

1 BRIAN A. ANGELINI, ESQ. [SBN 234072]
2 ANGEL AT LAW, INC., a Professional Law Corporation
3 1817 N. Fuller Avenue #204
4 Los Angeles, CA 90046
5 Telephone: (818) 675-4236
6 Facsimile: (818) 975-5201
7 bangelini@angelatlaw.com

8 Attorney for Plaintiffs, Cecil Cabalu and Natividad Cabalu

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA – RENEE C. DAVIDSON COURTHOUSE**

11 **CECIL CABALU, an Individual;**
12 **NATIVIDAD CABALU, an Individual,**

13 **Plaintiffs,**

14 **vs.**

15 **MISSION BISHOP REAL ESTATE, INC.,**
16 **d/b/a CENTURY 21 REAL ESTATE,**
17 **LLC; ISA ATIENZA, an Individual; ONE**
18 **WEST BANK FSB, Individually and as**
19 **Successor in Interest to INDYMAC**
20 **FEDERAL BANK F.S.B. and INDYMAC**
21 **MORTGAGE SERVICES; QUALITY**
22 **LOAN SERVICE CORPORATION;**
23 **DEUTSCHE NATIONAL BANK TRUST**
24 **CO.; AND DOES 1-20, INCLUSIVE,**

25 **Defendants.**

CASE NO.:

**VERIFIED COMPLAINT FOR
DAMAGES AND FOR INJUNCTIVE
RELIEF AND DEMAND FOR JURY
TRIAL**

1. TO SET ASIDE TRUSTEE’S SALE;
2. TO CANCEL TRUSTEE’S DEED;
3. QUIET TITLE;
4. DEMAND FOR AN ACCOUNTING;
5. SLANDER OF TITLE;
6. FRAUD;
7. TO VOID CONTRACT BASED ON IMPOSSIBILITY OF PERFORMANCE (CAL. CIV. CODE §§1411, 1511, 1595 et. seq.);
8. VOID CONTRACT BASED ON UNCONSCIOUSNESS TO (CAL. CIVIL CODE § 1670.5(A));
9. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
10. VIOLATION OF CAL. CIVIL CODE §§ 1920 AND 1921;
11. VIOLATION OF CAL. CIVIL CODE § 1916.7;
12. RESCISSION/CANCELLATION;
13. VIOLATION OF CAL. BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ;
14. BREACH OF FIDUCIARY DUTY;
15. VIOLATION OF CAL. WELFARE & INSTITUTIONS CODE § 15600, ET SEQ. (ELDER ABUSE);

- 16. CONSPIRACY;
- 17. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- 18. INJUNCTIVE RELIEF;
- 19. DECLARATORY RELIEF; AND
- 20. VIOLATION OF CAL. CIV. CODE SECT. 1632.

Plaintiffs, CECIL CABALU and NATIVIDAD CABALU, allege:

JURISDICTION

1. The transactions and events which are the subject matter of this Complaint all occurred within the County of Alameda, State of California.

2. The property is located at 5266 Falmouth Place, Newark, California 94560, in the County of Alameda, California. The Assessor’s Parcel Number is 092A-0712-036-00.

PARTIES

3. Plaintiffs, CECIL CABALU and NATIVIDAD CABALU ("Plaintiffs") are natives of the Philippines, and while they can speak English, are much more comfortable speaking, writing and reading in their native Philippine dialect of Tagalog. Plaintiff CECIL CABALU was sixty-six (66) years of age when the written contract which is the subject matter of this action was discussed, negotiated and consummated. Plaintiffs are now, and at all times relevant to this action, were residents of Alameda County, State of California. At all times relevant to this action, Plaintiffs owned real property commonly known as 5266 Falmouth Place, Newark, Alameda County, State of California (the "Property"). The Property is further described as Assessor's Parcel Number 092A-0712-036-00.

4. Defendant, MISSION BISHOP REAL ESTATE, INC., d/b/a CENTURY 21 REAL ESTATE, LLC (“CENTURY 21”) was at all times relevant to this action a corporate entity organized under the Laws of the State of California with a principal place of business of 39180 Liberty Street, #101, Fremont, California 94538. At all times relevant in this action, this

1 Defendant purported to be authorized to conduct business within the State of California, and in
2 fact, conducted business within the County of Alameda on a regular basis. This Defendant has
3 registered with the Secretary of State of California that its Agent for Service of Process is Alan N.
4 Bishop, who is located at 43682 Excelso Drive, Fremont, California 94539.

5
6 5. Defendant, ISA ATIENZA (“ATIENZA”) was at all times relevant to this action a
7 Real Estate Agent purporting to be licensed by the State of California and at all times referenced
8 herein conducting herself and fulfilling her duties with the full support, authority, knowledge and
9 consent of Defendant CENTURY 21. At all times referenced herein, ATIENZA conversed with
10 Plaintiffs in the Philippine dialect of Tagalog.

11
12 6. Defendant, ONE WEST BANK (“ONE WEST”) is a corporate entity organized under
13 the laws of an unknown State, purporting to have its corporate headquarters at 888 East Walnut
14 Street, Pasadena, California 91101. This entity purchased or otherwise acquired INDYMAC
15 FEDERAL BANK, F.S.B. and INDYMAC MORTGAGE SERVICES. While the specific acts
16 and omissions referenced herein were committed by INDYMAC FEDERAL BANK, F.S.B. and
17 INDYMAC MORTGAGE SERVICES, liability therefore, is imputed upon ONE WEST as their
18 successor in interest and due to the fact that certain defenses are not available to a “holder in due
19 course” which are the subject of this action.

20
21 7. Defendant QUALITY LOAN SERVICE CORPORATION, (“QUALITY”) is a
22 corporation organized under the laws of the State of California, with a business address of 12141
23 5th Avenue, San Diego, California 92101. QUALITY’s agent for service of process in California,
24 as registered with the Secretary of State, is Kevin R. McCarthy, 2141 5th Avenue, San Diego,
25 California 92101.

26
27 8. Defendant, DEUTSCHE NATIONAL BANK TRUST CO., (“DEUTSCHE”) is a
28 private company categorized under NATIONAL CONSUMER COOPERATIVE BANK with a

1 principal place of business of 2000 Avenue of the Stars, Suite 1000, Los Angeles, California
2 90067.

3 9. Plaintiffs will further amend this Complaint, adding one or more Doe Defendants at a
4 point and time later.

5 10. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
6 DOES 1 - 25 Inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs
7 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs
8 are informed and believe and based thereon allege each of the fictitiously named defendants is
9 responsible in some manner for the injuries to Plaintiffs alleged herein, and that such injuries as
10 herein alleged were proximately caused by such defendants.

11 11. Plaintiffs are informed and believe and thereon allege that at all times herein
12 mentioned, that each of the defendants were the agents, employees, partners, joint venturers, co-
13 conspirators, successors or predecessors in interest, owners, principals, and employers of the
14 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
15 and scope of such agency, partnership, employment, ownership, joint venture and/or conspiracy.
16 Plaintiffs are further informed and believe and based thereon allege that the acts and conduct
17 herein alleged of each such Defendant were known to, authorized by, and/or ratified by the other
18 Defendants, and each of them.

19 12. Whenever in this Complaint an act or omission of a corporation or business entity is
20 alleged, said allegation shall be deemed to mean and include an allegation that the corporation or
21 business entity acted or omitted to act through its authorized officers, directors, agents, servants,
22 and/or employees, acting within the course and scope of their duties, that the act or omission was
23 authorized by corporate managerial officers or directors, and that the act or omission was ratified
24 by the officers and directors of the corporation.

25
26
27
28

1 17. Plaintiffs were very specific when they indicated the loan they were interested in
2 obtaining. They stated that they wanted a fixed interest rate for the life of the loan, wanted a lower
3 interest rate as rated had dropped at the time to historical lows, and if possible, wanted to use some
4 of their equity to complete some home improvements. They had been at all times responsible in
5 their financial dealings, and had met all of their financial obligations, as evidenced by their stellar
6 credit ratings.
7

8 18. Plaintiff CECIL CABALU was a senior citizen and heavily relied upon the honesty
9 and integrity of the name of Defendant, CENTURY 21 and ATIENZA.

