

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE No. 09-CV-20411-CIV-SEITZ/O’SULLIVAN
MIAMI DIVISION

PELAYO M. DURAN,

Plaintiff,

v.

GREENPOINT MORTGAGE FUNDING, INC.,
a Foreign Corporation, LEE A. ROSENTHAL,
Individually,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiff, PELAYO M. DURAN (hereinafter referred to as “DURAN”), by and through his undersigned counsel, sues GREENPOINT MORTGAGE FUNDING, INC. (hereinafter referred to as “GREENPOINT”) and LEE A. ROSENTHAL (hereinafter referred to as “ROSENTHAL”) and states:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00.
2. DURAN, is over the age of 18, and is otherwise *sui juris*.
3. GREENPOINT is a foreign corporation, authorized and doing business in Miami-Dade County, Florida.
4. ROSENTHAL, is over the age of 18, a resident of Melbourne, Florida, and is otherwise *sui juris*.
5. Venue is proper in Miami-Dade County, as all negotiations and transactions occurred in Miami-Dade County, and the property that is the subject matter of this lawsuit is located in Miami-Dade County.

FACTS COMMON TO ALL COUNTS

6. DURAN purchased his primary residence which is the subject matter of this litigation along with his wife on or about October 29, 2004. The residence shall hereinafter be referred to as “the primary residence”.

7. The purchase price of the primary residence was approximately \$984,000.00.

8. Duran gave an initial down payment of approximately \$100,000.00, obtained a first mortgage for approximately 80 percent of the purchase price, and obtained a second mortgage for approximately 10% of the purchase price.

9. Shortly after the purchase, it became apparent to Duran that he would need access to the money he had paid as down payment on the primary residence in order to address a number of issues that had arisen, including but not limited to:

- a. he was being evicted from his current office, requiring him to move his practice;
- b. he had recently discovered that his wife was pregnant with their second son.

10. On or about January, 2005 DURAN viewed a published advertisement from Wells Fargo Home Mortgage in *The Miami Herald*. A copy of the advertisement is attached hereto as **Exhibit “A”**.

11. The advertisement offered an Adjustable Rate Mortgage (ARM), with ten (10) years interest only payments, a fixed interest rate for 10 years, to be adjusted once per year after the change date, with no origination fees, \$350.00 application fee, no down payment, 95% loan to value, and a 5.1 APR¹.

12. After comparing the advertisement to other published rates and terms, DURAN found it appealing because:

- a. It offered the most favorable terms then advertised on the market, based on DURAN’s criteria; and

¹ DURAN now realizes that this advertisement was facially fraudulent since it would be mathematically impossible for a loan with a rate of 5.75% to have an APR of 5.1%.

b. He believed, based on Wells Fargo's name recognition in the marketplace, that they would look out for his best interests.

13. Acting in response to the advertisement, DURAN contacted what he believed to be Wells Fargo Bank.

14. DURAN was directed to CINDY SIERRA (hereinafter referred to as "SIERRA").

15. DURAN explained to SIERRA the reasons why he needed access to the money that he had just put down on the subject property several months earlier (as referenced in Paragraph 8 above).

16. SIERRA recommended to DURAN that he obtain a residential mortgage refinance of his primary residence, including an equity line of credit consistent with the advertised terms and rates.

17. At some point early in the process, SIERRA told DURAN that the advertised rates were not available, but that she would get him a "better deal".

18. SIERRA then proceeded to quote DURAN rates for Adjustable Rate Mortgage (ARM) with ten (10) years interest only payments with a fixed interest rate for either 3, 5, 7, or 10 years, to be adjusted once per year after the adjustment period, i.e. 3/1 ARM, 5/1 ARM, 7/1 ARM, and 10/1 ARM.

19. At some point early in the process, SIERRA asked DURAN about his credit history and the value of the primary residence.

20. DURAN informed SIERRA that his credit history was good and that he believed his primary residence to be worth about \$984,000.00 (which was the price that he had paid about 2 months earlier).

21. SIERRA informed DURAN that she would need to conduct a "pencil search" which was a common (questionably legal) practice where a mortgage broker would shop for an appraiser that would support the value that the lender wanted to arrive at or "hit".

22. Upon information and belief, SIERRA or one of her co-workers contacted Defendant, LEE A. ROSENTHAL (hereinafter referred to as "ROSENTHAL").

23. Upon information and belief, ROSENTHAL informed SIERRA that he could value the primary residence at \$1,500,000.00.

24. SIERRA represented to DURAN that based on the “pencil search” his primary residence was valued at \$1,500,000.00.

25. SIERRA represented to DURAN that he would be able to obtain a new first mortgage that would be payable in a 10 year interest only fixed period.

26. SIERRA represented to DURAN that if he was planning to keep the primary residence for a long time he should buy down his interest rate 1 to 2 percentage points at closing.

27. SIERRA recommended the arrangement referenced in Paragraphs 25 and 26 above because, according to her, it would result in DURAN potentially obtaining a loan with an interest rate of about 3 to 3.5% fixed interest rate.

28. Since the loan was to be repaid as interest only loan for 10 years, SIERRA represented to DURAN that any payment of principal would have the effect of reducing his monthly mortgage payment, thereby further reducing his mortgage.

29. SIERRA represented to DURAN that the arrangement referenced in Paragraphs 25 and 26 above would potentially result in him being able to repay his first loan in 10 to 15 years.

30. SIERRA represented to DURAN that the arrangement referenced in Paragraphs 25 and 26 above would also enable him to obtain an equity line for approximately \$500,000.00 since:

- a. The primary residence had appreciated so much in value; and
- b. the loan was *only* based on DURAN’s good credit and the appraised value of the home.

31. DURAN relied to his detriment on SIERRA’s representations, and continued with the mortgage process.

32. Rels Valuation ordered an appraisal from ROSENTHAL, naming Wells Fargo and its Agent SIERRA as a ROSENTHAL’s client. See attached **Exhibit “M”**.

33. The alleged purpose of the appraisal was to determine whether a loan secured by the property should be made². See Exhibits “N” and “O”.

34. Rels Valuation is an integrated enterprise with Wells Fargo, either by virtue of partial ownership by a common parent or economic power as its largest client.

35. Wells Fargo and/ Defendant GREENPOINTS or its agents requested an order needs its network of authorized brokers to be either knowingly or unknowingly complicit in a scheme with Rels Valuation to pressure appraisers to inflate property values and maximize profits from the loan.

