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7 ALLEN FARLEY, et al

KRISTIN CRONE, DEPUTY CLERK
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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

9 (Martinez Superior Court – Wakefield Taylor Courthouse)

10 UNLIMITED JURISDICTION

11 BY FAX

12 Civil Case No:

13 PLAINTIFFS' COMPLAINT FOR
14 DAMAGES:

15 1. Declaratory Relief;
16 2. Rescission – Mistake – Void
17 Agreement;
18 3. Negligence
19 4. Intentional
20 Misrepresentation
21 5. Conspiracy to Commit Civil
22 Tort

23 PER LOCAL RULE 5 THIS
24 CASE IS ASSIGNED TO
25 DEPT. *[Signature]*

26 SUMMONS ISSUED

27 ALLEN FARLEY, an individual;
28 DEBORAH FARLEY, an individual;
DANIEL ACKERMAN, an individual;
PATRICIA ACKERMAN, an individual;
TIMOTHY ADAMS, an individual;
CECILIA APOSTOL, an individual;
OBED APOSTOL, an individual;
MURAD ATIEH, an individual;
AILEEN BARTH, an individual;
ANTHONY BONAURO, an individual;
LISA BONAURO, an individual;
ROBERT BLANKENSHIP, an individual;
BRADLEY BOSCHEE, an individual;
LORRAINE BOSCHEE, an individual;
JOHN BYRON III, an individual;
DEBRA CARMAN, an individual;
JONATHON CARMAN, an individual;
MICHAEL CLARK, an individual;
NATHANIEL CROSBY, an individual;
WILENE CROSBY, an individual;
ALICIA CUEVAS, an individual;
JENNIFER A. DAVIS, an individual;
NAOMI GARLAND, an individual;
JOSEPH DE MASCO, an individual;
DARCEENE GARNER, an individual;
CURTIS GILLIS, an individual;
SERENA GILLIS, an individual;
DAVID HERED, an individual;
JAMES HIDER, an individual;
JANICE HIDER, an individual;
LEE HILLIS, an individual;
ELISE HOLLOWAN, an individual;
RICHARD JACKS, an individual;
ERNE JACKSON, an individual;
FELIX JIMENEZ, an individual;
BRIAN JOHNSON, an individual;

1 KIMBERLY JOHNSON, an individual;
2 MAE KAFITY, an individual;
3 ELAINE KOOYMAN, an individual;
4 RON KOOYMAN, an individual;
5 JOSE LEYVA, an individual;
6 SILVIA LOPEZ, an individual;
7 VICTOR LOPEZ, an individual;
8 DARREN MALTBIE, an individual;
9 BRENDA MARCH, an individual;
10 DONALD MARCH, an individual;
11 BEVERLY MATSUMURA, an individual;
12 THOMAS MATSUMURA, an individual;
13 SALVADOR MORENO, an individual;
14 ROBERT L. MUSICK, an individual;
15 CELESTE OLIVAREZ, an individual;
16 RICHARD POSTMAN, an individual;
17 ANNE COOPER-PRATT, an individual;
18 CECIL PRATT, an individual;
19 GREG REULBACH, an individual;
20 DAVID ROBINSON, an individual;
21 THERESA ROBINSON, an individual;
22 GILBERTO RODRIGUEZ, an individual;
23 MYRNA RODRIGUEZ, an individual;
24 ZAHER SAMMAK, an individual;
25 SHARON SCOGGINS, an individual;
26 LEONOR SENCION, an individual;
27 STEVE WON, an individual;
28 EBONY WRIGHT, an individual;
and ROES 1 through 1,000, inclusive,

Plaintiffs,

17 v.
18
19 JP MORGAN CHASE & CO, a corporation;
20 WASHINGTON MUTUAL BANK, N.A., a
national association ;
21 LONG BEACH MORTGAGE COMPANY, a
corporation;
22 FIRST MAGNUS FINANCIAL CORPORATION,
a corporation;
23 1ST NATIONAL LENDING SERVICES, a
corporation;
24 BANK OF AMERICA, N.A., a national association;
25 CITIBANK, N.A., a national association;
INDYMAC BANCORP, INC., a corporation;
WELLS FARGO BANK, N.A., a national
association;
WACHOVIA BANK, N.A., a national association;
And DOES 1 through 100, inclusive,

Defendants

1 Plaintiffs, and each of them, hereby demand a jury trial and allege as follows:

2 **PRELIMINARY STATEMENT**

3 1. In recent history, subprime mortgage lending reached epic proportions.
4 Historically, banks loaned money to homebuyers that they would not recoup until the
5 stream of payments had been made. For the loss of the use of this money, interest was
6 added to the total amount owed by the borrower. The bank took the soul risk of loss of
7 this investment. To hedge the bet, the bank was allowed to take as security for funds
8 loaned, the property of the borrower. Traditionally, prior to issuing a loan the bank would
9 have the property appraised to determine the amount it would lend. Because the bank was
10 bearing the risk of loss, the bank had motivation to seek reasonable and conservative
11 appraisals of the property.

12 2. In the early 1980's, two very important laws were passed that changed the nature
13 of mortgage litigation. The Depository Institutions Deregulation and Monetary Control
14 Act of 1980 essentially barred states from limiting mortgage interest rates. Then in 1982,
15 the Alternative Mortgage Transaction Parity Act passed which made it possible for
16 lenders to offer exotic mortgages.

17 3. As a result of the above legislation, this country saw the birth of adjustable-rate
18 mortgages, mortgages with balloon payments, interest-only mortgages, and so-called
19 option-ARM loans.

20 4. Unlike traditional mortgage lenders who made their money as borrowers repay the
21 loan, subprime lenders made their money upfront first by charging outrageous closing
22 costs and brokers fees that could total over \$10,000. Then the lenders pooled the loans
23 into Residential Mortgage Backed Securities (RMBS) and sold the RMBS to investors
24 recouping monies lent almost immediately. By doing so, lenders could make bad loans
25 and just pass the loans and the risk along to investors.

26 5. Because the lenders could now recoup monies lent almost immediately, the lenders
27 began issuing loans in utter disregard for all underwriting standards. The lenders offered
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1 high fees at loan origination to motivate brokers to write subprime loans for anyone who
2 would put up their property as security – no matter what the value of the property, or the
3 income, the credit or the ability to pay of the client.

4 6. These practices encouraged and incentivized brokers to deceive borrowers into
5 believing they could afford loans they could not and to promise borrowers refinances they
6 would never receive. In fact, brokers would say and do just about anything to get the
7 borrowers to agree to their financing because of the outrageous incentives offered by the
8 lenders.

9 7. JP Morgan Chase further encouraged deceptive practices by explaining to brokers
10 and employees how to cheat its own underwriting program, ZiPPY (as evidenced by an
11 internal memo attached hereto as Exhibit A).

12 8. In furtherance of this scheme of deception, the banks encouraged appraisers to
13 over-assess property values in order to determine loan amounts. Unlike the traditional
14 bank that had an interest in a conservative appraisal, these new banking standards gave the
15 bank an incentive to appraise properties far higher than their true values. By lending
16 larger sums of money to borrowers, the bank could package up mortgages with larger
17 streams of income. Larger streams of income appeared more valuable to investors and
18 could bring higher sums for the lender with the sale of the RMBS. For these reasons, the
19 lenders chose appraisers who cooperated with their scheme and incentivized them to
20 appraise homes at far greater than market value.

21 9. Borrowers unwittingly lost the investments and equity in their properties due to
22 these appraisals. Many borrowers are now under severe emotional distress facing the loss
23 of their homes and the uprooting of their families.

24 10. Furthermore, property owners nationwide were damaged similarly by the
25 negligence of the banks. Because homes appraised by these deceptive lenders were
26 appraised for higher than true market rate values, the comparables were skewed for ALL
27 property purchases and financing.

1 11. In addition to skewing property values for all of America in epic proportion, JP
2 Morgan Chase has further bilked borrowers and investors by its unreasonably servicing of
3 these loans. Chase, as servicer, collects high fees for foreclosure and has an incentive to
4 foreclose even when loan modification would be of greater value to the investors. Chase
5 has shown repeatedly that, although it purports to work with borrowers on loan
6 modifications, it is really only causing borrowers to send in the same prolific paperwork
7 over and over again only to deny the modification and move forward with foreclosure
8 despite borrower qualifications.

9 12. Borrowers are advised that their chances of loan modification are higher once they
10 are 90 days late on payment. This induces borrowers to stop mortgage payments during
11 the loan modification process. When denied months and sometimes years later, not only
12 does the borrower owe all of the back payments, but also a fortune in accrued fees.

13 13. A borrower's ability to pay a mortgage in the short term is not a reflection of
14 his/her ability to pay long term. Seemingly, if a borrower has the requisite circumstances
15 and income to qualify for a loan modification, his/her current loan status should have no
16 bearing.

17 14. Even plaintiffs who are current on payments are harassed by out-sourced Chase
18 employees.

19 15. Most Plaintiffs are faced with frequently changing payments they do not
20 understand. When they call for an accounting, they are given the run-around. Some are
21 given complex math equations they do not understand and are given a list of fees they do
22 not believe to be accurate. Yet, the bank will not justify the fees it is charging or the
23 amount it says is due.

24 16. Because of these willful and negligent behaviors, Plaintiffs have been injured.
25 Plaintiffs have suffered severe emotional distress, loss of investments and equity in their
26 homes, loss of credit, public embarrassment with the publishing of foreclosure notices,
27 and the dispossession of their family homes and properties.

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17. Everyone has a duty to act as a reasonably prudent person – or in this case, a reasonably prudent corporation. The bank certainly did not act reasonably prudent in its interactions with Plaintiffs and because of these acts, millions have been injured.

18. Before Congress last year, former Federal Reserve Chairman Alan Greenspan admitted he was in "a state of shocked disbelief" that lenders had failed to regulate themselves.

PARTIES

Plaintiffs

19. Plaintiff PATRICIA ACKERMAN is an individual residing in the State of California, with property located at 1236 Arthur Road, Martinez, CA 94553 (Contra Costa County). Ms. Ackerman and her husband Daniel Ackerman refinanced their mortgage loan with Washington Mutual Bank, as evidenced by the Deed of Trust recorded in Contra Costa County on July 31, 2007. The broker who negotiated the loan gave the Ackermans to believe that they could afford the terms, even though the Ackermans made insufficient income. The Ackermans receive all communications about their mortgage loan from Chase. After the economic crisis severely and unforeseeably altered their financial circumstances, the Ackermans sought a loan modification. Chase dragged out the process for over a year, requesting the same documents repeatedly. Finally, they were told that Chase could not assist them because they were not behind on their payments. The Ackermans owe more on the loan now than they did at origination. Because of their high mortgage payments, the Ackermans find it difficult to afford medical care and other necessities. The Ackermans have suffered from extreme emotional distress as a result of these events. Ms. Ackerman suffers from severe acid indigestion because of the constant stress she experiences.

20. Plaintiff DANIEL ACKERMAN is an individual residing in the State of California. He is married to PATRICIA ACKERMAN and subject to similar

1 circumstances. He is disabled and suffers from stress-related high blood pressure.

2 21. Plaintiff TIMOTHY ADAMS is an individual residing in the State of California,
3 with property located at 59 La Crosse Drive, Morgan Hill, CA 95037 (Santa Clara
4 County). Mr. Adams and his wife Rebecca Adams obtained their mortgage loan from
5 Washington Mutual Bank in 2006, as evidenced by the Deed of Trust recorded in Santa
6 Clara County on July 18, 2006. After the economic crisis severely and unforeseeably
7 altered their financial circumstances, and as their adjustable rate payments continued to
8 increase, the Adamses sought a loan modification. They attempted the process on their
9 own, through HUD, and through a third party company. Chase requested the same
10 paperwork over and over, claiming previous submissions were lost or outdated. The
11 Adamses were finally offered a trial payment but when they sent the requested payment
12 amount, the check was returned with a letter saying that "Chase does not fully reinstate
13 loan."

14 22. Plaintiff ANTHONY BONAURO is an individual residing in the State of Nevada,
15 with property located at 1800 Kodiak Circle, Reno, NV 89511. Mr. Bonauro and his wife
16 Lisa Bonauro obtained their mortgage loan from JP Morgan Chase Bank in 2005, as
17 evidenced by the Deed of Trust recorded in Washoe County on January 31, 2005. The
18 terms offered at signing were different from those discussed with the broker, but the
19 Bonauros felt pressured to sign. The mortgage is an adjustable rate loan with interest only
20 payments. Until recently, the Bonauros received all communications about their loan
21 from Chase. After the economic crisis severely and unforeseeably altered their financial
22 circumstances, the Bonauros found themselves unable to pay their loan and sought a loan
23 modification. A Chase representative told them that they would not qualify for a
24 modification until they were 90 days past due. Accordingly, they stopped making
25 payments. Chase initially said they would modify the loan but twice refused to negotiate
26 any modification, drawing out the process with multiple requests for identical documents.
27 The Bonauros then received notification that their loan servicer had changed from Chase
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1 to the loan servicing company Seterus, formerly LBPS. The Bonauros tried to go through
2 the short sale process and had a buyer, but LBPS failed to negotiate the sale after 90 days.
3 They tried the process a second time and had a buyer again, but the servicer refused to
4 accept the sale at the amount the home was valued for. On July 29, 2011, the house was
5 sold in foreclosure. As a result of these events, Mr. Bonauro has suffered extreme
6 emotional distress and worry, with symptoms including headaches and high blood
7 pressure. He has also suffered financial loss through the damage to his credit and money
8 paid to modification companies.