10 19. Plaintiffs' affirmatively provided to ATIENZA prior income tax records and W-2s
11 which reflected that Plaintiffs earned approximately \$4,000.00 per month. Plaintiffs also provided
12 pay stubs, and completed an IRS Form 4506-T which gave Defendants authority to obtain
13 information directly from the IRS to verify their income. Verifying income and assessing whether
14 a borrower can repay the loan at the fully amortized payment is a lender's duty and the law, both
15 federally and in California.
16

17 20. Defendant ATIENZA completed the residential loan application on behalf of Plaintiffs
18 and was provided true and accurate income and employment information. At such time, she
19 informed Plaintiffs that it would take approximately thirty (30) to forty-five (45) days to complete
20 the loan application and approval process.
21

22 21. Approximately two (2) weeks following their initial conversation with ATIENZA
23 wherein ATIENZA was provided with Plaintiffs' income and employment information, Plaintiffs
24 received a telephone call from ATIENZA who wanted to "re-visit" Plaintiffs' employment and
25 income information.
26

27 22. ATIENZA informed Plaintiffs that their loan application had been denied, but that she
28 would "figure out something" in order to "help them out." This intensified the faith and trust

1 Plaintiffs had in ATIENZA, and made them believe even more that ATIENZA was a person who
2 was looking out for their best interests, knew their situation, and was making it a priority to help
3 them refinance their home to a better rate.

4 23. A few weeks later, ATIENZA contacted Plaintiffs and informed them that their loan
5 application had been approved. Upon being asked by Plaintiffs, she did not state what she had
6 “done” in order to get the application approved. ATIENZA assured Plaintiffs that the initial denial
7 of the loan application had been a mistake, and that she was able to “clear up the problem” and get
8 the Plaintiffs “exactly what they had asked for.”

9 24. The Plaintiffs were lured into accepting two (2) loans on their property with “better”
10 rates, and the refinance loans closed on January 24, 2007. Plaintiffs were offered, in the aggregate,
11 the amount of \$808,100 as a 1st and 2nd Deed Cash Out Refinance, and were advised by ATIENZA
12 and the loan documents also reflected that the monthly payment on the loan would be \$2,562.74
13 with an interest rate of 1.75%. The loans, in the aggregate, totaled ninety percent (90%) of the
14 appraised value of the Property. The loans were secured by a 1st and 2nd Deed of Trust and
15 promissory note. The loans were extended by ONE WEST as successor in interest to IndyMac
16 Federal Bank, FSB.

17 25. When it came to signing and completing the loan, Plaintiffs were given no time to
18 review the loan documents and the documents were signed all at the same time, in one place, in
19 less than half an hour. Plaintiffs were unable to understand the language contained therein and
20 despite their objections, signed the loan documents as demanded by ATIENZA. The language
21 used in the promissory note was incomprehensible, filled with legalese and unintelligible language,
22 all designed to confuse the average purchaser such as Plaintiffs. The loan documents were not
23 provided to Plaintiffs in their native Tagalog dialect. ATIENZA, in a conspiracy with ONE
24 WEST, as successor in interest to INDYMAC FEDERAL BANK, FSB, used the faith she knew
25
26
27
28

1 Plaintiffs had in her in order to obscure the rights of Plaintiffs, and to take advantage of their
2 elderly status and limited ability to understand the English language in general. The language
3 contained in the documents, and the reassurances of ATIENZA, were designed to ensure that
4 Plaintiffs did not comprehend the true nature of the agreement and the extraordinary costs and
5 risks that were contained within. As a result, Plaintiffs relied upon ATIENZA and the statements
6 contained in the loan documents concerning the requested monthly payment. They were simply
7 shoved documents in order to sign, told by trusted ATIENZA to “sign here” and “sign there,”
8 assuring Plaintiffs all the while that the loan documents comported with everything that they had
9 discussed. Plaintiffs are informed and believe and thereon allege, that each of the Defendants was,
10 and at all relevant times were, acting within the scope of their authority as such agents, employees,
11 co-conspirators or alter-egos and with the permission and consent of the remaining named and un-
12 named co-Defendants.
13

14
15 26. Plaintiffs dutifully made the loan payment as requested, in the amount of \$2,562.74 per
16 month. What they did not know, and what ATIENZA and ONE WEST as successor in interest to
17 INDYMAC FEDERAL BANK, FSB conspired together to keep from Plaintiffs, is that if the
18 requested “principal and interest” minimum payment of only \$2,562.74 per month was made every
19 month, \$4,407.22 was added each month to the principal, and a portion of the interest rate that the
20 Plaintiffs were paying actually went into the pockets of Defendants in the form of a yield spread
21 premium. After consultation with experts, it was discovered for the first time that this loan was a
22 five (5) year fixed option Adjustable Rate Mortgage with a teaser rate of 1.75% and a true interest
23 rate of 6.75% and that for five (5) years negatively amortized with a margin of 2.57%.
24

25 27. In December 2008, Plaintiffs discovered that the principal amount of their loan was
26 steadily increasing each month, despite their paying the loan payment stated in their loan
27 documentation as being required. Plaintiffs’ contacted INDYMAC FEDERAL BANK, FSB to
28

1 inquire as to why the principal was increasing every month, but Defendants refused to speak to
2 them about the issue.

3 28. Fearing that something had gone terribly wrong, Plaintiffs contacted an attorney at the
4 Nocos Law Firm. It was during that consultation, which occurred in December 2008, that the true
5 nature of the loan was discovered for the first time. Plaintiffs were advised at this time that the
6 residential loan application submitted by ATIENZA and accepted by ONE WEST, as successor in
7 interest to INDYMAC FEDERAL BANK, FSB, without the documentation or verification
8 required by law, indicated that Plaintiff, CECIL CABULU was predominately self-employed and
9 earned in excess of \$22,000 per month selling real estate, when in fact, CECIL CABALU is a
10 quality assurance technician. Plaintiffs were further advised that the loan they had been lured into
11 accepting was a stated income loan, which was not appropriate for wage earners, was of a nature
12 that was completely unsuitable to Plaintiffs, who were senior citizens and very close to the time
13 that they would be on a fixed income, at a much higher interest rate than they should have been
14 offered, was directly contrary to the stated intentions of Plaintiffs, and despite providing full
15 documentation disclosing their income, the loan was a “no documentation” loan. These facts were
16 all concealed from Plaintiffs by ATIENZA and later by all other Defendants, in order to obtain
17 Plaintiffs’ signatures on the loan documents, and receive the profits, commissions, and other “junk
18 fees” and yield spread premiums to which they were not entitled. Defendants ATIENZA, ONE
19 WEST, as successor in interest to INDYMAC FEDERAL BANK, FSB and one or more other
20 Defendants, including DOE Defendants, conspired with each other to financially abuse Plaintiffs,
21 and to take advantage of the fact that they were senior citizens, in order to financially profit, at
22 their expense and to their detriment.

23 29. On March 5, 2009, a Notice of Default and Election to Sell Under Deed of Trust was
24 caused to be recorded on the Property. Plaintiffs spoke with their attorney, who advised them that
25

1 in April or May he would “begin working” on a loan modification, as there were “many programs
2 out there” and to not worry about the notice.

3 30. A few months passed and a Notice of Trustee’s Sale was recorded upon the Property
4 with a date of Trustee’s Sale set for June 30, 2009. Plaintiffs attempted to reach their attorney as
5 much as possible knowing the imminent threat, but to no avail.
6

7 31. On June 29, 2009, one (1) day before the sale of their Property, calling from a different
8 number than their home number which registered on caller-id, NATIVIDAD CABALU finally
9 reached their attorney, and was advised by a paralegal that they should probably file for
10 bankruptcy, as the modification application was denied.

11 32. Plaintiffs became aware that a loan modification package was sent to Plaintiffs’
12 attorney by ONE WEST BANK, as successor in interest to INDYMAC FEDERAL BANK, FSB
13 and INDYMAC MORTGAGE SERVICES, but no result was communicated to Plaintiffs until one
14 (1) day before the sale.
15

16 33. The Property was sold on June 30, 2009 by Defendant QUALITY to Defendant
17 DEUTSCHE for \$537,065.00; almost \$300,000 less than Plaintiffs’ loan on the Property.