36. Neither GREENPOINT, SIERRA, or ROSENTHAL, have any incentive to ensure that the appraisal is an accurate assessment of the property's true market value.

37. GREENPOINT, SIERRA, or ROSENTHAL’s only interest was for the deal to close.

38. At all times material hereto ROSENTHAL worried that he may be “black-listed” or professionally ostracized for not “playing ball.”

39. In its order to ROSENTHAL, SIERRA misrepresented the value of the home to be \$1,200,000.00.

40. A reasonable and prudent professional such as ROSENTHAL could knowingly expect that the parties to this matter would rely on his appraisal to determine whether a loan secured by the property should be made.

41. ROSENTHAL negligently, unskillfully and without due care, concluded the appraisal to be the exact same estimate that SIERRA informally requested in her order.

42. ROSENTHAL negligently, unskillfully and without due care prepared the appraisal without proper justification, and compared the primary residence to newer and larger properties in the area with better improvements with unjustifiable adjustments to compensate.

² It is important to note that the misrepresentations of ROSENTHAL as to the market value of the property were made in fashion that was not immediately apparent to DURAN and DURAN has recently discovered the existence of these representations after retaining the services of an expert who has brought to the attention of DURAN, for the first time, as of recently, some of the negligent misrepresentations that had the effect of inflating the appraisal of DURAN’s home to the detriment of DURAN.

43. At the time of the appraisal, ROSENTHAL's license required him to be operating under the presumptions of Section 475.628 of the Florida Statute which provides :

“Each appraiser registered, licensed, or certified under this part shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP). Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation or elaboration through the Appraisal Foundation shall also be binding on any appraiser registered, licensed or certified under this part”.

44. Standards Rule 2-5 of the USPAP provides that “[a]n appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the appraisal report. Section 475.624(14) by violating the standards set forth in the USPAP Standards Rules 1-1(a),(b), and (c). USPAP Rule 1-1 provides:

"In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

(b) not commit a substantial error of omission or commission that significantly affects an appraisal.

(c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.”

45. ROSENTHAL latently and negligently violated USPAP Rule 1-1 by comparing DURAN's property which is comprised of approximately 8,000 sq feet of land to two other properties that are comprised of more than 20,000 square feet of land located on triple lots.

46. To compensate for this lack of comparability, Defendant ROSENTHAL negligently and latently adjusted the price of the subject comparative by \$52,000 to \$58,000, notwithstanding that the property size difference is more than double that of Duran's, more specifically a 375% difference.

47. Moreover, Rosenthal never accounted that those aforementioned comparables, which are triple lots that can potentially be subdivided by its owners commensurate to Duran's land size value which was to his estimate \$910,000.00 or approximately \$113.00 per square foot of land a difference of over \$200,000 in land value adjustment.

48. Defendant ROSENTHAL estimated the site or land value at \$910,000 or 75% of the overall value of the site, which lies in an area that is between 50% to 70% land value.

49. Additionally, Rosenthal made other negligent and latent and unjustified adjustments including Pools for \$15,000, Garages for \$2000, and the Square footage adjustment that are 22% more than what would be in a reasonable comparison.

50. Defendant ROSENTHAL negligently misrepresented the value of the property and did not comply with USPAP.

51. ROSENTHAL is vicariously liable for the actions of Mamoud Sir in light of the fact that:

- a. At the time of the appraisal, ROSENTHAL was supervising Mamoud Sir;
- b. Neither Mamoud Sir or ROSENTHAL employed the recognized methods and techniques as established in the USPAP;
- c. ROSENTHAL vicariously committed substantial errors of omission or commission that significantly affected the appraisal;
- d. Neither Mamoud and ROSENTHAL committed careless errors that affected the credibility of the appraisal report;
- e. ROSENTHAL signed an appraisal report with an inflated value of more than \$200,000 without having independently conducted his own inspection of records of other comparable properties, and without having independently reviewed the sales history of the other properties, the history of the comparable sales included in the appraisal, or the values of vacant land of other comparative properties;

52. The process of securitizing loans and selling them to the secondary market changed the mortgage industry and has diminished the broker's and the lender's incentive to ensure the appraisal backing the loan is accurate.

53. With respect to DURAN's mortgage, the underwriting standards required minimal investigation into DURAN's credit history and income profile, and such mortgage loans may be underwritten primarily on the basis of an appraisal such as the one performed by Defendant ROSENTHAL.

54. Because GREENPOINT's profits are determined by the quantity of loans that they successfully close, and not the quality of those loans, the lender has an incentive to pressure appraisers and brokers to reach values that will allow the loan to close - without regard to whether the appraisal accurately reflects the home's actual value.

55. Likewise, the independent broker is not tied to a particular lender, but instead has relationships with multiple lenders and seeks to comply with the lender's wishes and conditions in order to service clients and maximize their own profits.

56. In the course of ROSENTHAL's business, profession or employment, ROSENTHAL supplied false information for the guidance of DURAN, and is subject to liability for pecuniary loss caused to DURAN.

57. DURAN justifiably relied to his detriment upon information provided to him by ROSENTHAL.

58. Defendant ROSENTHAL failed to exercise reasonable care or competence in obtaining or communicated that information to DURAN.

59. Over the period of approximately two (2) months following the initial contact with SIERRA, and as DURAN continued to go through the application process, DURAN continued to make periodic telephone inquiries to SIERRA as to rates and terms of the loans.

60. On or about February 10, 2005 SIERRA submitted to DURAN a Good Faith Estimate inducing him to apply for a ten (10) year interest only loan in the amount of \$900,000.00, to be adjusted once per year after ten (10) years (10/1 ARM) with a rate

of 5.75%³. A true and correct copy of the February 10, 2005 Good Faith Estimate is attached hereto as **Exhibit “C”**.

61. Relying on SIERRA’s representations, and on the February 10, 2005 Good Faith Estimate submitted by SIERRA, on or about February 10, 2005 DURAN signed and submitted to Wells Fargo a Residential Loan Application.

62. The Residential Loan Application requested a ten (10) year interest only loan, to be adjusted once per year (10/1 ARM) with a rate of 5.75%.

63. Based on SIERRA’s specific instruction to DURAN, his application did not contain any specification whatsoever as to monthly income, and contained an estimated value of the subject property of \$1,300,000.00 (although DURAN had been previously informed by SIERRA that the value of his home was \$1,500,000.00 according to the “pencil search”).

64. Inducing DURAN to omit his monthly income from the application enabled SIERRA to adjust the loan to value and debt to income ratio.

