

1 Edward Y. Lee (171996)
 edlee@leefieldslaw.com
 2 Christopher P. Fields (SBN 174155)
 chrisfields@leefieldslaw.com
 3 **LEE & FIELDS, A.P.C.**
 3701 Wilshire Blvd., Ste. 510
 4 Los Angeles, CA 90010
 Phone: (213) 380-5858

5 Paul R. Kiesel, Esq. (SBN 119854)
 kiesel@kbla.com
 6 Patrick DeBlase, Esq. (SBN 167138)
 deblase@kbla.com
 7 Michael C. Eyerly, Esq. (SBN 178693)
 eyerly@kbla.com
 8 **KIESEL BOUCHER LARSON LLP**
 8648 Wilshire Boulevard
 9 Beverly Hills, California 90211
 10 Phone: (310) 854-4444
 Fax: (310) 854-0812

Jeffrey K. Berns, Esq. (SBN 131351)
 jberns@jeffbernsllaw.com
LAW OFFICES OF JEFFREY K. BERNs
 19510 Ventura Boulevard, Suite 200
 Tarzana, California 91356
 Phone: (818) 961-2000; Fax: (818) 867-4820

11 Attorneys for Plaintiff and all Others Similarly Situated

12
 13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16

17 DIAN C. LYMBURNER, individually,
 and on behalf of others similarly situated,
 18
 Plaintiff,
 19
 v.
 20
 U.S. FINANCIAL FUNDING, INC.,
 21 a California corporation, INDYMAC
 BANCORP, INC., and Does 1
 22 through 10, inclusive,
 23
 Defendants.

CASE NO. CV08-0325 EDL
**STIPULATION AND
 [PROPOSED] ORDER
 GRANTING PLAINTIFF
 LEAVE TO FILE FIRST
 AMENDED COMPLAINT**

24
 25 IT IS HEREBY STIPULATED by and between the parties hereto through their
 26 respective attorneys of record that Plaintiff may file an Amended Complaint, a copy of
 27 which is attached hereto.
 28

1 WHEREFORE, Plaintiff, DYAN C. LYMBURNER (hereinafter "Plaintiff") filed
2 her Complaint on January 17, 2008.

3 WHEREFORE, subject to the Court's approval, Plaintiff and Defendant have
4 agreed to allow Plaintiff leave to file her First Amended Complaint, a copy of which is
5 attached hereto as Exhibit A.

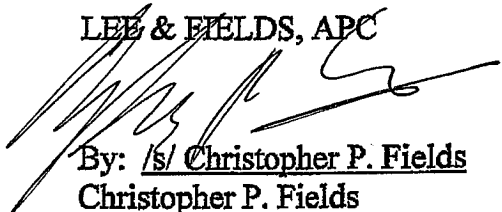
6 NOW, THEREFORE, the parties, through their respective attorneys, hereby
7 stipulate as follows:

8 1. Plaintiff may file an Amended Complaint, a copy of which is attached
9 hereto as Exhibit "A".

10 2. Defendant waives notice and service of the amended complaint and shall
11 not be required to answer the amendment, and that all denials, responses and
12 affirmative defenses contained in the answer filed by defendant to the original
13 complaint shall be responsive to the amended complaint.


14
15 ^{September}
Dated: ~~June~~ 8, 2008

LEE & FIELDS, APC


By: /s/ Christopher P. Fields
Christopher P. Fields
Attorneys for Plaintiffs,
DIAN C. LYMBURNER
and all others similarly situated

16
17
18
19
20
21
22
23 ^{September}
Dated: ~~June~~ 8, 2008

Lewis Brisbois Bisgaard & Smith


By: /s/ Roger Scott Raphael
Roger Scott Raphael
Attorneys for Defendants,
U.S. FINANCIAL FUNDING, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ECF CERTIFICATION

Pursuant to General Order No. 45, §X.B., the filing attorney attests that he has obtained concurrence regarding the filing of this document from each of the signatories to the document.

~~PROPOSED~~ ORDER

Pursuant to the Stipulation of counsel and for good cause shown, IT IS HEREBY ORDERED that:

- 1. Plaintiff is granted leave to file her First Amended Complaint.
- 2. Defendant is not required to answer the amendment, and all denials, responses and affirmative defenses contained in the answer filed by defendant to the original complaint shall be responsive to the amended complaint.

IT IS SO ORDERED

Dated: September 18, 2008



EXHIBIT A

1 Edward Y. Lee (171996)
edlee@leefieldslaw.com
2 Christopher P. Fields (SBN 174155)
chrisfields@leefieldslaw.com
3 **LEE & FIELDS, A.P.C.**
3701 Wilshire Blvd., Ste. 510
4 Los Angeles, CA 90010
Phone: (213) 380-5858

5
6 Paul R. Kiesel, Esq. (SBN 119854)
kiesel@kbla.com
7 Patrick DeBlase, Esq. (SBN 167138)
deblase@kbla.com
8 Michael C. Eyerly, Esq. (SBN
178693)
eyerly@kbla.com
9 **KIESEL BOUCHER LARSON
LLP**
10 8648 Wilshire Boulevard
Beverly Hills, California 90211
11 Phone: (310) 854-4444
12 Fax: (310) 854-0812

Jeffrey K. Berns, Esq. (SBN 131351)
jberns@jeffbernslaw.com
**LAW OFFICES OF JEFFREY K.
BERNS**
19510 Ventura Boulevard, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000; Fax: (818) 867-
4820

13 Attorneys for Plaintiff and all Others Similarly Situated

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17

18 DIAN C. LYMBURNER, individually,)
19 and on behalf of others similarly situated,)
20)
21 Plaintiff,)
22)
23 v.)
24 U.S. FINANCIAL FUNDING, INC.,)
a California corporation; INDYMAC)
BANCORP, INC., through 10, inclusive,)
25 Defendants.)

CASE NO. : CV 080325

**FIRST- AMENDED CLASS
ACTION COMPLAINT FOR:**

- (1) **Violations of the Truth in Lending Act, 15 U.S.C. §1601, et seq.;**
- (2) **Violation of Bus. & Prof. Code §17200, et seq. – “Unlawful” Business Practices (TILA);**
- (3) **Violation of Bus. & Prof. Code §17200, et seq. – “Unfair” and “Fraudulent” Business Practices;**

- 1 (4) **Fraudulent Omissions;**
2 (5) **Breach of Contract;**
3 (6) **Tortious Breach of**
4 **Covenant of Good Faith**
5 **Faith and Fair Dealing; and**
6 (7) **Omitted**

7 **JURY TRIAL DEMANDED**

8
9 Plaintiff, DIAN C. LYMBURNER, individually and on behalf of all others
10 similarly situated alleges as follows:

11 **I.**

12 **INTRODUCTION**

13 1. This is an action pursuant to the Truth in Lending Act (“TILA”), 15 U.S.C.
14 §1601, *et seq.*, California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §
15 17200, *et seq.*, and other statutory and common law in effect. Plaintiff, DIAN C.
16 LYMBURNER, individually, and on behalf of all others similarly situated, brings this
17 action against U.S. FINANCIAL FUNDING, INC. (“U.S. FINANCIAL”), INDYMAC
18 BANCORP, INC.(“INDYMAC”), and DOES 1-10 (hereinafter collectively referred to
19 as “Defendants”), based, in part, on Defendants failure to clearly and conspicuously
20 disclose to Plaintiff and the Class Members, in Defendants Option Adjustable Rate
21 Mortgage (“ARM”) loan documents, and in the required disclosure statements,
22 accompanying the loans, (i) the actual interest rate on the note(s) (12 C.F.R. § 226.17);
23 (ii) that payments on the notes at the teaser rate will result in negative amortization and
24 that the principle balance will increase (12 C.F.R. § 226.19); and (iii) that the initial
25 interest rate provided was discounted and does not reflect the actual interest that
26 Plaintiff and the Class members would be paying on the Note(s).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

THE PARTIES

2. Plaintiff, DIAN C. LYMBURNER (“Plaintiff”) is, and at all times relevant to this Complaint was an individual residing in Rohnert, California. On or about November 15, 2006, Plaintiff refinanced her existing home loan and entered into an Option ARM loan agreement with Defendant. The Option ARM loan was secured by Plaintiff’s primary residence. Attached hereto as Exhibit 1 is a true and correct copy of the Note and Truth and Lending Disclosure Form pertinent to this action.

3. Defendant, U.S. FINANCIAL is and/or was a California corporation licensed to do, and is and/or was doing business in California. At all relevant times hereto U.S. FINANCIAL is and/or was engaged in the business of promoting, marketing, distributing and selling the Option Arm loans that are the subject of this Complaint U.S. FINANCIAL transacts business in Sonoma County, California and at all relevant times promoted, marketed, distributed, and sold Option Arm loans throughout the United States, including Sonoma County, California. U.S. FINANCIAL has significant contacts with Sonoma County, California, and the activities complained of herein occurred, in whole or in part, in Sonoma County, California.

4. Defendant, INDYMAC is a California corporation licensed to do, and is doing business in California. Plaintiff is informed, believes and thereon alleges that on November 16, 2006, Defendant sold Plaintiff DYAN C. LYMBURNER’S ARM loan that is the subject of this action to Defendant INDYMAC. 15 U.S.C. §1641 states that “[a]ny person who purchases or is otherwise assigned a mortgage ... shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage.” Plaintiff is further informed, believes, and thereon alleges that Defendant INDYMAC was the subsequent purchaser who designed and approved the Option Arm loans referred to in this Complaint.

1 5. Defendant INDYMAC presently owns and or owned some or all of the
2 Option ARM loans that are the subject of this Complaint, including Option ARM
3 loans originated, recorded and held in Sonoma County, California.

4 6. Defendants, U.S. FINANCIAL, INDYMAC, and DOES 1 through 10,
5 shall hereinafter be referred to collectively as "Defendants."

6 7. At all times mentioned herein, Defendants, and each of them, were
7 engaged in the business of promoting, marketing, distributing, and selling the Option
8 ARM loans that are the subject of this Complaint, throughout the United States,
9 including Sonoma County, California.

10 8. Plaintiff is informed and believes, and thereon alleges that each and all of
11 the aforementioned Defendants are responsible in some manner, either by act or
12 omission, strict liability, fraud, deceit, fraudulent concealment, negligence, respondeat
13 superior, breach of contract or otherwise, for the occurrences herein alleged, and that
14 Plaintiff's injuries, as herein alleged, were proximately caused by the conduct of
15 Defendants.

16 9. Plaintiff is informed and believes, and thereon alleges, that at all times
17 material hereto and mentioned herein, each of the Defendants (both named and DOE
18 defendants) sued herein were the agent, servant, employer, joint venturer, partner,
19 division, owner, subsidiary, alias, assignee and/or alter-ego of each of the remaining
20 Defendants and were at all times acting within the purpose and scope of such agency,
21 servitude, joint venture, division, ownership, subsidiary, alias, assignment, alter-ego,
22 partnership or employment and with the authority, consent, approval and ratification
23 of each remaining Defendant.

24 10. At all times herein mentioned, each Defendant was the co-conspirator,
25 agent, servant, employee, assignee and/or joint venturer of each of the other
26 Defendants and was acting within the course and scope of said conspiracy, agency,
27
28

1 employment, assignment and/or joint venture and with the permission and consent of
2 each of the other Defendants.