9 23. Plaintiff LISA BONAUBRO is an individual residing in the State of California. She
10 is married to ANTHONY BONAUBRO and subject to similar circumstances.

11 24. Plaintiff ROBERT BLANKENSHIP is an individual residing in the State of
12 California, with property located at 3861 Grizzly Bluff Road, Ferndale, CA 95536
13 (Humboldt County). Mr. Blankenship refinanced his mortgage loan with Chase Bank in
14 2005, as evidenced by the Deed of Trust recorded in Humboldt County on May 9, 2005.
15 After the economic crisis severely and unforeseeably altered his financial circumstances,
16 Mr. Blankenship struggled to stay current on his payments. He researched the possibility
17 of a loan modification but determined that there was little assistance available for self-
18 employed borrowers who wished to remain current. He has continued to make full
19 payments on his mortgage but has defaulted on other bills to do so. The payment amount
20 demanded by Chase has increased, but when Mr. Blankenship requested an explanation
21 and accounting of this increase, he has not received a satisfactory answer. He has
22 experienced severe emotional distress in connection with these circumstances. He works
23 seven days a week to earn enough to make his payments and his health has deteriorated
24 significantly as a result.

25 25. Plaintiff BRADLEY BOSCHEE is an individual residing in the State of Arizona,
26 with property located at 4409 West Lawler Loop, Glendale, AZ 85310. Mr. Boschee and
27 his wife Lorraine refinanced their mortgage loan with Washington Mutual Bank in 2006,
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1 as evidenced by the Deed of Trust recorded in Maricopa County on July 25, 2006. The
2 loan has an adjustable rate arm, but they were told by a bank manager at Washington
3 Mutual that they could easily refinance out of the arm later. The Boschees receive all
4 communications about their loan from Chase. Before the adjustable rate arm came into
5 effect, Mr. Boschee called Chase to ask how much he was supposed to pay, and was
6 repeatedly referred to a non-operational website. After the economic crisis severely and
7 unforeseeably altered their financial circumstances, the Boschees sought a loan
8 modification. They were instructed by a representative of Chase Bank that they needed to
9 stop making their mortgage payments in order to receive a modification. Accordingly,
10 they fell behind on payments. Each time they applied for a modification, they were
11 eventually told that they had not provided the right documentation to complete their
12 applications. When the Boschees attempted to research who actually owned their loan,
13 they were directed to go into their branch to investigate by customer service agents at the
14 bank's 1-800 number; branch employees refused to assist them and directed them to the 1-
15 800 number. Since the Boschees retained legal representation, Chase representatives have
16 called the Boschees at odd hours to inquire into their personal finances and ability to keep
17 paying their loan. The Boschees have suffered extreme emotional distress, anger, and
18 feelings of hopelessness as a result of these events and suffer from insomnia. They are
19 struggling to make ends meet and have been forced to borrow money to meet their
20 payment obligations.

21 26. Plaintiff LORRAINE BOSCHEE is an individual residing in the State of Arizona.
22 She is married to BRADLEY BOSCHEE and subject to similar circumstances.

23 27. Plaintiff MICHAEL CLARK is an individual residing in the State of Washington,
24 with property located at 19920 199th Avenue, Court E, Graham, WA 98338. Mr. Clark
25 obtained his mortgage loan from Bear Stearns Residential Mortgage Corporation in 2005,
26 as evidenced by the Deed of Trust recorded in Pierce County on December 30, 2005. The
27 loan is a negative amortization adjustable rate loan. At origination, Mr. Clark dealt with a
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1 broker, who misrepresented the terms of the loan agreement. The broker told Mr. Clark
2 that the loan would be affordable and that he could avoid adjustments easily by
3 refinancing. At signing, Mr. Clark felt pressure to sign without reading over the
4 agreement and later found that the terms were different than what he had expected. Mr.
5 Clark was not present when the loan documents were notarized. In the struggle to stay
6 current on his mortgage, Mr. Clark has lost his savings and over half his 401K. Mr. Clark
7 suffers from periodic depression as a result of the fear that he will lose his home. In 2010,
8 he suffered a stress-related heart attack. Mr. Clark received his mortgage statements and
9 all communications about his loan from EMC until recently, when the servicer switched to
10 Chase. An active MERS record lists JP Morgan Chase as the servicer and the investor.
11 When Mr. Clark began having difficulties making his payments, he applied for a loan
12 modification. He applied multiple times and was denied each time. Chase gave a variety
13 of reasons for denying the modification. The bank used document requests to delay the
14 process, requesting the same documents repeatedly or changing what documents were
15 required. In dealing with loan servicing representatives, Mr. Clark has been shuttled from
16 department to department and placed on hold for up to an hour before his calls are
17 dropped. He experiences high blood pressure episodes in connection to these
18 communications, and since his heart attack has tried to avoid calls to the bank. As a result
19 of these events, he has suffered from extreme emotional distress. He struggles to make
20 ends meet and has been forced to default on other debts, and his credit has suffered.

21 28. Plaintiff NATHANIEL CROSBY is an individual residing in the State of
22 California, with property located at 1372 Rutherford Lane, Oakley, CA 94561 (Contra
23 Costa County). Mr. Crosby and his wife Wilene refinanced their mortgage loan with
24 Washington Mutual Bank in 2006, as evidenced by the Deed of Trust recorded in Contra
25 Costa County on November 1, 2006. The Crosbys receive all communications about their
26 mortgage loan from Chase. After the economic crisis severely and unforeseeably altered
27 their financial circumstances, the Crosbys sought a loan modification. They worked
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1 diligently through the process and received a temporary loan modification. Nonetheless,
2 on June 14, 2011, the trustee initiated foreclosure proceedings against the property.

3 29. Plaintiff WILENE CROSBY is an individual residing in the State of California.
4 She is married to NATHANIEL CROSBY and subject to similar circumstances.

5 30. Plaintiff ALICIA CUEVAS is an individual residing in the State of California,
6 with property located at 180 Belgian Drive, Danville, CA 94526 (Contra Costa). Ms.
7 Cuevas obtained her mortgage loan from Washington Mutual Bank in 2004, as evidenced
8 by the Deed of Trust recorded in Contra Costa County on Thursday, November 18, 2004.
9 Ms. Cuevas relied on the statements of the broker that the terms of the loan offered were
10 favorable to her. At closing, she felt pressured to sign the documents because of the
11 broker's behavior. She later discovered that she had agreed to a negative amortization
12 loan. Ms. Cuevas receives all communications about her mortgage loan from Chase.
13 After the economic crisis severely and unforeseeably altered her financial circumstances,
14 Ms. Cuevas spoke with a Chase representative about a loan modification. She was told
15 she would not qualify. Ms. Cuevas has had great difficulties communicating with Chase.
16 Her calls to the bank have sometimes gone unanswered. At other times, she has been
17 placed on hold for long periods or spoken to rudely and condescendingly. When she
18 asked for an accounting and explanation of the payment amount demanded, she was told
19 to review her loan documents. She has never successfully spoken to the same person
20 twice. Ms. Cuevas has suffered extreme emotional distress and high blood pressure as a
21 result of these circumstances. She describes feelings of bewilderment, depression, and
22 helplessness. At times she experiences tremors from stress. The damage to her credit has
23 negatively impacted her business and she struggles to afford necessities. On May 20,
24 2011, a Notice of Default was recorded on the property, and on August 22, 2011, a Notice
25 of Trustee Sale was recorded. As of this filing, public records show a trustee sale date of
26 November 21, 2011.

27 31. Plaintiff NAOMI GARLAND is an individual residing in the State of California,
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1 with property located at 2155 Geary Drive, Santa Rosa, CA 95404 (Sonoma County). Ms.
2 Garland refinanced her mortgage loan with JP Morgan Chase Bank in 2006, as evidenced
3 by the Deed of Trust recorded in Sonoma County on March 29, 2006. After the economic
4 crisis severely and unforeseeably altered her financial circumstances, Ms. Garland sought
5 a loan modification. Chase refused to modify the loan and told her she did not qualify
6 because she was living on her deceased husband's life insurance.

7 32. Plaintiff CURTIS GILLIS is an individual residing in the State of California, with
8 property located at 11205 Lalani Drive, La Mesa, CA 91941 (San Diego). Mr. Gillis and
9 his wife Serena Gillis refinanced their mortgage loan with Washington Mutual Bank in
10 2005, as evidenced by the Deed of Trust recorded on October 31, 2005. The broker
11 misrepresented the loan terms, characterizing it as favorable. At closing, the Gillises felt
12 pressure to sign quickly. They found themselves caught in a negative amortization loan,
13 which caused their balance to increase and was a source of stress and friction in their
14 marriage. The Gillises receive all communications about their mortgage loan from Chase.
15 After the economic crisis severely and unforeseeably altered their financial circumstances,
16 the Gillises sought a loan modification. Chase used document requests to draw out the
17 process and eventually denied the modification based on the Gillises' income-to-debt
18 ratio. On their next attempt, they received a modification offer. However, the
19 modification increased their monthly payment and they fell further behind on payments.
20 On July 25, 2011, the trustee issued a Notice of Default against the property. When they
21 attempt to contact the bank with questions about their loan, they experience long hold
22 times and disconnected calls. The Gillises have suffered from extreme emotional distress
23 and anxiety as a result of these events.

24 33. Plaintiff SERENA GILLIS is an individual residing in the State of California. She
25 is married to CURTIS GILLIS and subject to similar circumstances.

26 34. Plaintiff JAMES HIDER is an individual residing in the State of California, with
27 property located at 12600 New Avenue, San Martin, CA 95046 (Santa Clara County).

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1 Mr. Hider and his wife Janice Hider refinanced their mortgage loan with Washington
2 Mutual Bank in 2007, as evidenced by the Deed of Trust recorded on September 7, 2006.
3 In 2008, Washington Mutual filed for bankruptcy, and its assets and operations were
4 acquired by JP Morgan Chase. The Hiders receive all communications about their
5 mortgage loan from Chase. They have made their monthly payments on time every
6 month, but Chase claims that they are eight months delinquent. In May of 2010, after Mr.
7 Hider contacted Chase about this discrepancy, a bank representative told him that there
8 was an accounting error. The Hiders submitted multiple written requests asking Chase to
9 correct the error, but have been told repeatedly that the bank needs another 15 days to
10 review the account. When they contact Chase by phone, they have found that the
11 representatives are not knowledgeable enough to handle their situation. They often
12 experience long hold times and their calls have gone unreturned. As a result of these
13 circumstances, the Hiders experience extreme emotional distress and frustration. Mr.
14 Hider suffers from insomnia, loss of ability to concentrate, and high blood pressure, for
15 which he has had to seek medical treatment. The stress has also affected his ability to
16 work and run his business effectively.

17 35. Plaintiff JANICE HIDER is an individual residing in the State of California. She
18 is married to JAMES HIDER and subject to similar circumstances.

19 36. Plaintiff ELSIE HOLLOMAN is an individual residing in Washington, D.C., with
20 property located at 2446 Ontario Road NW, Washington D.C. 20009. Ms. Holloman and
21 her husband Benjamin Holloman refinanced their mortgage loan with Weststar Mortgage,
22 Inc. in 2007, as evidenced by the Deed of Trust recorded on March 16, 2007. The
23 Hollomans received all communications about their mortgage loan from EMC and now
24 from Chase. After the economic crisis severely and unforeseeably altered their financial
25 circumstances, the Hollomans sought a loan modification. They were told not to make
26 payments until their modification was processed. Relying on this information, they
27 stopped making payments. They later received notification that the modification was
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1 denied. They are now about eight months behind on their payments. As a result of these
2 circumstances, the Hollomans have suffered severe emotional distress and financial
3 hardship.

4 37. Plaintiff RICHARD JACKS is an individual residing in the State of Maryland,
5 with property located at 12505 Shiloh Church Road, Newburg, MD 20664. Mr. Jacks
6 obtained his mortgage loan from JP Morgan Chase Bank in 2008, as evidenced by the
7 Deed of Trust recorded in Charles County on April 15, 2008. His home is now worth half
8 the amount for which it was purchased. After the economic crisis severely and
9 unforeseeably altered his financial circumstances, Mr. Jacks sought a loan modification.
10 He was approved for a modification in 2009, but the modification did not lower his
11 payments enough to allow him to stay current on the loan, so he did not accept it.
12 Foreclosure proceedings were initiated against the property but no sale date has yet been
13 set. Mr. Jacks has had great difficulty contacting Chase for assistance and information.
14 He has experienced long call times and been transferred from department to department.
15 His calls have sometimes gone unanswered and his messages have not been returned. As
16 a result of these circumstances, Mr. Jacks suffers extreme stress and emotional distress
17 that affects his work and home life.

18 38. Plaintiff ERNE JACKSON is an individual residing in the State of Texas, with
19 property located at 2214 Bissonnet, Houston, TX 77005. Mr. Jackson obtained his
20 mortgage loan from Washington Mutual. He receives all communications about his
21 mortgage loan from Chase. At the origination of his loan, Mr. Jackson found that the
22 terms he signed for at closing were not the same as those he had been led to expect. After
23 the economic crisis severely and unforeseeably altered his financial circumstances, Mr.
24 Jackson sought a loan modification. He received a modification in 2009, but it was of no
25 assistance to him. He then applied for another modification. Chase used document
26 requests to drag out the process. The bank requested documentation without giving Mr.
27 Jackson reasonable time to satisfy the requests and finally closed the application on the
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1 basis of insufficient documentation. When communicating with Chase, Mr. Jackson has
2 never been able to talk to the same person regarding his loan and has been given
3 conflicting information about what documents he needs to submit. He has been placed on
4 hold for long periods and had his calls dropped. When Mr. Jackson requested an
5 accounting of the payment amount demanded of him, he never received a satisfactory
6 answer. He has suffered devastating emotional distress and high blood pressure in
7 connection with these events.

