proper.

13 Plaintiffs also seek an order awarding Plaintiffs and Class
14 members damages, restitution, and for declaratory and injunctive
15 relief under Plaintiffs' state law claims for violation of the
16 UCL and fraudulent omissions, and such other relief as is just
17 and proper. Plaintiffs also seek litigation costs and attorneys
18 fees.

19 Defendants' Statement

20 1. Defendants deny that they are liable to Plaintiffs in
21 any respect.

22 2. Defendants contend that Plaintiffs' claims that
23 Defendants committed violations of TILA entitling them to
24 rescission or damages, violated the UCL, or committed fraudulent
25 concealment are wholly without merit. Defendants did not
26 originate Plaintiffs' loan or the putative class members' loans.
27 The terms of Plaintiffs' loans were properly disclosed and
28 Plaintiffs knowingly and voluntarily agreed to those terms.

1 Defendants will show that Plaintiffs can establish neither
2 liability or damages and all of these claims will fail.

3 IV. Orders Re Amendments To Pleadings.

4 1. At this time, the parties do not anticipate any
5 amendment of the pleadings. However, Plaintiffs anticipate that
6 if a class is certified, they will seek to amend their complaint
7 to include the subsequent purchasers of the loans of currently
8 absent class members. Defendants believe addition of new parties
9 after class certification would be inappropriate.

10 V. Factual Summary.

11 A. Admitted Facts Which Are Deemed Proven Without Further
12 Proceedings.

13 1. Plaintiffs, Elvin Valenzuela and Phyllis
14 Valenzuela, at the time of the loan transaction, were residents
15 of the Eastern District of California, Fresno Division.

16 2. Plaintiffs received an option ARM loan from
17 American Home Mortgage Acceptance, Inc., on or about June 23,
18 2005.

19 3. Defendant American Home Mortgage Investment Trust
20 2005-2 presently holds Plaintiffs' Option ARM loan as part of a
21 pool of securitized loans as an assignee.

22 4. Defendant Deutsche Bank National Trust Company is
23 the indenture trustee under the mortgage pool for American Home
24 Mortgage Investment Trust 2005-2.

25 5. The Valenzuelas' loan is current.

26 B. Contested Facts.

27 Plaintiffs' Statement

28 1. Whether Defendants failed to disclose that

1 negative amortization was certain to occur.

2 2. Whether Defendants failed to disclose clearly that
3 the initial interest rate was discounted.

4 3. Whether Defendants failed to disclose clearly that
5 the initial interest rate would not apply for more than one
6 month.

7 4. Whether Defendants failed to disclose clearly the
8 loan's true cost.

9 5. Whether Defendants' loan documents failed to
10 disclose material facts regarding the terms of Plaintiffs' Option
11 ARM loan.

12 Defendants' Statement

13 1. Whether Plaintiffs or any putative class members
14 actually and reasonably relied on any allegedly improper
15 disclosures.

16 2. Whether Defendants made any disclosures to
17 Plaintiffs or the putative class members, and whether they had
18 any duty to do so.

19 3. What information did plaintiffs and putative class
20 members have or review regarding the nature of the loans they
21 entered into.

22 4. Did any Defendants' actionable conduct proximately
23 cause Plaintiffs or any putative class member any injury.

24 5. Whether Plaintiffs or class members' loans have
25 been repaid, modified, foreclosed or otherwise altered by
26 agreement or operation of law in bankruptcy.

27 6. Whether any applicable statutes of limitation bar
28 the claims of Plaintiffs or any putative class members.

1 7. Whether any statute of limitation tolling doctrine
2 applies to the claims of Plaintiffs or any putative class
3 members.

4 8. Whether Plaintiffs and the putative class members'
5 claims satisfy the requirements of Federal Rule of Civil
6 Procedure 23(a) and 23(b) (3) .

7 VI. Legal Issues.

8 A. Uncontested.

9 1. Jurisdiction exists under 28 U.S.C. § 1331 and the
10 Truth in Lending Act.

11 2. Venue is proper under 28 U.S.C. § 1391.

12 B. Contested.

13 Plaintiffs' Statement

14 1. Whether Defendants' loan documents violated TILA,
15 15 U.S.C. § 1601, et seq.

16 2. Whether Defendants engaged in unfair business
17 practices aimed at deceiving Plaintiffs and Class members before
18 and during the loan application process.