3 11. Plaintiff is informed and believes, and thereon alleges, that Defendants,
4 and each of them, are, and at all material times relevant to this Complaint, performed
5 the acts alleged herein and/or otherwise conducted business in California. Defendants,
6 and each of them, are corporations or other business entities, form unknown, have, and
7 are doing business in this judicial district.

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

15 13. The true names and capacities, whether individual, corporate, associate or
16 otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are
17 unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by such
18 fictitious names. Plaintiff alleges, on information and belief, that each Doe defendant
19 is responsible for the actions herein alleged. Plaintiff will seek leave of Court to
20 amend this Complaint when the names of said Doe defendants have been ascertained.

21 14. Plaintiff is informed and believes, and thereon alleges, that at all times
22 mentioned herein, Defendants, and each of them, including without limitation those
23 Defendants herein sued as DOES, were acting in concert or participation with each
24 other, or were joint participants and collaborators in the acts complained of, and were
25 the agents or employees of the others in doing the acts complained of herein, each and
26 all of them acting within the course and scope of said agency and/or employment by
27 the others, each and all of them acting in concert one with the other and all together.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

JURISDICTION AND VENUE

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

16. This Court has personal jurisdiction over the parties in this action by the fact that Defendants are either individuals who reside in this District within California or are corporations duly licensed to do business in California.

17. Venue is proper within this District and Division pursuant to 28 U.S.C. §1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this district, and because there is personal jurisdiction in this district over the named Defendant because it regularly conducts business in this judicial district.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

18. U.S. FINANCIAL sold a variety of home loans. The Option ARM or adjustable rate mortgages are the loans that are the subject of this Complaint. Based upon information obtained by U.S. Financial, Plaintiff's loan note was sold to Defendant INDYMAC on November 16, 2006. Defendant INDYMAC designed and approved the loan note in issue.

19. The instant action arises out of residential mortgage loan transactions in which Defendants failed to disclose pertinent information in a clear and conspicuous manner to Plaintiff and the Class members, in writing, as required by law.

20. This action also concerns Defendants' unlawful, fraudulent and unfair business acts or practices. Defendants engaged in a campaign of deceptive conduct and concealment aimed at maximizing the number of consumers who would accept

1 this type of loan in order to maximize Defendants' profits, even as Defendants knew
2 their conduct would cause many of these consumers to lose their homes through
3 foreclosure.

4 21. Plaintiff, along with thousands of other similarly situated consumers, were
5 sold an Option ARM home loan by Defendants. The Option ARM loan sold to
6 Plaintiff and the Class is a deceptively devised financial product. The loan has a
7 variable rate feature with payment caps. The product was sold based on the promise
8 of a low fixed payment based on a low listed interest rate, when in fact Plaintiff and
9 the Class were charged a different, much greater interest rate than promised. Further,
10 Defendants failed to disclose, and by omission, failed to inform Plaintiff the fact that
11 Defendants' Option ARM loan was designed to, and did, cause negative amortization
12 to occur. Further still, once lured into these loans, consumers cannot easily extricate
13 themselves from these loans because Defendants included in these loans a stiff and
14 onerous prepayment penalty making it extremely difficult, if not impossible, for
15 borrowers to extricate themselves from these loans.

16 22. The Option ARM loan Defendants sold to Plaintiff and the Class violate
17 the Truth In Lending Act (TILA). TILA is supposed to protect consumers; it
18 mandates certain disclosures be made by lenders to borrowers concerning the terms
19 and conditions of their home loans. Defendants failed to make these disclosures in
20 connection with the Option ARM loan sold to Plaintiff and the Class.

21 23. At all times relevant, Defendants sold their Option ARM loan product to
22 consumers, including Plaintiff, in a false or deceptive manner. Defendants' loan
23 documents indicated that the loan would have a very low fixed interest rate for the first
24 three (3) to five (5) years and no negative amortization. In furtherance of their
25 scheme, Defendants listed a low "teaser" rate in the Note(s) and a low corresponding
26 payment schedule in the TILA Disclosure Statement (hereafter "TILDS") to lure
27 Plaintiff and the Class members into purchasing Defendants' Option ARM loan
28

1 product. However, the low “teaser” rate was illusory, a false promise. Plaintiff and
2 others similarly situated did not receive the benefit of the low rate promised to them.
3 Once signed on to Defendants’ loan, the interest rate applied to Plaintiff’s and Class
4 members’ loans was immediately and significantly increased.

5 24. Plaintiff and others similarly situated were consumers who applied for a
6 mortgage loan through Defendants. During the loan application process, in each case,
7 Defendants intended Plaintiff and the Class members to believe that in entering these
8 loan contracts that they would be able to have low mortgage payments. Defendants
9 initiated this scheme in order to maximize the amount of the loans it sold to consumers
10 and to maximize its profits.

11 25. Based on the Defendants’ representations, and the misconduct alleged
12 herein, Plaintiff and the Class members agreed to finance their primary residence
13 through Defendants’ Option ARM loan. Plaintiff and Class members were sold a
14 home loan with a low interest rate of between 1% and 3% interest rate (the “teaser”
15 rate), and a corresponding payment schedule based on that the interest rate for the first
16 three (3) to five (5) years of the loan. Defendants also represented to Plaintiff, and
17 Plaintiff reasonably believed, that if she made payments based on the promised low
18 interest rate, which were the payments reflected in the written payment schedule
19 provided to them by Defendant, that the loan would be a no negative amortization
20 home loan and that Plaintiff’s payments would be applied to both their principal loan
21 balances as well as their interest.

22 26. After, the purported three (3) to five (5) year fixed interest period, Plaintiff
23 and the Class members reasonably believed, based on the representations contained in
24 the documents Defendant provided to Plaintiff and the Class members, that they would
25 be able to refinance their loan and get a new loan before their scheduled payments
26 increased. However, the payment schedule provided by Defendants failed to disclose,
27 and by omission, failed to inform these consumers that due to the negative
28

1 amortization that was purposefully built into these loans, Plaintiff and the Class
2 members would be unable to refinance their homes as there would be little or no
3 equity left to refinance.

4 27. Plaintiff believed these facts to be true because that is what the Defendants
5 intended consumers to believe. Defendants aggressively marketed their product as a
6 fixed, low interest home loan. Defendants knew that if marketed and sold in such a
7 manner, their Option ARM loan product would be a hugely popular and profitable
8 product for them. Defendants also knew, however, that they were selling their product
9 in a false and deceptive manner. While Defendants trumpeted their low rate loans to
10 the public, Defendants knew their promise of a low interest was a mirage.

11 28. In fact, Defendants' Option ARM loan possessed a low, fixed *payment* but
12 not a low, fixed interest rate. Unbeknownst to Plaintiff and the Class members, the
13 actual interest rate they were charged on their loans was not fixed, was not the low
14 teaser interest rate stated in the loan documentation and was in fact considerably
15 higher than going market rates. And, after purchasing Defendants' Option ARM loan
16 product, Plaintiff and Class members did not actually receive the benefit of the low
17 teaser rate at all, or in some cases, at best, received that teaser rate for only a single
18 month. Immediately, thereafter, Defendants in every instance and for every loan,
19 secretly increased the interest rate they charged consumers. The now-increased
20 interest charges incurred by Plaintiff and the Class members, over and above the fixed
21 interest payment rate, were added to the principal balance on their home loans in ever
22 increasing increments, substantially reducing the equity in these borrowers' homes.

23 29. In stark contrast to this reality, Defendant, through the standardized loan
24 documents they created and supplied to Plaintiff, stated that negative amortization was
25 only a mere possibility. Defendants concealed and failed to disclose the fact that the
26 loan, as presented and designed, in fact, guaranteed negative amortization. Defendants
27 failed to disclose and omitted the objectively material fact that negative amortization
28

1 was absolutely certain to occur if consumers followed the payment schedule listed by
2 Defendants in the TILDS. This information was objectively material and necessary
3 for consumers to make an informed decision because this would have revealed that the
4 loan's principal balance would increase if the payment schedule was followed, thereby
5 rendering it impossible to refinance the loan at or around the time the prepayment
6 penalty expired and/or by the time the interest and payment rates re-set. In this
7 respect, Defendants utterly failed to place any warning on the Truth and Lending
8 Disclosure Form about negative amortization.

9 30. At all times relevant, once Plaintiff and the Class members accepted
10 Defendants' Option ARM loan contract, they had no viable option by which to
11 extricate themselves because these Option ARM loan agreements included a draconian
12 pre-payment penalty for a period of up to three years.

13 31. The Option ARM loans sold by Defendants all have the following uniform
14 characteristics:

- 15 (a) There is an initial low interest rate or "teaser" rate that was used to
16 entice the Plaintiff into entering into the loan. The rate offered was
17 typically 1%-3%;
- 18 (b) The loan has with it a corresponding low payment schedule. The
19 documentation provided intended to misleadingly portray to
20 consumers that the low payments for the first three (3) to five (5)
21 years were a direct result of the low interest rate being offered;
- 22 (c) The initial payments in the required disclosures were equal to the low
23 interest rate being offered. The purpose was to assure that if someone
24 were to calculate what the payment would be at the low offered
25 interest rate, it corresponded to the payment schedule. This portrayal
26 was intended to further mislead consumers into believing that the
27 payments were enough to cover all principal and interest;
- 28

1 (d) The payment has a capped annual increase on the payment amount;
2 and

3 (e) The loan includes a prepayment penalty preventing consumers from
4 securing a new loan for a period of up to three (3) years.

5 32. Defendants uniformly failed to disclose, and by omission, failed to inform
6 consumers, including Plaintiff and the Class members, in a clear and conspicuous
7 manner that the fixed "teaser" rate offered by Defendants was actually never applied
8 to their loans, or, at best, was only applied for thirty (30) days. Thereafter, the true
9 interest charged on the loans was significantly higher than the promised, advertised
10 rate.

11 33. Defendants uniformly failed to disclose and by omission failed to inform
12 consumers, including Plaintiff and the Class members, that the payments set forth in
13 Defendants' schedule of payments were insufficient to cover the actual amount they
14 were being charged for the loan, and that this was, in fact, a loan that would cause the
15 Plaintiff and the Class members to lose the equity they have in their home.

16 34. Defendants uniformly failed to disclose and by omission failed to inform
17 consumers, including Plaintiff and the Class members, that when the principal balance
18 increased to a certain level, they would no longer have the option of making the fixed
19 interest payment amount.

20 35. Disclosing whether a payment will result in negative amortization is of
21 critical importance to consumers. If the disclosed payment rate is insufficient to pay
22 both principal and interest, one of the consequences of negative amortization is a loss
23 of equity. Defendants are and at all times relevant hereto have been aware that clear
24 and conspicuous disclosure of the actual interest rate and a payment rate sufficient to
25 avoid negative amortization and the concomitant loss of equity is extremely important
26 material information.

1 36. At all times relevant, Defendants, and each of them, knew or should have
2 known, or were reckless in not knowing, that: (i) the payment rate provided to Plaintiff
3 and the Class members were insufficient to pay both interest and principal; (ii) that
4 negative amortization was certain to occur if Plaintiff and the Class members made
5 payments according to the payment schedule provided by Defendants; and (iii) that
6 loss of equity and/or loss of Plaintiff's and the Class members' residence was
7 substantially certain to occur if Plaintiff and the Class members made payments
8 according to the payment schedule provided by Defendants.