18 34. On July 27, 2009 Plaintiffs were served with a 3-Day Notice to Vacate Property.

19 35. On August 6, 2009 Plaintiffs were served with an Unlawful Detainer Action bearing
20 Alameda County Case Number FG09466501.
21

22 36. Now Defendants, in completion of their plot and plan to cause financial harm to befall
23 Plaintiffs, senior citizens who should be enjoying the benefits of having worked their whole lives,
24 and to take the Property Plaintiffs call their home, have transferred title to their property, and are
25 threatening to have them forcefully removed from their home.
26

27 ///
28

**FIRST CAUSE OF ACTION
(To Set Aside Trustee Sale)**

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

37. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 36.

38. At all times relevant to this action, Plaintiffs owned real property commonly known as 5266 Falmouth Place, Newark, Alameda County, State of California (as defined above, the "Property"). Further described as Assessor's Parcel Number: 092A-0712-036-00.

39. Defendant DEUTSCHE, as trustee of the IndyMac INDX Mortgage Trust 2007-FLX2 and DOE Defendants 1 to 25, Inclusive, claim to be the owner, by virtue of a trustee's deed from QUALITY, to the Property described in paragraph 2 and 38.

40. Defendant QUALITY is a corporation organized under the laws of the State of California, authorized to engage in the title insurance and/or trustee business as a trustee company within the State of California, Alameda County. QUALITY is not the trustee pursuant to the Deed of Trust recorded on January 31, 2007 as Instrument No. 2007047234 as referenced in the Notice of Trustee Sale recorded July 8, 2009 as Instrument No. 2009216135.

41. Defendant CENTURY 21 was at all times relevant to this action a corporate entity organized under the Laws of the State of California with a principal place of business of 39180 Liberty Street, #101, Fremont, California 94538. At all times relevant in this action, this Defendant purported to be authorized to conduct business within the State of California, and in fact conducted business within the County of Alameda on a regular basis. This Defendant has registered with the Secretary of State of California that its Agent for Service of Process is Alan N. Bishop who is located at 43682 Excelso Drive, Fremont, California 94539. CENTURY 21 was the broker of record for the loan placed on the Property.

42. Defendant, ONE WEST is a corporate entity organized under the laws of an unknown

1 State, purporting to have its corporate headquarters at 888 East Walnut Street, Pasadena, California
2 91101. This entity purchased or otherwise acquired INDYMAC FEDERAL BANK, F.S.B. and
3 INDYMAC MORTGAGE SERVICES. While the specific acts and omissions referenced herein
4 were committed by INDYMAC FEDERAL BANK, F.S.B. and INDYMAC MORTGAGE
5 SERVICES, liability therefore is imputed upon ONE WEST as their successor in interest.
6
7 INDYMAC FEDERAL BANK, F.S.B. was the lender pursuant to the Deed of Trust recorded on
8 January 31, 2007 as Instrument No. 2007047234. INDYMAC MORTGAGE SERVICES is a
9 mortgage lending arm of INDYMAC FEDERAL BANK, F.S.B whose principal place of business
10 is located at 1 Banting, Irvine, CA 92618.

11 43. Defendant ONE WEST does business in California and within the County of Los
12 Angeles.

13 44. Plaintiffs do not know the true names and capacities or basis for liability of defendants
14 sued as Doe 1 through Doe 25, Inclusive. Each fictitiously named Defendant is in some manner
15 liable to Plaintiffs, or claims some right, title, or interest in the Property, or both.

16 45. On January 24, 2007, Plaintiffs, as borrower, made, executed and delivered to
17 Mortgage Electronic Registration Systems, Inc., (“MERS”), the alleged beneficiary, a written
18 promissory note in the amount of \$718,400.00.

19 46. To secure payment of the principal sum and interest as provided in the note and as part
20 of the same transaction, Plaintiffs, as trustor, executed and delivered to MERS, the alleged
21 beneficiary, a Deed of Trust dated January 24, 2007.

22 47. On March 5, 2009, defendant QUALITY, trustee, caused to be recorded a notice of
23 default and election to sell as Instrument No. 09-66894 of Official Records of Alameda County,
24 California, alleging that a breach of the obligation secured by the deed of trust had occurred,
25 consisting of Plaintiffs’ alleged failure to pay certain monthly payments of principal and interest,
26
27
28

1 and said Defendant elected to sell, or cause to be sold, the trust property to satisfy that obligation.

2 48. Plaintiffs allege, on information and belief, that on or about March 2009, Defendants
3 failed to publish and post, or cause to be published and posted, at various times and at various
4 places certain notices of their intent to sell the trust property at public auction, purportedly to
5 satisfy the obligation secured by the deed of trust, on grounds of the alleged breach of the
6 obligation and under the power of sale in the deed of trust. The notice of sale indicated a sale date
7 of June 30, 2009.
8

9 49. Defendant trustee attempted and purported to sell the property on June 30, 2009,
10 accepted valuable consideration from Defendant DEUTSCHE, as trustee of the IndyMac INDX
11 Mortgage Trust 2007-FLX2, and then executed and delivered or caused to be executed and
12 delivered a trustee deed to DEUTSCHE, as trustee of the IndyMac INDX Mortgage Trust 2007-
13 FLX2. Said deed is purportedly dated July 1, 2009.
14

15 50. Plaintiffs allege the sale was improperly held and the trustee's deed was wrongfully
16 executed, delivered and recorded in violation of the terms and conditions of the deed of trust and
17 state law, and in violation of the duties and obligations of Defendants to Plaintiffs, all to Plaintiffs'
18 loss and damage in that Plaintiffs are at a very real risk of being wrongfully deprived of the
19 beneficial use and enjoyment of the Property and has been deprived of legal title by forfeiture.
20

21 51. Plaintiffs had believed that their attorney had been negotiating a loan modification, and
22 up until the day before the sale of the Property, had believed that the sale would have been
23 postponed pending the loan modification. Plaintiffs were advised on the day before the sale of
24 their home that the request for modification had been categorically denied, with no other
25 explanation. Such further evidences the conspiracy and plan of Defendants, and each of them, to
26 take advantage of Plaintiffs, who believed that they were abiding by the system and retaining
27 experts in order to defend their rights.
28

1 Plaintiffs as a result of their conscious acts and omissions, and was a proximate cause of Plaintiffs
2 suffering damages in an amount to be proven at trial.

3
4 **FOURTH CAUSE OF ACTION**
5 **(Accounting)**

6 64. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through
7 63.

8 65. The amount of money still owed to Defendants is unknown to Plaintiffs and cannot be
9 determined without an accounting.

10 66. Plaintiffs demand judgment as follows:

11 a. That the Court issue a Declaration that the sale of the Property is null and
12 void and of no force and effect, and an order setting aside the trustee sale of the Property.

13 b. That the Court (a) issue an order that DEUTSCHE, and DOES 1 to 25,
14 Inclusive, deliver the trustee's deed to the Court and (b) cancel the trustee's deed.

15 c. That the Court order judgment quieting title to Plaintiffs, as owners of the
16 Property, declaring that DEUTSCHE, as trustee of the IndyMac INDX Mortgage Trust 2007-
17 FLX2, and DOES 1 to 25, Inclusive, has no right, title, estate, lien or interest in the Property
18 adverse to Plaintiffs.

19 d. That the Court render, between Plaintiffs and Defendants, an accounting
20 determining the amount, if any, actually owed to Defendants by Plaintiffs.

21
22
23
24 **FIFTH CAUSE OF ACTION**
25 **(Slander of Title)**

26 67. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through
27 64.

1 68. The tort of Slander of Title involves the action of one who, without a privilege or
2 without justification to do so, publishes matter, which is untrue and disparaging to another's
3 property in land.

4 69. Defendants, including Doe Defendants, purportedly acting as the agent of the
5 "current" but unascertained beneficiary of the Deed of Trust, wrongfully and without privilege
6 caused a Notice of Default to be recorded against the Property.
7

8 70. Later, one or more of the Defendants, including Doe Defendants, purportedly acting as
9 the agent of the "current" but unascertained beneficiary of the Deed of Trust, wrongfully and
10 without privilege, caused said Notice of Default to be served on Plaintiffs.