8 39. Plaintiff FELIX JIMENEZ (Santa Cruz) is an individual residing in the State of
9 California, with property located at 111 6th and 639 Rodriguez Street, Watsonville, CA
10 95076. Mr. Jimenez and his wife refinanced their mortgage loan with Washington Mutual
11 Bank, FA in 2007, as evidenced by the Deed of Trust. After the economic crisis severely
12 and unforseeably altered their financial situation, the Jiminezes sought a loan
13 modification. Due to the language barrier, the Jiminezes were unable to understand the
14 terms of the modification, and were put in default after the modification. As a result of
15 these circumstances the Jiminezes have suffered severe emotional distress and financial
16 hardship.

17 40. Plaintiff MARIA G. JIMENEZ (Santa Cruz) is an individual residing in the State
18 of California. She is married to FELIX JIMENEZ and subject to similar circumstances.

19 41. Plaintiff BRIAN JOHNSON is an individual residing in the State of California,
20 with property located at 2080 Buena Vista Avenue, Livermore, CA 94550 (Alameda
21 County). Mr. Johnson and his wife Kimberly Johnson obtained their mortgage loan from
22 Washington Mutual Bank in 2006, as evidenced by the Deed of Trust recorded on
23 February 10, 2006. The mortgage is a five year fixed arm adjustable rate loan. The
24 Johnsons were told at the origination of the loan that they could easily refinance for a
25 better rate. As soon as they realized their home was losing equity, they contacted the bank
26 to refinance, but the bank refused to assist them. They receive all communications about
27 their mortgage loan from Chase. When the economic crisis severely and unforseeably
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1 altered their financial circumstances, the Johnsons sought a loan modification. Chase
2 representatives told them that they would only qualify if they were in default. The
3 Johnsons accordingly fell behind on their payments. Chase used document requests to
4 draw out the modification process. They finally offered a trial modification, but when the
5 trial plan ended, the bank failed to notify the Johnsons. When Chase did send notification
6 that the modification had been denied, the bank claimed that the Johnsons were in default
7 and owed nine months of late fees dating from the beginning of the trial period. Chase
8 told the Johnsons that their application was denied on the basis of missing documentation,
9 but gave conflicting reports of what documents were missing. The Johnsons have had
10 great difficulty dealing with Chase and have experienced hang-ups and long hold times.
11 Their messages are never returned. Their calls have been transferred between the
12 Imminent Default, Loss Mitigation, and Customer Service departments, with each
13 department claiming that they did not have access to her file and directing her back to one
14 of the other departments. Chase representatives have given the Johnsons conflicting and
15 erroneous information on several occasions. As a result of these circumstances, the
16 Johnsons suffer severe emotional distress and stress that has led to physical and mental
17 health issues as well as causing conflict in their marriage.

18 42. Plaintiff KIMBERLY JOHNSON is an individual residing in the State of
19 California. She is married to BRIAN JOHNSON and subject to similar circumstances.
20 Ms. Johnson reports that she suffers from insomnia, indigestion, difficulty concentrating,
21 feelings of hopelessness, and other symptoms of depression as a result of the problems
22 with the mortgage. She has undergone professional treatment for severe depression and
23 anxiety.

24 43. Plaintiff MAE KAFITY is an individual residing in the State of California, with
25 property located at 2021 San Antonio Drive, Corona, CA 92882 (Riverside County). Ms.
26 Kafity refinanced her mortgage loan with Washington Mutual Bank in 2007, as evidenced
27 by the Deed of Trust recorded on December 12, 2007. At the origination of the loan,
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1 Washington Mutual required a balance of at least \$3000.00 in the borrower's checking
2 account. The loan officer who sold Ms. Kafity the loan personally gave her a check to
3 deposit into her checking account. On the day the loan was approved, Ms. Kafity wrote
4 the loan officer a check for the amount she had deposited. Ms. Kafity was given a five-
5 year interest only adjustable rate mortgage, and was told by the loan officer that it was the
6 best loan that she qualified for. In 2008, Washington Mutual filed for bankruptcy, and its
7 assets and operations were acquired by JP Morgan Chase. Ms. Kafity receives all
8 communications about her mortgage loan from Chase. After the economic crisis severely
9 and unforeseeably altered her financial circumstances, Ms. Kafity sought a loan
10 modification. A Chase representative told her that she would have to fall behind on her
11 payments to qualify for a modification. Ms. Kafity accordingly stopped making her
12 payments for three months. She received a trial modification and was informed that she
13 would be hear back about a full modification within three months. Ms. Kafity attempted
14 three times to get a permanent modification and was told each time that she needed to re-
15 send additional documents, documents that she had previously sent to the bank. Ms.
16 Kafity's attempts to contact Chase about her modifications resulted in her being
17 transferred between different departments without getting clear answers to her questions.
18 Messages that she left were not returned. During the modification process, Chase
19 employees continued to harass Ms. Kafity by phone and in person regarding her missed
20 payments. A Chase employee came to her door and left documents offering a short sale
21 with one daughter, an occurrence which was disturbing to the daughter as well as to Ms.
22 Kafity. After eleven months of making her trial payments she was told she did not qualify
23 for a permanent loan modification and that her requests were denied. Ms. Kafity
24 subsequently learned in February 2011 that Freddie Mac owned her loan and that Chase
25 was only the servicer. She was not informed at any time that her loan could be sold or was
26 aware about the nature of her relationship to a servicer rather than a lender. On June 20,
27 2011, the trustee recorded a Notice of Default against the property. As a result of the
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1 foregoing, Ms. Kafity has suffered severe emotional distress, anxiety and weight gain. As
2 a result of going behind on her payments and being denied for modification, Ms. Kafity
3 has suffered damage to her credit rating. Ms. Kafity's two teenage daughters have also
4 incurred emotional distress due to the uncertainty surrounding the foreclosure process.

5 44. Plaintiff JOSE LEYVA is an individual residing in the State of Arizona, with
6 property located at 2430 East Park View Lane, Phoenix, AZ 85024. Mr. Leyva obtained
7 his mortgage loan from Chase Bank in 2007, as evidenced by the Deed of Trust recorded
8 in Maricopa County on December 24, 2007. After the economic crisis severely and
9 unforeseeably altered his financial circumstances, Mr. Leyva sought a loan modification.
10 Mr. Leyva was contacted by Chase and was offered to be considered for modification that
11 would lower his monthly payments and principal balance. Mr. Leyva relied on the offer to
12 his economic detriment. Although Mr. Leyva received a marginal decrease in the interest
13 rate on his loan, the denial of the modification terms to which he was promised impacted
14 Mr. Leyva's mental and financial well being. His family has had to cut back expenses
15 severely in order to remain current on the mortgage.

16 45. Plaintiff SILVIA LOPEZ is an individual residing in the State of California, with
17 property located at 1431 Agate Creek Way, Chula Vista, CA 91915 (San Diego). Ms.
18 Lopez and her husband Victor Lopez refinanced their mortgage loan with Washington
19 Mutual Bank in 2006, as evidenced by the Deed of Trust recorded in San Diego County
20 on January 31, 2006. In 2008, Washington Mutual filed for bankruptcy, and its assets and
21 operations were acquired by JP Morgan Chase. After the economic crisis severely and
22 unforeseeably altered their financial circumstances, the Lopezes sought a loan
23 modification. They were granted a temporary modification, but the payments were still
24 too high to allow them to catch up on their debt.

25 46. Plaintiff VICTOR LOPEZ is an individual residing in the State of California. He
26 is married to SILVIA LOPEZ and subject to similar circumstances.

27 47. Plaintiff DARREN MALTBIE is an individual residing in the State of California,

1 with property located at 850 Ridge Drive, Concord, CA 94518 (Contra Costa County).
2 Mr. Maltbie obtained his mortgage loan with Washington Mutual Bank in 2006, as
3 evidenced by the Deed of Trust recorded in Contra Costa County on March 31, 2006. In
4 2008, Washington Mutual filed for bankruptcy, and its assets and operations were
5 acquired by JP Morgan Chase. After the economic crisis severely and unforeseeably
6 altered his financial circumstances, Mr. Maltbie sought a loan modification with JP
7 Morgan Chase. In total, he applied for a loan modification four times. Each time, his loan
8 modification request was not processed before the deadline and he was required to re-
9 apply and re-send previously sent documents. When attempting to speak to employees at
10 Chase, he was transferred among different departments and was not given the information
11 he requested. After falling behind on payments, Mr. Maltbie has received harassing phone
12 calls from Chase employees at his home and place of business. One employee threatened
13 that Mr. Maltbie would be kicked out of his house within 15 days if did not make a
14 payment. After 17 months of the process, he had still not received a modification. As a
15 result of the foregoing, Mr Maltbie has experienced severe emotional distress, financial
16 distress and weight loss.

17 48. Plaintiff THOMAS MATSUMURA is an individual residing in the State of
18 California, with property located at 3766 Hedge Lane, Camarillo, CA 93012 (Ventura
19 County). Mr. Matsumura and his wife Beverly Matsumura refinanced their mortgage loan
20 with Washington Mutual Bank in 2007, as evidenced by the Deed of Trust recorded in
21 Ventura County on September 27, 2007. Mr. Matsumura was placed in a variable rate
22 mortgage and was informed that this was the best loan that he qualified for. In 2008,
23 Washington Mutual filed for bankruptcy, and its assets and operations were acquired by
24 JP Morgan Chase. After the economic crisis severely and unforeseeably altered their
25 financial circumstances, the Matsumuras were unable to keep up with their high monthly
26 payments. On May 25, 2011, the trustee began foreclosure proceedings against the
27 property. As a result, the Matsumuras have suffered severe emotional distress, and
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1 physical symptoms such as loss of sleep. The Matusmuras considered a short sale before
2 deciding to litigate in the hopes of keeping their home.

3 49. Plaintiff BEVERLY MATSUMURA is an individual residing in the State of
4 California. She is married to THOMAS MATSUMURA and subject to similar
5 circumstances.

6 50. Plaintiff ROBERT L. MUSICK and JENNIFER A. DAVIS are individuals
7 residing in the State of Arizona, with property located at 4124 E. Lonesome Trail, Cave
8 Creek, AZ 85331. Mr. Musick and Ms. Davis obtained their mortgage with JP Morgan
9 Chase Bank in 2007, as evidenced by the Deed of Trust recorded on December 17, 2007.
10 Mr. Musick and Ms. Davis made a \$200,000 down payment on their home and borrowed
11 \$800,000 from Chase. The loan they received was an adjustable rate mortgage which was
12 interest only for the first seven years. When the economic crisis severely and unforseeably
13 altered property values, Mr. Musick and Ms. Davis saw the equity invested in their house
14 disappear. It is currently worth only \$500,000. As a result of the foregoing, Mr. Musick
15 and Ms. Davis have suffered severe emotional distress and anxiety.

16 51. Plaintiff JENNIFER A. DAVIS is an individual residing in the State of California.
17 She is married to ROBERT L. MUSICK and subject to similar circumstances.

18 52. Plaintiff RICHARD POSTMAN is an individual residing in the State of Florida,
19 with property located at 625 Casa Loma Boulevard #1506, Boynton Beach, FL 33435.
20 Mr. Postman obtained his mortgage loan from J.P. Morgan Chase Bank in 2006, as
21 evidenced by the Deed of Trust recorded on December 8, 2006. At the origination of his
22 loan, Mr. Postman felt pressured to sign and later found that the terms were not as
23 favorable as he had been led to believe. Mr. Postman receives all communications about
24 his mortgage loan from Chase. His communications with Chase have been characterized
25 by confusion about who to contact, long hold times, and transfers from department to
26 department without being able to speak to a representative who can help him. When the
27 economic crisis severely and unforseeably altered his financial circumstances, Mr.
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1 Postman tried to apply for a loan modification, but the representatives he spoke to at
2 Chase were unwilling to assist him. Though advised to fall behind on payments in order
3 to qualify for a loan modification, Mr. Postman has remained current on his mortgage
4 payments. He has experienced severe stress and emotional distress in connection with
5 these events and his financial resources have been drained.

6 53. Plaintiff CECIL PRATT is an individual residing in the State of California, with
7 property located at 574 Alene Street, Spring Valley, CA 91977 (Colusa County). Mr.
8 Pratt and his wife, Anne Cooper-Pratt, refinanced their mortgage loan with Fieldstone
9 Mortgage Company in 2006, as evidenced by the Deed of Trust recorded in San Diego
10 County on August 1, 2006. The Pratts receive all communications about their mortgage
11 loan from Chase, and MERS records indicate that JP Morgan Chase Bank is both the loan
12 servicer and the investor on the note. After the economic crisis severely and
13 unforeseeably altered their financial circumstances, the Pratts sought a loan modification,
14 but were denied.

15 54. Plaintiff ANNE COOPER-PRATT is an individual residing in the State of
16 California. She is married to CECIL PRATT and subject to similar circumstances.