9 37. In spite of its knowledge, Defendant sold its Option ARM loans as a
10 product that would provide Plaintiff and the Class members with a low payment and
11 interest rate for the first three (3) to five (5) years of the loan, and at all times relevant,
12 failed to disclose and/or concealed by making partial representations of material facts
13 when Defendants had exclusive knowledge of material facts that negative amortization
14 was certain to occur. This concealed and omitted information was not known to
15 Plaintiff and the Class members and which, at all times relevant, Defendants failed to
16 disclose and/or actively concealed by making such statements and partial, misleading
17 representations to Plaintiff and all others similarly situated. Because the ARM loans
18 did not provide a low interest rate for the first three (3) to five (5) years of the Note
19 and the payment disclosed by Defendants was insufficient to pay both principal and
20 interest, negative amortization occurred.

21 38. The true facts about Defendants' ARM loans is that they do not provide the
22 low interest rate promised, and are certain to result in negative amortization.

23 39. Disclosure of a payment rate that is sufficient to pay both principal and
24 interest on the loans is of critical importance to consumers. If the disclosed payment
25 rate is insufficient to pay both principal and interest, one of the consequences is that
26 negative amortization or loss of equity will occur. Defendants are and at all times
27 relevant hereto have been aware that the ability of the disclosed payment rate to pay
28

1 both principal and interest so as to avoid negative amortization is one of the most
2 important terms of a loan.

3 40. To this day, Defendants continue to conceal material information from
4 consumers, and the public, that: (i) the payment provided to Plaintiff and the Class
5 members is and was insufficient to pay both principal and interest; (ii) if the disclosed
6 payment schedule is followed, Plaintiff and the Class members will suffer negative
7 amortization; and (ii) loss of equity and/or possession of the property is substantially
8 certain to occur if the disclosed payment schedule is followed. Nevertheless,
9 Defendants have refused to clearly and conspicuously disclose to Plaintiff and the
10 Class members the existence of this important material information and the injury
11 caused thereby, including but not limited to the loss of equity.

12 41. In the end, the harm caused by Defendants' failures to disclose and
13 omissions, as alleged herein, grossly outweighs any benefit that could be attributed to
14 them.

15 42. Knowing the truth and motivated by profit and market share, Defendants
16 has knowingly and willfully engaged in the acts and/or omissions to mislead and/or
17 deceive Plaintiff and others similarly situated.

18 43. The Option ARM loans have resulted and will continue to result in
19 significant loss and damage to the Class Members, including but not limited to the loss
20 of equity these consumers have or had in their homes.

21 44. The facts which Defendants misrepresented and concealed, as alleged in
22 the preceding paragraphs, were material to the decisions about whether to purchase the
23 Option ARM loans in that Plaintiff and others similarly situated would not have
24 purchased these loans but for Defendants' unlawful, unfair, fraudulent and/or
25 deceptive acts and/or practices as alleged herein.

26 45. Defendants engaged in the unlawful, unfair, fraudulent, untrue and/or
27 deceptive marketing scheme to induce consumers to purchase their ARM loans.

1 46. Defendants' unlawful, unfair, fraudulent, untrue and/or deceptive acts
2 and/or practices were committed with willful and wanton disregard for whether or not
3 Plaintiff or others similarly situated would receive a home loan that would actually
4 provide the low interest and payment rate for the first three (3) to five (5) years of the
5 loan sufficient to pay both principal and interest.

6 47. Upon information and belief, and at all times relevant during the liability
7 period, Defendants possessed full knowledge and information concerning the above
8 facts about the ARM loans, and otherwise marketed and sold these ARM loans
9 throughout the United States, including the State of California.

10
11 V.

12 **CLASS ACTION ALLEGATIONS**

13 48. Plaintiff brings this action on behalf of herself, and on behalf of all others
14 similarly situated (the "Class") pursuant to Federal Rule of Civil Procedure, Rules
15 23(a), and 23(b), and the case law thereunder. The classes Plaintiff seeks to represent
16 are defined as follows:

17 **The California Class:** All individuals who, within the four year period
18 preceding the filing of Plaintiff's Complaint through the date notice is
19 mailed to the Class, received an Option ARM loan through Defendant on
20 their primary residence located in the State of California. Excluded from
21 the California Class are Defendant's employees, officers, directors, agents,
22 representatives, and their family members; and

23 **The National Class:** All individuals in the United States of America who,
24 within the four year period preceding the filing of Plaintiff's complaint
25 through the date notice is mailed to the Class, received an Option ARM
26 loan through Defendant on their primary residence located in the United
27 States of America. Excluded from the National Class are Defendant's
28 employees, officers, directors, agents, representatives, and their family
members.

An appropriate sub-Class exists for the following Class Members:

All individuals in the United States of America who, within the three year
period preceding the filing of Plaintiff's complaint through the date notice
is mailed to the Class, received an Option ARM loan through Defendant on
their primary residence located in the United States of America. Excluded

1 from the National sub-Class are Defendant's employees, officers, directors,
2 agents, representatives, and their family members.

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

7 49. Numerosity: The Class is so numerous that the individual joinder of all
8 members is impracticable under the circumstances of this case. While the exact
9 number of Class members is unknown at this time, Plaintiff is informed and believes
10 that the entire Class or Classes consist of approximately tens of thousands of members.

11 50. Commonality: Common questions of law or fact are shared by the Class
12 members. This action is suitable for class treatment because these common questions
13 of fact and law predominate over any individual issues. Such common questions
14 include, but are not limited to, the following:

- 15 (1) Whether Defendants' acts and practices violate the Truth in Lending
16 Act, 15 U.S.C. §1601, et seq;
- 17 (2) Whether Defendants' conduct violated 12 C.F.R. § 226.17;
- 18 (3) Whether Defendants' conduct violated 12 C.F.R. § 226.19;
- 19 (4) Whether Defendants engaged in unfair business practices aimed at
20 deceiving Plaintiff and the Class members before and during the
21 loan application process;
- 22 (5) Whether Defendants, by and through their officers, employees, and
23 agents failed to disclose that the interest rate actually charged on
24 these loans was higher than the rate represented and promised to
25 Plaintiff and the Class members;
- 26
- 27
- 28

- 1 (6) Whether Defendants, by and through their officers, employees and
2 agents concealed, omitted and/or otherwise failed to disclose
3 information they were mandated to disclose under TILA;
- 4 (7) Whether Defendants failed to disclose the true variable nature of
5 interest rates on adjustable rate mortgage loans and adjustable rate
6 home equity loans;
- 7 (8) Whether Defendants failed to properly disclose the process by which
8 negative amortization occurs, ultimately resulting in the recasting of
9 the payment structure over the remaining lifetime of the loans;
- 10 (9) Whether Defendants' failure to apply Plaintiff and the Class
11 members' payments to principal as promised in the form Notes
12 constitutes a breach of contract, including a breach of the covenant
13 of good faith and fair dealing;
- 14 (10) Whether Defendants' conduct in immediately raising the interest
15 rate on consumers' loans so that no payments were applied to the
16 principal balance constitutes breach of the covenant of good faith
17 and fair dealing;
- 18 (11) Whether Defendants' marketing plan and scheme misleadingly
19 portrayed or implied that these loans were fixed rate loans, when
20 Defendants knew that only the periodic payments were fixed (for a
21 time) but that interest rates were not, in fact, "fixed;"
- 22 (12) Whether the terms and conditions of Defendants' Option ARM
23 home loan are unconscionable;
- 24 (13) Whether Plaintiff and the Class are entitled to damages;
- 25 (14) Whether Plaintiff and the Class members are entitled to punitive
26 damages; and
- 27 (15) Whether Plaintiff and the Class members are entitled to rescission.
28

1 51. Typicality: Plaintiff's claims are typical of the claims of the Class
2 members. Plaintiff and the other Class members were subjected to the same kind of
3 unlawful conduct and the claims of Plaintiff and the other Class members are based on
4 the same legal theories.

5 52. Adequacy: Plaintiff is an adequate representative of the Class because her
6 interests do not conflict with the interests of the other members of the Class Plaintiff
7 seeks to represent. Plaintiff has retained counsel competent and experienced in
8 complex class action litigation and Plaintiff intends on prosecuting this action
9 vigorously. The interests of members of the Class will be fairly and adequately
10 protected by Plaintiff and her counsel.

11 53. Ascertainable Class: The proposed Classes are ascertainable in that the
12 members can be identified and located using information contained in Defendants'
13 mortgage lending records.

14 54. This case is brought and can be maintained as a class action under Rule
15 23(b)(1), 23(b)(2), and 23(b)(3):

16 (a) Risk of Inconsistent Judgments: The unlawful acts and practices of
17 Defendants, as alleged herein, constitute a course of conduct common
18 to Plaintiff and each Class member. Prosecution of separate actions
19 by individual Class members would create a risk of inconsistent or
20 varying adjudications which would establish incompatible standards
21 of conduct for Defendants and/or substantially impair or impede the
22 ability of individual Class members to protect their interests;

23 (b) Injunctive and/or Declaratory Relief to the Class is Appropriate:
24 Defendants, and each of them, have acted or refused to act on grounds
25 generally applicable to the Class, thereby making final injunctive
26 relief or corresponding declaratory relief with respect to the Class as a
27 whole appropriate; and
28

1 (c) Predominant Questions of Law or Fact: Questions of law or fact
2 common to the Class members, including those identified above,
3 predominate over questions affecting only individual Class members
4 (if any), and a class action is superior to other available methods for
5 the fair and efficient adjudication of the controversy. Class action
6 treatment will allow a large number of similarly situated consumers to
7 prosecute their common claims in a single forum, simultaneously,
8 efficiently, and without the unnecessary duplication of effort and
9 expense that numerous individual actions would require. Further, an
10 important public interest will be served by addressing the matter as a
11 class action. The cost to the court system of adjudicating each such
12 individual lawsuit would be substantial.

13
14 **VI.**

15 **FIRST CAUSE OF ACTION**

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

17 **(Against All Defendants)**

18 A. Defendants' Failure to Clearly and Conspicuously Disclose a Single APR
19 Violates the Truth in Lending Laws

20 55. Plaintiff incorporates all preceding paragraphs as though fully set forth
21 herein.

22 56. 15 U.S.C. §1638(a)(4) requires lenders to disclose only one annual
23 percentage rate ("APR") and not an additional APR that is only applicable for the first
24 30 days of a loan.

25 57. The Federal Reserve Board's ("FRB") Commentary to 12 C.F.R. §
26 226.(17)(C)-6 requires that the APR must "reflect a composite annual percentage rate
27 based on the initial rate for as long as it is charged and, for the remainder of the term,
28

1 the rate that would have been applied using the index or formula at the time of
2 consummation.”

3 58. 15 U.S.C. § 1638(a)(8) and 12 C.F.R § 226.18(e) also requires lenders to
4 provide a descriptive explanation of the APR.

5 59. 12 C.F.R .§ 226.18 (e) defines “ APR” as the cost of credit
6 expressed as a yearly rate.

7 60. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 requires lenders to make
8 disclosures concerning the APR in a clear and conspicuous manner and a misleading
9 disclosure is as much a violation of TILA as a failure to disclose at all.