11 71. By doing the acts described above, Defendants, including Doe Defendants, slandered
12 Plaintiffs' title to the Property because California Civil Code § 2924(a)(1)(c) was violated, and
13 such acts were not privileged.
14

15 72. Pursuant to, among others, California Civil Code § 2924(a)(1)(C), only the actual
16 beneficiary of a Deed of Trust or its assignee may cause to be recorded against Property either a
17 Notice of Default or commence with a Trustee Sale.

18 73. None of the Defendants, including Doe Defendants, have proof that they are the
19 holders of the Note.
20

21 74. The conduct of Defendants, and each of them, was deliberate, wilful, purposeful, done
22 with blatant disregard of the financial and emotional ramifications that would surely befall
23 Plaintiffs as a result of their conscious acts and omissions, and was a proximate cause of Plaintiffs
24 suffering damages in an amount to be proven at trial.

25 75. Because Plaintiffs' damages were the result of the unprotected and unlawful conduct
26 and acts of Defendants, including Doe Defendants, Plaintiffs are entitled to recover damages in an
27 amount to be proven at trial against Defendants, including Doe Defendants.
28

1 **SIXTH CAUSE OF ACTION**
2 **(Fraud-Misrepresentation)**

3 76. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1
4 through 75.

5 77. California Civil Code § 1572 states that fraud exists when any of the following acts
6 and situations occur. Actual fraud consists in any of the following acts, committed by a party to
7 the contract, or with his connivance, with intent to deceive another party:
8

- 9 a. The suggestion, as a fact, of that which is not true, by one who
10 does not believe it to be true; second, the positive assertion, in a
11 manner not warranted by the information of the person making it,
12 of that which is not true, though he believes it to be true; third, the
13 suppression of that which is true, by one having knowledge or
14 belief of the fact; fourth, a promise made without having any
15 intention of performing it; or any other act fitted to deceive.

14 78. Defendants ATIENZA, CENTURY 21 and ONE WEST as successor in interest to
15 INDYMAC FEDERAL BANK, FSB and its agents/employees, committed fraud by purposefully
16 evading the use of Plaintiffs' true income which Plaintiffs had readily available and gave to
17 ATIENZA and CENTURY 21. ATIENZA, CENTURY 21 and Defendant, ONE WEST, as
18 successor in interest to INDYMAC FEDERAL BANK, FSB inflated Plaintiffs' income on
19 Plaintiffs' loan application to a level that would allow Plaintiffs to qualify for the loan in an
20 amount of \$22,000 per month, instead of the truthful and provided income of \$4,000 per month.
21

22 79. ATIENZA had informed Plaintiffs approximately two (2) weeks after they had
23 submitted their loan application and documentation concerning their income, that the requested
24 refinance had been denied by INDYMAC FEDERAL BANK, FSB. However, somehow
25 ATIENZA was able to "change the bank's mind" concerning the issue, and miraculously was able
26 to give Plaintiffs "exactly what they had asked for."
27

28 80. Plaintiffs are informed and believe and thereupon allege that Defendants, ATIENZA,

1 CENTURY 21 and ONE WEST, as successor in interest to INDYMAC FEDERAL BANK, FSB,
2 having the information concerning Plaintiffs’ true income available to them, made a conscious
3 decision to inflate the income of Plaintiffs, changing a part time occupation of Plaintiff into a full
4 time lucrative career with heavy bonuses being paid monthly, in order to “qualify” Plaintiffs for
5 the subject loans.
6

7 81. Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to
8 INDYMAC FEDERAL BANK, FSB had a responsibility, by well established law, to verify the
9 financial status of Plaintiffs, analyze the likelihood of Plaintiffs’ ability to repay the loans, not
10 based on the minimum payment, but based upon the entire amortized payment, and determine,
11 based on their knowledge, training and experience, whether or not the loan product was
12 appropriate and suited for Plaintiffs. Defendants represented that they had done this and Plaintiffs
13 were justified in believing that they had, and Plaintiffs were financially destroyed as a result of that
14 trust, belief and reliance.
15

16 82. Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to
17 INDYMAC FEDERAL BANK, FSB committed fraud by violating California Civil Code § 2924 et
18 seq. in demanding sums they were not entitled to receive, for the sole and only purpose of personal
19 profit.
20

21 83. Defendants, ATIENZA, CENURY 21 and ONE WEST committed fraud by knowing what
22 the Plaintiffs’ intention was by requesting a refinance of their Property. Defendants, and each of
23 them, knew that the loans they were offering Plaintiffs did not comport with Plaintiffs’ desires.
24 However, Defendants, and each of them, knowing that their statements were untrue, assured
25 Plaintiffs that the loan was “just what they had asked for.” Plaintiffs were justified in believing
26 Defendants, and were damaged as a result of that belief.
27

28 84. Defendants, ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to

1 INDYMAC FEDERAL BANK, FSB committed fraud by preparing loan documents that
2 specifically indicated that the principal and interest loan payment would be \$2,567.74 per month,
3 at a 1.75% interest rate. Defendants ATIENZA, CENTURY 21, ONE WEST, and each of them,
4 represented to Plaintiffs that if they paid this amount, they would extinguish the loan in
5 compliance with the date set forth on the promissory note after thirty (30) years. Defendants knew
6 when they made these statements, that in truth, if Plaintiffs made those payments, over \$4,400
7 would be added each month to the principal. The Defendants never told Plaintiffs this information,
8 used the trust that ATIENZA had “culminated” with Plaintiffs, in order to prey upon them and take
9 advantage of them. Plaintiffs were justified in believing Defendants, and were damaged as a result
10 of such belief and trust.
11

12 85. Defendants’ actions in this matter have been willful and knowing and/or with complete
13 and reckless disregard of the emotional or financial ramifications that would surely befall
14 Plaintiffs. Defendants’ actions were as a direct result of a scheme to further gain financially by
15 taking advantage of senior citizens who quite frankly did not understand the intentionally
16 confusing legal jargon with which the loan documents were drafted.
17

18 81. Defendants ATIENZA, CENTURY 21 and Defendant ONE WEST, as successor in
19 interest to INDYMAC FEDERAL BANK, FSB, conspired each with each other in order to take
20 advantage of Plaintiffs, who were senior citizens at the time the subject loan was offered and
21 Plaintiffs were induced into accepting.
22

23 82. Plaintiffs were reasonable in their reliance of the statements and representations made by
24 Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to INDYMAC
25 FEDERAL BANK, FSB.
26

27 83. Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to
28 INDYMAC FEDERAL BANK, FSB’s conduct was intentional, despicable, willful, malicious,
29

1 calculated, and deliberate. It was their intention to cause financial as well as emotional damage to
2 befall Plaintiffs in order that they profit.

3 **SEVENTH CAUSE OF ACTION**
4 **To Void Contract Based on**
5 **Impossibility of Performance**
6 **California Civil Code §§ 1411, 1511, 1595 et seq.**
7 **(Against All Defendants)**

8 84. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through
9 83.

10 85. Plaintiffs are informed and believe, and based upon such information and belief
11 allege, that whereas the written contract has but a single object and such object is impossible to
12 perform, the entire contract is void.

13 86. The Defendants, and each of them, together with any DOE Defendants claiming to be
14 a holder in the course of the Note knew, or should have known, based upon the actual income
15 information provided by Plaintiffs to Defendants, ATIENZA, CENURY 21 and ONE WEST, as
16 successor in interest to INDYMAC FEDERAL BANK, FSB, and or DOE Defendants as well as
17 information inserted by ATIENZA, both individually and as an authorized agent of Defendant
18 CENTURY 21 into the loan application, Defendants, and each of them, knew, or should have
19 known, that Plaintiffs, quality assurance technician and house wife, could never have performed in
20 accordance with the terms set forth in the written contract over the life of the loan.