65. The omission of a monthly income on the application enabled SIERRA to back into the required debt to income ratio by increasing DURAN’s income without the risk of contradicting a previous statement of DURAN if the income was too low.

66. In the following weeks SIERRA told DURAN on several occasions that the rates had gone up, and that the originally offered terms, i.e. 10/1 ARM, were not likely available.

67. During those conversations, SIERRA continued to insist, and attempted to induce DURAN, to accept a 3/1 ARM.

68. DURAN repeatedly refused the 3/1 ARM, and repeatedly insisted on the originally offered terms of 10/1 ARM at 5.1%.

69.

³ It is important to note that Sierra told DURAN that he would be able to buy down the rate at closing 1 to 2 percentage point and that he should not worry about the quoted rate since all rates could be bought down at closing, this was a common industry practice.

43. Thereafter, DURAN received a series of different and conflicting Truth in Lending disclosures from Wells Fargo and/or GREENPOINT accompanied by a series of different and conflicting Good Faith Estimates, that either fraudulently, recklessly or negligently misrepresented the resulting closing terms included in the final loan as follows:

a. The second Good Faith Estimate was dated February 18, 2005, quoting an annual percentage rate (APR) of 5.8212% with good faith estimate cost of \$12,631.50. A copy of the February 18, 2005 disclosure and Good Faith Estimate is incorporated by reference as **Composite Exhibit “E”**;

b. The third Good Faith Estimate was dated February 22, 2005, quoting an annual percentage rate of APR 5.451% with a good faith estimate cost of \$8,362.00. A copy of the February 22, 2005 disclosure and Good Faith Estimate is incorporated by reference as **Composite Exhibit “F”**.

44. The February 22, 2005 Good Faith Estimate bore GREENPOINT’s logo, and was provided to DURAN by GREENPOINT or by GREENPOINT’s authorized agent and/or representative.

45. The prospect of a first mortgage with GREENPOINT was presented to DURAN by SIERRA acting as Broker/ Agent for GREENPOINT.

46. SIERRA further induced DURAN to obtain an additional \$20,000.00 line advance from the line of credit in order to increase her commission.

47. SIERRA specifically advised DURAN to draw the entire line of credit so that she could generate more commissions profits and kickbacks that supposedly she would be paid by the either Defendant GREENPOINT or Wells Fargo.

48. DURAN entered into a Rate Lock Agreement with GREENPOINT on February 22, 2005 for a fixed interest rate of 5.5% during a five (5) year period, to be adjusted once per year after the change date, with a lifetime cap of 5% with no pre payment penalty. A copy of the Rate Lock Agreement is incorporated by reference as **Exhibit “D”**. This is a substantially riskier loan since the adjustments are twice per

year, include a prepayment penalty (to insure that SIERRA would not face the prospect of being charged back her commission, rebates and kick backs) and most importantly the loan contained a Rate Cap of 10.5% not 5% as represented to DURAN in the rate lock agreement.

49. On March 10, 2005 DURAN and GREENPOINT closed on a \$920,000.00 first mortgage.

50. The March 10, 2005 closing took place five (5) days prior to expiration of the Wells Fargo Rate Lock Agreement.

51. At the time of closing GREENPOINT gave DURAN a final Truth in Lending disclosure, reflecting a financed amount of \$903,830.29 with an APR of 5.622%.

52. The March 10, 2005 Truth in Lending Disclosure fraudulently, recklessly or negligently misrepresented to DURAN the terms of the loan.

50. At no time during the months of discussions between DURAN and SIERRA, did SIERRA ever discuss the prospect of the terms that were ultimately originated in the GREENPOINT Note, i.e., rate adjustments up to twice per year as opposed to the offered adjustment of once per year, or pre-payment penalty or a rate cap of 10.5%.

53. At no time prior to closing did GREENPOINT, or anyone acting on behalf of GREENPOINT, ever discuss the prospect of the terms that were ultimately originated in the GREENPOINT Note, i.e., rate adjustments up to twice per year as opposed to the offered adjustment of once per year, or pre-payment penalty or a rate cap of 10.5%.

54. DURAN paid a required fee that should have been credited at the time of closing, but was not.

55. DURAN also received a Broker Compensation Disclosure from GREENPOINT informing DURAN that GREENPOINT "will be acting as mortgage broker". A copy of the Broker Compensation Disclosure is attached hereto as Exhibit "G".

56. The final costs charged at closing were \$27,376.21. A copy of the final HUD-1 and Truth in Lending disclosure are incorporated by reference as **Composite Exhibit "B"**.

57. At the time of closing, DURAN was provided with a typed version of the Residential Loan Application.

58. This typed version of the Residential Loan application contained income information that had not been provided by DURAN in the original application.

59. Upon reviewing the Note, mortgage and pre-payment penalty during the March 10, 2005 closing, DURAN learned for the first time that GREENPOINT had switched the terms of the loan from the terms that were promised in the February 22, 2005 Good Faith Estimate (annual percentage rate of APR 5.451% with a good faith estimate cost of \$8,362.00) to a fixed interest rate during a five (5) year period, to be adjusted twice per year after the adjustment period 5/6mo. ARM with \$27,376.21 in costs. A copy of which are incorporated by reference as **Composite Exhibit "H"**

60. The GREENPOINT Mortgage/Note also contained a pre-payment penalty that was never previously disclosed to DURAN.

61. At the time of the GREENPOINT closing (Thursday, March 10, 2005), DURAN and his wife were each given only one (1) copy of a Notice of Right of Rescission, not (2) two as required by law. Copies of which are attached hereto as **Composite Exhibit "L"**.

62. Although SIERRA worked for Wells Fargo, upon information and belief, she also routinely placed customers who replied to Wells Fargo advertisements with loans from other lenders such as GREENPOINT.

63. Further, the HUD-1 settlement statement provided at closing and other documents from the March 10, 2005 closing show that GREENPOINT and Wells Fargo shared the same office space at 800 Fairway Drive, Suite 140, Deerfield Beach FL 33441-1830.

64. GREENPOINT and Wells Fargo's sharing of office space raises additional questions with regard other improprieties and deceptive lending and business practices associated with the GREENPOINT mortgage.

65. Upon information and belief, SIERRA received premiums or commissions or fees and kick backs directly from GREENPOINT, or through Wells Fargo, for the closing of DURAN's GREENPOINT loan.

66. Such premiums or commissions or fees and kick backs were intended to encourage SIERRA to place with GREENPOINT customers with high risk, subprime loans with unfavorable terms.

