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Attorneys for Gloria and Carlos Moreno, Plaintiffs

6 **IN THE SUPERIOR COURT**
7 **OF THE STATE OF CALIFORNIA**
8 **CONTRA COSTA COUNTY**

9 GLORIA MORENO AND CARLOS
MORENO,

10 Plaintiffs.

11 v.s.

12
13 AMERIQUEST MORTGAGE
14 COMPANY; AMC MORTGAGE
15 SERVICES, INC.; ACC CAPITAL
16 HOLDINGS CORPORATION; CITI
RESIDENTIAL LENDING, INC.; CR
JONES; AND DOES 1-20,

17 Defendants.

No:

COMPLAINT FOR
DECLARATORY JUDGMENT
PURSUANT TO CCP §1060,
FRAUD, GOOD FAITH AND FAIR
DEALING, AND FOR AN
ACCOUNTING

18
19 Plaintiffs Gloria and Carlos Moreno, allege:

20 **PARTIES**

21 1. Plaintiffs Gloria and Carlos Moreno are married and at all times herein
22 mentioned are and were residents of Contra Costa County, California. They
23 reside at and their home is at 2949 Cashew Court, Antioch, CA 94509.

24 2. Defendant AMERIQUEST MORTGAGE COMPANY, INC. (herein
25 after referred to as AMERIQUEST) is a fictitious business entity with a
26 principal place of business in California at 1100 Town and Country Road, Suite
27 1100, Orange, CA 92868. AMERIQUEST's agent for the service of process in
28 the State of California, as registered with the California Secretary of State, is

1 National Registered Agents, Inc., 2030 Main Street, Suite 1030, Irvine, CA
2 92614. AMERIQUEST does business in California and within the County of
3 Contra Costa, California on a regular basis. Ameriquest is the beneficiary of the
4 January 4, 2004 loan and securing trust deed.

5 3. Defendant AMC MORTGAGE SERVICES, INC. (herein after referred
6 to as AMC) is a fictitious business entity with a principal place of business
7 located at 1100 Town and Country Road, Suite 1200, Orange, CA 92868.
8 AMC's agent for the service of process in the State of California, as registered
9 with the California Secretary of State, is National Registered Agents, Inc., 2030
10 Main Street, Suite 1030, Irvine, CA 92614. AMC does business in California
11 and within the County of Contra Costa, California on a regular basis. Plaintiffs
12 are informed and believe that AMERIQUEST and AMC merged into ACC
13 Capital Holdings Corporation. AMC and AMERIQUEST are thereby one.

14 4. Defendant ACC Capital Holdings Corporation (herein after referred to
15 as ACC) is a fictitious business entity with a principal place of business located at
16 1100 Town and Country Road, Suite 1200, Orange, CA 92868. ACC's agent for
17 the service of process in the State of California, as registered with the California
18 Secretary of State, is National Registered Agents, Inc., 2030 Main Street, Suite
19 1030, Irvine, CA 92614. Plaintiffs are informed and believe and thereby allege
20 that AMERIQUEST and AMC have joined together and formed the business
21 entity into ACC. ACC does business in California and within the County of
22 Contra Costa, California on a regular basis.

23 5. Defendant CITI RESIDENTIAL LENDING, INC. (herein after referred
24 to as CITI) is a fictitious business entity and is a Delaware Corporation with a
25 principal place of business located at 388 Greenwich Street, 17th Floor, New
26 York, NY 10013. CITI's agent for the service of process in the State of
27 California, as registered with the California Secretary of State, is CSC - Lawyers
28 Incorporating Service, 2730 Gateway Oaks Drive, Suite 100, Sacramento, CA

1 95833. CITI does business in California and within the County of Contra Costa,
2 California on a regular basis. Plaintiffs are informed and believe that CITI
3 became the servicing agent of the January 4, 2004 loan from Ameriquest and
4 AMC.