21 87. Defendants, and each of them, knew or should have known that the written contract
22 provided for a negative amortization payment schedule, and as such, as the payments were set
23 forth, there was no way that the loan would be repaid by the date set forth in the Note.
24

25 88. Despite being in possession, at all times of the information noted above, Defendants,
26 and each of them, together with any DOE Defendants claiming to be a holder in due course of the
27 Note, produced and tendered the loan documentation to Plaintiffs and sought to obtain the
28

1 signature of Plaintiffs upon all such documentation, knowing at the onset of the written contract
2 that performance in accordance with the terms, was impossible.

3 89. Defendants, and each of them, knew or should have known, that Plaintiffs would be
4 forced to refinance their home loan at some point in the future in order to pay off the loan in
5 accordance with the repayment date set forth in the Note. However, Defendants, and each of them
6 knew that Plaintiffs were senior citizens at the time the loan was extended, and therefore would be
7 unable to refinance their home in order to comply with the terms of the Note, given the fact that
8 their number of years in which they would be able to work were very limited, being sixty-six (66)
9 years of age at the time and NATIVIDAD CABALU being a housewife.

10
11 90. Given that at the time the loan documents were executed by Plaintiffs, it was
12 impossible for Plaintiffs to repay the loan in accordance with the date set forth on the Note, the
13 Note was void at the time of its execution and an Order so stating should be issued by this Court.
14

15
16 **EIGHTH CAUSE OF ACTION**
17 **To Void Contract Based on Unconscionableness**
18 **California Civil Code § 1670.5(a)**
19 **(Against All Defendants)**

20 91. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
21 through 90.

22 92. California Civil Code § 1670.5(a) states:

23 If the court as a matter of law finds the contract or any clause of the contract to
24 have been unconscionable at the time it was made, the court may refuse to enforce
25 the contract, or it may enforce the remainder of the contract without the
26 unconscionable clause, or it may so limit the application of any unconscionable
27 clause as to avoid any unconscionable result.

28 93. The January 2007 written contract governing the subject loan is unconscionable for the
following reasons:

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

- Defendants ATIENZA and CENTURY 21 breached their fiduciary duty owed to Plaintiffs by falsifying loan documents and thus engaging in fraud.
- Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor to INDYMAC FEDERAL BANK, FSB, knew Plaintiffs would never have qualified for the loan they had wanted to extend to Plaintiffs, based upon their true income, therefore they avoided the documentation, failed to verify Plaintiffs’ income by “turning their head away”, which was required by law and placed them in a Stated Income loan which was not available to wage earners at the time the subject loan was funded.
- Defendants ATIENZA, CENTURY 21 and ONE WEST essentially “promoted” Plaintiffs into a completely unauthorized and lucrative profession, without their knowledge or consent, for the sole purpose of “closing the deal” and having them approved for a loan that they knew, based on CECIL CABALU’S true income, they would never have been able to have afforded over the life of the loan.
- Defendants and each of them, including their respective agents, never explained to Plaintiffs the truth, that the mortgage payments could and would be more than what was represented and stated in the Truth in Lending disclosure document.
- The language which Defendant ONE WEST, as successor to INDYMAC FEDERAL BANK, FSB, used in the promissory note was incomprehensible, filled with legalese and filled with unintelligible language, all designed to confuse the average *English Speaking* purchaser, and when coupled with individuals such as Plaintiffs, it demonstrated the specific intent and purpose of obscuring their rights and the unconscionableness of the contract. It was designed to insure that Plaintiffs did not comprehend the true nature of the agreement and the extraordinary costs that it contained. As a result, Plaintiffs relied upon

1 the oral representations of the agents of Defendant, CENTURY 21 and the Truth in
2 Lending Disclosure.

- 3 • The subject loan was a negative amortization loan, a fact which all Defendants through
4 their agents, affiliates and employees and independent contractors, conspired, each with
5 each other, to conceal and attempted to conceal from Plaintiffs. Plaintiffs believed they
6 were paying the amounts as due in the Truth in Lending Disclosure and that they would be
7 able to liquidate or extinguish the Promissory Note by the date stated in the Promissory
8 Note. They further believed that the payments, during the first portion of the repayment
9 schedule, would further accomplish this. However, the balance due on the loan increased
10 rather than decreased.
- 11 • The Plaintiffs have been informed and believe and thereupon allege that they would have
12 qualified for a loan with better terms such as a fixed rate loan or a “safer” loan product.
- 13 • The Plaintiffs would have been approved for a better loan with a fixed interest rate, instead
14 of the exploding ARM they were lured into accepting.
- 15 • The loan extended to Plaintiffs were generally extended to those people with much worse
16 credit and foreclosures in their history, not for potential borrowers with the stellar credit
17 scores of the Plaintiffs.
- 18 • The Defendants knew that the loans were exactly opposite of what Plaintiffs had requested,
19 specifically, a lower interest rate, lower payments and possibly cash out to perform some
20 home improvements. Instead they were lured into accepting a loan with a false “teaser
21 rate” of interest, which later soared into an exploding ARM, subject to negative
22 amortization which added over \$4,400 each month to the principle balance.
- 23 • Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to
24 INDYMAC FEDERAL BANK, FSB and INDYMAC MORTGAGE SERVICES preyed
25
26
27
28

1 upon the trust of Plaintiffs, and took advantage of their elderly status in order to confuse
2 them, lie to them, and thus deceive them into accepting a loan which was completely
3 contrary to their financial condition and needs for the sole purpose of profit.

4 94. Defendants' action in this matter have been willful and knowing and/or with complete
5 and reckless disregard of the emotional or financial ramifications that would surely befall
6 Plaintiffs.
7

8 **NINETH CAUSE OF ACTION**
9 **Contractual Breach of Implied Covenant of Good Faith and Fair Dealing**
10 **(Against all Defendants)**

11 95. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through
12 94.

13 96. Every contract imposes upon each party a duty of good faith and fair dealing in its
14 performance and its enforcement. This implied covenant of good faith and fair dealing required
15 that no party will do anything that will have the effect of impairing, destroying, or injuring the
16 rights of the other party to receive the benefits of their agreement. The covenant implies that in all
17 contracts each party will do all things reasonably contemplated by the terms of the contract to
18 accomplish its purpose. This covenant protects the benefits of the contract that the parties
19 reasonably contemplated when they entered into the agreement.
20

21 97. The terms of the Promissory Note and the Deed of Trust imposed upon Defendants
22 INDYMAC FEDERAL BANK, FSB, and ONE WEST as its successor and/or assign, a duty of
23 good faith and fair dealing in this matter.
24

25 98. Defendants enjoyed substantial discretionary power affecting the rights of Plaintiffs
26 during the events alleged in this Complaint. Defendants were required to exercise such power in
27 good faith.

28 99. Defendants willfully breached their implied covenant of good faith and fair dealing

1 with Plaintiff when Defendants:

- 2 i. Failed to provide all of the proper disclosures;
- 3 ii. Did not provide an accurate Truth In Lending Disclosure on the Option
4 ARM mortgage;
- 5 iii. Placing Plaintiffs into a loan whereby it was likely the Plaintiffs would
6 default or incur bankruptcy as a result of the loan and it was reasonable foreseeable that such
7 would occur;
- 8 iv. Offering a product that was not suited to the financial circumstances and
9 status of Plaintiffs;
- 10 v. Falsified loan documentation in order to “close a deal” to the detriment of
11 Plaintiffs;
- 12 vi. Placing Plaintiffs into a stated income loan whereby the Plaintiffs could be
13 liable for actions that the Plaintiff is unaware of;
- 14 vii. Placing the Plaintiffs into a loan with a significantly higher monthly
15 payment in order to receive a Yield Spread Premium;
- 16 viii. Fraudulently inducing Plaintiffs to enter into a mortgage transaction which
17 was contrary to Plaintiffs’ stated intentions, contrary to their interests, and contrary to the
18 preservation of their home;
- 19 ix. Placing Plaintiffs into a loan without a realistic test of the ability of the
20 Plaintiffs to repay the loan; and
- 21 x. Using the reminiscent and easily confused nature of elderly senior citizens
22 in order to culminate “trust” and “friendship” for the sole purpose of using undue influence to
23 financially take advantage of Plaintiffs.