67. Upon information and belief, SIERRA placed many customers with loans through GREENPOINT.

68. Upon information and belief, SIERRA closed several loans on behalf of GREENPOINT.

69. Upon information and belief, SIERRA used GREENPOINT's policies, rate sheets, product sheets, loan pricing software, closing documents and training materials when placing customers with loans through GREENPOINT.

70. Upon information and belief, SIERRA filled out the computer-generated loan applications, executed rate lock agreements and other documentation, and submitted final loan documents for the GREENPOINT loan on behalf of GREENPOINT.

71. SIERRA represented to DURAN that she had the authority from GREENPOINT to arrange or grant mortgage financing for the GREENPOINT loan.

72. Upon information and belief, Wells Fargo and GREENPOINT had a written agreement to do business with each other, whereby Wells Fargo authorized GREENPOINT to broker or arrange mortgage loans using Wells Fargo agents and/or employees.

73. DURAN's loan with GREENPOINT was intended to be arranged in conjunction with GREENPOINT's credit-granting policies.

74. SIERRA took and accepted DURAN's loan on behalf of GREENPOINT.

75. SIERRA's acts, as alleged in this lawsuit, were encouraged by GREENPOINT's compensation policies and designed to further enhance GREENPOINT's profits.

76. DURAN contacted SIERRA on the telephone during the March 10, 2005 Closing, and told her that she had given him a loan that was different from that which had been represented previously.

77. Acting as GREENPOINT's agent, SIERRA insisted that DURAN close on the GREENPOINT transaction since he supposedly had three (3) days to cancel the transaction.

78. Acting as GREENPOINT's agent, SIERRA further assured DURAN that there had been some sort of mistake and that she would speak to her supervisor.

79. Acting as GREENPOINT's agent, SIERRA assured DURAN that the corrections to the GREENPOINT mortgage were made as per the Rate Lock Agreement and their previous discussions regarding the "buy down" of the rate 1 to 2 percentage points.

80. On or about March 11, 1009 DURAN told SIERRA that he wanted to exercise his right to rescind the GREENPOINT mortgage, and inquired what would happen if he did.

81. SIERRA indicated that the Wells Fargo Rate Lock Agreement for the second mortgage equity line of credit loan had essentially expired since the loan would have to be re-processed through underwriting, and that if he rescinded the GREENPOINT loan his new rate would be significantly higher.

82. SIERRA either, fraudulently, recklessly or negligently misrepresented and told DURAN that if he rescinded the loan she would also have to cancel the second mortgage equity line of credit loan that was still being processed at that time.

83. At all times material hereto, SIERRA knew that the second mortgage equity line of credit loan was the primary purpose of the transaction.

84. At all times material hereto, SIERRA knew that a threat of canceling the second mortgage equity line of credit loan would induce DURAN not to rescind his GREENPOINT loan.

85. SIERRA timed the closing of the equity mortgage and the misrepresentations in the GREENPOINT loan so as to induce DURAN into closing on both loans.

86. Closing of the equity mortgage took place on April 25, 2005. Copy of letter from Wells Fargo referencing the closing package for the equity line of credit is attached hereto and incorporated herein by reference as Composite Exhibit “J”). A copy of the Wells Fargo EquityLine with Flexibility Agreement and Disclosure Statement is attached hereto as **Exhibit “K”**).

87. Throughout the time that SIERRA dealt with DURAN on the GREENPOINT loan, SIERRA assured DURAN that the loan(s) that she was securing were “the best deal for you” or words to that effect.

88. DURAN relied to his detriment on assurances made by GREENPOINT’s agent, that he was receiving the most favorable loan terms available to him.

89. SIERRA induced DURAN to go through the loan process and at the end, secure a loan that did not resemble the advertised terms or the promised terms.

90. SIERRA induced DURAN to secure a loan that was designed to maximize hers and GREENPOINT’S profits.

91. SIERRA induced DURAN to secure a loan that generated kick backs and fees to the detriment of DURAN.

92. SIERRA acted as an agent for both GREENPOINT and WELLS FARGO.

93. DURAN has sustained and will continue to sustain in the future damages as a result of GREENPOINT’s and ROSENTHAL’s representations, misrepresentations concealments, and nondisclosures.

FACTUAL ALLEGATIONS REGARDING
MISREPRESENTATIONS COMMON TO ALL COUNTS

94. GREENPOINT individually and/or through its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently failed to disclose and/or misrepresented to DURAN the following statements of material fact that were either false, untrue, and/or misleading prior to, during, and after the closing of the GREENPOINT mortgage:

- a. After Plaintiff attempted to obtain financing through what he believed to be Wells Fargo Bank, Wells Fargo Bank and SIERRA decided to “switch roles” from “lender” to “broker”, and ultimately wrote the loan specifying

GREENPOINT as the lender in order to pay themselves a loan origination/ broker commission or fee of \$10,350.00 and a “processing/admin fee” of \$230 that was not properly disclosed to the DURAN.

- b. Neither SIERRA, Wells Fargo, or GREENPOINT ever properly disclosed these fees, totaling \$10,580.00.
- c. GREENPOINT failed to disclose, negligently or fraudulently concealed, that the annual percentage rate to be charged for the loan would be lower than the one eventually provided by GREENPOINT at closing;
- d. GREENPOINT failed to disclose, negligently or fraudulently concealed, that the value of the primary residence was more than the actual value of the property;
- e. GREENPOINT failed to disclose, negligently or fraudulently concealed, that the amount financed and finance charges would be less than what was eventually in the mortgage documents presented to DURAN at closing;
- f. GREENPOINT failed to disclose, negligently or fraudulently concealed, that the total payments would be less than what was eventually stated in the loan documents;
- g. The terms reflected on the GFE (**Exhibit “F”**) prepared by GREENPOINT on or about 2/22/05 that was provided to DURAN, and that DURAN reasonably relied on, reflected an APR of 5.451% for a loan that has a higher undisclosed nominal rate and cost.
- h. The APR in the 2/22/05 GFE was both incorrect and understated outside allowable tolerances under TILA.
- i. The 2/22/05 TILD outlines an initial 60 payments at \$4,996.55 and then leads the borrower(s) to believe that their payments will actually decrease for the remainder of the term of the loan to approximately \$4,935.00, notwithstanding the fact that up to this point it appears the initial “fixed” period progressively dropped from 10 years to 7 years and is now just 5 years as compared to other prior good faith estimates provided to DURAN.