10 61. In addition, the FRB’s Commentary § 226.17(a)(1)-1 provides that TILA’s
11 clear and conspicuous requirement applies to the disclosure and explanation of the cost
12 of the loan as an APR, and where there is a contradiction between the TILDS and other
13 information provided to the borrower, the disclosure is unclear.

14 62. At all times relevant during the liability period, Defendants provided
15 Plaintiff and the Class members with Notes that state, at ¶ 2 (A), “I will pay interest at
16 a *yearly rate* of 2.400%.” However, in the TILDS, in the box entitled “ANNUAL
17 PERCENTAGE RATE” it describes the APR as “[t]he cost of your credit as a *yearly*
18 *rate*” and then lists an APR of “8.578%.”

19 63. At all times relevant during the liability period, Defendants violated §
20 226.17(a)(1)-1 by listing two completely different APRs in the loan documents. In
21 particular, for Ms. Lymburner, the TILDS lists an APR of 8.578%. However, the Note
22 lists an APR of “2.400%.” Thus, the “2.400%” APR stated in the Note contradicts
23 the “8.578%” APR Defendants stated in the TILDS.

24 64. At all times relevant during the liability period, Defendants failed to clearly
25 and conspicuously explain in the Note or TILDS that the low APR (the same APR
26
27
28

1 upon which Defendants base the written payment schedule provided to Plaintiff) was
2 only offered for the first thirty (30) days of the loan.

3 65. At all times relevant during the liability period, Defendants also failed to
4 clearly, conspicuously and accurately disclose the APR that it charged Plaintiff and the
5 Class members' on their loans. Defendants also failed to disclose, and by omission,
6 failed to inform Plaintiff and the Class members that the APR listed in the TILDS was
7 not the APR used to determine the first five years of payments listed in the very same
8 TILDS; rather, Defendants listed payment amounts for the first five years of the loan
9 based on the APR listed in the Note which was correct for *only* thirty days.

10 66. At all times relevant during the liability period, Defendants created and
11 caused the contradiction in the loan documents by purposefully disclosing two
12 different APR's in the loan documents it provided to Plaintiff and the Class members.
13

14 **B. Defendants' Failure to Clearly and Conspicuously Disclose That the**
15 **Payment Schedules Are Not Bases on the APR Stated in the TILDS Violates TILA**

16 67. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 require the lender to make
17 disclosures concerning the interest rate in a clear and conspicuous manner. Further, a
18 misleading disclosure is as much a violation of TILA as a failure to disclose at all.

19 68. As for Plaintiff and the Class members Option ARM loans, Defendants
20 violated 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 in that they failed to clearly and
21 conspicuously disclose the annual interest rate upon which the payments listed in the
22 TILDS are based.

23 69. The scheduled payment amounts and APR listed in the Note and TILDS
24 for each of the subject loans are unclear and inconspicuous. In fact, the payment
25 amounts for the first three to five years are not based on the APR listed in the TILDS
26
27
28

1 but instead, were based upon an APR listed in the Note that existed for only thirty (30)
2 days.

3 70. At all times relevant, Defendants knowingly and intentionally included in
4 each of the TILDS a schedule of payments which was not based upon the interest rate
5 listed in these same documents. Defendants' failure to clearly and conspicuously
6 disclose the payment amounts due based on the listed APR was, and is, deceptive.

7 71. Further, in addition to Defendants' failure to disclose in the Note and the
8 TILDS that the payments listed were not based upon the APR listed, Defendants
9 knowingly and intentionally expressly and/or impliedly represented in the loan
10 documents that the payments would be applied to both principal and interest.
11 However, in truth, if Plaintiff followed the payment schedule provided by Defendants,
12 the payments were guaranteed to be insufficient to pay the principal and interest on the
13 loan.

14 72. At all times relevant, Defendants failed to clearly and conspicuously
15 disclose to Plaintiff and the Class members that if they made payments according to
16 the payment schedule set forth in the TILDS, that negative amortization was not just a
17 mere possibility, it was an absolute certainty.

18 73. At all times relevant, Defendants purposefully and intentionally failed to
19 disclose to Plaintiff, and all others similarly situated, the annual interest rate upon
20 which the payment schedule was based in order to mislead and deceive Plaintiff and
21 Class members into believing that they would be getting a loan with a low fixed
22 payment rate that would be sufficient to pay both interest and principal.

23 74. At all times relevant, the payment amount provided by Defendants was
24 intended to and did deceive consumers into falsely believing they would, in fact,
25 receive the low interest rate upon which the payment schedule is based. While the
26 Note states the amount of Plaintiff's initial monthly payment, however, the initial
27

28

1 monthly payment amounts stated in the Note and TILDS are not, in anyway related to
2 the interest rate listed in the Note(s) and TILDS.

3 75. Defendants employed the aforementioned bait-and-switch tactics in a
4 common and uniform class-wide basis. In particular, had Defendants clearly and
5 conspicuously disclosed a payment amount sufficient to cover both principle and
6 interest, the payment amounts would have to have been almost double the payment
7 amounts listed.

8 76. The TILDS are also deceptive for much the same reason. The TILDS list
9 a schedule of payments, yet for up to the five years the listed payment amounts have no
10 relation to, and are also not based on the annual interest rate listed in the TILDS.

11 77. At all times relevant, Defendants failed to clearly, conspicuously, and
12 accurately disclose a payment amount that corresponds to the APR being charged on
13 the loan and that was sufficient to pay the true costs of the loan. Plaintiff and the Class
14 members reasonably believed that if they made the payments according to Defendants'
15 payment schedule, the payments would, in fact, be paying off the loan. However, the
16 true fact is that the payment amounts stated in Defendants' payment schedule did not
17 include any principal on the loans at all and only covered a portion of the interest
18 Defendants were charging on these loans.

19 78. Official Staff Commentary to 12 C.F.R. § 226.17(a)(1) states that "this
20 standard requires that disclosures be in a reasonably understandable form. For
21 example, while the regulation requires no mathematical progression or format, *the*
22 *disclosures must be presented in a way that does not obscure the relationship of the*
23 *terms to each other...*"

24 79. At all times relevant, Defendants' Option ARM loans violated 12 C.F.R. §
25 226.17(a)(1) in that the relationship between the payments, for up to the first five years
26 of the loans, bear no relationship to the APR listed in the TILDS. Therefore, as a
27
28

1 direct and proximate result, the form of disclosure used by Defendants obscured the
2 relationship between the APR listed in the Note(s) and the APR listed in the TILDS
3 and the payment schedule.
4

5 **C. Defendants' Failure to Clearly and Conspicuously Disclose Negative**
6 **Amortization Violates the Truth in Lending Laws**

7 80. 12 C.F.R. § 226.19 set forth additional specific disclosure requirements for
8 residential home loans:

9 **§ 226.19. Certain residential mortgage and variable-rate transactions. . . .**

10 (b) Certain variable-rate transactions. If the annual percentage rate may increase
11 after consummation in a transaction secured by the consumer's principal dwelling with
12 a term greater than one year, the following disclosures must be provided at the time an
13 application form is provided or before the consumer pays a non-refundable fee,
14 whichever is earlier. . . (vii) *Any rules relating to changes in the index, interest rate,*
15 *payment amount, and outstanding loan balance including, for example, an explanation*
16 *of interest rate or payment limitations, negative amortization, and interest rate*
17 *carryover.* (Emphasis added.)

18 81. The negative amortization disclosure is required and must be made clearly
19 and conspicuously, and done in a manner that does not obscure its significance. The
20 disclosure must state whether the loan and payments established under the terms
21 dictated by the Defendants is a negative amortizing loan.

22 82. In 1995, and continuing each time new Official Staff Commentary was
23 issued, the Federal Reserve Board made clear that when the loan was a variable rate
24 loan with payment caps, such as those that are the subject of this lawsuit, that the
25 disclosure requires a definitive statement about negative amortization:

26 12 CFR Part 226

27 [Regulation Z; Docket No. R-0863]
28

Monday, April 3, 1995

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

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

(Found at

C.F.R. § 226.19)

83. At all times relevant, statutory and common law in effect make it unlawful for a lender, such as Defendants, to fail to comply with the Federal Reserve Board’s Official Staff Commentary as well as Regulation Z and TILA.

84. Defendants sold Plaintiff and the Class members Option ARM loans which have a variable rate feature with payment caps. Defendants failed to include any reference in the TILDS or in the Note(s) that negative amortization would occur if Plaintiff and the Class members followed the payment schedule provided by Defendant.

85. In fact, the only place where Defendants even inferentially reference negative amortization is in the Note. However, they mention it in such a way as to make a reasonable person believe that negative amortization is only a possibility, rather than a certainty. And, these loans are, in fact, designed in such a manner so as to make negative amortization an absolute certainty. And, even when a separate explanation was provided, Defendants omitted the important material fact that these loans and payment schedules would, in fact, guarantee negative amortization.

86. Defendants’ statement in the Note(s): “[i]f the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur” was a half-truth and did not alert or inform Plaintiff that the payment schedule

1 provided by Defendant would absolutely guarantee that negative amortization was
2 going to occur on these loans. Rather, Defendants made it appear that as long as the
3 payments were made according to the schedule listed in the TILDS, that there would
4 be no negative amortization.

5 87. At all times relevant, Defendants' statement in the Note, TILDS, and any
6 other disclosures they provided, described negative amortization as only a mere
7 possibility, and therefore was misleading and deceptive. In fact, Defendants' Option
8 ARM loan was designed in such a way as to guarantee negative amortization. TILA
9 demands more than a statement that the payment could be less, or "may" be less,
10 when Defendants knew that the payments were less, and would always be less, than
11 the full amount required to pay both principle and interest.

12
13 **D. Defendants' Failure to Clearly and Conspicuously Disclose the Legal**
14 **Obligation Violates Truth in Lending Laws**

15 88. As previously stated, the informed use of credit means being able to make
16 decisions, as well as being able to plan an individual's finances. Every month
17 consumers look at their income and budget where their funds must be paid. The
18 biggest investment in one's life is generally that person's home. In fact, it is often
19 referred to as "the American Dream" to own a home.

20 89. Variable rate loans are based on a "margin" and an "index." The index is
21 often the Prime Rate or the LIBOR exchange rate. The margin is the amount the
22 lender charges over that rate or, basically, the lender's profit on the loan.

23 90. TILA and Regulation Z require disclosures to be clear and conspicuous so
24 people understand what their obligations are. In particular, when the payment is not
25 based on that index and margin a separate disclosure is required. The disclosure must
26 also inform that interest rate and payment may go up and clearly and conspicuously
27

1 provide the circumstances under which the rate and payment will increase. Further,
2 the disclosure must inform the borrower what the true cost of the loan is.

3 91. The Federal Reserve Board established disclosure requirements for
4 variable rate loans. 26 C.F.R. § 226.19 requires a lender to disclose the frequency of
5 interest rate and payment adjustments to borrowers. If interest rate changes will be
6 imposed more frequently or at different intervals than payment changes, a creditor
7 must disclose the frequency and timing of both types of changes.

8 92. The disclosures required pursuant to 12 C.F.R. § 226.19 are extremely
9 important because Plaintiff and other consumers similarly situated need this
10 information in order to budget their money. They need to know if their house
11 payments are going to go up so that they can plan for it. If the change comes as a
12 surprise, they face a much greater possibility of defaulting on their loans and losing
13 their homes.