24 100. As a result of Defendants’ breach of this covenant, Plaintiffs have suffered injury and
25
26
27
28

1 will cause Plaintiffs to suffer the loss of their home and threatening loss of possession of their
2 home. Plaintiffs have incurred and continue to incur attorney's fees and other costs and expenses
3 to right this wrong.

4 101. Defendants' actions in this matter have been willful, knowing, malicious, fraudulent
5 and oppressive, entitling Plaintiffs to punitive damages in an amount appropriate to punish
6 Defendants and to deter others from engaging in the same behavior.
7

8
9 **TENTH CAUSE OF ACTION**

10 **Violation of California Civil Code §§ 1920 and 1921**
11 **(Against All Defendants)**

12 102. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
13 through 101.

14 103. Based on information and belief, Plaintiffs allege that Defendants, and each of them,
15 violated California Civil Code sections 1920 and 1921 in failing to meet the requirements of an
16 adjustable rate mortgage instrument as set forth in California Civil Code section 1920 and the
17 requirements for disclosure of information and connections with an adjustable rate mortgage
18 instrument as set forth in California Civil Code section 1921.
19

20 104. As a proximate result of Defendants' actions Plaintiffs have been damaged in an
21 amount not yet ascertained, to be proven at trial.
22

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Civil Code § 1916.7**
25 **(Against Defendants)**

26 105. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
27 through 104.
28

1 106. Based on information and belief, Plaintiffs allege that Defendants, and each of them,
2 violated California Civil Code § 1916.7 in failing to provide the disclosure notice required by §
3 1916.7 in a timely manner.

4 107. Plaintiffs were not fully informed of the terms, pros, cons and risks of their adjustable
5 rate mortgage and other loan options that might have been more beneficial to them as a borrower.
6

7 108. As a result of Defendants' actions, the loan is rescindable pursuant to § 1916.7.

8 109. As a proximate result of Defendants' actions Plaintiffs have been damaged in an
9 amount not yet ascertained, to be proven at trial.

10
11 **TWELFTH CAUSE OF ACTION**

12 **Rescission/Cancellation**
13 **(Against all Defendants)**

14
15 110. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
16 through 109.

17 111. Plaintiffs' allege that the loan was obtained by Defendants, and each of them,
18 through mistake and fraud by engaging in deceptive practices as alleged herein.

19 112. Defendants, and each of them, with intent to deceive Plaintiffs to consent to the loan,
20 knew or should have known Plaintiffs were not capable of understanding or comprehending the
21 true costs of the loan; and which Defendants, and each of them, did fraudulently conceal from
22 Plaintiffs that Plaintiffs were at a risk of losing their home.
23

24 113. The active misrepresentations of Defendants, and each of them and their silence and
25 deceit, were false and fraudulent.

26 114. At the time Defendants, and each of them, made the misrepresentations and engaged
27 in the a conspiracy to conceal and deceive as herein alleged, and at the time Plaintiffs applied for
28

1 the loans, Plaintiffs did not know that the misrepresentations, deceit and inducements by
2 Defendants and each of them, were false and fraudulent, but instead believed them to be truthful
3 and reasonably relied on them, thereby entering into the loan transaction without the benefit of
4 true facts, and by coercion and mistake.

5
6 115. As a result of the fraudulent misrepresentations and deceit by Defendants and each of
7 them, Plaintiffs have incurred substantial financial damages as herein alleged. Plaintiffs hereupon
8 serve notice of their demand for rescissionary damages on the grounds of fraudulent
9 misrepresentations, deceit and mistake by Defendants, and each of them as alleged herein. To the
10 extent that Plaintiffs' loan transaction documents contain an exculpatory clause in favor of
11 Defendants, and each of them purporting to release Defendants, and each of them from their own
12 fraud, Plaintiffs allege that such a clause is unenforceable pursuant to Civil Code § 1668 and other
13 applicable law.
14

15 116. Plaintiffs hereby demand restitution from Defendants, and each of them, in an
16 amount that will restore Plaintiffs to a position they would have been in had Defendants and each
17 of them, not engaged in the willful, intentional and purposeful conduct herein alleged. Plaintiffs
18 further alleged that Defendants and each of them, have been unjustly enriched by the actions
19 herein alleged and all the fees, profits, payments and commissions earned by Defendants, and each
20 of them, must be disgorged by Defendants and each of them to Plaintiffs.
21

22
23 **THIRTEENTH CAUSE OF ACTION**

24 **Unfair Business Practices**
25 **(Against All Defendants)**

26 117. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
27 through 116.

28 118. California Business and Professions Code § 17200 prohibits any unlawful, unfair or

1 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
2 act prohibited by Business and Professions Code § 17500, et seq.

3 119. California Business and Professions Code § 17500, et seq. prohibits the making of a
4 statement or a publication or declaration concerning any circumstances or matter of fact connected
5 with the proposed performance or disposition of real or personal property, which pronouncement
6 is untrue or misleading, and which if known, or which by the exercise of reasonable care should be
7 known, to be untrue or misleading.
8

9 120. Defendants ATIENZA, CENTURY 21 and ONE WEST, as successor and/or assign
10 to INDYMAC FEDERAL BANK, FSB and each of them, have committed acts of unfair business
11 practices defined by California Business and Professions Code § 17200, et seq. by engaging in
12 acts and practices as alleged above, including but not limited to: continuously violating RESPA
13 and the Truth In Lending Act, using bait and switch tactics; making loans without providing
14 borrowers with sufficient, accurate and understandable information regarding the terms and
15 conditions of the loan; making loans without providing borrowers with sufficient, accurate and
16 understandable information regarding the nature and extent of the financial risk being assumed by
17 the borrowers; and making loans based on income information they themselves inflated in order to
18 “close the loan”.
19

20 121. The acts all as alleged above violate California Business and Professions Code §
21 17200, et seq. in the manner alleged above, and, based on information and belief, in the following
22 further respects: the conduct of Defendants and each of them, threatens an incipient violation of
23 various consumer protection statutes, or which violate the policy or spirit of such laws, including,
24 but not limited to, California Business and Professions Code §§ 10130 and 17500, California Civil
25 Code §§ 1709, 1710, 1711, 1770, 1920 and 1921 and § 1639 of Title 15 of the United States
26 Codes, together with Regulation Z, 12 C.F.R. 226.1.
27
28

1 income which Plaintiffs provided to Defendants, they knew she would never escape from. This
2 incomprehensibility was intended to insure that the Plaintiffs did not comprehend its terms, which
3 in turn permitted the Defendants and their successors to mislead the Plaintiffs and thereby
4 financially profit from its terms. The Defendants and each of them, continued this action by
5 demanding performance and payment of money, justifying these demands by the
6 incomprehensible language of the subject loan.
7

8 128. Defendants and each of them, breached their fiduciary duty owed to Plaintiffs by
9 violating the accurate disclosure requirements of the loan and by failing to comply with the
10 Federal Truth in Lending Act (15 U.S.C §§1601-1666) and with the Act's corresponding
11 Regulation Z (24 C.F.R. §§3500.1-3500.17) and thereafter by willfully failing and refusing after
12 demand made to correct these inaccuracies.
13

14 129. Defendants and each of them, breached their fiduciary duty owed to Plaintiffs by
15 concealing from Plaintiffs that the subject loan was a negative amortization loan. They concealed
16 from the Plaintiffs the fact that this loan could never be paid off by its terms by the payments as
17 set forth in the Truth in Lending Disclosure, thus forcing Plaintiffs to lose their home, because, as
18 a result of their age, refinancing their property might not be an option.
19

20 130. Defendants and each of them, breached their fiduciary duty owed to Plaintiffs by
21 luring Plaintiffs into a more expensive and higher interest rate loan than what they would and
22 should have qualified for, and lied to the Plaintiffs in doing so.

23 131. Defendants and each of them, breached their fiduciary duty owed to Plaintiffs by
24 placing them into a Stated Income loan, knowing that such loan was not available to them as a
25 wage earner, thus exposing them to liability for future actions.

26 132. Defendants and each of them, breached their fiduciary duty owed to Plaintiffs by
27 intentionally placing them into a loan program without any realistic test as to their ability to repay
28

1 years old at the time the subject loan was extended and accepted. As such, in accordance with
2 California Welfare and Institutions Code § 15610.27, he was a senior citizen and is therefore,
3 afforded special protections under the laws of the State of California.

