

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

NATIONSTAR MORTGAGE, LLC, a California limited liability company; CENTEX HOME EQUITY COMPANY, LLC, a California limited liability company; CINDY KELLY, an individual; and DOES 1-100, Inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Clerk of the Superior Court

SEP 23 2008

By: T. CURRY, Deputy

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARK RICHTER, ANNA RICHTER, JOSHUA DALTON, CRISTINA DALTON, ROSEMARIE B. ACEDILLO, HERMANN WEBER, DEBORAH WEBER, AILEEN RAMIREZ, RICARDO RAMIREZ, JONAS DELEON, LISSA DELEON, NOEMI BARRIOS, MARISA AGUILAR, MARY HELEN CANETT, EDWARD CANETT, MARIA HYNUM, BRAD TOMAZIC, CYNTHIA DUTTON, KENNETH DUTTON, BRYSON KIM, EILENE KIM, RICARDO SANCHEZ, and others similarly situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
330 WEST BROADWAY

SAN DIEGO, CA 92101

HALL OF JUSTICE

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

RICHARD D. ACKERMAN, ESQ. (171900) 951-308-6454 951-308-6453

ACKERMAN, COWLES & ASSOCIATES

29975 TECHNOLOGY DRIVE

MURRIETA, CA 92563

DATE:

SEP 23 2008

(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

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Code of Civil Procedure §§ 412.20, 465

Page 1 of 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

MARK RICHTER, ANNA RICHTER,)
JOSHUA DALTON, CRISTINA)
DALTON, ROSEMARIE B. ACEDILLO,)
HERMANN WEBER, DEBORAH)
WEBER, AILEEN RAMIREZ, RICARDO)
RAMIREZ, JONAS DELEON, LISSA)
DELEON, NOEMI BARRIOS, MARISA)
AGUILAR, MARY HELEN CANETT,)
EDWARD CANETT, MARIA HYNUM,)
BRAD TOMAZIC, CYNTHIA DUTTON,)
KENNETH DUTTON, BRYSON KIM,)
EILENE KIM, RICARDO SANCHEZ, and)
others similarly situated,)

CASE NO: 37-2008-00092170-CU-BT-CTL

COMPLAINT FOR:

- 1. Unfair, False & Misleading Business Practices; and**
- 2. Negligence**

Plaintiffs,

vs.
NATIONSTAR MORTGAGE, LLC, a)
California limited liability company;)
CENTEX HOME EQUITY COMPANY,)
LLC, a California limited liability company;)
CINDY KELLY, an individual; and DOES)
1-100, Inclusive,)

Defendants.

GENERAL ALLEGATIONS

Defendants & Venue

1. At all relevant times NATIONSTAR MORTGAGE LLC ("NATIONSTAR"), was a limited liability company doing business in the City of San Diego. The tortious acts

1.

COMPLAINT FOR UNFAIR BUSINESS PRACTICES & NEGLIGENCE

1 alleged herein took place within this jurisdiction at the times mentioned. To the best of
2 Plaintiffs' knowledge, each of the Defendants did so register with the State of
3 California's Secretary of State in order to conduct business within this state, but did not
4 have licenses (at all relevant times) to offer mortgages in California. Furthermore, upon
5 information and belief, it is alleged that said Defendant may have had a valid real estate
6 mortgage license within this state at any relevant times. NATIONSTAR did not have a
7 securities license for purposes of offering, soliciting, or placing investments at any
8 relevant time.