14 93. Here, Defendants state only that the interest rate *may* increase in the future.
15 However, an interest rate increase was in fact far more certain than this disclosure led
16 Plaintiff and the Class members to believe. If Defendants had given the Plaintiff and
17 the Class members the promised low interest rate for any initial period of time, the
18 interest rate was guaranteed to go up even without any change in the index. Thus, the
19 increase in the interest rate on these loans was not just a possibility; it was an absolute
20 certainty and Defendants failed and omitted this material information in their
21 disclosures to Plaintiff and the Class members.

22 94. Defendants' loan documents state that the interest rate may increase during
23 the term of this transaction if the index increases. This, however, was not the only
24 circumstance that could cause an increase in the interest rate because the disclosed
25 interest rate was discounted.

26 95. At all times relevant during the liability period, Defendants failed to
27 disclose, and by omission, failed to inform Plaintiff and the Class members that the
28

1 initial interest rate was discounted, creating the possibility of an increase even when
2 the index did not rise. Due to the initial discounted interest rate being listed at 1% to
3 3%, the interest rate would increase because the index and margin were between 5%
4 and 8% higher. Even when Defendants did provide a disclosure that stated the initial
5 payment was not based on the index, it did so in a manner that was not clear and
6 conspicuous. Because the loan documents failed to provide this extremely important
7 material information in a clear and conspicuous manner that did not obscure its
8 importance, Defendants' disclosure failed to meet the standards mandated under
9 TILA.

10 96. Defendants failed to disclose to Plaintiff and the Class members that their
11 interest rate was, with 100% certainty, going to increase, regardless of whether or not
12 the index upon which their loans are based changed. As such, Defendants violated
13 TILA and Regulation Z by providing Plaintiff and the Class members with unclear,
14 deceptive and poorly drafted or intentionally misleading disclosures.

15
16 **E. Defendants' Failure to Disclose the Composite Interest Rate Violates**
17 **Truth in Lending Laws**

18 97. Defendants provided Plaintiff and the Class members with multiple,
19 conflicting annual interest rates when describing the costs of this loan. On the TILDS,
20 Defendants set forth one annual interest rate, while on the Note, Defendants set forth a
21 different annual interest rate.

22 98. The FRB's Commentary to 12 C.F.R § 226.(17)(C)-6 requires that the
23 APR must "reflect a composite annual percentage rate based on the initial rate for as
24 long as it is charged and, for the remainder of the term, the rate that would have been
25 applied using the index or formula at the time of consummation."

26 //

27 //

28

1 “in a variable-rate transaction with a...discounted or premium
2 rate, *disclosures should not be based solely on the initial*
3 *terms. In those transactions, the disclosed annual percentage*
4 *rate should be a composite rate* based on the rate in effect
5 during the initial period and the rate that is the basis of the
6 variable-rate feature for the remainder of the term.”

7 99. The reason for this requirement is clear. Consumers cannot make an
8 informed decision when they cannot compare the cost of credit to other proposals. It is
9 therefore incumbent upon Defendant to show the composite interest rate in effect so
10 that the borrowers can understand exactly what they will be paying for the loan.

11 100. A lender violates TILA, and Reg. Z, by failing to list the composite annual
12 interest rate in variable rate loans that have a discounted initial rate. The loan sold to
13 Plaintiff and Class members by Defendant is a variable-rate loan. At all times relevant
14 during the liability period, Defendant listed an annual interest rate in the Note(s) that,
15 in truth, would only be provided for the first thirty (30) to forty-five (45) days of a
16 thirty year loan, and would, with one hundred percent certainty, be increased after that
17 first month. Because Defendant failed to clearly and conspicuously disclose the
18 composite annual percentage rate on these loans, and instead listed a different interest
19 rate in the documents provided to consumers, Defendant violated TILA and Regulation
20 Z, and failed to provide disclosures that did not obscure relevant information.

21 **F. Defendants’ Failure to Clearly and Conspicuously Disclose That the**
22 **Initial Interest Rate is Discounted Violates TILA**

23 101. Variable rate loans are based on a “margin” and an “index.” The index is
24 often the Prime Rate or the LIBOR exchange rate. The margin is the amount the
25 lender charges over and above that indexed rate.

26 102. TILA and Regulation Z require that when the interest rate on a loan is a
27 “discounted rate” (*i.e.*, not based on the index and margin) a separate disclosure is
28 required. The disclosure must also inform borrowers that, after the discounted rate

1 falls away, the interest rate will increase and it must conspicuously describe all of the
2 circumstances under which the interest rate will increase. Further, the disclosure must
3 inform the borrower what the true cost of the loan is.

4 103. The Federal Reserve Board established disclosure requirements for
5 variable rate loans. 26 C.F.R. § 226.19 requires lenders to disclose the frequency of
6 interest rate and payment adjustments to borrowers. If interest rate changes will be
7 imposed more frequently or at different intervals than payment changes, a creditor
8 must disclose the frequency and timing of both types of changes.

9 104. The Notes at issue only stated that the interest rate “may” increase in the
10 future. However, it was absolutely certain, and not merely possible, that the interest
11 rate would increase above the discounted annual interest rate after thirty (30) days. At
12 all times relevant, Defendant failed to clearly, conspicuously and unambiguously
13 disclose this critical fact as required by law.

14 105. Further violating TILA’s disclosure requirements, Defendants’ loan
15 documents state that the interest rate *may* increase during the term of this transaction if
16 the index increases. That statement is incomplete and misleading, as an increase in the
17 index was not the only thing that could cause an increase in the interest rate. Because
18 the disclosed interest rate was discounted, it was absolutely certain to increase even
19 without any change in the index. Thus, Defendants’ disclosures were unclear,
20 inconspicuous, ambiguous and misleading in violation of TILA.

21 106. In stark contrast to the incomplete, misleading, contradictory and false
22 statements that Defendant made to Plaintiff and the Class regarding the interest rate
23 applicable to the loans here at issue, Defendants unambiguously told their investors
24 (but not Plaintiff or the Class) that the APR listed in the Note would apply for just one
25 month, after which time it would be replaced by a monthly adjustable interest rate
26 based on the margin and index:
27
28

1 107. Defendant failed to disclose, and by omission, failed to inform Plaintiff
2 and the Class members that the initial interest rate was discounted, and that it was
3 absolutely certain to increase even when the index did not rise. Due to the initial
4 discounted interest rate being listed at 1.000%, the interest rate would increase because
5 the index and margin were several points higher. Even when Defendant did provide a
6 disclosure that stated the initial payment was not based on the index, they did so in a
7 manner that was not clear and conspicuous. Because the loan documents failed to
8 provide this extremely important material information in a clear and conspicuous
9 manner that did not obscure its importance, Defendants' disclosure failed to satisfy the
10 requirements of TILA.

11 108. Defendant failed to disclose to Plaintiff and the Class members that their
12 interest rate was, with 100% certainty, going to increase, regardless of whether the
13 index upon which their loans are based changed. As such, Defendants violated TILA
14 and Regulation Z by providing Plaintiff and the Class members with unclear, deceptive
15 and poorly drafted or intentionally misleading disclosures.

16 109. Defendant also failed to disclose all of the ways by which the interest rate
17 applicable to Plaintiff's and Class members' loans could increase, in violation of
18 TILA.

19
20
21 **E. Defendants' Failure to Clearly and Conspicuously Disclose the Effect**
22 **of the Payment Cap on the True Cost of the Loan Violates Truth in**
23 **Lending Laws**

24 110. The Option ARM loans at issue each contained a variable rate feature with
25 an initial teaser rate with payment caps. The payment cap is a limit on how much the
26 payment may be increased annually. Its purpose is to provide borrowers with a limit
27 on how much their payment can increase from year to year. The loans issued by
28

1 Defendant had a 7.50% payment cap, which means that a borrower would only see
2 their payment rise each year by a maximum of 7.50%. (i.e. a \$1,000 monthly payment
3 in year one, could go to a \$1,075 payment in year two.)

4 111. The Official Staff Commentary to 12 C.F.R. § 226.17(c)(1)(10)(iii) states
5 that “[i]f a loan contains a rate or payment cap that would prevent the initial rate or
6 payment, at the time of the first adjustment, from changing to the rate determined by
7 the index or formula at consummation, the effect of that rate or payment cap should be
8 reflected in the disclosures.” Thus, at all times relevant during the liability period,
9 Defendants had a duty to Plaintiff and the Class members to disclose the effect the
10 payment caps would have on the loans.

11 112. At all times relevant during the liability period, Defendants failed to
12 disclose, and by omission, failed to inform Plaintiff and the Class members that the
13 payment cap would cause hundreds, if not thousands of dollars, each month, to be
14 secretly added to principal.

15 113. As a direct and proximate result, Defendants failed to disclose, and by
16 omission, failed to inform Plaintiff and the Class members of the effect of the
17 payment cap in violation of 12 C.F.R. § 226.17.

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

24 //

25 //

26 //

27 **VII.**

1 **SECOND CAUSE OF ACTION**

2 **Violation of California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et***
3 ***seq.* - "Unlawful" Business Acts or Practices Predicated on Violations of TILA**
4 **(Against All Defendants)**

5 115. Plaintiff incorporates all preceding paragraphs as though fully set forth
6 herein.

7 116. Plaintiff brings this cause of action on behalf of themselves, on behalf of
8 the Class, and in their capacity as a private attorney general against all Defendants for
9 their unlawful business acts and/or practices pursuant to California Business and
10 Professions Code Sections 17200 *et seq.*, which prohibits all unlawful business acts
11 and/or practices.

12 117. Plaintiff asserts these claims as they are representatives of an aggrieved
13 group and as a private attorney general on behalf of the general public and other
14 persons who have expended funds that the Defendants should be required to pay or
15 reimburse under the equitable and restitutionary remedies provided by California
16 Business and Professions Code Sections 17200 *et seq.*

17 118. The unlawful acts and practices of Defendants alleged above constitute
18 unlawful business acts and/or practices within the meaning of California Business and
19 Professions Code Sections 17200 *et seq.*

20 119. By engaging in the above described acts and practices, Defendants have
21 committed one or more acts of unfair competition within the meaning of Business and
22 Professions Code Sections 17200, *et seq.*

23 120. Defendants' unlawful business acts and/or practice as alleged herein have
24 violated numerous laws and/or regulations and said predicate acts are therefore *per se*
25 violations of §17200, *et seq.* These predicate unlawful business acts and/or practices
26 include Defendants failure to comply with the disclosure requirements mandated by
27 TILA, 15 U.S.C. §1601, *et seq.*, Regulation Z and Official Staff Commentary issued
28

1 by the Federal Reserve Board. And, as described in more detail above, Defendants
2 also failed in a number of ways to clearly or accurately disclose the terms of the ARM
3 loans to Plaintiff and the Class members as required under TILA.

4 121. Defendants' misconduct as alleged herein gave Defendants an unfair
5 competitive advantage over their competitors.

6 122. As a direct and proximate result of the aforementioned acts, Defendants
7 received monies and continues to hold the monies expended by Plaintiff and others
8 similarly situated who purchased the ARM loans as described herein.

9 123. In addition to the relief requested in the Prayer below, Plaintiff seeks the
10 imposition of a constructive trust over, and restitution of, the monies collected and
11 realized by Defendants.