- j. The payment schedule disclosed in the Final TILD, which was presented to DURAN for the first time on 3/10/05, reflected a misrepresented APR of 5.622% which, even if correct, exceeds .125% of the percentage rate disclosed in the Truth in Lending Disclosure (TILD) dated 2/22/05, thereby necessitating re-disclosure under TILA.
- k. The schedule of payments reflects a fixed payment amount of \$4,216.67 multiplied by 120 months, which would mislead a borrower into believing that the initial "fixed period" term of both the interest rate and payment has returned to 10 years. But the Adjustable Rate Note and Adjustable Rate Rider actually contradict the TILD, and allow for adjustments to both the payment and interest rate after only 5 years.
- l. The Note introduces for the first time an "interest only" term which no prior disclosures, GFEs, or TILDS, including the ones at closing, ever disclosed.
- m. GREENPOINT failed to disclose the existence of an early payment penalty prior to the closing.
- n. The Loan Seller, mortgage lender, mortgage broker, correspondent mortgage lender (GREENPOINT) posed as a conventional mortgage lender, thus leading Plaintiff to reasonably believe that the Loan Seller, the mortgage broker, and the loan originator had an interest in the success (repayment of the loan) of the transaction that Plaintiff was induced to believe was being executed at the time of the "closing" of the subject loan transaction.
- o. In fact, neither the Loan Seller, mortgage lender, mortgage broker, correspondent mortgage lender (GREENPOINT), SIERRA, ROSENTHAL, or loan originator, had a financial stake (i.e., liability) in the transaction.
- p. In fact, neither the Loan Seller, mortgage lender, mortgage broker, correspondent mortgage lender (GREENPOINT), SIERRA, ROSENTHAL, or loan originator, had any interest other than obtaining

Plaintiff's signature on a "loan" that could never be repaid, contrary to representations and assurances from the conspiring participants in this fraudulent scheme.

- q. In fact, the "Appraisal" was either negligently intentionally and/or knowingly prepared and inflated, as more specifically alleged in Paragraphs 32-58 above, to justify the closing of the "loan transaction."
- r. Plaintiff relied upon the due diligence of ROSENTHAL and GREENPOINT, the apparent "Lender", in executing and accepting the closing documents.
- s. In fact, no "lender" was involved in the closing in the sense of an entity performing due diligence and evaluation pursuant to national standards for underwriting and evaluating risk of loaning money in a residential loan closing.
- t. Upon information and belief, GREENPOINT is an institution that was paid a fee to pose as a residential mortgage lender, broker, correspondent lender, when in fact, the source of loan funds and the actual lender (Investors in Certificates) and underwriter (Mortgage Aggregator and Investment Banker) were other parties whose identities and receipt of fees and profits were withheld from Plaintiff at Closing, and despite numerous requests, continue to be withheld from Plaintiff by the GREENPOINT, contrary to the requirements of applicable Law.
- u. Unbeknownst to Plaintiff, GREENPOINT entered into Assignment and Assumption Agreements with one or more parties, and Pooling and Service Agreements with one or more parties, including but not limited to the mortgage aggregator, prior to or contemporaneously with the "Closing" of the subject "loan transaction."
- v. Under the terms of these agreements with third parties, GREENPOINT received a sum of money (pre-funding), usually on receiving an application for a loan equal to the gross amount of the loan sought by Plaintiff plus a fee which was allocated to the subject loan transaction.

- w. Contrary to the documents presented before and during the "closing" of the "loan transaction", GREENPOINT was neither the source of funding nor the "Lender."
- x. Immediately upon closing, the loan was assigned to a Trust.
- y. Thus, at the time of recording the source of funding and the "Lender" was a different entity than the nominal mortgagee, and was neither named nor disclosed in any fashion.
- z. The security for the "loan" thus secured an obligation that had been paid in full by third party(ies) who were acting as a financial institution or "Lender" without even having been chartered or registered to do so.
- aa. Some form of documentation represented by GREENPOINT to the Mortgage Aggregator was presented before or contemporaneously with the "closing" of the loan" transaction. But Plaintiff does not know what version of documentation GREENPOINT presented to the Mortgage Aggregator, or if the Mortgage Aggregator took one or more varying descriptions of the alleged "loan documents" into more than one pool of assets which was eventually sold for the purpose of securitizing the assets of the pool which included the subject loan transaction either once or more than once. Plaintiff has requested such information numerous times only to be met with complete silence and resistance from the Defendants.
- bb. GREENPOINT failed to disclose, negligently or fraudulently concealed, that the note from the subject "loan transaction" was eventually allocated into a new corporation (Special Purpose Vehicle) formed for the express purpose of holding the pooled assets under certain terms.
- cc. GREENPOINT failed to disclose, negligently or fraudulently concealed, that the terms of the allocation into the Special Purpose Vehicle included the allocation of payments from one note to pay any deficiency in payment of another note in unrelated "loan transactions".

- dd. This practice by GREENPOINT is contrary to the terms of each such note, which requires payments to be allocated to the principal, interest, escrow and fees associated with only that specific "loan transaction."
- ee. Whether such misapplication of payments was caused by the difference between the higher general terms of description of the note or the lower actual payment requirements from the "borrower" is not known, despite requests for accounting and the refusal of GREENPOINT to provide any such information.
- ff. GREENPOINT failed to disclose, negligently or fraudulently concealed, that The Investment Banking firm arranged for a false inflated appraisal of the certificates and/or issuer of the certificates that would be sold to investors, in much the same way as it had procured the inflated appraisal of the property that "secured" the "loan transaction."
- gg. GREENPOINT failed to disclose, negligently or fraudulently concealed, the fact that insurance was probably purchased from proceeds of this transaction, credit default swaps were purchased from proceeds of this transaction, the investors investments were "oversold" to create a reserve pool from which the SPV could pay deficiencies in payments, and the SPV created cross-collateralization agreements and overcollateralization of the pool assets to assure payments to the investors, thus creating co-obligors on the payment stream due from the Plaintiff on the subject "loan transaction."

95 . GREENPOINT individually and/or through its authorized agent, with actual or apparent authority, manipulated DURAN's Uniform Residential Loan Application URLA Form 1003 in the following respects :

- a. SIERRA specifically instructed DURAN not to fill out any income information in the Uniform Residential Loan Application URLA Form 1003 dated 2/10/05, and to put a market value on the property of \$1,500,000.00.