- 9 2. At all relevant times CENTEX HOME EQUITY COMPANY, LLC, ("CENTEX") was
10 a limited liability company doing business in the City of San Diego. The tortious acts
11 alleged herein took place within this jurisdiction at the times mentioned. To the best of
12 Plaintiffs' knowledge, each of the Defendants did so register with the State of
13 California's Secretary of State in order to conduct business within this state, but may not
14 have had a real estate license at all relevant times as required by law. Upon information
15 and belief, it is alleged that CENTEX did not have a valid license to provide mortgage
16 loans and other real estate services at the time of the acts alleged herein. CENTEX did
17 not have a securities license for purposes of offering, soliciting, or placing investments
18 at any relevant time. Defendant CENTEX became known as a NATIONSTAR company
19 in or around July of 2006.
- 20 3. Defendant CINDY KELLY ("KELLY"), was at all times mentioned, a resident of the
21 County of San Diego, and a branch manager for the corporate defendants. She was under
22 the supervision and control of the corporate defendants at all relevant times and was an
23 "employee" or "agent" within the meaning of the law. Defendant CINDY KELLY, on
24 behalf of the corporate defendants was responsible for underlings such as one Maurice
25 McLeod, Derek Nolde, Bret Johnson, Steven Contegiacomo and others who were
26 involved in the loan processing referenced below. Such persons provided mortgage loan
27 services to Plaintiffs around Fall of 2005 and thereafter. KELLY is not a licensed
28 securities broker, but nevertheless did make securities offerings during her tenure as a

1 manager of the other Defendants named herein. At all relevant times, a reasonable
2 customer would have believed that KELLY had the authority and permission to speak
3 on behalf of the corporate defendants because she was a manager and was regularly
4 identified as such.

- 5 4. At all relevant times, the corporate defendants ratified, directed and authorized the
6 conduct of CINDY KELLY and her subordinates.
- 7 5. Plaintiff is not aware of the true names and capacities of DOES 1 through 50, Inclusive,
8 and therefore sues such defendants by their fictitious names.
- 9 6. Whenever reference is made in this Complaint to any act(s) of any defendant(s), that
10 allegation shall mean that each defendant acted individually and jointly with the other
11 defendants.
- 12 7. Any allegation about the acts of any corporate or other business defendant means that the
13 corporation or other business did the acts alleged through its officers, directors,
14 employees, agents and/or representatives while they were acting with the actual or
15 ostensible scope of their authority.
- 16 8. At all relevant times, each defendant should have known of the fact that other defendants
17 were acting in violation of the law alleged in this complaint. Each of the defendants
18 negligently facilitated the illegal conduct of the others. Intentionally or unintentionally,
19 the corporate defendants did encourage, facilitate and/or assist in the commission of the
20 unlawful and negligent acts.
- 21 9. At all relevant times the defendants and each of them were engaged in a common
22 enterprise as defined by law.
- 23 10. Plaintiffs and each of them arranged for mortgage loans, original financing or
24 refinancing, within the last four years and reasonably discovered the basis for their
25 damages within the last two years.

26 **Defendants' Business Acts and Practices**

- 27 11. This action is brought, among other reasons, to remedy violations of the Truth In Lending
28 Act codified at 15 U.S.C. § 1601 and "Regulation Z" at 12 C.F.R. Part 226 (2003) and

- 1 California's Unfair Business Practices Statutes at *Business & Professions Code* § 17200,
2 17500, et seq..
- 3 12. Defendants and each of them were, within the last two years, engaged in the business of
4 providing residential mortgage loans and home equity lines of credit (HELOC).
- 5 13. Within the last two years, Plaintiffs, and each of them, entered into or maintained
6 mortgage loans or home equity line agreements with the Defendants.
- 7 14. Each of the Plaintiffs was referred to NATIONSTAR/CENTEX in 2006-2007 for loan
8 financing through something called Stonewood Consulting, a Murrieta CA based
9 company, with whom KELLY was closely associated. Stonewood Consulting offered
10 illegal securities/investment opportunities and is the subject of an ongoing FBI
11 investigation, cease and desist orders in Arizona, and is a defendant in an action by the
12 SEC. One or more of the defendants knew that a consistent flow of referrals were
13 coming from the principals of Stonewood Consulting and the FBI had interviewed one
14 or more CENTEX employees. CINDY KELLY was not terminated until many months
15 and weeks after her superiors/principals (i.e., the corporate defendants) should have or
16 did know that she was part of an illegal real estate and investment scheme. Defendants
17 ignored her involvement because she was generating significant sales and profits from
18 the constant stream of Stonewood-related referrals. Moreover, the Department of Real
19 Estate had inquired as of mid-2007 into whether or not CENTEX even had a valid real
20 estate mortgage license in California.
- 21 15. While working for Defendants, and representing herself as being the San Diego Branch
22 Manager for the corporate defendants, within the last two years, CINDY KELLY or her
23 direct underlings verbally, and in writing, represented to each of the Plaintiffs that excess
24 loan proceeds from refinancing or excess proceeds from original mortgages would be
25 used to invest in Iraqi Dinars, real estate holdings, and other "investments" with high
26 returns. These representations were false as the money was simply handed over to
27 KELLY and her friends at Stonewood for personal use (i.e, one James Duncan or others).
28 However, neither KELLY nor the other Defendants are licensed to offer securities or