17 55. Plaintiff DAVID ROBINSON is an individual residing in the State of Virginia,
18 with property located at 109 Hedgerow Lane, Yorktown, VA 23693. Mr. Robinson and
19 his wife, Theresa Robinson, obtained their mortgage loan from Washington Mutual Bank
20 in 2006, as evidenced by the Deed of Trust dated May 18, 2006. The Robinsons receive
21 all communications about their loan from Chase. In early 2011, Mr. Robinson received a
22 letter from Chase stating that they planned to change the terms of the loan. Mr. Robinson
23 contacted the bank to find out whether this was true, but no one could give him a definite
24 answer on the status of his loan. He asked Chase about applying for a modification, but
25 was told that because he was current on his payments and could not show sufficient
26 hardship, he would not qualify. Throughout his communications with Chase concerning
27 the terms and changes to his loan, Mr. Robinson had great difficulty contacting
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1 knowledgeable representatives and has often been given conflicting information. As a
2 result of this uncertainty, he and his wife suffer from severe emotional distress that
3 impacts their personal and professional lives.

4 56. Plaintiff THERESA ROBINSON is an individual residing in the State of Virginia.
5 She is married to DAVID ROBINSON and subject to similar circumstances.

6 57. Plaintiff SHARON SCOGGINS is an individual residing in the State of California,
7 with property located at 7150 Le Flore Place, Granite Bay, CA 95746 (Placer County).
8 Ms. Scoggins refinanced her mortgage loan with Washington Mutual Bank, as evidenced
9 by the Deed of Trust recorded in Placer County on November 1, 2006. Ms. Scoggins
10 receives all communications about her mortgage loan from Chase. After the economic
11 crisis severely and unforeseeably altered her financial circumstances, Ms. Scoggins sought
12 a loan modification. A Chase representative told her that she would have to be behind on
13 her payments in order to qualify. Ms. Scoggins did so and was offered a trial
14 modification, but a permanent modification was never approved. Chase drew out the
15 process with document requests and finally told Ms. Scoggins that the modification had
16 been denied. Ms. Scoggins has had great difficulty communicating with Chase. She
17 provided the same documents repeatedly and felt that they were simply throwing them
18 away. When she speaks with bank representatives, they are unwilling to work with her
19 and are not knowledgeable about her situation. She feels she has to start all over again
20 each time she contacts the bank. As a result of these circumstances, Ms. Scoggins has
21 suffered severe emotional distress. She feels distraught, nervous, helpless, and frustrated.
22 Her credit is ruined and she has considered bankruptcy.

23 58. Plaintiff LEONOR SENCION is an individual residing in the State of California,
24 with property located at 4816 Brompton Avenue, Bell, CA 90201 (Los Angeles County).
25 Ms. Sencion refinanced her mortgage loan with JP Morgan Chase Bank in 2008, as
26 evidenced by the Deed of Trust recorded in Los Angeles County on January 22, 2008.
27 Ms. Sencion receives all communications about her mortgage loan from Chase. After the
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1 economic crisis severely and unforeseeably altered her financial circumstances, Ms.
2 Sencion sought a loan modification. She received a temporary modification but is still
3 struggling to make her payments.

4 59. Plaintiff OBED APOSTOL is an individual residing in the State of California,
5 with property located at 1629 Trieste Court, San Jose, CA 95122 (Santa Clara County).
6 Mr. Apostol and his wife Cecilia Apostol obtained their mortgage loan from Long Beach
7 Mortgage Company in 2005, as evidenced by the Deed of Trust recorded in Contra Costa
8 County on February 11, 2005. At closing, the Apostols felt pressured to sign quickly and
9 did not feel they had time to review the terms to which they were agreeing. They were
10 later advised that the broker had not dealt fairly with them. After the economic crisis
11 severely and unforeseeably altered his financial circumstances, the Apostols sought a loan
12 modification. Chase drew out the application process with repeated requests for identical
13 documents and eventually denied them assistance. As of this filing, the Apostols have
14 been engaged in the loan modification process for three years. On July 17, 2009, a Notice
15 of Default was recorded on the property. The Apostols have had difficulty
16 communicating with Chase and often speak with representatives who do not seem
17 knowledgeable about their loan. Chase makes constant collection calls to their home at all
18 hours. They are currently facing foreclosure, with a Notice of Trustee Sale recorded
19 March 2, 2011. The Apostols suffer extreme emotional distress and insomnia as a result
20 of these circumstances.

21 60. Plaintiff CECILIA APOSTOL is an individual residing in the State of California.
22 She is married to OBED APOSTOL and subject to similar circumstances.

23 61. Plaintiff MURAD ATIEH is an individual residing in the State of Illinois, with
24 property located at 9314 Windsor Parkway #114, Tinley Park, IL 60487. Mr. Atieh
25 obtained his mortgage loan from Long Beach Mortgage Company in 2005, as evidenced
26 by the Warranty Deed recorded in Cook County on April 26, 2005 and the Rider dated
27 March 9, 2005. Mr. Atieh receives all communications about his mortgage loan from

1 Chase. After the economic crisis severely and unforeseeably altered his financial
2 circumstances, Mr. Atieh sought a loan modification. He received a modification in 2009
3 but the modification did not help his situation. When he applied for another modification,
4 Chase used document requests to draw out the process, asking for the same documents
5 repeatedly and seeming to lose documentation he had already sent. Mr. Atieh has had
6 great difficulty communicating with the bank. Customer service representatives employed
7 by Chase have treated him rudely and do not provide the assistance he needs. As a result
8 of these circumstances, Mr. Atieh has suffered from severe emotional distress. He feels
9 frustrated, angry, confused, and fears losing his home.

10 62. Plaintiff AILEEN BARTH is an individual residing in the State of Massachusetts,
11 with property located at 16 Miacomet Road, Nantucket, MA 02554. Ms. Barth refinanced
12 her mortgage loan with Washington Mutual Bank, FA in 2007, as evidenced by the Deed
13 of Trust. Her loan officer at the time informed her to not worry about her income because
14 he could make it work in order for her to obtain the refinance. After the economic crisis
15 severely and unforeseeably altered her financial situation, Ms. Barth sought a loan
16 modification. She made 3 trial period payments, and at the end the mortgage company
17 made her re-submit all of her paperwork, and then denied her. She has submitted her
18 modification paperwork 6 times, due to the mortgage company continuously misplacing
19 her paperwork. As a result of these circumstances Ms. Barth is approximately 37 months
20 behind, and has suffered severe emotional distress and financial hardship.

21 63. Plaintiff JON BYRON III is an individual residing in the State of Nevada, with
22 property located at 2448 Melody Lane, Reno, NV 89512. Mr. Byron obtained his
23 mortgage loan from Sierra Pacific Mortgage Company in 2003, as evidenced by the Deed
24 of Trust recorded in Washoe County on September 30, 2003. MERS records indicate that
25 JP Morgan Chase Bank is the servicer. The investor “has chosen not to display their
26 information.” Mr. Byron receives all communications about his mortgage loan from
27 Chase. After the economic crisis severely and unforeseeably altered his financial
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1 circumstances, Mr. Byron sought a loan modification. A Chase representative told him
2 that he would have to fall behind on his payments in order to become eligible for a
3 modification. Mr. Byron accordingly stopped making his payments and tried for three
4 years to obtain a modification. On his third application, he was offered a modification
5 that increased his principle and payment amount. Mr. Byron has found it very difficult to
6 communicate with Chase. He has experienced long hold times, dropped calls, and
7 transfers from department to department, none of which were able to assist him. In
8 multiple instances, he sent loan modification payments and was told Chase had not
9 received them. He has received threatening collections calls from outsourced callers at
10 odd hours and an overwhelming volume of calls requesting documentation during the
11 modification process. As a result of these circumstances, Mr. Byron has suffered severe
12 emotional distress. He suffers from high blood pressure and anxiety about losing his
13 home, and feels frustrated and cheated. He has brought his loan current but lives month to
14 month to keep up with his payments.

15 64. Plaintiff DEBRA CARMAN is an individual residing in the State of California,
16 with property located at 22335 Caminito Arroyo Seco, Laguna Hills, CA 92653 (Orange
17 County). Ms. Carman and her husband Jonathon Carman refinanced her mortgage loan
18 most recently with Argent Mortgage Co. in 2007, as evidenced by the Deed of Trust
19 recorded in Orange County on January 11, 2007. The loan is a negative amortization
20 adjustable rate mortgage. The broker told the Carmans the loan was favorable. At closing
21 the Carmans felt pressured to sign quickly and were unclear on the terms they were
22 signing to. An inactive MERS record indicates that American Home Mortgage Holdings,
23 Inc. was the loan servicer and Fannie Mae was the investor. However, the Carmans
24 receive all communications about their mortgage loan from Chase. After the economic
25 crisis severely and unforeseeably altered their financial circumstances, the Carmans
26 sought a loan modification. A Chase representative told them that they would have to fall
27 behind on their payments in order to qualify. Accordingly, the Carmans stopped making
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1 their payments. Chase used repeated document requests to draw out the process. Finally,
2 the Carmans received a trial modification but were eventually denied a permanent
3 modification, with the reason given that the modification would not benefit the investor.
4 They were then told to stop making trial payments but were not told to resume their
5 regular payments. The Carmans experienced great difficulty in trying to communicate
6 with Chase. The representatives the Carmans spoke with had little interest in their
7 situation or in assisting them. Meanwhile, Chase initiated foreclosure proceedings
8 against the Carmans. As a result of these circumstances, the Carmans have suffered
9 severe emotional distress. They experience fear and anxiety about losing their home, and
10 Debra has sought professional treatment for depression. Their previously good credit has
11 been damaged and they risk losing their home.

12 65. Plaintiff JONATHON CARMAN is an individual residing in the State of
13 California. He is married to DEBRA CARMAN and subject to similar circumstances.

14 66. Plaintiff JOSEPH DE MASCO is an individual residing in the State of New York,
15 with property located at 1057A Waverly Ave., Holtsville, NY 11742. Mr. De Masco
16 refinances his mortgage loan with Chase in 2004. After the economic crisis severely and
17 unforeseeably altered his financial circumstances, Mr. De Masco went behind on his
18 mortgage payments. He is currently approximately 2 years behind. As a result of these
19 circumstances, Mr. De Masco has suffered severe emotional distress and financial
20 hardship.

21 67. Plaintiff ALLEN FARLEY is an individual residing in the State of California, with
22 property located at 3548 Shasta Dam Boulevard, Shasta Lake, CA 96019 (Shasta County).
23 Mr. Farley and his wife Deborah Farley most recently refinanced their mortgage loan with
24 First Magnus Financial Corporation in 2006, as evidenced by the Deed of Trust recorded
25 in Shasta County on July 28, 2006. The loan is a negative amortization, adjustable rate
26 loan. After the economic crisis severely and unforeseeably altered their financial
27 circumstances, the Farleys sought a loan modification. They applied through HARP,
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1 HAMP, and through Chase. They were told by a Chase representative that their HAMP
2 modification had gone through but were later told the opposite. Later they were told their
3 income was not high enough to allow them to qualify. Chase used document requests to
4 draw out the process and make nearly constant calls to the Farleys requesting duplicate
5 documents. At one point, a bank representative told them that they needed to stop making
6 payments in order to get a loan modification. The Farleys accordingly stopped making
7 their payments, but the modification was denied. On or around May 19, 2011, the trustee
8 initiated non-judicial foreclosure proceedings with a Notice of Default. The Farleys have
9 suffered severe emotional distress as a result of these circumstances. Mr. Farley receives
10 professional treatment for depression and experiences feelings of hopelessness. He and
11 his wife are both disabled and he fears becoming homeless.

12 68. Plaintiff DEBORAH FARLEY is an individual residing in the State of California.
13 She is married to ALLEN FARLEY and subject to similar circumstances.

14 69. Plaintiff DARLENE GARNER is an individual residing in the State of Michigan,
15 with property located at 4781 Catalina Drive, Lake Orion, MI 48359. Ms. Garner
16 obtained her mortgage loan from Pulte Mortgage LLC in 2007, as evidenced by the Deed
17 of Trust recorded in Oakland County on April 12, 2007. At the origination of her loan,
18 Ms. Garner felt that the representatives she worked with were unclear about the terms of
19 the loan. She pressured to sign the loan agreement quickly in order to close escrow but
20 later found the terms were not the same as those she believed she would receive.
21 Following closing, the loan servicer changed, but this was not made clear to Ms. Garner.
22 Ms. Garner now receives all communications about her loan from Chase Bank. After the
23 economic crisis severely and unforeseeably altered her financial circumstances, Ms.
24 Garner sought a loan modification. She has applied three times over the course of two
25 years. Each time, Chase requests documents over and over again. When Ms. Garner
26 sends the documents, the bank claims never to have received them and eventually closes
27 the application. Her calls to the bank yield long hold times and her calls are often
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1 dropped. She is always directed to a different individual when she has questions about her
2 loan. Ms. Garner has experienced extreme emotional distress as a result of these issues,
3 and suffers from depression, high blood pressure, migraine headaches, loss of appetite,
4 insomnia, and stress-related asthma. Because of her asthma, she sometimes requires a
5 respirator to help her breathe and has had to take weeks off from work and lost wages.