19 3. Whether Defendants, by and through their officers,
20 employees, and agents failed to disclose that the interest rate
21 actually charged on these loans was higher than the rate
22 represented and promised to Plaintiffs and Class members.

23 4. Whether Defendants, by and through their officers,
24 employees and agents concealed, omitted and/or otherwise failed
25 to disclose information they were mandated to disclose under
26 TILA.

27 5. Whether Defendants failed to disclose the true
28 variable nature of interest rates on the Option ARM loans.

1 6. Whether Defendants failed to properly disclose the
2 process by which negative amortization occurs, ultimately
3 resulting in the recasting of the payment structure over the
4 remaining lifetime of the loans.

5 7. Whether Defendants' had a duty to disclose and
6 failed to disclose that if Plaintiffs made payment according to
7 the payment schedule in TILDS, negative amortization was certain
8 to occur.

9 8. Whether the facts Defendants failed to disclose
10 concerning Plaintiffs' Option ARM loan were material.

11 9. Whether Defendants were aware of their fraudulent
12 omissions and intended to deceive Plaintiffs and Class members.

13 10. Whether Plaintiffs relied on Defendants'
14 fraudulent omissions in deciding to enter into the Option ARM
15 loan.

16 11. Whether Defendants' scheme misleadingly portrayed
17 or implied that these loans were fixed rate loans, when
18 Defendants knew that only the periodic payments were fixed (for a
19 time) but that interest rates were not "fixed."

20 12. Whether Defendants' loan documents are "unlawful,"
21 "unfair," and "fraudulent" under the UCL.

22 13. Whether the terms and conditions of Defendants'
23 Option ARM home loans are unconscionable.

24 Defendants Statement

25 1. Whether Plaintiffs or any putative class members
26 received disclosure statements compliant with TILA and Regulation
27 Z.

28 2. Whether any alleged failure of compliance was

1 evident on the face of the disclosure statements within the
2 meaning of 15 U.S.C. § 1641(a).

3 3. Whether Defendants may be held vicariously liable
4 under any theory for TILA violations allegedly committed by
5 others in the origination of the Plaintiffs' and putative class
6 members' loans.

7 4. Whether either Defendant committed any act that
8 was unlawful, unfair, or deceptive in a manner that caused harm
9 to Plaintiffs or the putative class.

10 5. Whether Defendants can be held vicariously liable
11 under the UCL for third parties' actions.

12 6. Whether Defendants had any duty of disclosure and,
13 if so, the extent of that duty.

14 7. Whether Defendants can be held vicariously liable
15 for third parties' alleged failure to disclose.

16 8. Whether Plaintiffs' claims or putative class
17 member claims are barred by applicable statutes of limitation.

18 9. Whether Plaintiffs and the putative class members'
19 claims satisfy the requirements of Federal Rule of Civil
20 Procedure 23(a) and 23(b)(3).

21 VII. Consent to Magistrate Judge Jurisdiction.

22 1. The parties have not consented to transfer the
23 case to the Magistrate Judge for all purposes, including trial.

24 VIII. Corporate Identification Statement.

25 1. Any nongovernmental corporate party to any action in
26 this court shall file a statement identifying all its parent
27 corporations and listing any entity that owns 10% or more of the
28 party's equity securities. A party shall file the statement with

1 its initial pleading filed in this court and shall supplement the
2 statement within a reasonable time of any change in the
3 information.

4 IX. Discovery Plan and Cut-Off Date.

5 1. The parties agree that initial disclosures should be
6 exchanged pursuant to Fed. R. Civ. P. 26(a)(1) within the time
7 prescribed by the Rule.

8 2. In addition to discovery concerning Plaintiffs'
9 individual claims, Plaintiffs will be seeking discovery related
10 to class certification, including the loan documents used by
11 American Home Mortgage Investment Trust 2005-2 ("AHMIT 2005-2")
12 and Deutsche Bank National Trust Company's ("Deutsche Bank")
13 assignor, American Home Mortgage Acceptance, Inc., during the
14 Class Period, and information necessary for Plaintiffs to
15 establish numerosity. Plaintiffs will also be seeking discovery
16 related to AHMIT 2005-2 and Deutsche Bank's practices and conduct
17 in connection with the formulation, development and
18 implementation of the Option ARM loans at issue. At this time,
19 Plaintiffs agree to limit discovery to issues relevant to
20 Plaintiffs' individual claims and issues relevant to class
21 certification.