1 commodities in or originating from the State of California. NATIONSTAR/CENTEX
2 was on specific notice of concerns with respect to CINDY KELLY in and before March
3 of 2007. Upper management had discussed the volume of business being suddenly
4 brought in by KELLY, but the origin of the business was not questioned and sales/profits
5 were deemed to be more important than figuring out whether KELLY was engaged in
6 negligent misrepresentations, loan fraud, negligent or intentional violations of the Truth
7 In Lending Act, or other violations of law.

- 8 16. The corporate defendants maintained electronic and other databases by which corporate
9 management could and did track KELLY's performance and the overall performance of
10 the San Diego CENTEX branch in late 2006 and early 2007. The corporate defendants
11 tracked the number of loan applications, underwriting exceptions, and dollar volume of
12 loans during early 2007.
- 13 17. In Fall 2005, Defendants and each of them, personally or through agents such as CINDY
14 KELLY, verbally or in writing, represented themselves to Plaintiffs and the general
15 public as being able to offer no-documentation loans, adjustable rate loans, high loan to
16 equity ratio transactions, and other offerings made through verbal representations by
17 KELLY or public advertising by the corporate defendants.
- 18 18. By early 2007, Defendants were receiving numerous complaints from Plaintiffs and other
19 similarly situated persons that loan terms were not understood, that Plaintiffs were not
20 receiving returns on investments as promised earlier by NATIONSTAR/CENTEX
21 employee-agents (as promised by KELLY during the loan process), and that they could
22 not reach (by telephone or message) CINDY KELLY or others involved in their
23 transactions. Moreover, counsel for many of the Plaintiffs also attempted to find out
24 what happened and NATIONSTAR/CENTEX's representatives at the San Diego location
25 refused to answer questions and refused to so much as even consider whether something
26 had gone awry. The corporate defendants went into a self-protective mode and did not
27 disclose that they knew that KELLY was offering investments through
28 NATIONSTAR/CENTEX and that legally required lending disclosures were more than

1 likely not made.

- 2 19. When KELLY's sales numbers began to significantly increase, which they did, during
3 the last months of her employment, the other Defendants all encouraged her to continue
4 the pace of volume increases and to continue in her efforts to lure customers, even if it
5 meant that she was representing that she was taking excess loan proceeds for
6 "investments" with the Stonewood Consulting company or other investment interests.
7 Moreover, Defendants also knew or should have known that KELLY was representing to
8 the borrower-Plaintiffs that their mortgages would be paid by Stonewood for at least six
9 months while KELLY and Stonewood worked to flip investment properties covered by
10 original mortgages offered through Defendants or in the alleged efforts to realize gains
11 on the monies allegedly "invested" by the NATIONSTAR/CENTEX borrowers
- 12 20. Unbeknownst to the borrower Plaintiffs, in many instances, KELLY and other agents of
13 the corporate defendants caused false information to be placed on loan applications,
14 including, but not limited to, inflated income, false employment positions, primary
15 residence declarations, false income information, and other misleading information such
16 that underwriting could successfully occur. Plaintiffs were simply asked to sign blank
17 or incomplete application information or their signatures would simply be forged on title,
18 loan, or escrow documents. This occurred in Fall 2005 and thereafter.
- 19 21. At all relevant times, from September 2007 forward, KELLY nor her employers had any
20 reasonable basis for believing that the borrower Plaintiffs could actually repay the loans,
21 that they would be able to keep the security (homes) covered by the loans, or that their
22 creditworthiness would not be negatively affected as a result of bad loans. Moreover,
23 there was no reasonable basis for believing that any investment profits/income would be
24 realized from Iraqi dinars, real estate holdings, or other investments, because such things
25 were never actually provided to Plaintiffs as promised.
- 26 22. Regardless of foreseeable outcomes, Defendants' branch manager KELLY constantly
27 pressured others, including one Derek Nolde and other subordinates, to increase loan
28 production, branch profits, and commissions through the dealings with Stonewood