4 139. Plaintiff, NATIVIDAD CABALU was born on September 8, 1952 and was fifty-five
5 (55) years old at the time the subject loan was extended and accepted.
6

7 140. California Welfare and Institutions Code § 15610.30(a) defines financial abuse as the
8 taking of real or personal property with an intent to defraud. Civil remedies are sometimes
9 available under California Welfare and Institutions Code § 15657.03.

10 142. In addition, California Civil Code § 525 known as the California Consumer Legal
11 Remedies Act, which can be used in conjunction with all other legal remedies, specifies unfair
12 methods of competition and unfair or deceptive acts and practices for the sale of goods or services
13 to consumers, and includes specific enhanced penalties and protections for seniors as indicated in
14 California Civil Code § 1770(a)(23). California Civil Code § 3345 also provides for the recovery
15 of treble damages as a result of unfair or deceptive practices against senior citizens.
16

17 143. Defendants, ATIENZA, CENTURY 21 and ONE WEST, as successor in interest to
18 INDYMAC FEDERAL BANK, FSB, based the subject loan on the Plaintiffs' home equity, as
19 opposed to their ability to repay the loan, in conscious disregard of their duties to Plaintiffs as well
20 as to the American economy in general.
21

22 145. Defendant CENTURY 21 and Defendant ATIENZA first made the conscious
23 decision to "close the deal" with regard to securing the Property of Plaintiffs by way of a Deed of
24 Trust at whatever cost.

25 146. Defendant ATIENZA, with the cooperation, support and ratification of Defendant
26 CENTURY 21, made the conscious decision that despite the stated intentions of Plaintiffs as to the
27 loan product desired, to "win over" the confidence of Plaintiffs by engaging them in reminiscent
28

1 conversations regarding family and their native country of the Philippines in Tagalog, in order to
2 befriend Plaintiffs and cultivate trust.

3 147. Defendant ATIENZA, with the cooperation, support and ratification of Defendant
4 CENTURY 21, made the conscious decision that she was going to convince Plaintiffs of her
5 knowledge of the loan markets at the time and convince Plaintiffs that she would “look out for
6 their interests” and get them “exactly what they asked for” with regard to a specific loan product.
7

8 148. Defendant ATIENZA, with the cooperation, support and ratification of Defendant
9 CENTURY 21, realized that based on the true income of Plaintiffs, she would not be able to get
10 the Plaintiffs approved for the particular loan product she wanted them to sign off on. Therefore,
11 after thought and consideration as to the possible solutions, she made the conscious decision, and
12 such decision was ratified by Defendant CENTURY 21, that with the incentive of additional
13 profits and financial gains, she would place Plaintiffs into a no documentation/stated income loan
14 in order to inflate the income of Plaintiffs from the true income of \$4,000.00 per month to
15 \$22,000.00 per month in order to “approve” Plaintiffs for the negative amortization loan product
16 which offered a yield spread premium. ATIENZA did this despite having the true income as
17 indicated by income tax records and pay stubs available to her. True income likely would have
18 resulted in denial of the loan.
19

20 149. Defendant ATIENZA, with the cooperation, support and ratification of Defendant
21 CENTURY 21, made the conscious decision that she would hide from Plaintiffs the true nature of
22 the loan, so as to ensure that they were not aware of what they were in fact agreeing to, for the sole
23 purpose of procuring her commission.
24

25 150. Defendant ONE WEST, as successor in interest to INDYMAC FEDERAL BANK,
26 FSB, made the conscious decision that despite requirements to the contrary, after receiving the
27 loan documentation of Plaintiffs created by Defendant ATIENZA, with the cooperation, support
28

1 and ratification of Defendant CENTURY 21, made the conscious decision to ignore the fact that
2 verification of income had not been made and even failed to verify themselves, any information of
3 Plaintiff as to whether the loan should be approved. Their motivation was to secure the Property
4 of the senior citizen Plaintiffs upon foreclosure, who they knew were making further
5 improvements on the Property, in order to secure additional profit, at the expense of the Plaintiffs.
6

7 152. Defendant ONE WEST, as successor in interest to INDYMAC FEDERAL BANK,
8 FSB, made the conscious decision to work with Defendant CENTURY 21 and Defendant
9 ATIENZA that the Plaintiffs would be figuratively left in the dark as to the true nature and
10 exploding costs of the loan, so as to ensure that Plaintiffs would sign their names upon the loan
11 documents. They counted on the abilities of Defendant ATIENZA and CENTURY 21 to be able
12 to assure Plaintiffs that they were getting exactly what they had stated they wanted, so as to ensure
13 that the signatures of Plaintiffs would be affixed to the loan documents.
14

15 153. The “originating” Defendants received their unjust enrichment in the form of yield
16 spread premiums and inflated costs and simply waited patiently until Plaintiffs inevitable default
17 on the loan. At such time their plan would come to fruition and they would be able to sell the
18 Property at a foreclosure auction, likely to return to a party within the Defendants’ fraudulent
19 scheme.
20

21 154. Once the counted on default occurred, Defendant ONE WEST, as successor in
22 interest to INDYMAC FEDERAL BANK, FSB, made the conscious decision to ignore the
23 attempts on the part of Plaintiffs to work out a restructure or modification to the loan. Preventing
24 foreclosure was never their intention, they were counting on the foreclosure. Once default
25 occurred, they were quick to act and foreclose on the Property.
26

27 155. Defendants acts were willful, shameless, deliberate, calculated, scheming, intentional,
28 and done with complete and total disregard for the financial and emotional harm that would befall

1 the Plaintiffs, despite their protected status of senior citizens.

2 156. Plaintiffs had no reason to believe that they would be taken advantage of. Their lives
3 have been turned upside down, in this, what is supposed to be, their golden years.

4 157. Plaintiffs are entitled to recover punitive and exemplary damages in addition to
5 attorney's fees and costs of their suit incurred as a result of Defendants actions as hereinabove set
6 forth.
7

8 **SIXTEENTH CAUSE OF ACTION**

9 **Conspiracy**

10 (Against ATIENZA, CENTURY 21, ONE WEST and DOE Defendants 1-25, Inclusive)

11 158. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
12 through 157.

13 159. During the period of January 2007 to the present, Defendants ATIENZA, CENTURY
14 21, ONE WEST, as successor in interest to INDYMAC FEDERAL BANK, FSB and unknown
15 DOE Defendants, and each of them, knowingly and willfully conspired and agreed among
16 themselves to conceal from Plaintiffs the true nature of the loan that they had lured Plaintiffs into
17 accepting. They misrepresented and concealed the current mortgage payments which were to be
18 paid after computing the fully amortized amount. They concealed from Plaintiffs the fact that this
19 was a negative amortization loan. They concealed the fact that a large portion of the fees paid at
20 the close of escrow were for no other reason but to profit the Defendants tied up in a Yield Spread
21 program. They concealed the fact that Plaintiffs actually qualified for a better rate mortgage loan
22 product. They concealed the fact that they had inflated their income on the loan application. They
23 concealed the fact that they had, in fact, created an entirely new occupation for Plaintiff so as to
24 enable them to qualify, as opposed to a documentation loan which is required of wage earners.
25 They concealed from the Plaintiffs the fact that the loan could never be paid off by its terms by the
26 payments as set forth in the Truth in Lending Disclosure. They concealed the true nature of the
27
28

1 teaser rate of 1.75% and in fact, told Plaintiffs that this was the actual interest rate. Defendants
2 and each of them, knew that based on the true income readily available to Defendants for
3 verification, that the fully amortized loan payments actually greatly exceeded the available income
4 of Plaintiffs, but they conspired, each with each other, to hide this fact from Plaintiffs in order to
5 induce them into accepting the loans. Defendants and each of them, concealed each and every
6 month the nature and extent of the ever growing principal and the reason therefore.
7

8 160. Each and every Defendant did the acts and things herein alleged pursuant to, and
9 furtherance of, the conspiracy and the above-alleged agreement to secure these additional
10 payments and money from Plaintiffs and conceal its nature from Plaintiffs.