22 3. Defendants agree that discovery should be limited to
23 issues relevant to Plaintiffs' individual claims and class
24 certification unless and until a class is certified.

25 4. Defendants have not reviewed specific discovery
26 requests from Plaintiffs. They may dispute that some, or much,
27 of the discovery Plaintiffs seek, particularly discovery about
28 other alleged assignees of securitized loans, is proper. This

1 may result in the need for the Court's assistance.

2 Completion of Initial Discovery, Proposed Class
3 Certification Briefing Schedule, and Proposed
4 Schedule for Dispositive Motions.

5 Merits Discovery.

6 5. The parties agree that merits discovery should close on
7 April 16, 2010.

8 Expert Discovery.

9 6. The parties agree that initial expert disclosures
10 should be made on May 13, 2010, and that rebuttal expert
11 disclosures should be made on June 10, 2010. Expert discovery
12 should be completed by August 10, 2010.

13 Class Certification Briefing Schedule.

14 7. Plaintiffs intend to file a motion for class
15 certification. Plaintiffs believe they will be able to file
16 their motion on or before September 16, 2009. Plaintiffs believe
17 that Defendants' opposition should be filed 28 days thereafter,
18 that Plaintiffs' reply should be filed 28 days after the
19 opposition and that the hearing should be held 2 weeks after the
20 briefing is completed, or whenever it is convenient for the
21 Court.

22 8. Defendants do not object to Plaintiff's proposed date
23 of September 16, 2009, as the deadline to move for class
24 certification and agree that Defendants should have 28 days to
25 file an opposition. However, Defendants believe 28 days for
26 Plaintiffs' reply is excessive and thus propose that Plaintiffs
27 file their reply within 14 days instead. Defendants agree that
28 the hearing should be held 2 weeks after briefing is completed or

1 whenever it is convenient for the Court.

2 Dispositive Motions.

3 9. The parties agree that dispositive motions should be
4 made no later than September 15, 2010.

5 Discovery of Electronically Stored Information.

6 10. The parties have agreed to meet and confer on a
7 protocol that will govern the production of Electronically Stored
8 Information in accordance with the Federal Rules of Civil
9 Procedure. The parties intend to submit such a protocol in the
10 form of a case management order.

11 Privilege or Work Product Issues.

12 11. At present, the parties are not aware of any issues
13 relating to claims of privilege or work product. To the extent
14 such issues arise in the future, the parties will confer to
15 address them and, if necessary, bring them to the attention of
16 the Court.

17 Limitations on Discovery.

18 12. In light of the potential for additional defendants to
19 be added to this action if a class is certified (i.e., other
20 assignees of Class members' Option ARM loans), Plaintiffs believe
21 that the 10 deposition and 25 interrogatory limits are
22 inappropriate in this case. In light of the number of potential
23 defendants, Plaintiffs propose that each party be permitted to
24 take a maximum of 25 fact witness depositions pursuant to Fed. R.
25 Civ. P. 30(a)(2) (expert depositions shall be treated separately
26 and shall be limited to one deposition of each designated expert
27 and rebuttal expert). Plaintiffs further propose that each party
28 be permitted to serve 25 interrogatories on each opposing party.

1 13. Defendants dispute that additional defendants should be
2 added after class certification as proposed by plaintiffs, and do
3 not believe that any discovery accommodations should be made on
4 that basis. Defendants contend that the standard limitations for
5 discovery set forth in the Federal Rules of Civil Procedure are
6 appropriate. If either party contends additional discovery is
7 needed, that party should not be permitted to exceed the limits
8 established by the Federal Rules absent a showing of
9 particularized need.

10 Other Orders.

11 14. At present, the parties do not propose that this Court
12 enter any other orders under Fed. R. Civ. P. 16 or 26(c). The
13 parties expect that a confidentiality order is appropriate. The
14 parties will meet and confer about a proposed Stipulated
15 Protective Order and, if necessary, the parties will file an
16 appropriate motion seeking its entry.

17 The Court Orders:

18 1. The parties shall file their initial disclosures under
19 Rule 26 on or before May 8, 2009.