6 70. Plaintiff DAVID MICHAEL HERED is an individual residing in the State of
7 California. Mr. Hered refinanced his mortgage loan with Washington Mutual Bank in
8 2005, as evidenced by the Deed of Trust recorded in Broward County on April 19, 2005.
9 Mr. Hered receives all communications about his mortgage loan from Chase. After the
10 economic crisis severely and unforeseeably altered his financial circumstances, Mr. Hider
11 sought a loan modification from Chase. He was told he received a modification. Then he
12 began receiving a flood of communications offering him a new modification and others
13 saying he was in default. Chase then requested additional time to research his
14 modification request. Mr. Hered still does not know the status of his loan modification
15 and has not received the assistance he needs. He has suffered severe emotional distress,
16 anxiety, and frustration as a result of these events.

17 71. Plaintiff LEE HILLIS is an individual residing in the State of Michigan, with
18 property located at 52774 Weathervane, Chesterfield, MI 48047. Mr. Hillis refinanced his
19 mortgage loan with Southstar Funding in 2005, as evidenced by the Deed of Trust
20 recorded in Macomb County on December 12, 2005. MERS records show that EMC
21 Mortgage LLC is the loan servicer and JP Morgan Chase is the investor on the note. After
22 the economic crisis severely and unforeseeably altered his financial circumstances, Mr.
23 Hillis sought a loan modification. Chase asked for the same paperwork over and over
24 again. After a year of this process, Mr. Hillis had still not obtained a loan modification.

25 72. Plaintiff RON KOOYMAN is an individual residing in the State of California,
26 with property located at 4312 Walnut Blvd, Walnut Creek, CA 94596 (Contra Costa
27 County). In 2007 Mr. Kooyman refinanced his mortgage loan with Washington Mutual, as
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1 evidenced by the Deed of Trust recorded in Contra Costa County on February 8, 2007.
2 The servicing of his loan was transferred to EMC Mortgage in 2007. At the time of
3 origination, Mr. Kooyman was placed in an negatively amortized adjustable rate mortgage
4 and was relying upon the ability to refinance the loan before the adjustment date. The
5 economic crisis severely and unforseeably altered his financial circumstances, and Mr.
6 Kooyman suffered a loss in equity in his property. MERS records indicate that JP Morgan
7 Chase Bank N.A. fka WAMU is the servicer of the loan and Wells Fargo is the investor as
8 trustee. Mr. Kooyman was not aware at the time of origination that his loan could be sold
9 to an investor or that his borrower/lender relationship with Washington Mutual could be
10 severed. Mr. Kooyman has suffered severe emotional distress and loss of sleep as a result
11 of being placed in the loan by Washington Mutual and the subsequent economic
12 difficulties he has faced.

13 73. Plaintiff ELAINE KOOYMAN is an individual residing in the State of California.
14 She is married to RON KOOYMAN and subject to similar circumstances.

15 74. Plaintiff DONALD MARCH is an individual residing in the State of New York,
16 with property located at 144 Old Neck Road, Center Moriches, NY 11934. Mr. March
17 refinanced his mortgage loan with Washington Mutual and obtained an adjustable rate
18 loan. At the time of origination, the terms of the loan were not fully explained to Mr.
19 March and he was told that the loan was beneficial to him because it would lower his
20 mortgage payments. He was told that he would be able to refinance the loan at a later date.
21 Mr. March receives all his servicing statements and communications about his mortgage
22 loan from Chase. After the economic crisis severely and unforseeably altered his
23 financial circumstances, Mr. March sought a loan modification. Chase employees told
24 Mr. March that he needed to go late on his payments in order to get a modification. Mr.
25 March relied on those statements and stopped making payments. Mr. March sent and re-
26 sent paperwork and documents to Chase for over a year before his loan modification was
27 denied. As a result of the foregoing, Mr. March has suffered severe emotional distress,
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1 marital problems, and damage to his credit rating. He has since been unable to qualify for
2 a student loan necessary for his child's college education.

3 75. Plaintiff BRENDA MARCH is an individual residing in the state of New York.
4 She is married to DONALD MARCH and is subject to similar circumstances.

5 76. Plaintiff SALVADOR MORENO is an individual residing in the State of
6 California, with property located at 464 Delridge Drive, San Jose, CA 95111 (Santa Clara
7 County). Mr. Moreno refinanced his mortgage loan with 1st National Lending Services in
8 2006, as evidenced by the Deed of Trust recorded in Santa Clara County on March 3,
9 2006. At the time of origination of the loan, Mr. Moreno was put into a negative
10 amortization loan and was told that this was the best loan for which he qualified. MERS
11 records indicate that JP Morgan Chase is the loan servicer and Bank of America is the
12 investor on the loan. However, 1st National Lending Services has initiated non-judicial
13 foreclosure proceedings against Mr. Moreno. However, no record of registration can be
14 found on the California Secretary of State website for this business. Mr. Moreno was
15 timely making his mortgage payments of \$1700 every month, until Chase began paying
16 his property tax without his consent. Chase then demanded a new monthly payment of
17 \$5000. Mr. Moreno did not know why the new fee was so high. Mr. Moreno attempted to
18 make his previous payment, but Chase refused to accept it. Due to the increased payment
19 requirement as well as the severe and unforeseeable consequences of the economic crisis,
20 Mr. Moreno was unable to keep up with his mortgage payments. Mr. Moreno sought a
21 loan modification with Chase, and was strung along for a period of months. The bank was
22 unresponsive to requests for communication and Mr. Moreno's phone calls were
23 transferred among many departments of the bank, none of which was accommodating.
24 Throughout the process Chase employees have made harassing phone calls to Mr. Moreno
25 regarding his mortgage payment. Mr. Moreno was finally denied a loan modification due
26 to insufficient income. As a result of the foregoing, Mr. Moreno has suffered severe
27 emotional distress and has had to be hospitalized twice due to stress induced illness. He
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1 has also suffered damage to his credit rating. His wife has suffered mental distress and has
2 suffered emotional problems that have negatively affected her work. Additionally, his
3 children and elderly mother-in-law residing in the house have suffered emotional distress
4 due to uncertainty of the family's living situation. On March 11, 2011, the trustee initiated
5 foreclosure proceedings, and a Notice of Trustee Sale was issued on June 14, 2011.

6 77. Plaintiff CELESTE OLIVAREZ is an individual residing in the State of
7 California, with property located at 257 Flint Court, Hayward, CA 94541 (Alameda). Ms.
8 Olivarez refinanced her mortgage loan with Greenpoint Mortgage in 2005, as evidenced
9 by the Deed of Trust recorded in Alameda County on March 24, 2005. Ms. Olivarez
10 receives all communications regarding her mortgage loan from Chase, and an active
11 MERS record indicate that JP Morgan Chase is both the investor and the servicer of the
12 loan. After the economic crisis severely and unforeseeably altered their financial
13 circumstances, Ms. Olivarez sought a loan modification. Chase delayed her application
14 through repeated document requests. When she called the bank to get information on the
15 loan modification process, she was never able to speak to the same person twice and was
16 given conflicting information about how to proceed. She was frequently placed on hold
17 and transferred between departments. Ms. Olivarez became so frustrated that she gave up.
18 She recently received a call from Chase saying that foreclosure proceedings had been
19 initiated, but was given no sale date. Ms. Olivarez has suffered severe emotional distress
20 as a result of these circumstances. She has lost sleep and her memory is affected by stress
21 and insomnia.

22 78. Plaintiff GREG REULBACH (Ventura County) is an individual residing in the
23 State of California, with property located at 1530 Fairmount Road, Westlake, CA 91362.
24 Mr. Reulbach and his wife financed their mortgage loan with Chase Manhattan Mortgage
25 Corporation, in 2003, as evidenced by the Deed of Trust recorded on August 11, 2011.
26 After the economic crisis severely and unforeseeably altered his financial circumstances,
27 Mr. Reulbach tried to refinance his house, without success. Mr. Reulbach has suffered
28

1 severe emotional distress and financial hardship as a result of these circumstances.

2 79. Plaintiff GILBERTO RODRIGUEZ is an individual residing in the State of
3 Florida, with property located at 949 Fontana Court West, Jacksonville, FL 32225. Mr.
4 Rodriguez and his wife, Myrna Rodriguez, refinanced their mortgage loan with People's
5 Choice Home Loan Inc. in 2007, as evidenced by the Deed of Trust recorded in Duval
6 County on February 13, 2007. The broker who handled negotiations did not make it clear
7 to the Rodriguezes that the loan was to be an interest-only loan, and told them it was
8 favorable and affordable. The Rodriguezes have suffered severe emotional distress as a
9 result of discovering these misrepresentations. The Rodriguezes receive all
10 communications about their mortgage loan from Chase, and MERS records indicate that
11 JP Morgan Chase fka Washington Mutual is the loan servicer. The investor is "not
12 disclosed" through MERS. After the economic crisis severely and unforeseeably altered
13 their financial circumstances, the Rodriguezes sought a loan modification. The first
14 application was denied on the basis of the Rodriguezes debt to income ration. On their
15 second attempt, they received an offer for a trial modification, but declined to accept it
16 because the payments under the modification were even higher than they had been
17 previously. During both attempts, Chase used document requests to draw out the process
18 by requesting the same documents over and over. As a result of these circumstances, the
19 Rodriguezes have experienced severe emotional distress. They report feeling tricked,
20 powerless, and extremely frustrated. They have spent thousands of dollars on loan
21 modification services and have not been able to make any payments to the principal of
22 their loan.

23 80. Plaintiff MYRNA RODRIGUEZ is an individual residing in the State of Florida.
24 She is married to GILBERTO RODRIGUEZ and subject to similar circumstances.

25 81. Plaintiff ZAHER SAMMAK is an individual residing in the State of Illinois, with
26 property located at 7445 Blackstone Avenue, Justice, IL 60458. Mr. Sammak refinanced
27 his mortgage loan with Encore Credit Corporation in 2004, as evidenced by the Deed of
28

1 Trust recorded in Cook County on September 14, 2004. Following origination of his loan,
2 Mr. Sammak understood that his loan was sold to EMC. However, in 2010, EMC ceased
3 sending mortgage statements. When Mr. Sammak contacted EMC, he was told his loan
4 had been sold to Chase. He then called Chase, but Chase representatives told him they
5 had no record of his loan. Mr. Sammak then began receiving letters from both EMC and
6 Chase regarding a possible loan modification and soliciting him to begin the modification
7 process. During this process, a Chase representative told him that he would have to fall
8 behind on his payments before he was eligible for a modification. Mr. Sammak
9 accordingly stopped making his payments, but Chase claimed that they never received his
10 application for a modification. He applied again, and found that Chase requested
11 documents multiple times, sometimes sending letters requesting documents by a due date
12 that had already passed by the time the letter was received. In October 2011, he was
13 finally offered a modification and felt forced to accept it by the threat of foreclosure.
14 However, the terms of the modification are not favorable to Mr. Sammak. Mr. Sammak
15 experiences severe emotional distress, stress, and uncertainty in connection with his loan,
16 the modification, and the problems with the loan servicing.

17 82. Plaintiff STEVE WON (Contra Costa County) is an individual residing in the
18 State of California, with property located at 3113 Almond Tree Court, Antioch, CA
19 94509. Mr. Won refinanced his mortgage loan with Washington Mutual Bank, FA, in
20 2007, as evidenced by the Deed of Trust recorded on May 24, 2007. After the economic
21 crisis severely and unforeseeably altered his financial situation, Mr. Won sought a loan
22 modification. He was given a temporary loan modification and made two payments on
23 time toward the modification when it was revoked. Mr. Won was told that the new
24 investor did not like the terms and therefore revoked the modification. Mr. Won is now
25 about 30 months behind on his payments. As a result of these circumstances, Mr. Won
26 has suffered severe emotional distress and financial hardship.

27 83. Plaintiff MICHAEL WRIGHT is an individual residing in the State of California,
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1 with property located at 19525 Normandy Avenue, Cerritos, CA 90703 (Los Angeles
2 County). Mr. Wright and his wife Ebony Wright refinanced their mortgage loan with
3 Fremont Investment and Loan in 2006, as evidenced by the Deed of Trust recorded in Los
4 Angeles County on December 1, 2006. The loan they received was an adjustable rate
5 mortgage with an initial three year fixed rate, and were told by the broker that they would
6 be able to refinance before the rate adjusted. They were told that this was the best loan
7 that they qualified for. MERS records indicate that JP Morgan Chase is currently the loan
8 servicer. The investor “has chosen not to display their information.” After the economic
9 crisis severely and unforeseeably altered their financial circumstances, the Wrights sought
10 a loan modification from their servicer at the time, EMC Mortgage, a subsidiary of JP
11 Morgan Chase. The modification was denied, and they were told that they would have to
12 stop making payments in order to get a modification. After ceasing to make payments, the
13 Wrights applied again for a modification, and were placed into a trial modification. They
14 were told that they would receive notice about a permanent modification at the end of the
15 three month trial period, but they did not receive a definitive denial until many months
16 later. In total, the Wrights were strung along during the modification process for over two
17 years. They were asked to fax hundreds of documents to EMC as part of the modification
18 process, and then asked to resend the same information numerous times. The Wrights
19 were uncertain about whom they were supposed to deal with, and had their phone calls
20 transferred between Chase and EMC repeatedly. The Wrights have suffered extreme
21 emotional distress as part of the uncertainty surrounding their modification. Eventually,
22 the Wrights were told that they had insufficient income for a loan modification even
23 though their income had actually increased by more than double from the time their loan
24 was originated. A notice of default was recorded on their property in July 2010.