12 124. The unlawful acts and practices, as fully described herein, present a
13 continuing threat to members of the public to be misled and/or deceived by
14 Defendants as described herein. Plaintiff and other members of the general public
15 have no other remedy of law that will prevent Defendants' misconduct, as alleged
16 herein, from occurring and/or reoccurring in the future.

17 125. As a direct and proximate result of Defendants' unlawful conduct alleged
18 herein, Plaintiff and Class Members have lost thousands if not millions of dollars of
19 equity in their homes. Plaintiff and the Class members are direct victims of the
20 Defendants' unlawful conduct, as herein alleged, and each has suffered injury in fact,
21 and have lost money or property as a result of Defendants' unfair competition.

22 126. WHEREFORE, Plaintiff and members of the Class are entitled to equitable
23 relief, including restitution, restitutionary disgorgement of all profits accruing to
24 Defendants because of its unlawful and deceptive acts and practices, attorney's fees
25 and costs, declaratory relief, and a permanent injunction enjoining Defendants from
26 their unlawful activity.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII.

THIRD CAUSE OF ACTION

**(Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200 *et seq.*, "Unfair" and "Fraudulent" Business Acts or Practices,
(Against All Defendants))**

127. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

128. Plaintiff brings this cause of action on behalf of themselves, on behalf of the Class, and in their capacity as private attorney generals against all Defendants for their unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California Business and Professions Code Sections 17200 *et seq.*, which prohibits all unfair and/or fraudulent business acts and/or practices.

129. Plaintiff asserts these claims as they are representative of an aggrieved group and as private attorney generals on behalf of the general public and other persons who have expended funds that the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 *et seq.*

130. The instant claim is predicated on the generally applicable duty of any contracting party to not misrepresent material facts, and on the duty to refrain from unfair and deceptive business practices. The Plaintiff and the Class members hereby seek to enforce a general proscription of unfair business practices and the requirement to refrain from deceptive conduct. The instant claim is predicated on duties that govern anyone engaged in any business and anyone contracting with anyone else.

131. At all times relevant during the liability period, Defendants engaged in a pattern of deceptive conduct and concealment aimed at maximizing the number of borrowers who would accept their Option ARM loan. Defendants, and each of them, marketed and sold Plaintiff and the Class members a deceptively devised financial

1 product. Defendants marketed and sold their Option ARM loan product to consumers,
2 including Plaintiff, in a false or deceptive manner. Defendants sold a loan which
3 appeared to have a very low, fixed payment and interest rate for a period of three (3) to
4 five (5) years and no negative amortization. However, at all times relevant during the
5 liability period, Defendants failed to disclose, and by omission, failed to inform
6 Plaintiff and the Class members the true fact that Defendants' Option ARM loan was
7 designed to, and did, cause negative amortization to occur.

8 132. Defendants lured Plaintiff and the Class members into the Option ARM
9 loan with promises of low payment and low interest. Once Plaintiff and the Class
10 members entered into these loans, Defendants switched the interest rate charged on the
11 loans to a much higher rate than the one they advertised and promised to Plaintiff and
12 the Class members. After entering these loans, Class members could not escape
13 because Defendants purposefully placed into these loans an extremely onerous
14 prepayment penalty that made it prohibitively expensive for consumers to extricate
15 themselves from these loans. Thus, once on the hook, consumers could not escape
16 from Defendants' loans.

17 133. Plaintiff and Class members were consumers who applied for a mortgage
18 loan through Defendants. During the loan application process, in each case,
19 Defendants uniformly promoted, advertised, and informed Plaintiff and Class
20 members that in accepting these loan terms, Plaintiff and Class members would be
21 able to lower their mortgage payment and save money.

22 134. Defendants promoted their Option ARM loan as having a low fixed
23 interest rate, i.e., typically between 1% and 3%. However, Defendants did not
24 disclose that this was just a "teaser" rate, the purpose of which was to get consumers
25 to enter into loan agreements with Defendants. Defendants did not disclose to Plaintiff
26 and the Class members that the "teaser" rate was not the fixed rate that Defendants
27
28

1 would actually charge Plaintiff and the Class members on their outstanding loan
2 balances after the first thirty days.

3 135. Based on the Defendants' representations and misconduct as alleged
4 herein, Plaintiff and the Class members agreed to finance their primary residence
5 through Defendants' Option ARM loan product. Plaintiff and the Class members were
6 told they were being sold a home loan with a low payment and interest rate. Plaintiff
7 and the Class members were also led to believe that if they made payments based on
8 this interest rate, and the payment schedule provided to them by Defendants, the loan
9 would be a no negative amortization home loan. After, the fixed interest period, the
10 loan documents stated that the interest rate "may" change. And, Plaintiff believed
11 they would then be able to re-finance to another home loan. Plaintiff and the Class
12 members believed these facts to be true because that is what the Defendants wanted
13 consumers to believe.

14 136. Defendants aggressively sold their product as a fixed low interest home
15 loan. Defendants knew that if marketed in such a manner, their Option ARM loan
16 product would be a hugely popular and profitable product for them. Defendants also
17 knew, however, that they were marketing their product in a false and deceptive
18 manner. While Defendants trumpeted their low payment loans with a "teaser" rate to
19 the public, Defendants knew, that this was not entirely true.

20 137. In fact, Defendants' Option ARM loan possessed a low, fixed *payment* but
21 not a low interest rate. Unbeknownst to Plaintiff and Class members, the actual
22 interest rate they were charged on their loans was not fixed. After purchasing
23 Defendants' Option ARM loan product, Plaintiff and class members never actually
24 received the benefit of the low advertised interest rate, or, in some cases, consumers
25 received the low rate for just a single month. Immediately, thereafter, Defendants in
26 every instance and for every loan increased the interest rate they charged Plaintiff and
27 the Class members. Once Plaintiff and Class members accepted Defendants' Option
28

1 ARM loan, they had no viable option to extricate themselves because of these loan
2 agreements included a draconian pre-payment penalty.

3 138. Defendants perpetrated this bait and switch scheme on Plaintiff and Class
4 members in a common and uniform manner. Defendants' misconduct and failures to
5 disclose the truth about the actual interest rate charged on the loans and describing the
6 loans as having a low payment that corresponded to a listed "teaser" rate was, at all
7 times relevant, deceptive and unfair. Defendants initiated this scheme in order to
8 maximize the amount of the loans issued to consumers and to maximize Defendants'
9 profits.

10 139. The acts, misrepresentations, omissions, and practices of Defendants
11 alleged above constitute unfair, and/or fraudulent business acts and/or practices within
12 the meaning of California Business and Professions Code Sections 17200 *et seq.*

13 140. By engaging in the above described acts and practices, Defendants have
14 committed one or more acts of unfair competition within the meaning of Business and
15 Professions Code Sections 17200, *et seq.*

16 141. Defendants' conduct, as alleged herein, was likely to deceive members of
17 the consuming public, and at all times relevant during the liability period, Defendants'
18 failures to disclose and omission of material facts have been and continue to be unfair,
19 fraudulent, untrue and/or deceptive.

20 142. Defendants' misconduct as alleged herein gave Defendants an unfair
21 competitive advantage over their competitors.

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

26 //

27 //

28

1 144. In addition to the relief requested in the Prayer below, Plaintiff seeks the
2 imposition of a constructive trust over, and restitution of, the monies collected and
3 realized by Defendants.

4 145. The harm to Plaintiff, members of the general public and others similarly
5 situated outweighs the utility of Defendants' policies, acts and/or practices and,
6 consequently Defendants' conduct herein constitutes an unlawful business act or
7 practice within the meaning of California Business & Professions Code Sections
8 17200 *et seq.*

9 146. The unfair, deceptive and/or fraudulent business practices of Defendants,
10 as fully described herein, present a continuing threat to members of the public to be
11 misled and/or deceived by Defendants' ARM loans as described herein. Plaintiff and
12 other members of the general public have no other remedy of law that will prevent
13 Defendants' misconduct as alleged herein from occurring and/or reoccurring in the
14 future.

15 147. As a direct and proximate result of Defendants' unfair and/or fraudulent
16 conduct alleged herein, Plaintiff and Class Members have lost thousands if not
17 millions of dollars of equity in their homes. Plaintiff and Class members are direct
18 victims of the Defendants' unlawful conduct, and each has suffered injury in fact, and
19 have lost money or property as a result of Defendants' unfair competition.

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

25 //

26 //

27 //

28

1 IX.
2 FOURTH CAUSE OF ACTION
3 FRAUDULENT OMISSIONS
4 (Against All Defendants)

5 149. Plaintiff incorporates all preceding paragraphs as though fully set forth
6 herein.

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

13 151. Defendants further had a duty to disclose to Plaintiff, and each Class
14 member (i) the actual interest rate being charged on the Note(s), (ii) that negative
15 amortization would occur and that the "principal balance *will* increase"; and (iii) that
16 the initial interest rate on the note was discounted, based upon Defendants partial
17 representations of material facts when Defendants had exclusive knowledge of
18 material facts that negative amortization was certain to occur.

19 152. The Note(s) state at ¶ 3 (A) "Each monthly payment will be applied as of
20 its scheduled due date and will be applied to interest before Principal." The Note(s)
21 then state, at ¶ 7(A), under the heading "BORROWERS FAILURE TO PAY AS
22 REQUIRED," that "[t]he amount of the charge will be 5.000% of *my overdue payment*
23 *of Principal and Interest.*" However, the true facts are that the payments schedules
24 provided by Defendants were completely insufficient to pay both principal and interest.
25 In fact, the payment amounts provided in the TILDS were not even sufficient to pay
26 enough interest to avoid negative amortization which, under the terms of the Note(s)
27 was absolutely certain to occur.
28

1 153. The Note(s) further state, at ¶ 3(E) that “my Minimum Payment *could be*
2 *less* than the amount of the interest portion of the monthly payment that would be
3 sufficient to repay the unpaid principal...” And, for “each month that my monthly
4 payment is less than the interest portion, the Note Holder will subtract the amount of
5 my monthly payment from the amount of the interest portion and will add the
6 difference to my unpaid principal.” It goes on to state that “[t]he Note Holder will
7 also add interest on the amount of this difference to my unpaid principal.” However,
8 the payment schedules provided by Defendants in the TILDS were absolutely
9 incapable of covering the amount of interest due and therefore these statements were
10 false in that it omitted this material fact.

11 154. The Note(s) list an interest rate and a payment amount based on that initial
12 interest rate. However, the TILDS Defendants gave to Plaintiff and the Class members
13 include the schedule of payments (including that initial payment rate) but yet disclose a
14 different interest rate. In truth, the payment schedule stated in the TILDS is wholly
15 unrelated to the true interest rate being charged on the loans and, at all times relevant
16 during the liability period, Defendants failed to disclose, and by omission, failed to
17 inform Plaintiff and the Class members of this important material information.

18 155. The aforementioned omitted information was not known to Plaintiff and
19 the Class members and which, at all times relevant, Defendants failed to disclose
20 and/or actively concealed by making such statements and partial, misleading
21 representations to Plaintiff and all others similarly situated. Because the Option ARM
22 loans did not provide a low interest rate for the first three (3) to five (5) years of the
23 Note, and the payment rate disclosed by Defendants was insufficient to pay both
24 principle and interest, negative amortization occurred.