20 2. With regard to the class certification schedule, the
21 parties shall limit discovery to class certification issues and
22 Plaintiffs shall file their class certification motion on or
23 before September 16, 2009. Defendants shall file their
24 opposition on or before October 14, 2009. Plaintiffs' reply
25 shall be filed on or before November 12, 2009. The hearing shall
26 be held on December 7, 2009.

27 3. A Further Scheduling Conference will be held following
28 the ruling on the class certification motion to schedule the

1 balance of the case.

2 4. The parties are ordered to complete all expert
3 discovery on or before August 13, 2010.

4 5. The parties are directed to disclose all expert
5 witnesses, in writing, on or before May 13, 2010. Any rebuttal
6 or supplemental expert disclosures will be made on or before June
7 14, 2010. The parties will comply with the provisions of Federal
8 Rule of Civil Procedure 26(a)(2) regarding their expert
9 designations. Local Rule 16-240(a) notwithstanding, the written
10 designation of experts shall be made pursuant to F. R. Civ. P.
11 Rule 26(a)(2), (A) and (B) and shall include all information
12 required thereunder. Failure to designate experts in compliance
13 with this order may result in the Court excluding the testimony
14 or other evidence offered through such experts that are not
15 disclosed pursuant to this order.

16 6. The provisions of F. R. Civ. P. 26(b)(4) shall
17 apply to all discovery relating to experts and their opinions.
18 Experts may be fully prepared to be examined on all subjects and
19 opinions included in the designation. Failure to comply will
20 result in the imposition of sanctions.

21 X. Motions - Hard Copy.

22 1. The parties shall submit one (1) courtesy paper copy to
23 the Court of any motions filed that exceed ten pages and any
24 motions that have exhibits attached. Exhibits shall be marked
25 with protruding numbered or lettered tabs so that the Court can
26 easily identify such exhibits.

27 XIII. Trial.

28 1. Plaintiffs demand a jury. Defendants do not demand a

1 jury.

2 2. Counsels' Estimate Of Trial Time:

3 a. At this time, trial length will depend upon the
4 outcome of the class certification motion. This issue will be
5 addressed in a supplemental scheduling order.

6 3. Counsels' attention is directed to Local Rules
7 of Practice for the Eastern District of California, Rule 285.

8 XIV. Settlement Conference.

9 1. The parties agree to private mediation. They will
10 notify the Court any time they believe a settlement conference
11 would be helpful.

12 XV. Request For Bifurcation, Appointment Of Special Master,
13 Or Other Techniques To Shorten Trial.

14 1. Not requested at this time.

15 XVI. Related Matters Pending.

16 1. Plaintiffs have compiled the list of cases below.
17 Defendants have not been able to analyze whether or not these
18 cases are related, and do not agree that they are.

19 EASTERN DISTRICT OF CALIFORNIA

20 <u>Case Name</u>	<u>Civ. No.</u>
21 Nelson v. Guild Mortgage Company	1:08-cv-0678 OWW
22 Campbell v. Soma Financial, Inc.	1:08-cv-0170 OWW
23 Quezada v. Loan Center of California, Inc.	2:08-cv-0177 WBS
24 Vang, et al. v. Home Loan Funding, Inc.	1:07-cv-1454 AWI
25 Bowman v. Mortgagee Lending, Inc.	1:08-cv-0119 AWI
26 Hill v. U.S. Financial Mortgage Corporation	1:08-cv-0235 AWI
27 Nava v. VirtualBank	2:08-cv-0069 FCD

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CENTRAL DISTRICT OF CALIFORNIA