25 84. Plaintiff EBONY WRIGHT is an individual residing in the State of California.
26 She is married to MICHAEL WRIGHT and subject to similar circumstances.

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1 **Defendants**

2 85. Defendant JP MORGAN CHASE & CO is incorporated in Delaware with its main
3 office in New York.

4 86. Defendant FIRST MAGNUS FINANCIAL CORPORATION is incorporated in
5 Arizona and with its main office in Arizona.

6 87. Defendant 1ST NATIONAL LENDING SERVICES is incorporated in California
7 and operating under the laws of California according to the Deed of Trust recorded on the
8 property of Salvador Moreno (attached hereto as Exhibit B). This is also the entity that
9 has initiated non-judicial foreclosure proceedings against Mr. Moreno. However, no
10 record of registration can be found with the California Secretary of State under this name.

11 88. Defendant LONG BEACH MORTGAGE COMPANY was incorporated in
12 Delaware, but has since been merged with Washington Mutual. Washington Mutual was
13 later merged with JP Morgan Chase & Co.

14 89. Defendant WASHINGTON MUTUAL BANK, N.A. was incorporated in the State
15 of Washington. It has since been purchased by JP Morgan Chase & Co. It is now a
16 subsidiary of JP Morgan Chase & Co.

17 90. Defendant BANK OF AMERICA N.A. is incorporated in Delaware with its main
18 office in North Carolina.

19 91. Defendant CITIBANK, N.A. is a national association incorporated in Delaware.
20 Its main office is in Sioux Falls, South Dakota according to its articles of association.

21 92. Defendant INDYMAC BANCORP, INC is incorporated in Delaware with main
22 offices in California.

23 93. Defendant WELLS FARGO BANK, N.A. is incorporated in Delaware with main
24 offices in South Dakota. Wells Fargo's principal place of business is in California.

25 94. Defendant WACHOVIA BANK, N.A. is a federally chartered bank with main

1 offices in North Carolina.

2 95. Defendants (with exception of Bank of America, Citi Bank, Wells Fargo,
3 IndyMac, and Wachovia) in this action are all agents, predecessors-in-interest, or
4 otherwise controlled by JP Morgan Chase & Company (Chase) and will collectively be
5 referred to as “the Chase Defendants” or “Defendants.”

6 96. JP Morgan Chase, Washington Mutual, Bank of America, Citi Bank, Wells Fargo,
7 IndyMac and Wachovia will be referred to as the “Lenders” or “Lending Defendants.”

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10 **JURISDICTION AND VENUE**

11 **Jurisdiction**

12 97. Defendants are all either residents of California or have such “substantial,
13 continuous, or systematic” contacts with California as to have general personal
14 jurisdiction.

15 98. When a Defendant is subject to general personal jurisdiction, he may even be sued
16 on causes of action unrelated to his activities within the state. *Perkins v. Benguet*
17 *Consolidated Mining Co.*, 342 US 437 (1952).

18 99. Not all Plaintiffs herein are California residents and some Plaintiffs request action
19 in regard to property located outside of California. If all the property owners are before
20 the court, California courts may affect rights in property outside the state if the state finds
21 personal jurisdiction over the Defendant. *Fall v. Eastin*, 215 US 1, 7 (1909).

22 100. In the mortgage crisis, California was one of the hardest hit states in the nation.
23 California has an interest in protecting its citizens from the poor business practices of
24 these major lenders leading to the subprime mortgage crisis.

26 **Venue**

27 101. The California County with the greatest number of Plaintiffs and properties

1 included in this suit is Contra Costa. Therefore, venue is proper in Contra Costa County
2 Superior Court.

3

4 **GENERAL FACTS**

5 102. Paragraphs 1 through 99 and the paragraphs following this cause of action are
6 incorporated by reference as though fully set forth herein.

7 103. As discussed more thoroughly in the Preliminary Statement, the lending arena was
8 materially changed by the passage of acts allowing riskier and hybrid loans.

9 104. JP Morgan Chase, its subsidiaries and predecessors in interest were regularly
10 engaged in the issuance of Option-Arm Loans.

11 105. Option-ARM loans are negative amortization loans that allowed borrowers to
12 make minimum payments that did not cover the interest owed. The interest not paid was
13 added to the principal owed on the loans. As such, it is argued that these loans are not
14 negotiable instruments.

15 106. Fraudulent document signing (so called “robo-signing) has been found against all
16 of the Lenders, including Chase.

17 107. Because of repeated instances of fraudulent documentation, the use of MERS to
18 transfer loan documents without recording the transfers, improper or no notice of the
19 transfers to the Plaintiffs, Plaintiffs do not know who legally has the right to enforce their
20 Notes.

21 108. Not only are loan transfers hidden from the public, but the Notes are not properly
22 transferred between parties with proper indorsement.

23 109. Chase had notice when it purchased the failing banking entities and other RMBS
24 that these loans were bad.

25 110. At origination, Plaintiffs believed that they were entering into a traditional
26 lender/borrower relationship.

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1 111. At origination, Defendants knew that Plaintiffs' loans would be packaged up into
2 RMBS and sold to investors. Defendants knew that they would recoup monies lent
3 immediately. Defendants knew that Plaintiffs would be subject to a servicer instead of a
4 lender and that the servicer was limited as to its power to assist Plaintiffs when issues not
5 foreseeable to Plaintiffs arose.

6 112. Chase has indicated an intent to work with Plaintiffs through loan modification.
7 However, Plaintiffs who have entered the loan modification process have encountered
8 huge obstacles placed by Chase employees.

9 113. Plaintiffs are first asked to submit a plethora of paperwork. A month or two later,
10 the Plaintiffs are told they must resubmit the same, but updated, plethora of paperwork.

11 114. Chase loss mitigation employees state that they did not receive the paperwork or
12 that it was lost.

13 115. Many Plaintiffs have been required to submit updated paperwork every month for
14 years only to be denied the loan modification.

15 116. Instead of the traditional lender/borrower arms-length transaction, "lenders" turned
16 into loan processors for Residential Mortgage Backed Securities (RMBS). As such, the
17 lenders had an incentive, not to protect themselves from default, but to write as many high
18 dollar loans as possible.

19 117. The Lenders touted high underwriting standards while encouraging its employees
20 and brokers to cheat to overcome these standards.

21 118. Lenders encouraged brokers to tell potential borrowers anything to get them into
22 the subprime loans. Lenders even encouraged brokers to adjust loan applications to fit
23 underwriting standards. Brokers were given high incentives at loan closing for subprime
24 loans.

25 119. Many borrowers who qualified for prime loans were told they were being placed in
26 prime loans when really they were placed in subprime loans.

1 120. Plaintiffs relied on the representations of the Lenders that their loans were of good
2 quality. Loan approvals were used to convince Plaintiffs they were in loans they could
3 afford.

4 121. Inflated loan appraisals were also used to convince Plaintiffs into high dollar loans.
5 Plaintiffs were told, "look how much your house is worth and the value just keeps rising.
6 It will never depreciate."

7 122. Inflated loan appraisals resulting in a wide-spread skew of property values across
8 the nation.

9 123. The appraisers were chosen by the Lenders.

10 124. It is impossible to connect each individual Lenders' acts to the injury of each
11 individual Plaintiff.

12 125. All of the Lenders were engaged in inflating property appraisals in order to write
13 higher dollar loans to package up and sell to investors. Together, the Lenders are
14 responsible for the injury to Plaintiffs.

15 126. All of this resulting in Plaintiffs' loss of equity and investments in their properties.
16 Plaintiffs have suffered severe emotional distress. Many Plaintiffs have had physical
17 manifestations of the emotional stress they have suffered.

18
19 **FIRST CAUSE OF ACTION**
20 (Request for Declaratory Relief)
21 (By All Plaintiffs)

22 127. Paragraphs 1 through 124 and the paragraphs following this cause of action are
23 incorporated by reference as though fully set forth herein.

24 128. Parties disagree as to their rights and duties under the contract. Therefore,
25 Plaintiffs seeks declaratory relief on disputed matters. Disputed matters are as follows:

26 **NEGOTIABLE V. NON-NEGOTIABLE INSTRUMENTS**

27 129. There are material differences between instruments classified as negotiable
28 instruments and those that are not. Material hereto are two distinct differences: 1) a

1 negotiable instrument requires the physical delivery of the instrument for the transferor to
2 enforce, and 2) Holder in Due Course Doctrine only applies to negotiable instruments.

3 130. Plaintiffs request declaratory relief to determine first whether or not the notes in
4 question are negotiable instruments and, therefore, whether or not the Defendants.

5 131. Under Cal. Com. Code § 3104, a negotiable instrument is defined as follows:

6 (a) Except as provided in subdivisions (c) and (d), “negotiable instrument” means
7 an unconditional promise or order to pay a *fixed amount of money*, with or without
8 interest or other charges described in the promise or order, if it is all of the
9 following:

10 (1) Is payable to bearer or to order at the time it is issued or first comes
11 into possession of a holder.

12 (2) Is payable on demand or at a definite time.

13 (3) Does not state any other undertaking or instruction by the person
14 promising or ordering payment to do any act in addition to the payment of money,
15 but the promise or order may contain (i) an undertaking or power to give,
16 maintain, or protect collateral to secure payment, (ii) an authorization or power to
17 the holder to confess judgment or realize on or dispose of collateral, or (iii) a
18 waiver of the benefit of any law intended for the advantage or protection of an
19 obligor.

20 Cal. Com. Code § 3104(a) (emphasis added)

21 132. The Option-Arm loans issued by Defendants are negative amortization loans (neg-
22 am). This means that the principal amount due is increased by any amounts of unpaid
23 interest.

24 133. Some Plaintiffs are in loans that do not negatively amortize and seek only the
25 court’s determination that these loans are negotiable instruments. Furthermore, Plaintiffs
26 request that notes determined to be negotiable instrument follow the requirements of such
27 as laid out in California Commercial Code Division 3 – Negotiable Instruments.

1 134. Many Plaintiffs herein were placed in these option-arm loans.

2 135. Several other Plaintiffs herein were placed in loans that contained the following
3 clause:

4 **Changes in My Unpaid Principal Due to Negative Amortization or
5 Accelerated Amortization**

6 Since my payment amount changes less frequently than the interest rate and since
7 the monthly payment is subject to the payment limitations described in Section
8 4(F), my monthly payment could be less or greater than the amount of the interest
9 portion of the monthly payment that would be sufficient to repay the unpaid
10 Principal I owe at the monthly payment date in full on the maturity date in
11 substantially equal payments. *For each month that the monthly payment is less
12 than the interest portion, the Note Holder will subtract the monthly payment from
13 the amount of the interest portion and will add the difference to my monthly
14 principal, and interest will accrue on the amount of this difference at the current
15 interest rate.* For each month that the monthly payment is greater than the interest
16 portion, the Note Holder will apply the excess towards a Principal reduction of the
17 Note.” (Emphasis Added) (Excerpt from Plaintiff Alicia Cuevas’ Adjustable Rate
18 Rider attached hereto as Exhibit C)

19 136. As an aside, it stands to be noted that Ms. Cuevas never received any disclosures
20 or documentation other than this paragraph alerting her to the fact that her loan would
21 negatively amortize. In fact, the rider in which this clause is contained is named
22 “Adjustable Rate Rider.”

23 137. The emphasized language in this clause shows that the amount to be repaid is not a
24 fixed amount. Cal. Com. Code § 3104 states that a negotiable instrument is for a fixed
25 amount of money, with or without interest or other charges. Here, the principal balance
26 owed adjusts. It is not a fixed amount.

27 138. Therefore, neg-am loans are not negotiable instruments.

1 **RIGHT TO ENFORCE**

2 139. Plaintiffs with loans that do not negatively amortize have negotiable notes.
3 Negotiable notes are governed by California Commercial Code Division 3.

4 140. California Commercial Code § 3203 states, “An instrument is transferred when it
5 is delivered by a person other than its issuer for the purpose of giving to the person
6 receiving delivery the right to enforce the instrument.”

7 141. Furthermore, a bill, note, check or draft indorsed in blank is transferable by
8 delivery only according to *Curtis v. Sprague*, 51 Cal. 239 (1876); *Bank of Lassen v.*
9 *Sherer*, 41 P. 415 (1895); *O'Conor v. Clarke*, 44 P. 482 (1896); *Meyer v. Foster*, 81 P.
10 402 (1905).

11 142. Plaintiffs are aware of allegations of fraudulent documentation produced by the
12 purported note holders (e.g., robo-signing). Furthermore, Plaintiffs have experienced
13 considerable confusion in the transfer and handling of their mortgages. For these reasons,
14 Plaintiffs simply need a determination that the proper party seeks to enforce the Notes
15 since the parties now enforcing the notes are not the original parties to the contracts.

16 143. Note that Plaintiffs are not arguing that production of the Note is a requirement of
17 non-judicial foreclosure in California under California Commercial Code §§ 2924-2924l.
18 Plaintiffs dispute that the party attempting to enforce the notes has a right to do so.

19 **HOLDER IN DUE COURSE DOCTRINE**

20 144. Plaintiffs with negotiable notes also request a determination that Defendants (as to
21 only these Plaintiffs) are not protected by Holder in Due Course Doctrine.

22 145. For Plaintiffs with neg-am loans, a request is hereby made that the court determine
23 Holder in Due Course Doctrine if the neg-am loans are found to be negotiable.