25 156. Defendants, and each of them, failed to disclose, and by omission failed to
26 inform Plaintiff and each Class member that (i) the payment rate provided to Plaintiff
27

1 and the Class members on the TILDS was insufficient to pay both principle and
2 interest; (ii) that negative amortization was absolutely certain to occur if Plaintiff and
3 the Class members made payments according to the payment schedule provided by
4 Defendants; and (iii) that loss of equity and/or loss of Plaintiff's and the Class
5 members' residence was substantially certain to occur if Plaintiff and the Class
6 members made payments according to the payment schedule provided by Defendants.

7 157. As alleged herein, Defendants had a duty to disclose to Plaintiff, and each
8 Class member and at all times relevant, failed to disclose and/or concealed material
9 facts by making partial representations of some material facts when Defendants had
10 exclusive knowledge of material facts, including but not limited to, (i) the disclosed
11 interest was not the actual interest rate charged on the Note(s), (ii) that negative
12 amortization was certain to occur, and (iii) that the initial rate was discounted. The
13 concealed and omitted information was not known to Plaintiff and the Class members
14 and which, at all times relevant, Defendants failed to disclose and/or actively
15 concealed by making such statements and partial, misleading representations to
16 Plaintiff and all others similarly situated. Because the Option ARM loans did not
17 provide a low interest rate for the first three (3) to five (5) years of the Note, and the
18 payment rate disclosed by Defendants was insufficient to pay both principle and
19 interest, negative amortization occurred.

20 157. As alleged herein, Defendants had a duty to disclose to Plaintiff, and each
21 Class member and at all times relevant, failed to disclose and/or concealed material
22 facts by making partial representations of some material facts when Defendants had
23 exclusive knowledge of material facts, including but not limited to, (i) the disclosed
24 interest was not the actual interest rate charged on the Note(s), (ii) that negative
25 amortization was certain to occur, and (iii) that the initial rate was discounted. The
26 concealed and omitted information was not known to Plaintiff and the Class members
27

28

1 and which, at all times relevant, Defendants failed to disclose and/or actively
2 concealed by making such statements and partial, misleading representations to
3 Plaintiff and all others similarly situated. Because the Option ARM loans did not
4 provide a low interest rate for the first three (3) to five (5) years of the Note, and the
5 payment rate disclosed by Defendants was insufficient to pay both principle and
6 interest, negative amortization occurred.

7 158. From the inception of the Option ARM loan scheme, until the present,
8 Defendants have engaged in a purposeful and fraudulent scheme to omit material facts
9 known solely to them, and not reasonably discoverable by Plaintiff and the Class
10 members, regarding the true facts concerning the actual interest rate charged on the
11 loans, that negative amortization that was certain to occur, and that the initial interest
12 rate, in fact, was discounted, all of which Defendants were duty bound to clearly and
13 conspicuously disclose to Plaintiff and the Class members in the TILDS.

14 159. Defendants have known from the inception of their Option ARM loan
15 scheme that these loans, (i) do not provide the promised annual interest rate for the first
16 three (3) to five (5) years of the Note, (ii) that negative amortization would occur and
17 that Plaintiff's and the Class members' principle balances would increase, and (iii) that
18 the initial interest rate was discounted and did not accurately reflect the interest that
19 consumers were being charged on the loans.

20 160. Defendants purposefully and intentionally devised this Option ARM loan
21 scheme to defraud and/or mislead consumers into believing that these loans would
22 provide a low-interest rate loan, for the first three (3) to five (5) years of the note and
23 that if they made their payments according to the payment schedule provided by
24 Defendants that it would be sufficient to pay both principle and interest.
25
26
27
28

1 161. The omitted information, as alleged herein, was material to Plaintiff and
2 each Class member in that had the information be disclosed, Plaintiff and each Class
3 member would not have entered into the loans.

4 162. As a direct and proximate result of Defendants' failures to disclose and
5 omission of material facts, as alleged herein, Plaintiff and each Class member has
6 suffered damages, which include, but are not limited to the loss of equity Plaintiff and
7 each Class member had in their homes prior to entering these loans.

8 163. The wrongful conduct of Defendants, as alleged herein, was willful,
9 oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious and in
10 conscious disregard for the well being of Plaintiff, and others similarly situated.
11 Accordingly, Plaintiff, and the others similarly situated seek punitive damages against
12 Defendants in an amount to deter Defendants from similar conduct in the future.

13 164. WHEREFORE, Plaintiff and members of the Class are entitled to all legal
14 and equitable remedies provided by law, including but not limited to actual damages,
15 exemplary damages, prejudgment interest and costs.
16

17
18 **X.**
19 **FIFTH CAUSE OF ACTION**
20 **Breach of Contract**
21 **(Against All Defendants)**

22 165. Plaintiff incorporates all preceding paragraphs as though fully set forth
23 herein.

24 166. Plaintiff and Class members entered into a written home loan agreement –
25 the contract or Note – with Defendants. The Note was drafted by Defendants and
26 could not be modified by Plaintiff or Class members. The Note describes terms and
27 respective obligations applicable to the parties herein.
28

1 167. The Note describes Plaintiff's and Class members' interest rate on the loan
2 as a low interest rate, typically between 1% and 3%. In addition, as required by federal
3 law, the Defendants provided a Truth In Lending Disclosure concerning the home loan
4 agreement that shows a payment schedule based on that low 1% to 3% interest rate.
5 For the first three (3) to five (5) years the payment schedule shows that Plaintiff's and
6 Class members' monthly payment obligations to Defendants are the exact payments
7 necessary to pay off all principal and interest during the terms of the loans if, indeed,
8 the interest rate actually charged by Defendants on the loans was the low interest rate
9 promised.

10 168. Defendants drafted the Note and did not allow Plaintiff or the Class
11 members any opportunity to make changes to the Note and due to Defendants' superior
12 bargaining position, the Note was offered on a take it or leave it basis. As such, the
13 Notes at issue are contracts of adhesion.

14 169. Defendants expressly and/or through their conduct and actions
15 agreed that Plaintiff's and the Class members' monthly payment obligations would be
16 sufficient to pay both the principal and interest owed on the loans. Defendants
17 breached this agreement and never applied any of Plaintiff's and the Class members'
18 payments to principal.

19 170. The written payment schedules prepared by Defendants, and applicable to
20 Plaintiff's and Class members' loans, show that the payment amounts owed by
21 Plaintiff and Class members to Defendants in year one are exactly equal to the amount
22 required to pay off the loan if, indeed, the interest actually charged on the loan was the
23 low interest rate promised. If the Defendants did as promised, the payments would
24 have been sufficient to pay both principal and interest amounts.

25 171. Instead, Defendants immediately raised Plaintiff's and Class members'
26 interest rates and applied *no part* of Plaintiff's and Class members' payments were
27
28

1 applied to the principal balances on their loans. In fact, because Defendants charged
2 more interest than was agreed to and payments, as disclosed by Defendants, were, at all
3 times relevant, insufficient to cover the interest charge and thus principal balances
4 increased (which is the negative amortization built into the loan).

5 171. Defendants breached the written contractual agreement by failing to apply
6 any portion of Plaintiff's and the Class members' monthly payments towards their
7 principal loan balances.

8 173. Plaintiff and the Class members, on the other hand, did all of those things
9 the contract required of them. Plaintiff and the Class members made monthly
10 payments in the amount required by the terms of the Note and reflected in the payment
11 schedule prepared by Defendants.

12 174. As a result of Defendants' breach of the agreement, Plaintiff and the Class
13 members have suffered harm. Plaintiff and Class members have incurred additional
14 charges to their principal loan balance. Plaintiff and Class members have incurred and
15 will continue to incur additional interest charges on the principal loan balance and
16 surplus interest added to Plaintiff's and Class members' principal loan balance.
17 Furthermore, Defendants' breach has placed Plaintiff and Class members in danger of
18 losing their homes through foreclosure, as Defendants have caused Plaintiff's and
19 Class members' principal loan balances to increase and limited these consumers'
20 ability to make their future house payments or obtain alternative home loan financing.

21 175. At all times relevant, there existed a gross inequality of bargaining power
22 between the parties to the ARM loan contracts. At all times relevant, Defendants
23 unreasonably and unconscionably exploited their superior bargaining position and
24 foisted upon Plaintiff and the Class members extremely harsh, one-sided provisions in
25 the contract, which Plaintiff and Class members were not made aware of and did not
26 comprehend (e.g., Defendants' fraud and failures to clearly and conspicuously disclose
27

28

1 as alleged herein), and which attempt to severely limit Defendants' obligations under
2 the contracts at the expense of Plaintiff and Class members, as alleged herein. As a
3 result of these extremely harsh, one-sided provisions, including but not limited to the
4 provisions which seek to limit the "teaser" interest rate for one month or less, these
5 provisions are unconscionable and therefore unenforceable.

6 176. WHEREFORE, Plaintiff and members of the Classes are entitled to
7 declaratory relief, compensatory damages proximately caused by Defendants' breach
8 of contract as alleged herein, pre-judgment interest, costs of suit and other relief as the
9 Court deems just and proper.

10
11 **XI.**

12 **SIXTH CAUSE OF ACTION**

13 **TORTIOUS Breach of Implied Covenant of Good Faith and Fair Dealing**
14 **(Against All Defendants)**

15 177. Plaintiff incorporates all preceding paragraphs as though fully set forth
16 herein.

17 178. Defendants entered into written agreements with Plaintiff and Class
18 members based on representations Defendants made directly and indirectly to Plaintiff
19 and the Class members about the terms of their loans.

20 179. Defendants expressly and impliedly represented to Plaintiff and the Class
21 members that they would provide loans secured by Plaintiff's and Class members'
22 homes, and that the loans would have a fixed interest rate at promised low interest rate
23 for a period of three (3) to five (5) years.

24 180. Defendants also represented that if Plaintiff and the Class members made
25 the monthly payments in the amount prescribed by Defendants that no negative
26 amortization would occur. The Note expressly states and/or implies that Plaintiff's
27 and Class members' monthly payment obligation **will** be applied to pay both principal
28

1 and interest owed on the loan. The Note further states that for each monthly payment
2 Plaintiff and the Class members interest shall be paid before principal.

3 181. The written payment schedules prepared by Defendants, and applicable to
4 Plaintiff's and Class members' loans, show that the payment amounts owed by
5 Plaintiff and Class members to Defendants in year one are exactly equal to the amount
6 required to pay off the loan if, indeed, the interest actually charged on the loan was the
7 low interest rate promised. If the Defendants acted as it promised, the payments
8 would have been sufficient to pay both principal and interest.

9 182. Instead, Defendants immediately raised Plaintiff's and Class members'
10 interest rate and applied *no part* of Plaintiff's and Class members' payment to
11 principal. In fact, because Defendants charged more interest than was disclosed and
12 agreed to in the loan contracts, Plaintiff's and the Class members' payments were
13 insufficient to cover the interest that Defendants charged resulting in an increase in the
14 amount of principal Plaintiff and the Class members owed on their homes.

15 183. Defendants unfairly interfered with Plaintiff's and Class members' rights
16 to receive the benefits of the contract. These loans will cost Plaintiff and Class
17 members thousands of dollars more than represented by Defendants. Plaintiff and
18 Class members did not receive the fixed low interest rate home loan promised them by
19 Defendants. Defendants have caused Plaintiff and Class members to lose equity in
20 their homes and therefore have denied Plaintiff and Class members the enjoyment and
21 security of one of their most important investments.