11 161. Defendant and each one of them, furthered the conspiracy by cooperation with, or
12 lent aid and encouragement to, or ratified and adopted the acts of the other Defendants.
13

14 162. Plaintiffs are informed and believe and thereon allege that the overt acts in pursuance
15 of the above-described conspiracy occurred and are occurring by each Defendants' continued
16 actions, including non-judicial foreclosure, and its consequential costs to Plaintiffs. Plaintiffs have
17 incurred substantial legal costs to protect their legal rights.
18

19 **SEVENTEENTH CAUSE OF ACTION**
20 **Intentional Infliction of Emotional Distress**
21 **(Against All Defendants)**

22 163. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
23 through 162.
24

25 164. The actions of Defendants and each of them, which has resulted in Plaintiffs now
26 being faced with the possibility of losing the Property forever, the very Property that Plaintiffs
27 have called home, the Property they worked their entire lives to achieve, constitutes outrageous
28 conduct.

1 165. Defendants and each of them, knowingly, intentionally, purposefully, and with
2 complete disregard for the consequences which would befall Plaintiffs, committed these acts with
3 reckless disregard of the probability of causing Plaintiffs to suffer emotional distress.

4 166. The acts of Defendants as herein above described and each of them, have resulted in
5 Plaintiffs suffering severe anxiety, asthma, nervousness, depression, fear, diabetes aggravation,
6 insecurity and extreme emotional distress.

7 167. The outrageous conduct of Defendants as herein above described and each of them,
8 which was, in by no stretch of the imagination privileged, is the actual and proximate cause of the
9 severe emotional distress suffered by Plaintiffs. Plaintiffs, who thought they could trust
10 Defendants ATIENZA and CENTURY 21 due to their fiduciary relationship and seemingly close
11 “friendship” with Defendant ATIENZA, relied on the expertise and training of Defendants to
12 guide them in this extremely important decision of the refinance of their home, only to be
13 deceived, lied to, victimized by theft, deliberately subjected to a situation wherein Plaintiffs would
14 be forced to incur additional fees and expenses in order to overcome, targeted for predatory loan
15 tactics, taken advantage of and now being faced with losing their home, have all caused Plaintiffs
16 extreme emotional distress.

17 168. Despite legislation enacted by the State of California to the contrary, Defendants and
18 each of them, refused to finalize a loan modification in order to cure the default status of the
19 Property, sold the Property at Trustee’s Sale and now have initiated an unlawful detainer action
20 for the sole purpose of forcing Plaintiffs to leave their home.

21 169. The conduct of Defendants as herein above described, and each of them, was so vile,
22 base, contemptible, miserable, wretched and loathsome that it would be looked down upon and
23 despised by ordinary people. The conduct of Defendants, committed intentionally against senior
24 citizens, is shocking and vulgar. The conduct and actions of Defendants and each of them, as
25
26
27
28

1 hereinabove described, was done as a result of greed, with the sole and only purpose and intent to
2 enjoy unjust profits and monetary enrichment at Plaintiffs' expense. Plaintiffs are therefore
3 entitled to punitive damages in an amount appropriate to punish Defendants and to deter others
4 from engaging in similar conduct.

5
6
7 **EIGHTEENTH CAUSE OF ACTION**
8 **Injunctive Relief**
(Against all Defendants)

9 170. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1
10 through 169.

11 171. Plaintiffs are entitled to injunctive relief in this matter based upon the fact that neither
12 of the Defendants attempting to singularly or collectively foreclose on the Property is the real
13 party in interest in the foreclosure proceeding nor can they be the real party in interest in
14 defending this action. Only the real party in interest can prosecute or defend a lawsuit and
15 moreover, only the real party in interest can proceed with a judicial foreclosure. Plaintiff is
16 informed and believes and thereon alleges that neither of the Defendants is the holder of the note
17 on the Property. Therefore, neither of the Defendants has the right to proceed with a foreclosure on
18 the Property and the Defendants should be enjoined from proceeding with a foreclosure without
19 producing the original note and moreover establishing that they are holders of the note.
20

21 172. Defendants and each of them, have failed to make good faith reasonable efforts to
22 attempt to make a mortgage workout plan between Plaintiffs and Defendants, all of which would
23 have worked out to Defendants' advantage and given them adequate protection of their interest in
24 the Property. Such failure and refusal to act in good faith by defendants is manifested by:
25

- 26 (1) Failure to follow California Civil Code § 2924, et. seq. in dealing with Plaintiff;
27 (2) Failure and refusal to comply with the fair debt collection practice laws of the State of
28

1 California in attempting to collect a debt and the federal equivalent of said laws.

2

3

NINETEENTH CAUSE OF ACTION

4

Declaratory Relief
(Against all Defendants)

5

6

173. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1

7

through 172.

8

9

174. An actual controversy has arisen and now exists between Plaintiffs and Defendants,

10

regarding their respective rights and duties concerning the status and validity of the loan and

11

Promissory Notes, the Deeds of trust, nominated beneficiaries on the Deeds of Trust, actual

12

beneficiaries, loan servicers, and the foreclosure process in that Plaintiffs contends that Defendants

13

do not have the right to foreclose on the Subject Property because Defendants do not have

14

possession of the original Promissory Note and that the purported power of sale contained in the

15

Deed of Trust no longer applies, pursuant to California Civil Code § 2932.5.

16

17

175. Plaintiffs request that this Court find that the purported power of sale contained in the

18

Deeds of Trust is of no force and effect because Defendants' security interest in the Property has

19

been rendered void.

20

176. Plaintiffs further request that this Court find that the Defendants are not the holder in

21

due course of the Promissory Notes.

22

23

177. A judicial declaration is necessary and appropriate at this time and under these

24

circumstances in order, so that the Plaintiffs may ascertain their rights and duties and avoid loss of

25

possession of their home through the unlawful detainer action filed by Defendants DEUTSCHE.

26

178. As a result of the actions of Defendants, Plaintiffs have suffered damages according

27

to proof and seek declaratory relief that Defendants did not have a right to foreclose and that

28

Defendants' purported power of sale in the Deed of Trust is void and have no force or effect

1 against the Property.

2 179. Defendants' actions in this matter have been willful and knowing.

3

4

TWENTIETH CAUSE OF ACTION

5

Violation of Cal. Civ. Code §1632

6

(Against Defendants ATIENZA, CENTURY 21, INDYMAC FEDERAL BANK AND
7 ONE WEST)

7

8

9 180. Plaintiffs hereby incorporate by reference each and every one of the preceding
10 paragraphs as if the same were fully set forth herein.

11

12 181. California Civil Code § 1632 provides that any person engaged in a trade or business
13 who negotiates primarily in Spanish, Chinese, *Tagalog*, Vietnamese, or Korean, orally or in
14 writing, in the course of entering into any of the following, shall deliver to the other party to the
15 contract or agreement and prior to the execution thereof, a translation of the contract or agreement
16 in the language in which the contract or agreement was negotiated, which includes a translation of
17 every term and condition in that contract or agreement.

17

18

19 182. Plaintiffs hereby claim violation of this California Civil Code section, alleging, that
20 Plaintiffs did not understand the loan documents and the translations were provided in English
21 only and said terms and conditions of the note and deed of trust were actually negotiated in
22 Tagalog and not English.

22

23

24 183. Under this Violation of California Civil Code section, Plaintiffs have the legal right to
25 rescind such loans.

24

25

26

PUNITIVE DAMAGES

27

28 184. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1

28

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

9. For punitive damages.

10. For such other and further relief as the Court may deem proper.

Dated: August____2009

ANGEL AT LAW, INC.
A Professional Law Corporation

By: **Brian A. Angelini, Esq.**
Attorney for Plaintiff

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

Verification

I, **CECIL CABALU**, am a Plaintiff in the above-entitled matter. I have read the Foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are herein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this the _____ day of August, 2009 at Newark, California.

CECIL CABALU
Declarant

Verification

I, **NATIVIDAD CABALU**, am a Plaintiff in the above-entitled matter. I have read the Foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are herein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this the _____ day of August, 2009 at Newark, California.

NATIVIDAD CABALU
Declarant