5 6. Defendant CR TITLE SERVICES, INC. (herein after referred to as CR)
6 is a fictitious business entity and is a Delaware Corporation with a a principal
7 place of business located at 388 Greenwich Street, 17th Floor, New York, NY
8 10013. This is the same address as for defendant Citi Residential Lending, CITI.
9 CR's agent for the service of process in the State of California, as registered with
10 the California Secretary of State, is CSC - Lawyers Incorporating Service, 2730
11 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833, the same agent as for
12 CITI. CR does business in California and within the County of Contra Costa,
13 California on a regular basis. Additionally, CR is the trustee of an alleged deed
14 of Trust on the property of 2949 Cashew Court, Antioch, CA 94509. That trust
15 deed number is Contra Costa County number 2004002467600.

16 7. Defendant Jason Jones was at all times mentioned in the complaint an
17 agent, servant, representative and employee of defendant AMERIQUEST and
18 undertook his actions with the authorization, consent and approval of defendant
19 AMERIQUEST.

20 8. Plaintiffs are informed and believe, and thereon allege, that each
21 Defendant is and at all relevant times herein was, the agent, employee, alter-ego,
22 principal, employer, or co-conspirator of each of the remaining co-Defendants,
23 and in committing the acts herein alleged, were acting in the scope of their
24 authority as such agents, employees, principals, employers, alter-egos, or co-
25 conspirators and with the permission and consent of the remaining co-
26 Defendants.

27 9. DOES 1-20, inclusive, are individuals and/or businesses whose forms
28 are unknown and were agents, principals, employees, employers, and co-

1 conspirators of each and every other named or unnamed Defendant in this
2 complaint. Plaintiffs are informed and believe, and thereon allege, that each of
3 such Defendants is, and at all relevant times was, acting within the scope of their
4 authority as such agents, employees, or alter-egos and with the permission and
5 consent of the remaining named and un-named co-Defendants.

6 10. The true names and/or capacities of Defendants 1-20, inclusive, are
7 unknown to Plaintiffs, and therefore they sue said Defendants by such fictitious
8 names. Plaintiffs are informed and believe and thereon allege that each of the
9 Defendants fictitiously named herein as a DOE is responsible for the events and
10 happenings hereinafter referred to, and thereby proximately caused the injuries
11 and damages to Plaintiffs as hereinafter alleged. Plaintiffs will seek leave of the
12 Court to amend this complaint to allege the true names and/or capacities of said
13 fictitiously named Defendants when ascertained.

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

21 12. As a result of their mortgage activities, defendants and each of them are
22 and were subject to and must comply with the Federal Truth in Lending Act (15
23 U.S.C .§§1601-1666j) and with the Act's corresponding Regulation Z (24 C.F.R.
24 §§3500.1-3500.17).

25 13. While the complained of loan was originated by defendant
26 AMERIQUEST and Jason Jones, all subsequent holders of this note took this
27 note subject to all defenses which the Morenos have against AMERIQUEST,
28 Jason Jones and any other successors to this note and deed of trust.

1 **JURISDICTION**

2 14. The transactions and events which are the subject matter of this
3 complaint all occurred within the County of Contra Costa, State of California.

4 15. The property located at 2949 Cashew Court, Antioch, CA 94509 is
5 located in the County of Alameda, California. The APN is 051-400-023.

6 **JURY TRIAL DEMAND**

7 16. Plaintiffs Gloria and Carlos Moreno request a jury trial on all issues in
8 this matter.

9 **FACTUAL ALLEGATIONS**

10 17. Commencing in October 2003, Jason Jones of Ameriquest contacted
11 Gloria and Carlos Moreno about a refinance to their home. Jason Jones called the
12 Morenos soliciting them to refinance with AMERIQUEST. In November 2007,
13 lured by the representations and promises of Mr. Jones, the Morenos agreed to a
14 refinance. As a result, Carlos and Gloria faxed paperwork to Jason Jones,
15 including pay stubs and W-2's.

16 18. An appraisal was done in December 2003. Jason Jones thereafter
17 advised the Morenos that they had been approved. Mr. Jones advised in
18 December 2003 that the interest rate would be 7%. However, Ameriquest never
19 sent to the Morenos any confirming documents during December 2003.