- b. During a subsequent telephone conversation SIERRA requested DURAN to change the value on the property from \$1,500,000.00 to \$1,300,000.00.
- c. DURAN was not presented the typed version of the URLA Form 1003, and did not execute the same, until the time of closing, at which time he learned that GREENPOINT, by and through its authorized agent, had done the following:
 - i. Misrepresented the market value on the primary residence on the Uniform Residential Loan Application URLA Form 1003 as \$1,100,000.00;
 - ii. Deleted SIERRA's name from pg. 5 of the URLA Form 1003;
 - iii. Fabricated DURAN's Gross Average monthly income to be \$17,928 per month in order to meet the underwriting criteria of the loan product.

COUNT I
UNFAIR AND DECEPTIVE TRADE PRACTICES
AGAINST GREENPOINT AND ROSENTHAL

96. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-95 as if the same had been fully set forth herein.
97. This is an action for damages for violation of the Florida Deceptive and Unfair Trade Practices Act §§ 501.201, *et seq.*
98. DURAN is a "consumer" as defined in § 501.203(7) of the Florida Deceptive and Unfair Trade Practices Act.
99. The conduct of GREENPOINT, acting individually and through its agent SIERRA, and ROSENTHAL as hereinabove alleged in Paragraphs 6-95 above, constitutes a fraud as defined in the Florida Deceptive and Unfair Trade Practices Act and applicable case law against DURAN.
100. As specifically alleged above, these Defendants, directly or through their agents and employees, including SIERRA, made false representations, concealments, and nondisclosures to DURAN knowing the falsity of their representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN and to induce him to secure mortgage loans that were not in DURAN's best interest.
101. In so doing, these Defendants failed to disclose the significant financial aspects of the loan transactions, including failure to disclose the true value of the property at issue, the amount of fees, costs and interest that DURAN would have to pay for the loans.

102. By engaging in the conduct more specifically described in Paragraphs 6-95 above, GREENPOINT, individually and through its agent, SIERRA, and ROSENTHAL engaged in what is commonly referred to as "bait and switch" sales tactics.

103. SIERRA utilized the Wells Fargo advertisement to entice prospective borrowers such as DURAN to undertake and agree to loans from various lenders such as GREENPOINT.

104. GREENPOINT, acting individually and through its agent SIERRA, made false statements regarding interest rates and other fees in its Rate Lock Agreements and the "good faith" estimates at issue in order to entice DURAN into higher rate loans that would yield higher fees and earnings to all Defendants all in violation of the applicable law.

105. By engaging in the conduct more specifically described in Paragraphs 6-95 above, GREENPOINT, individually and through its agent, SIERRA, and ROSENTHAL knowingly and intentionally engaged in an unfair and deceptive act or practice.

105. GREENPOINT and ROSENTHAL knowingly and intentionally engaged in an unfair and deceptive act or practice by changing the terms and conditions of the loan after having provided DURAN with a Good Faith Estimate, misstating the value of the subject property, and other false and misleading information as more specifically alleged above in Paragraph 6-95 above.

106. The typed version of the Residential Loan application provided at closing on March 10, 2005 contained income information that was not provided by DURAN.

107. These changes evidence the fact that the loan was made without regard to DURAN's ability to repay the same, and that the broker and lender engaged in fraud upon DURAN.

108. Defendants individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently represented and/or failed to disclose and/or misrepresented to DURAN statements of material fact that were either false untrue and/or misleading prior to, during and after the closing of the mortgage loan in question, as alleged in Paragraphs 94-95 above, that are alleged and incorporated herein by reference as if having been fully alleged herein.

109. In addition, GREENPOINT, acting individually and through SIERRA, failed to disclose the existence of an early payment penalty prior to the closing.

110. As specifically alleged above, these Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to DURAN knowing the falsity of their representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN and to induce him to secure mortgage loans that were not in DURAN's best interest. In so doing, these Defendants failed to disclose the significant financial aspects of the loan transactions, including failure to disclose the amount of fees, costs and interest that DURAN would have to pay for the loans.

111. As a result of Defendant's conduct, DURAN sustained and will continue to sustain damages in the future.

112. DURAN's damages occurred as the proximate result of defendant's unlawful conduct.

113. DURAN retained an attorney to pursue his claims against Defendants, and accordingly, is obligated to pay reasonable fees and costs associated therewith.

114. DURAN is entitled, upon prevailing, to recover those fees pursuant to Fla. Stat. § 501.2105.

115. DURAN is, upon prevailing, further entitled to recover court costs pursuant to Fla. Stat. § 501.2105.

WHEREFORE, DURAN requests judgment against Defendants, GREENPOINT and ROSENTHAL for compensatory damages, together with attorney's fees and costs of suit and such other and further relief as the court may deem proper.

COUNT II

VIOLATION OF FLA. STAT. CHAPTER 494 AGAINST GREENPOINT

116. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-95 as if the same had been fully set forth herein.

117. This is a claim for violation of Chapter 494, Fla. Stat.

118. Defendant, GREENPOINT, is a "mortgage brokerage business", as defined by Fla. Stat. § 494.001.

119. Defendant, GREENPOINT, solicited or offered to solicit a mortgage loan on behalf of DURAN, and accepted or offered to accept an application for a mortgage loan from DURAN, for compensation or gain, or in the expectation of compensation or gain, as contemplated by Fla. Stat. § 494.001.

120. Defendant, GREENPOINT, advertised certain rates and conditions to DURAN for a residential mortgage loan in violation of Fla. Stat. § 494.00165.

121. Defendant, GREENPOINT, violated Fla. Stat. §494.0025 and other applicable law by (1) acting as mortgage lender, correspondent mortgage lender and mortgage broker without an active license, (2) by either directly or indirectly engaging in a practice or transaction or course of business relating to a mortgage transaction negotiation promotion advertisement or hypothecation of a mortgage transaction knowing or willingly employ any device scheme or artifice to defraud; by engaging in transaction, practice, or course of business which operated as a fraud upon DURAN in connection with purchase or sale of any loan; by obtaining property by fraud, willful misrepresentation of a future act or false promise and (3) knowingly and willfully falsifying, concealing or covering up by a trick, scheme, or device a material fact, making false or fraudulent statements or representations or making use of a false writing or document knowing the same to contain false or fraudulent statements or entries (4) using the name of a financial institution or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers without consent in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by or is related to or the responsibility of the financial institution or its affiliate as alleged above in the course of conduct alleged in paragraphs 6-95 and by engaging in the following course of illegal conduct and making or causing to be made the specific fraudulent misrepresentation as specifically alleged in Paragraphs 6-95 above that are alleged and incorporated herein by reference as if having been alleged herein.