22 184. Plaintiff and Class members, on the other hand, did all of those things the
23 contract required of them. Plaintiff and Class members made monthly payments in the
24 amount required by the terms of the Note and reflected in the payment schedule
25 prepared by Defendants.

26 185. At all times relevant, Defendants unreasonably denied Plaintiff and
27 members of the Class the benefits promised to them under the terms of the Note,
28

1 including but not limited to a low interest rate for the first three (3) to five (5) years of
2 the loan, and clear and conspicuous disclosure of a payment amount sufficient to pay
3 both principle and interest so as to avoid negative amortization and the other failures to
4 comply with the disclosure requirements mandated by TILA, 15 U.S.C. §1601, et seq.,
5 Regulation Z and Official Staff Commentary issued by the Federal Reserve Board as
6 alleged herein

7 186. Knowing the truth and motivated by profit and market share, Defendants
8 have knowingly and willfully breached the implied covenant of good faith and fair
9 dealing by engaging in the acts and/or omissions to mislead and/or deceive Plaintiff
10 and others similarly situated as alleged herein.

11 187. Defendants breaches, as alleged herein were committed with willful and
12 wanton disregard for whether or not Plaintiff or others similarly situated would
13 actually receive a home loan that would provide the promised low interest and
14 payment rate for the first three (3) to five (5) years of the loan sufficient to pay both
15 principal and interest.

16 188. Upon information and belief and at all times relevant during the liability
17 period, Defendants possessed full knowledge and information concerning the above
18 facts about the Option ARM loans, and otherwise marketed and sold these loans
19 throughout the United States, including the State of California.

20 189. Defendants' placing of their corporate and/or individual profits over the
21 rights of others is particularly vile, base, contemptible, and wretched and said acts
22 and/or omissions were performed on the part of officers, directors, and/or managing
23 agents of each corporate Defendant and/or taken with the advance knowledge of the
24 officers, directors, and/or managing agents who authorized and/or ratified said acts
25 and/or omissions. Defendants thereby acted with malice and complete indifference to
26 and/or in conscious disregard for the rights and safety of others, including Plaintiff and
27 the General Public.
28

1 190. At all times relevant during the liability period, Defendants' conduct, as
2 alleged herein, was malicious, oppressive, and/or fraudulent.

3 191. As a direct and proximate result of Defendants' misconduct, as alleged
4 herein, Plaintiff and the Class members have suffered harm. Plaintiff and the Class
5 members have incurred additional charges to their principal loan balances. Plaintiff
6 and the Class members have incurred and will continue to incur additional interest
7 charges on their principal loan balances which Defendants have secretly added to their
8 principal loan balances. Furthermore, Defendants' breach has caused and/or otherwise
9 placed Plaintiff and the Class members in danger of losing their homes through
10 foreclosure and, as a direct and proximate result of said misconduct, caused Plaintiff
11 and the Class members' principal loan balances to increase limiting these consumers'
12 ability to make their future house payments or obtain alternative home loan financing.

13 192. WHEREFORE, Plaintiff and members of the Class are entitled to
14 declaratory relief, all damages proximately caused by Defendants' breach of the
15 implied covenant of good faith and fair dealing as alleged herein, punitive damages,
16 pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff and all Class members pray for judgment against each
20 Defendant, jointly and severally, as follows:

- 21 A. An order certifying this case as a class action and appointing Plaintiff and
22 her counsel to represent the Class;
23 B. For actual damages according to proof;
24 C. For compensatory damages as permitted by law;
25 D. For consequential damages as permitted by law;
26 E. For statutory damages as permitted by law;
27 F. For punitive damages as permitted by law;

28

- 1 G. For rescission;
- 2 H. For equitable relief, including restitution;
- 3 I. For restitutionary disgorgement of all profits Defendants obtained as a
- 4 result of their unfair competition;
- 5 J. For interest as permitted by law;
- 6 K. For Declaratory Relief;
- 7 L. For a mandatory injunction requiring Defendants to permanently include
- 8 in every Option ARM loan and disclosure statement: (i) clear and
- 9 conspicuous disclosure of the actual interest rate on the Note(s) and
- 10 disclosure statement(s) as required under 12 C.F.R. § 226.17 by; (ii) clear
- 11 and conspicuous disclosure in the Note(s) and the disclosure statement(s)
- 12 that payments on the variable interest rate loan during the initial period
- 13 at the teaser rate will result in negative amortization and that the principal
- 14 balance will increase as required under 12 C.F.R. § 226.19; and (iii) clear
- 15 and conspicuous disclosure that the initial interest rate provided is
- 16 discounted and does not reflect the actual interest that Plaintiff and Class
- 17 members would be paying on the Note(s).
- 18 M. For reasonable attorneys' fees and costs; and
- 19 N. For such other relief as is just and proper.
- 20

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial by jury to the full extent permitted by law.

23 DATED: September 8, 2008

24 LEE & FIELDS
25 A Professional Corporation

26 By: 

27 Christopher P. Fields, Esq.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3701 Wilshire Blvd., Ste. 510
Los Angeles, CA 90010
Phone: (213) 380-5858
Fax: (213) 380-5860

Paul R. Kiesel, Esq.
Patrick Deblase, Esq.
Michael C. Eyerly, Esq.
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90210
Phone: (310) 854-4444
Fax: (310) 854-0812

Jeffrey K. Berns, Esq.
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Blvd, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000
Fax: (818) 867-4820

Attorneys for Plaintiff and all
others Similarly Situated

Exhibit 1

ADJUSTABLE RATE NOTE

(12 MAT Payment and Rate Caps)

MIN: 1004246-0611010100-3
Loan# 0611010100

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THIS NOTE.

NOVEMBER 15, 2006
[Date]

ORANGE
[City]

CALIFORNIA
[State]

8201 CAMINO COLEGIO UNIT 75, ROHNERT PARK, CALIFORNIA 94928
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 210,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is U.S FINANCIAL FUNDING INC., A CALIFORNIA CORPORATION

I will make all payments under this Note in the form of cash, check or money order. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 2.400 %. This is my initial interest rate. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of JANUARY, 2007, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Interest Rate Limit

My interest rate will never be greater than 9.950 %.

(D) Index

Beginning with the first Interest Rate Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the monthly yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rate (H.15)" ("the Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(E) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 550/1000 percentage point(s) (3.550 %) to the Current Index. Subject to the limit stated in Section 2(C) above, the result of this addition will be my new interest rate until the next Interest Rate Change Date.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on JANUARY 1

2007 . I will make these payments every month until I have paid all the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. If, on DECEMBER 1, 2046 , I still owe amounts under this Note, I will pay these amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2100 W. ORANGEWOOD AVE., SUITE 200, ORANGE, CALIFORNIA 92868 or at a different place required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 681.00 . This amount may change. My initial monthly payment may be an amount that is less than the amount that would be required to repay my unpaid principal on the Maturity Date in full in substantially equal installments.

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1st day of JANUARY , 2012 , and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.

I will pay the amount of my new monthly payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

Before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Payment Change Date in full on the Maturity Date in substantially equal installments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." My new monthly payment will be in the amount of the Full Payment unless the Full Payment is more than 7.5% greater or less than the amount of my last monthly payment due before the Payment Change Date, in which case my new monthly payment will be limited to an amount that will not be more than 7.5% greater or less than the amount of my last monthly payment due before the Payment Change Date, but this limitation will not apply under the circumstances described in Section 3(F) or 3(G).

(E) Additions to My Unpaid Principal

My monthly payment could be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. If so, each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder also will add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to principal will be the rate required by Section 2 above.

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid principal can never exceed a maximum amount equal to one hundred ONE HUNDRED FIFTEEN AND 000/1000 percent (115.000 %) of the principal amount I originally borrowed. Because of my paying only limited monthly payments, the addition of unpaid interest to my unpaid principal under Section 3(E) above could cause my unpaid principal to exceed that maximum amount when interest rates increase. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. The new monthly payment will be in an amount that would be sufficient to repay my then unpaid principal in full on the Maturity Date in substantially equal installments at the interest rate effective during the preceding month.

(G) Required Full Payment

On the 1st Payment Change Date and on each succeeding 5th Payment Change Date thereafter, I will begin paying the Full Payment as my monthly payment until my monthly payment changes again. I also will begin paying the Full Payment as my monthly payment on the final Payment Change Date.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a prepayment if I have not made all the monthly payments due under this Note.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use my prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my prepayment to the accrued and unpaid interest on the prepayment before applying my prepayment to reduce the principal amount of this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to these changes. My partial prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of my monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE


This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
DIAN C LYMBURNER -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Date: NOVEMBER 15, 2006

Loan Number: 0511010100
Lender: U.S FINANCIAL FUNDING INC.
Address: 2100 W. ORANGEWOOD AVE., SUITE 200, ORANGE, CALIFORNIA 92868

Borrower(s): DIAN C LYMBURNER

Address: 8201 CAMINO COLEGIO UNIT 75, ROHNERT PARK, CALIFORNIA 94928

Disclosures containing an "x" are applicable:

ANNUAL PERCENTAGE RATE <small>The cost of your credit as a yearly rate</small>	FINANCE CHARGE <small>The dollar amount the credit will cost you.</small>	Amount Financed <small>The amount of credit provided to you or on your behalf.</small>	Total of Payments <small>The amount you will have paid after you have made all payments as scheduled.</small>	<input type="checkbox"/> Total Sale Price <small>The total cost of your purchase on credit including your down-payment of \$</small>
8.578 %	\$ 602,041.00	\$ 204,026.00	\$ 806,067.00	\$

Payments: Your payment schedule will be:

Number of Months	Amount of Payment **	When Payments Are Due		Number of Payments	Amount of Payment **	When Payments Are Due	
		Monthly Beginning	Monthly Beginning			Monthly Beginning	Monthly Beginning
36	681.00	01/01/07					
44	1,760.25	01/01/10					

DEMAND FEATURE: This obligation has a demand feature.

VARIABLE RATE FEATURE: Your loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to you earlier.

INSURANCE: The following insurance is required to obtain credit:

Credit life insurance and credit disability Property Insurance Flood Insurance Mortgage Insurance

You may obtain property insurance from any insurer that is acceptable to the Lender.

SECURITY: You are giving a security interest in: 8201 CAMINO COLEGIO UNIT 75, ROHNERT PARK, CALIFORNIA
 The goods or property being purchased Real property you already own. 94928

LOAN FEES: \$

LATE CHARGE: If payment is more than 15 days late, you will be charged 5.000 % of the payment.

REPAYMENT: If you pay off early, you

may will not have to pay a penalty.

may will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

may may, subject to conditions may not assume the remainder of your loan on the original terms.

Read your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.

"x" means an estimate. All dates and numerical disclosures except the late payment disclosures are estimates.

Each of the undersigned acknowledge receipt of a complete copy of this disclosure. The disclosure does not constitute a contract or a commitment to lend.

Borrower: DIAN C LYMBURNER Date _____ Applicant _____ Date _____
 Borrower: _____ Date _____ Applicant _____ Date _____
 Borrower: _____ Date _____ Applicant _____ Date _____

NOTE: Payments shown above do not include reserve deposits for taxes, assessments, and property or flood insurance.