24 146. Even if all loans of Plaintiffs herein are found to be negotiable, Plaintiffs argue
25 that the loans are not subject to Holder in Due Course Doctrine for the following two
26 reasons:

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1 147. **Defendants had notice:** When mortgage backed securities were at their peak of
2 popularity, a group of investors realized that many consumers were being approved for
3 loans they did not have a dream of affording. These investors noticed that underwriting
4 standards were ignored in order to package up and sell mortgage backed securities to
5 unsuspecting investors. Borrowers were mislead and lied to in order to lure them into
6 these loans. Because of these realizations, a group of investors began to bet against the
7 mortgage backed securities market by the use of credit default swaps – a kind of stock
8 insurance that was issued even to non-stockholders.

9 148. These credit default swaps along with ample other press related evidence proves
10 that Defendants knew of the issues inherent in their acquisitions.

11 149. Therefore, Defendants had notice of the issues present in the mortgages held by
12 the businesses they acquired and are, therefore, not holders in due course.

13 150. **Improper Indorsement:** If the Court disagrees with Plaintiffs and believes
14 Defendants should continue to enjoy holder in due course status despite the notice of
15 potential claims, Plaintiffs additionally requests that the Court require Defendants to prove
16 that the transfer and indorsement of the notes were proper before allowing them to enforce
17 rights as the new holder of the notes.

18 151. It hardly seems just to allow Defendants to take the benefits of both a negotiable
19 and non-negotiable instrument. To allow Defendants to circumvent the requirements of
20 transfer and indorsement of negotiable instruments and enjoy holder in due course status
21 would frustrate the laws of California.

22 152. The legislature has made a distinction in the treatment of negotiable and non-
23 negotiable instruments purposefully. In order to protect makers of promissory notes from
24 dual claims for payment, specific requirements are present for the transfer and
25 indorsement of negotiable instruments that are not requirements of non-negotiable
26 instruments.

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153. To properly transfer a negotiable instrument, the physical Note must be transferred from the seller to the buyer (*see supra*). Furthermore, the Note must be indorsed to the transferee. This indorsement must be made on the Note if there is room. California Commercial Code § 3204 provides, “for the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.” Furthermore, the Court in *Pribus v. Bush*, 118 Cal. App. 3d 1003 decided that an allonge is not an effective indorsement when there is ample room for an indorsement on the note itself. Plaintiffs allege that their notes neither have been properly indorsed nor transferred.

154. Holder in Due Course protection requires a negotiable instrument, transfer of the actual note, and proper indorsement of the note.

155. A judicial declaration is necessary and appropriate at this time and so that the Plaintiffs may ascertain their rights and duties and avoid any illegal collection activity which might occur.

156. Plaintiffs further request nominal and punitive damages in a sum according to proof and to such other relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

SECOND CAUSE OF ACTION

Rescission – Mistake – Void Agreement

(By All Plaintiffs, Against the Chase Defendants)

157. Paragraphs 1 through 154 and the paragraphs following this cause of action are incorporated by reference as though fully set forth herein.

158. The Restatement (Second) of Contract, § 17 states that “the formation of a contract requires a bargain in which there is a manifestation of mutual assent. . . .” American Law Institute, Restatement (Second) of Contracts, § 17(1).

159. The bargain between the parties is often referred to as the “meeting of the minds.” See, e.g., American Law Institute, Restatement (Second) of Contracts, § 17, comment 2.

1 160. The California Forth District Appellate Court has held that a lack of meeting of the
2 minds, a mistake as to fact, can justify a rescission of the contract. "A mutual mistake,
3 whether of fact or law, which affects an essential element of the contract and is harmful to
4 one of the parties, is subject to rescission by the party harmed." *Guthrie v. Times-Mirror*
5 *Co.*, 51 Cal.App.3d 879 (1975).

6 161. The mistake or missing of the minds does not have to be mutual. A single party
7 mistaken justifies the voiding or rescinding of the contract when the mistake is known to
8 the non-mistaken party. *Donovan v. RRL Corp.*, 109 Cal. Rptr. 2d 807, 823 (2001).

9 162. The Restatement (Second) of Contracts, § 153 states:

10 "Where a mistake of one party at the time a contract was made as to a basic
11 assumption on which he made the contract has a material effect on the agreed
12 exchange of performances that is adverse to him, the contract is voidable by him if he
13 does not bear the risk of the mistake under the rule stated in § 154 , and

14 a. The effect of the mistake is such that enforcement of the contract would be
15 unconscionable, or
16 b. The other party had reason to know of the mistake or his fault caused the
17 mistake.

18 163. The Plaintiffs in this action executed their Loan documents based on the mistaken
19 belief that they would remain in a borrower/lender relationship.

20 164. The Lenders knew there would be no borrower/lender relationship.

21 165. Because of this mistake, the Plaintiffs' benefit from their Loan agreement is far
22 less than they thought they would receive. Instead of a lender who had full authority to
23 deal with their contractual relationship and the economic value to the lender, the Plaintiffs
24 received a relationship with a party who lacked the full authority of the lender and lacked
25 the economic incentive to modify the loan rather than foreclose.

26 166. The mistake was not a future contingency, but a reality present at the contract
27 formation: the Defendants knew the securitization of the conduit Loans would occur with
28

1 certainty and they knew no borrower/lender relationship was contemplated or planned as a
2 result of the Loan.

3 167. As illustrated by the Wells Fargo publication attached herein as Exhibit D, the
4 major lenders knew borrowers did not understand that the securitization of the Loans
5 would destroy the lender/borrower relationship.

6 168. Based on the material mistake in the formation of their contracts, Plaintiffs are,
7 therefore, entitled to an order of this Court rescinding the Loans and/or declaring the
8 Loans void, invalid, and unenforceable.

9 169. In addition, Plaintiffs request restitution and damages, the specific amount to be
10 determined at trial as well as such other relief as is set forth below in the section captioned
11 Prayer for Relief which is by this reference incorporated herein.

12

13 **THIRD CAUSE OF ACTION**

14 Negligence

15 (By all Plaintiffs against the Chase Defendants)

16 170. Paragraphs 1 through 167 and the paragraphs following this cause of action are
17 incorporated by reference as though fully set forth herein.

18 171. The elements of negligence are duty, breach, causation, and damages. The first
19 and most important element of negligence is duty. According to 46 California
20 Jurisprudence 3d Negligence § 9, “The concept of duty is only an expression of the sum
21 total of those considerations of policy that lead the law to say that the particular plaintiff is
22 entitled to protection.” John A. Gebauer, J.D. et al, 46 Cal. Jur. 3d Negligence § 9 (2011).

23 § 8 says a duty of care has three origins. The origin relevant to this action is “the duty of a
24 person to use ordinary care in activities from which harm might reasonably be anticipated
25 A person is not liable unless he or she is actively careless.” *Id.* at §8 “Moreover,
26 one’s general duty of care includes the duty not to place another person in a situation in
27 which the other person is exposed to an unreasonable risk of harm through the reasonably
28

1 foreseeable conduct, including the reasonably foreseeable negligent conduct of a third
2 person.” *Id.*

3 172. Although, “as a general rule, a financial institution owes no duty of care to a
4 borrower when the institution’s involvement in the loan transaction does not exceed the
5 scope of its conventional role as a mere lender of money,” *Nymark v. Heart Fed. Savings*
6 & *Loan Assn.*, 231 Cal. App. 3d 1089 (1991), several courts have agreed that this is a
7 “general rule” and there are occasions when a lender owes a duty of care to borrowers.
8 *Champlais v. BAC Home Loans Servicing, LP*, 706 F. Supp. 2d 1029, 1059-60 (2009);
9 *Taheny v. Wells Fargo Bank, N.A.*, No. CIV. S-10-2123 LICK/EFB, 2010 WL 5394315;
10 *Miller v. GMAC Mortgage, LLC*, NO. 2:11-CV-00257-MCR-DAD, 2011 WL 1549290.

11 173. It is first arguable that JP Morgan Chase’s involvement in these loan transactions
12 did “exceed the scope of its conventional role as a mere lender of money.” *Nymark* at
13 1096. A conventional lender of money issued loans with the incentive to underwrite the
14 loans conservatively as the lender bore the risk of loss. In the Plaintiffs’ loan transactions,
15 JP Morgan Chase did not bear the risk of loss. Instead, Chase packaged up the loans and
16 sold them off to investors.

17 174. Plaintiffs were unaware that their loans would be packaged up and sold to a group
18 of investors and expected a traditional lending relationship (as more fully set out in the
19 Second Cause of Action).

20 175. In so treating the loans issued, Chase was not acting as a traditional lender of
21 money, but more of a loan processor. Furthermore, in processing these loans, Chase acted
22 negligently and fraudulently as evidenced by the internal memo attached hereto as Exhibit
23 A.

24 176. Furthermore, the courts have noted that “even when a lender’s acts are confined to
25 their traditional cope, *Nymark* announced on a ‘general’ rule.” *Champlais* at 1060.
26 Rather than conclude that no duty existed per se, the *Nymark* court determined whether a
27 duty existed on the facts of that case by applying the six-factor test established by the
28

1 California Supreme Court in *Biakanja v. Irving*, 320 P.2d 16 (1958). *Nymark* at 1098; *see*
2 *also Glenn K. Jackson Inc. v. Roe*, 273 F.3d 1192, 1197 (9th Cir. 2001). This test balances
3 six non-exhaustive factors:

4 [1] the extent to which the transaction was intended to affect the plaintiff, [2] the
5 foreseeability of harm to him, [3] the degree of certainty that the plaintiff suffered
6 injury, [4] the closeness of the connection between the defendant's conduct and the
7 injury suffered, [5] the moral blame attached to the defendant's conduct, and [6]
8 the policy of preventing future harm.

9 *Biakanja* at 19

10 177. The *Champlaine* court noted that *Nymark* held that this test also determines
11 'whether a financial institution owes a duty of care to a borrower-client,' *Champlaine* at
12 1061; *Nymark* at 1098.

13 178. In *Roe*, the Ninth Circuit noted that the California Supreme Court 'arguably
14 limited' *Biakanja* in *Bily v. Arthur Young & Co.*, 834 P.2d 745 (1992), which held a court
15 must consider three additional factors before imposing a duty of care. *Roe* at 1198. *Roe*
16 summarized these factors as "(1) liability may in particular cases be out of proportion to
17 fault; (2) parties should be encouraged to rely on their own ability to protect themselves
18 through their own prudence, diligence and contracting power; and (3) the potential
19 adverse impact on the class of defendants upon whom the duty is imposed." *Id.* (citing
20 *Bily*, at 68-73). *Bily* was decided before *Nymark*, but not discussed therein.

21 179. Applying the facts as fully set forth in the Parties section and General Facts,
22 Plaintiffs as borrowers were directly related to the loans issued. Some Plaintiffs borrowed
23 money from Defendants to purchase the home. Monies were invested for down payment
24 and/or improvements to the home during ownership. Other Plaintiffs borrowed money
25 against the grossly inflated value of the property for various reasons. All plaintiffs lost
26 investments made in the property and existing equity due to the negligence of Defendants.

1 180. Among other reasons, property appraisals were grossly inflated in order to induce
2 plaintiffs into unaffordable loans. Falsification of loan applications was encouraged by
3 Chase in order to, among other things, convince Plaintiffs they were being placed into
4 loans they could afford. These negligent and fraudulent acts were intended to strip equity
5 from Plaintiffs and thereby, these transactions were intended to directly affect Plaintiffs.

6 181. It is a reasonable inference that creating highly inflated appraisals in the real estate
7 market, issuing those inflated appraisals to induce plaintiffs into unaffordable loans,
8 changing loan applications to show more favorable income for Plaintiffs as induced by
9 Chase and using the loan approval as proof to Plaintiffs that they could afford their loans
10 (among other things), would all lead to defaulting borrowers, many of whom lost all of the
11 equity and investment in their properties. Furthermore, borrowers were disposed of their
12 family homes, accrued expenses of relocation and attorneys fees trying to fight for better
13 loan terms or to remain in their properties, and suffered severe emotional distress.

14 182. As some evidence of the foreseeability of harm to Plaintiffs, Plaintiffs point to the
15 existence of credit default swaps created by Wallstreet to bet against the housing bubble.
16 Had there been no reason to believe that the issuance of these highly predatory and
17 fraudulently induced loan transactions would lead to defaulting borrowers on a scale not
18 seen since the savings and loan debacle, why would Wallstreet investment banks create
19 stock instruments designed to bet against the Residential Mortgage Backed Securities
20 market?

21 183. Plaintiffs are all in loans far higher than the value of their properties. Plaintiffs are
22 expected to pay these loans when the over-valued appraisals used to set the loan amounts
23 were incentivized by Chase. Some Plaintiffs have been injured by the loss of equity and
24 investment in their properties. Other Plaintiffs have been further injured by being
25 dispossessed of their properties. Therefore, it is certain that Plaintiffs have been injured
26 by the acts of the Defendants.

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1 184. Furthermore, based on the above analysis, the injuries suffered by Plaintiffs is a
2 direct result of the conduct of Defendants.

3 185. There is moral blame associated with lying, deceit, and fraud encouraged by
4 Chase. Chase's conduct is clearly reprehensible.

5 186. Banks should not be allowed to treat borrowers with suchreckless disregard for
6 their welfare. Before Congress last year, former Federal Reserve Chairman, Alan
7 Greenspan, admitted he was in "a state of shocked disbelief" that lenders had failed to
8 regulate themselves.

9 187. We've all seen the result of allowing banks free reign over dealings with
10 borrowers and loan approvals. It has been an invitation for fraud and deceit.