122. In addition, GREENPOINT, acting individually and through SIERRA, failed to disclose the existence of an early payment penalty prior to the closing.

123. As specifically alleged above, GREENPOINT directly or through its agents, employees, made false representations, concealments, and nondisclosures to

DURAN knowing the falsity of their representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN and to induce him to secure mortgage loans that were not in DURAN's best interest. In so doing, these Defendants failed to disclose the significant financial aspects of the loan transactions, including failure to disclose the amount of fees, costs and interest that DURAN would have to pay for the loans.

124. As a result of GREENPOINT's actions, DURAN sustained and will continue to sustain damages in the future.

125. DURAN's damages occurred as the proximate result of defendant's unlawful conduct.

WHEREFORE, DURAN demands judgment against Defendant, GREENPOINT, for compensatory damages, interest, and costs.

COUNT III
BREACH OF FIDUCIARY DUTY AGAINST GREENPOINT

126. DURAN repeats and reaffirms all of the allegations set forth in Paragraphs 1-95 as if the same had been fully set forth herein.

127. GREENPOINT, acting through SIERRA owed a fiduciary duty to DURAN by virtue of the fact that she obtained confidential information from him and developed a relationship of trust for the purpose of inducing him to secure mortgage loan financing using her services and the services of her principal.

128. GREENPOINT, acting through SIERRA knew that DURAN placed his trust and confidence in her and relied on her to assure that he would receive loan terms that were most favorable to him.

129. DURAN was a customer with whom GREENPOINT had an established relationship of trust and confidence and these were transaction from which GREENPOINT was likely to benefit, and in fact did benefit at DURAN's expense.

130. GREENPOINT was under the apparent and actual obligation to disclose fact material to the transaction not otherwise available to DURAN.

131. Throughout these transactions GREENPOINT, through SIERRA, told DURAN that he was getting the "best rate available" and that "she was looking out for

his best interest” and that she would insure that he would be getting “the best deal possible”.

132. GREENPOINT, acting through SIERRA breached that fiduciary duty by making false representations, concealments, and nondisclosures to DURAN knowing the falsity of the representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN and to induce him to secure mortgage loans that were not in DURAN’s best interest. In so doing, SIERRA failed to disclose the significant financial aspects of the loan transactions, including failure to disclose the amount of fees, costs and interest that DURAN would have to pay for the loans.

133. Defendant GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently represented and/or failed to disclose and/or misrepresented to DURAN statements of material facts that were either false untrue and misleading prior to, during and after the closing of the mortgage loan in question as alleged in Paragraphs 94-95 above that are alleged and incorporated herein by reference as if having been fully alleged herein.

134. In addition, GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently represented and/or failed to disclose and/or misrepresented to DURAN that :

- a. the mortgage loan being processed was not in DURAN’s best interest;
- b. the terms of the mortgage loan being processed were less favorable than the loan which Defendants previously advised DURAN that DURAN qualified for;
- c. that the adjustable rate mortgage loan was an inter-temporal transaction (transaction where terms, risks, or provisions at the commencement of the transaction differ at a later time) on which DURAN had only qualified at the initial "teaser" fixed rate but had not and could not qualify for the loan once the interest rate terms changed after year 5;
- d. that as a result of the change in interest rate and terms and that after closing and after year 5 when the interest would become fully adjustable every 6

months that DURAN would eventually not be able to meet his financial obligations on the loan given;

e. that DURAN would likely be placed in a position of default, foreclosure, and deficiency judgment upon not being able to meet their increased loan obligations once the fixed rate interest period expired and the adjustable rate applied;

f. that Defendant GREENPOINT had no intention of retaining ownership interest in the mortgage loan and in fact may have already presold the loan, prior to closing, to a third party mortgage aggregator;

g. that the mortgage loan was actually intended to be repeatedly sold and assigned to multiple third parties, including one or more mortgage aggregators and investment bankers, for the ultimate purpose of bundling the DURAN's mortgage with hundreds or perhaps thousands of others as part of a companion, support, or other tranche in connection with the creation of a Real Estate Mortgage Investment Conduit ("REMIC") security known as a Collateralized Mortgage Obligation ("CMO"), also known as a "mortgage-backed security" to be sold by a securities firm (and which in fact ended up as collateral for Asset-Backed Securities Certificates, probably created the same year as the closing);

h. that the mortgage instrument and Promissory Note may be sold, transferred, or assigned separately to separate third parties so that the later "holder" of the Promissory Note may not be in privity with or have the legal right to foreclose in the event of default or to defend this action;

i. that in connection with the multiple down the line resale and assignment of the mortgage and Promissory Note that assignees or purchasers of the Note may make "paydowns" against the Note which may effect the true amount owed by the DURAN on the Note; and

j. that there was a prepayment penalty.

k. That Wells Fargo could not originate the First Loan because they "wanted to limit their financial exposure" when in truth and in fact neither Defendant GREENPOINT nor Wells Fargo had any financial exposure under this loan

135. As specifically alleged above, GREENPOINT, directly or through their agents and employees, made false representations, concealments, and nondisclosures to DURAN knowing the falsity of their representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN and to induce him to secure mortgage loans that were not in DURAN's best interest. In so doing, Defendant GREENPOINT failed to disclose the significant financial aspects of the loan transactions, including failure to disclose the amount of fees, costs and interest that DURAN would have to pay for the loans.

136. As a result of GREENPOINT's actions, DURAN sustained and will continue to sustain damages in the future.

137. DURAN's damages occurred as the proximate result of defendant's unlawful conduct.

WHEREFORE, DURAN demands judgment against Defendant, SIERRA, for compensatory damages, interest, and costs.

COUNT IV

FRAUD AGAINST DEFENDANT GREENPOINT

138. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-95 as if the same had been fully set forth herein.

139. As described in Paragraphs 94-95 above, GREENPOINT intentionally misrepresented the true terms of DURAN's loan. The conduct or course of conduct of GREENPOINT, as hereinabove alleged in Paragraphs 94-95 above, constitutes a fraud against DURAN.

140. Specifically, GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently represented and/or failed to disclose and/or misrepresented to DURAN statements of material facts that were either false, untrue and misleading prior to, during and after the closing of the mortgage loan in question as alleged in Paragraphs 94-95 above that are alleged and incorporated herein by reference as if having been fully alleged herein.

141. In addition, GREENPOINT, acting individually and through SIERRA, failed to disclose the existence of an early payment penalty prior to the closing.