1		
2	Boisjolie v. SBMC Mortgage	2:07-cv-5521 AG
3	Saavedra v. GMAC Mortgage, LLC, et al.	2:07-cv-7050 AG
4	Conder v. Home Savings of America, et al.	2:07-cv-7051 AG
5	Krumme v. American Mortgage Network	2:07-cv-7048 AG
6	Valencia v. Home Savings Mortgage	2:07-cv-7049 AG
7	Schwartz v. Benchmark Lending Group	2:08-cv-0781 AG
8	Welch v. Casa Blanca Mortgage, Inc.	2:08-cv-0783 AG
9	Marshell v. IMPAC Funding Corp.	5:07-cv-1290 AG
10	Soloko v. Western Capital Mortgage	8:08-cv-0012 AG
11	Love v. First Mortgage Corporation	5:08-cv-0060 AG
12	Rohrmann v. First Metropolitan Funding	2:08-cv-0313 AG
13	Bagsby v. Stearns Lending, Inc.	2:08-cv-0674 AG
14	Bigverdi v. Countrywide Bank FSB	2:07-cv-3454 AHS
15	Ly v. Gateway Business Bank	2:07-cv-3772 AHS
16	Carroll v. Homecomings Financial LLC	2:07-cv-3775 AHS
17	Boschma v. Home Loan Center, Inc.	8:07-cv-0613 AHS
18	Gamelin v. Homefield Financial, Inc.	8:07-cv-0612 AHS
19	Spicer v. IndyMac Bank FSB	2:07-cv-3456 AHS
20	Guadiz v. MortgageIt, Inc.	2:07-cv-3782 AHS
21	Swan v. Steward Financial, Inc.	2:07-cv-3459 AHS
22	Cohen v. SCME Mortgage Bankers, Inc.	2:07-cv-3778 AHS
23	Dubose v. Just Mortgage, Inc.	2:08-cv-0133 AHS
24	Garrison v. Greenpoint Mortgage Funding	2:07-cv-6490 AHS
25	Solof v. Washington Mutual Bank	2:07-cv-3451 R
26	Yniguez v. Washington Mutual Bank	2:07-cv-3137 R
27	Velazquez v. GMAC Mortgage Corporation	2:08-cv-5444 DDP
28	Jackson v. Nationwide Discount Homeloans	5:08-cv-0063 AG

1 Hill v. California Empire Financial 5:08-cv-0056 VAP
2 Peel v. Brooks American Mortgage Corp. 8:08-cv-0049 JVS
3 Tijerina v. American First Real Estate 5:08-cv-0055 SGL

4 NORTHERN DISTRICT OF CALIFORNIA

5 O'Donnell v. Bank of America Corp. 5:07-cv-4500 RMW
6 Plascencia v. Lending 1st Mortgage 4:07-cv-4485 CW
7 Jordan v. Paul Financial, LLC 3:07-cv-4496 SI
8 Amparan v. Plaza Home Mortgage 5:07-cv-4498 JF
9 Mandrigues v. World Savings, Inc. 5:07-cv-4497 JF
10 (certified for multi-district treatment. The MDL transferee
court is the Northern District of California, Hon. Jeremy Fogle.)
11 Ralston v. Mortgage Investors Group 5:08-cv-0536 JF
12 Brooks v. ComUnity Lending, Inc. 5:07-cv-4501 JF
13 Romero v. First Magnus Financial 5:07-cv-4491 JF
14 Lymburner v. U.S. Financial Funds, Inc. 3:08-cv-0325 EDL

15 SOUTHERN DISTRICT OF CALIFORNIA

16 Christian v. American Sterling Bank 3:08-cv-0090 LAB
17 Pence v. Union Fidelity Mortgage, Inc. 3:08-cv-0089 WQH

18 STATE COURT

19 Romero v. Bank of America C-07-04500 (Fruin)/LASC
20 XVII. Compliance With Federal Procedure.

21 1. The Court requires compliance with the Federal
22 Rules of Civil Procedure and the Local Rules of Practice for the
23 Eastern District of California. To aid the court in the
24 efficient administration of this case, all counsel are directed
25 to familiarize themselves with the Federal Rules of Civil
26 Procedure and the Local Rules of Practice of the Eastern District
27 of California, and keep abreast of any amendments thereto.

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1 XVIII. Effect Of This Order.

2 1. The foregoing order represents the best
3 estimate of the court and counsel as to the agenda most suitable
4 to bring this case to resolution. The trial date reserved is
5 specifically reserved for this case. If the parties determine at
6 any time that the schedule outlined in this order cannot be met,
7 counsel are ordered to notify the court immediately of that fact
8 so that adjustments may be made, either by stipulation or by
9 subsequent scheduling conference.

10 2. Stipulations extending the deadlines contained
11 herein will not be considered unless they are accompanied by
12 affidavits or declarations, and where appropriate attached
13 exhibits, which establish good cause for granting the relief
14 requested.

15 3. Failure to comply with this order may result in
16 the imposition of sanctions.

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19 IT IS SO ORDERED.

20 Dated: April 20, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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