- 1 unlicensed securities. This conduct violates public policy.
- 2 29. During the past two to four years, the Defendants extended mortgage loans and HELOCs
- 3 to the Plaintiffs without any regard to whether such loans could even be paid.
- 4 30. During the last two to four years, and by the time of any loan closings, Defendants and
- 5 each of them did not cause statements of Truth In Lending Act disclosures to be provided
- 6 as required by law to the Plaintiffs and each of them. This failure included providing
- 7 information on the right to rescind, the actual terms of repayment, and the ultimate
- 8 disposition of excess proceeds or HELOC proceeds.
- 9 31. While, in any many instances, Plaintiffs signed acknowledgments of receipt for written
- 10 disclosures, not all disclosures were actually received as required by law. Moreover,
- 11 many were told that they would simply receive their paperwork ‘later.’
- 12 32. Moreover, CINDY KELLY inexplicably made the decision, while working for
- 13 NATIONASTAR/CENTEX to cause forged or false real property deeds to be executed
- 14 in the Plaintiffs’ names and to cause title to be handed over to unknown third parties.
- 15 33. Title to many of the properties still subject to obligations with NATIONSTAR/CENTEX
- 16 is still held in the names of persons other than the Plaintiff-borrowers.
- 17 34. The Plaintiffs’ consumer credit histories have been largely destroyed as a result of the
- 18 conduct of the Defendants and each of them. Plaintiffs seek restoration for any and all
- 19 monies wrongfully taken by way of HELOC loans with the Defendants and for any and
- 20 all other losses occasioned by the unfair conduct of the Defendants.
- 21 35. Plaintiffs seek rescission of any and all obligations with NATIONSTAR/CENTEX or
- 22 their assigns per 15 U.S.C. §§ 1635(a)(f) and 12 C.F.R. §§ 226.17, 226.18.
- 23 36. Plaintiffs seek declaratory relief as to the rescission rights or voiding of any contracts
- 24 with the Defendants. Such relief cannot be afforded without judicial intervention and the
- 25 rights and obligations of the parties are in material dispute.
- 26 37. Plaintiffs seek an award of reasonable attorneys’ fees for being forced to prosecute this
- 27 action.
- 28 ////

**SECOND CAUSE OF ACTION
FOR NEGLIGENCE
AS AGAINST ALL DEFENDANTS**

- 4 38. Plaintiffs hereby incorporate Paragraphs 1 through 37 as though fully set forth and
5 alleged herein. DOES 40 through 50 are alleged to be escrow companies, notaries, and
6 other professionals working at the behest of the Defendants named herein, but whose
7 names are not reasonably known to the Plaintiffs at this time.

8 39. Defendants and each of them had a duty to exercise due care and to avoid foreseeable
9 harm to Plaintiffs in September of 2006 and thereafter. Moreover, Defendants and each
10 of them were in a fiduciary relationship with the Plaintiffs at the time loan contracts were
11 entered into by and between the parties.

12 40. Defendants failed to employ the reasonable standards of care that would otherwise apply
13 to mortgage/HELOC lenders and their agents acting under similar or same circumstances
14 as those presented by way of the Plaintiffs' loan applications and financial situations in
15 and after September of 2006.

16 41. Defendants and each of them breached their duty of reasonable care toward others by the
17 following acts:

18 a.) By causing false statements to be made to Plaintiffs about what payments
19 would be owed per month on the loans extended to the Plaintiffs.
20 Specifically, each was told that they would not need to worry about *any*
21 payments for six months because Stonewood Consulting, or one of its
22 related companies, would take care of the same. No reasonable
23 mortgage lender would have made such representations.