11 188. Therefore as a matter of public policy, a duty should be found between lenders and
12 borrowers to sustain a reasonable level of care in handling the loan transactions.

13 189. Stated income loans have often been referred to as "liars loans." The implication
14 of this secondary title is that those seeking the loans are the "liars." But, based on the
15 internal memo attached hereto as Exhibit A, it is not the loan applicants who were the liars
16 in these transactions, but the lender. Everyone is trying to place blame on borrowers for
17 entering into unaffordable loans which lead to default and their dispossession of their
18 properties, when the borrowers were deceived and their loan applications were altered.
19 Why should borrowers bear the weight of the housing disaster?

20 190. Property owners have repeatedly attempted to work things out with Chase outside
21 of court by working with the loan modification department. Chase loan modification
22 representatives have demonstrated an unwillingness to work with borrowers for their
23 liability in the handling of these loan transactions. Although clients are required to
24 resubmit massive amounts of documentation month after month, Chase staff continues to
25 "lose" this documentation month after month. In some instances, Chase employees have
26 told clients they did not receive documents when the client received confirmation of
27 receipt for such documents.

1 191. While parties should be encouraged to rely on their own ability to protect
2 themselves through their own prudence, diligence and contracting power, the same should
3 not be said when the party is dealing with unethical and deceitful behavior. Plaintiffs
4 aren't arguing that the bank should ensure that Plaintiffs can afford their mortgages.
5 Plaintiffs are arguing that, as a minimum, a bank should not encourage the alteration of
6 the income provided by Plaintiffs, approve a loan they should not so that they can sell it to
7 investors, and then use the approval to persuade Plaintiffs they can afford the loan in
8 which they are being placed.

9 192. Asking banks to follow their own underwriting guidelines would not in any way
10 adversely impact the bank. The bank sets the guidelines. If the bank wants riskier loans
11 approved, it should set lower underwriting standards instead of holding out to the public
12 that it has impeccable underwriting standards and then encouraging fraudulent adjustment
13 of loan applications to approve loans not within their own standards.

14 193. In this case, a duty should be found between lenders and borrowers. After
15 weighing all of the *Nymark* and *Roe* factors, public policy is best served by a finding of
16 duty. JP Morgan Chase did not act as a reasonably prudent corporation and, as a result,
17 the plaintiffs were damaged by Chase's negligence. Chase should be held liable for the
18 damages its negligence caused.

19 194. If Chase is found to have a duty to act reasonably toward borrowers by not
20 encouraging the adjustment and fraudulent submissions of loan applications by Chase
21 employees and brokers, Chase breached such duty.

22 195. As evidenced by Chase's internal memo attached as Exhibit A, Chase encouraged
23 brokers and employees to adjust and fraudulently submit loan applications. In essence,
24 Chase encouraged fraud on itself. Although Chase encouraged its employees and brokers
25 to defraud Chase, this encouraged fraud damaged Plaintiff and indicates a breach of
26 reasonable care.

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1 196. But for these behaviors of Chase, Plaintiffs would not have been injured. Had
2 Chase not encouraged the fraud, Plaintiffs would not have been lured into over-valued
3 loans with terms they could not afford. Plaintiffs would not have been approved for the
4 loans and would have remained where they were. Now, Plaintiffs are facing
5 homelessness, and have lost the equity and investments in their properties. None of this
6 would have occurred but for the encouragement of loan application adjustment for
7 approval of loans.

8 197. It is foreseeable that encouraging the adjustment of loan applications in order to
9 qualify otherwise unqualified borrowers would lead to borrowers being placed in loans
10 they could not afford. Furthermore, it is foreseeable that borrowers placed in loans they
11 cannot afford will, at some point, default.

12 198. Because of the above, Defendants acts were the actual and proximate cause of
13 Plaintiffs' injuries.

14 199. Plaintiffs have suffered multiple damages as more fully set forth above. In
15 general, plaintiffs have suffered severe emotional distress, severe financial difficulty, the
16 loss of equity and investment in their properties, and, in some cases, have been
17 dispossessed from their properties.

18 200. Defendants acted outrageously and persistently in performing the acts alleged
19 herein and continue to do so. Accordingly, Plaintiffs are entitled to exemplary and
20 punitive damages in a sum according to proof and to such other relief as is set forth below
21 in the section captioned Prayer for Relief which is by this reference incorporated herein.

22 201. Defendants acted outrageously and persistently with actual malice in performing
23 the acts alleged herein and continue to do so. Accordingly, Plaintiffs are entitled to
24 exemplary and punitive damages in a sum according to proof and to such other relief as is
25 set forth below in the section captioned Prayer for Relief which is by this reference
26 incorporated herein.

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FOURTH CAUSE OF ACTION

Intentional Misrepresentation

(All Plaintiffs against Lending Defendants)

202. Paragraphs 1 through 199 and the paragraphs following this cause of action are incorporated by reference as though fully set forth herein.

203. The elements of the tort of intentional fraudulent misrepresentation are: (1) false representation as to material fact; (2) knowledge of falsity; (3) intent to deceive; (4) justifiable reliance; and (5) resulting damages. *Gonsalves v. Hodgson* (1951) 237 P.2d 656; *Cooper v. Equity Gen. Insurance* (1990, 1st Dist) 219 Cal App 3d 1252.

204. As described more fully above, the Lending Defendants were engaged in a scheme to defraud investors and borrowers alike.

205.....Lending Defendants chose appraisers who would cooperate with their scheme and would appraise properties for far higher than actual value. These inflated appraisals were then used to write loans far greater than the value of the properties securing them. The incentive for the Lending Defendants was to write loans with high streams of income to package off and sell to investors.

206. When the Defendants used these artificially inflated appraisal values, they knew them to be false. The Defendants chose the appraisers and incentivized them to appraise homes at far greater than market value.

207. The Defendants had two purposes for these inflated appraisals: 1. To induce Plaintiffs into loans far greater than the value of the property, and 2. To then sell these loans with high income streams to investors. Defendants intended to deceive borrowers and investors alike.

208. Based on traditional lender practices, Plaintiffs believed that the Lender had no reason to inflate an appraisal and the appraisal would be conservative in order to preserve the interests of the lender. This idea was furthered by representations made by brokers and lenders on their websites and in public statements. Plaintiffs were unaware of the

1 falsity of the appraisals, but believed them to be accurate representations of the value of
2 the subject properties. Had the plaintiffs been aware of the true values of the homes, they
3 would not have agreed to purchase or finance the properties at the inflated price.
4 Accordingly, Plaintiffs were justified in their reliance on the false appraisals.

5 209. In reliance on the Defendant's representations as to the value of the subject
6 properties, the Plaintiffs entered into a mortgage contract with the Chase Defendant,
7 which provided for a larger principal balance and payment than the Plaintiff would have
8 received if the appraisal was accurate. Plaintiffs were further robbed of the equity and
9 investments in their properties.

10 210. The fraud herein alleged is based on misrepresentations made to each Plaintiff
11 during each Plaintiff's loan origination. The misrepresentation alleged is in regard to the
12 appraisal value of each property herein listed.

13 211. The appraisals led to a housing bubble of epic proportions, the bursting of which
14 led to one of the worst recessions in American History. Plaintiffs have suffered loss of
15 equity and investments in their properties, loss of credit, severe emotional distress and
16 other related injuries.

17 212. Generally, the plaintiff bears the burden of proving that his or her injuries were
18 caused by the act of the defendant or by an instrumentality under the defendant's control.
19 *Sindell v. Abbott Laboratories* (1980) 607 P.2d 924. However, in some cases in which a
20 plaintiff is unable to identify which of two or more defendants caused an injury, the
21 burden of proof may shift to the defendants to show that they were not responsible for the
22 harm. *Summers v. Tice* (1948) 199 P.2d 1.

23 213. In this case, the activity that damaged Plaintiffs was widespread among major
24 mortgage lenders and their predecessors-in-interest. In *Summers v. Tice*, both Defendants
25 shot at Plaintiff, but Plaintiff could not identify which Defendant's bullet hit him. The
26 court determined that both Defendants acted negligently and shifted the burden on the
27 Defendants to prove which caused the injury to Plaintiff. When Defendants were unable
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1 to prove which was the actual cause of Plaintiff's injuries, they were found jointly and
2 severally liable for the damage. *Id.*

3 214. Similarly in this case, the Lending Defendants shot a metaphorical bullet at
4 Plaintiffs by falsely inflating appraisals and causing the housing bubble. Plaintiffs are not
5 able to prove which Defendant caused the specific harm to each Plaintiff. But, if all
6 Defendants are found to be guilty, the burden of proof should shift to Defendants to prove
7 causation. If Defendants are not able to prove causation, they should be held jointly and
8 severally liable.

9 215. Defendants acted outrageously and persistently with actual malice in performing
10 the acts alleged herein and continue to do so. Accordingly, Plaintiffs are entitled to
11 exemplary and punitive damages in a sum according to proof and to such other relief as is
12 set forth below in the section captioned Prayer for Relief which is by this reference
13 incorporated herein.

14

15 **FIFTH CAUSE OF ACTION**

16 Conspiracy to Commit Civil Tort

17 216. Paragraphs 1 through 213 and the paragraphs following this cause of action are
18 incorporated by reference as though fully set forth herein.

19 217. Under California law, a party may be vicariously liable for another's tort in a civil
20 conspiracy where the plaintiff shows "(1) formation and operation of the conspiracy and
21 (2) damage resulting to plaintiff (3) from a wrongful act done in furtherance of the
22 common design." *Rusheen v. Cohen*, 128 P.3d 713 (2006) (citing *Doctors' Co. v.*
23 *Superior Court*, 775 P.2d 508 (1989).

24 218. There exists under California law a duty not to engage in affirmative fraud.
25 *Champlai* at 1058-59 (citing *Shafer et al v. Gladstone et al*, 107 Cal. App. 4th 54, 84).

26 219. In this case, the Chase Defendants were engaged in a scheme with mortgage
27 brokers to defraud investors and borrowers alike. As alleged in the preliminary statement,
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1 the traditional lender/borrower relationship has disappeared. It is now replaced with a
2 lending structure that allows almost immediate recoupment of loaned funds. Traditional
3 lenders now act more like loan processors for groups of investors.

4 220. Because of the new structure of lending, lender motivations have also changed.
5 Instead of requiring an appraisal to protect its interests, the lender now uses the property
6 appraisal both to induce the borrower to enter into a loan far greater than the value of the
7 property and to package up loans with greater streams of income to sell to investors. The
8 purpose of the appraisal has changed and so should the duties of the parties.

9 221. Not only were the appraisals a material misrepresentation to borrowers, but other
10 false and misleading statements were made to borrowers in order to induce them into
11 loans they could not afford. These claims are set out in detail in relation to each plaintiff
12 in the parties section above.

13 222. Many of the plaintiffs herein were told they could afford the loans by way of the
14 approval of their loan application. They were told they could refinance in a few years.
15 They were told their house was worth a fortune and the value would always increase and
16 never come down. All of America has become painfully aware that all of these statements
17 were lies.

18 223. According to an article published on OregonLive.com (attached hereto as Exhibit
19 E), ZiPPY is Chase's in-house automated loan underwriting system. This system is used
20 both by Chase employees and by brokers.

21 224. Chase issued an internal memo that was emailed out by an employee named
22 Tammy Lish (attached hereto as Exhibit A). This memo encourages adjustment of loan
23 application information in order to get loans approved by ZiPPY.

24 225. Plaintiffs believe and allege that Chase formed and operated a conspiracy with
25 loan brokers to defraud borrowers as to quality of loan, the significance of loan approval,
26 and the value of the property on which the loan was granted. The Chase internal memo
27 (Exhibit A) serves as some support for this belief.

1 226. Chase was engaged in an elaborate scheme to bilk investors and borrowers alike.
2 As more fully described above, Chase held out that it had impeccable underwriting
3 standards. It then encouraged the adjustment of borrowers' loan applications to fit its
4 underwriting standards and sold those loans to unwary investors.

5 227. Plaintiffs were damaged by being placed into loans they could not afford. As a
6 result of being placed into loans they could not afford, Plaintiffs defaulted on the loans
7 and lost equity and investment in their properties. Plaintiffs have further suffered severe
8 emotional distress, and in some cases have been dispossessed of their family homes.

9 228. All of this resulted from the encouragement of brokers and employees to make
10 fraudulent adjustments of Plaintiffs' loan applications by Chase. This was done as part of
11 Chase's scheme to bilk both borrowers and investors.

12 229. Defendants acted outrageously and persistently with actual malice in performing
13 the acts alleged herein and continue to do so. Accordingly, Plaintiffs are entitled to
14 exemplary and punitive damages in a sum according to proof and to such other relief as is
15 set forth below in the section captioned Prayer for Relief which is by this reference
16 incorporated herein.

17

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them
20 as follows:

21 1. Declaratory relief and nominal and punitive damages according to proof under the
22 First Cause of Action;

23 2. Equitable relief according to proof under the Second Cause of action;

24 3. General, special and exemplary damages according to proof under the Third,
25 Fourth, Fifth Causes of Action;

26 4. On all causes of action, for costs of suit herein;

27 5. On all causes of action, for pre- and post-judgment interest;

6. On all causes of action for which attorney's fees may be awarded pursuant to the governing contract, by statute or otherwise, reasonable attorneys fees; and

Dated: October 18, 2011

Respectfully submitted by,

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