141. Sierra timed the closing of the equity mortgage and the misrepresentations in the GREENPOINT loan so as to fraudulently induce DURAN into closing on both loans.

142. GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or intentionally represented and/or failed to disclose and/or misrepresented to DURAN statements of material facts that were either false, untrue and misleading prior to, during and after the closing of the mortgage loan in question as alleged in Paragraphs 94-95 above that are alleged and incorporated herein by reference as if having been fully alleged herein.

143. GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority represented to DURAN that she was unable to honor the terms that had been offered all along (a fixed interest rate during a 5-10 year period, to be adjusted once per year after the adjustment period, with a lifetime cap of 5%) and no prepayment penalty and also misrepresented to DURAN the possibility of buying down the rate at closing.

144. GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority Sierra indicated to DURAN that she would speak to her supervisor and try to resolve the discrepancy, but ultimately after numerous discussions between sierra and Duran Sierra told DURAN that nothing could be done.

145. As specifically alleged above, Defendants GREENPOINT, directly or through their agents and employees, made false representations, concealments, and nondisclosures to DURAN knowing the falsity of their representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN and to induce him to secure mortgage loans that were not in DURAN's best interest. In so doing, these Defendants failed to disclose the significant financial aspects of the loan transactions, including failure to disclose the amount of fees, costs and interest that DURAN would have to pay for the loans.

146. Defendant GREENPOINT intended for DURAN to rely on the representations, concealments, and nondisclosures.

147. DURAN justifiably relied on the representations, concealments, and nondisclosures to his detriment.

148. Absent the misrepresentations, concealments, and nondisclosures, DURAN would not have entered into the loan agreements.

149. Defendant GREENPOINT had actual knowledge of the fraud, and aided and abetted, encouraged and rendered substantial assistance in accomplishing the wrongful conduct and their wrongful goals, and other wrongdoings complained of herein. In taking action to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoings complained of herein, each of these defendants acted with an awareness of its or her primary wrongdoing and realized that its or her conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

150. Specifically, GREENPOINT individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently represented and/or failed to disclose and/or misrepresented to DURAN statements of material facts that were either false, untrue and misleading prior to, during and after the closing of the mortgage loan in question as alleged in Paragraphs 94-95 above, that are alleged and incorporated herein by reference as if having been fully alleged herein.

151. As a result of GREENPOINT's actions, DURAN sustained and will continue to sustain damages in the future.

152. DURAN's damages occurred as the proximate result of defendant's GREENPOINT's and ROSENTHAL's unlawful conduct.

153. DURAN has sustained damages and will continue to sustain damages in the future as a result of Defendants' fraudulent misrepresentations.

WHEREFORE, DURAN requests judgment against Defendants, GREENPOINT's and ROSENTHAL's, for compensatory damages, together with costs of suit and such other and further relief as the court may deem proper.

COUNT V
NEGLIGENT MISREPRESENTATION AGAINST DEFENDANTS,
GREENPOINT AND ROSENTHAL

154. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-95 as if the same had been fully set forth herein.

155. As more specifically described in Paragraphs 6-95 above, Defendants negligently intentionally engaged in a pattern of conduct that had the effect misrepresenting the true terms of the DURAN's loan.

156. The conduct of GREENPOINT's and ROSENTHAL's as herein alleged in Paragraphs 6-95 above, constitutes negligent misrepresentation against DURAN.

157. Defendant GREENPOINT's and ROSENTHAL's individually and/or through or its authorized agent, with actual or apparent authority, negligently failed to disclose and/or misrepresented to DURAN statements of material facts that were either false untrue and misleading prior to, during and after the closing of the mortgage loan in question

158. Specifically, Defendant GREENPOINT's and ROSENTHAL's individually and/or through or its authorized agent, with actual or apparent authority, fraudulently, recklessly or negligently represented and/or failed to disclose and/or misrepresented to DURAN statements of material facts that were either false, untrue and misleading prior to, during and after the closing of the mortgage loan in question as alleged in Paragraphs 94-95 above, that are alleged and incorporated herein by reference as if having been fully alleged herein.

159. Defendant GREENPOINT's and ROSENTHAL's had actual knowledge of the misrepresentations and aided and abetted, encouraged and rendered substantial assistance in accomplishing the wrongful conduct and their wrongful goals, and other wrongdoings complained of herein. In taking action to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoings complained of herein, each of these defendants acted with an awareness of its or her primary wrongdoing and realized that its or her conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

160. As a result of Defendants' actions, DURAN sustained and will continue to sustain damages in the future.

161. DURAN's damages occurred as the proximate result of Defendants, GREENPOINT's and ROSENTHAL's, unlawful conduct.

162. DURAN has sustained damages and will continue to sustain damages in the future as a result of Defendants' fraudulent misrepresentations actions, DURAN sustained and will continue to sustain damages in the future.

163. DURAN's damages occurred as the proximate result of Defendants 'GREENPOINT's and ROSENTHAL's unlawful conduct.

WHEREFORE, DURAN requests judgment against Defendants, GREENPOINT, and ROSENTHAL for compensatory damages, together with costs of suit and such other and further relief as the court may deem proper.

COUNT VI

BREACH OF CONTRACT (RATE LOCK AGREEMENT) AND FAILURE TO ACT IN GOOD FAITH AGAINST GREENPOINT

164. DURAN reavers and reaffirms all of the allegations set forth in Paragraphs 1-95 as if the same had been fully set forth herein.

165. GREENPOINT individually and through its agent SIERRA, entered into a valid contract with DURAN, whose rates are contained in Exhibit "D" and are incorporated herein by reference.

166. GREENPOINT materially breached said contract by failing to provide those rates and terms to DURAN at closing.

167. DURAN has suffered damages as a result.

WHEREFORE, DURAN respectfully demands that the Court enter judgment against GREENPOINT, and award DURAN actual and consequential damages in the amount prescribed by law, and grant such further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

PUNITIVE DAMAGES

Plaintiff specifically reserves the right to request Punitive Damages if the circumstances so warrant.

Respectfully submitted,

/s Adis L. Riveron, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on November 9th, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s Adis L. Riveron

SERVICE LIST

*PELAYO M. DURAN V. GREENPOINT MORTGAGE FUNDING, INC., COUNTRYWIDE,
HOME LOANS SERVICING, L.P., WELLS FARGO BANK, N.A., A AND CINDY SIERRA,*
Case No. 09-20411-CIV-SEITZ/O'SULLIVAN
United States District Court, Southern District of Florida

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