24 b.) Causing excess proceeds from refinance loans and original mortgage
25 loans to Plaintiffs, as arranged by NATIONSTAR/CENTEX, to be
26 "invested" in unlicensed securities.

27 c.) By extending mortgage loans and HELOCs to the Plaintiffs without any regard
28 to whether such loans could even be paid and by allowing false information

relating to the Plaintiffs to be used for underwriting purposes.

d.) By failing to cause statements of Truth In Lending Act disclosures to be provided as required by law to the Plaintiffs and each of them. This failure included providing information on the right to rescind, the actual terms of repayment, and the ultimate disposition of excess proceeds or HELOC proceeds.

e.) NATIONSTAR/CENTEX, by and through its authorized agents, negligently caused forged or false real property deeds to be executed in the Plaintiffs' names and to cause title to be handed over to unknown third parties. Title to many of the properties still subject to obligations with NATIONSTAR/CENTEX are still held in the names of persons other than the Plaintiff-borrowers. DOES 40 through 50 were responsible for causing notarization on such deeds or allowing the same to go through escrow.

f.) By negligently failing to advise the Plaintiffs of the foreseeable effect on consumer credit histories and financial health as a result of the above conduct and omissions to act by the Defendants.

g.) By failing to carefully supervise, review, direct, oversee, instruct, or otherwise properly direct subordinate loan agents and officers working for NATIONSTAR/CENTEX at or about the times that loans were extended by the Defendants to each of the Plaintiffs mentioned herein. These failures include a lack of proper training, disregard of facts that would have placed NATIONSTAR/CENTEX on notice of the fact that damage could occur to the Plaintiffs, negligent lack of supervision over loan document preparation, and other omissions.

26 42. The above conduct was a substantial factor in causing serious financial harm to each and
27 every one of the Plaintiffs herein.

28 | 43. But for the conduct of the Defendants, as alleged herein, the Plaintiffs would not have

been harmed as alleged herein.

2 44. The negligence of the Defendants legally caused damage to the Plaintiffs and the acts of
3 the Defendants were the proximate and legal cause thereof.

4 45. As a result of the negligence of the Defendants, Plaintiffs and each of them have been
5 damaged in an amount of more than \$25,000.00 per person/Plaintiff.

6 46. Plaintiffs have suffered embarrassment, lost sleep, humiliation, distress, stress, anxiety,
7 nervousness, and other physical and psychological harm as a result of the negligence of
8 the Defendants and each of them.

9 47. Plaintiffs did not reasonably discover the negligent acts of the Defendants until early
10 2007, when Defendants began declaring the Plaintiffs in default for nonpayment of loan
11 obligations. Such notices were sent within the period of time that Plaintiffs were told
12 that no payments would be due because of the structure of the investments made by and
13 through CINDY KELLY or other NATIONSTAR/CENTEX agents/representatives.

PRAYER FOR RELIEF

First Cause of Action for Unfair Business Practices

- 16 A. For restitution sufficient to make Plaintiffs whole for their losses;

17 B. Rescission of any affected mortgage or HELOC obligations incurred as a result of the

18 relationship with the Defendants;

19 C. For reasonable attorneys' fees;

20 D. For costs of suit;

21 E. For declaratory relief as necessary to establish the rights and obligations of the parties;

22 and,

23 F. For any and all other such relief or remedies as may be allowed by law or equity.

Second Cause of Action for Negligence

- 25 A. For special and general damages sufficient to make Plaintiffs, and each of them, whole
26 for their losses in an amount to be proven at trial but not less than \$25,000.00 per
27 Plaintiff;
28 B. For out of pocket expenses incurred in this matter;

- 1 C. For costs of suit;
2 D. For declaratory relief as necessary to establish the rights and obligations of the parties;
3 and,
4 E. For any and all other such relief or remedies as may be allowed by law or equity.

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6 Dated: September 15, 2008
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Respectfully submitted:

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ACKERMAN, COWLES & ASSOCIATES


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MICHAEL W. SANDS, JR., ESQ.,
Attorneys for Plaintiffs.