20 19. On January 10, 2004, Carlos and Gloria Moreno went to sign loan
21 documents at the Ameriquest office in Concord. A notary public was waiting to
22 walk them through the signing. Sheets of paper were passed to them for signing.
23 The process of signing documents with Ameriquest took about 30 minutes. The
24 Morenos were not given nor permitted time to thoroughly review the documents
25 but in fact were constantly pressured to sign the documents without reading them.
26 The promissory note of January 10, 2004 is attached as Exhibit 1 to this
27 complaint. The trust deed executed on January 10, 2004 is attached as Exhibit 2.

1 20. Explanations which the notary provided were brief, if any. "This is the
2 Deed. This is this. This is that. Just sign." During this time, Gloria had to
3 translate into Spanish for Carlos the gist of each document. Carlos Moreno does
4 not understand English and does not read English.

5 21. Ameriquet, through its agent Jason Jones, represented the refinancing
6 to Carlos and Gloria Moreno as follows. The Morenos would have a 2 year fixed
7 rate mortgage at 7% . This interest rate would make their mortgage payment
8 \$1,182.92 a month for two years. After the two years, the payment would be
9 slightly higher. It would be \$1,268.02 for 335 months. The final payment was
10 \$1,260.84.

11 22. These mortgage payments were set forth in the Truth in Lending
12 Statement, a copy of which is attached to this complaint as Exhibit 3. As
13 promised by Mr. Jones, the Truth in Lending disclosure represented that the
14 mortgage payment would be \$1,182.92 a month for two years. After the two
15 years, the payment would be slightly higher. It would be \$1,268.02 for 335
16 months. The final payment was \$1,260.84. Ameriquet and its agents never
17 explained to the Morenos the truth, that the mortgage payments could be and
18 would be more than what was represented and stated in the Truth in Lending
19 disclosure document.

20 23. The language which Defendants Jason Jones and AMERIQUEST used
21 in the promissory note was incomprehensible, filled legalese and filled with
22 unintelligible language, all designed to confused the average purchaser such as
23 Plaintiffs Gloria Moreno and Carlos Moreno in order to obscure their rights and
24 the unconscionableness of the contract . It was designed to insure that they did
25 not comprehend the true nature of the agreement and the extraordinary costs that
26 it contained. As a result, Gloria and Carlos Moreno relied upon the Truth in
27 Lending Disclosure which is Exhibit 3 to this complaint, and the representations
28

1 of Mr. Jones and AMERIQUEST.

2 24. This January 10, 2004 loan was a negative amortization loan, a fact
3 which AMERIQUEST and Jason Jones, and then subsequently the remaining
4 defendants concealed and attempted to conceal from the Morenos. The Morenos
5 believed that by paying the amounts as due in the Truth in Lending Disclosure,
6 they would be able to liquidate or extinguish promissory note within the thirty
7 year period of the loan. They further believed that the first two years of payments
8 would help accomplish this. In fact, during the teaser rate years, the interest rate
9 was higher than the TILA disclosed payment schedule with the unpaid amounts
10 being added to the loan as principal. The balance due on the loan increased rather
11 than decreased.

12 25. The January 10, 2004 loan was a full documentation loan, as reflected
13 by the paperwork and the Moreno's actions with their loan application. It merited
14 better terms for the Morenos.

15 26. FHA would have probably approved this loan, with the proper
16 documentation, the same documentation the Morenos submitted to Ameriquest.
17 The interest rates for Gloria and Carlos would have been in the fixed 5%'s for a
18 30 year fixed mortgage at that time. Yet Ameriquest extended to the Morenos an
19 exploding 7% ARM.

20 27. The loan extended to the Moreno were generally extended to those
21 people with worse credit and foreclosures in their history.

22 28. The Final Settlement statement of this loan shows "Discount Points"
23 paid of 3.99%. Discount points are paid to "buy the rate down". In this case to
24 7%. That would suggest that Ameriquest quoted a rate of 9% to the Morenos,
25 which would be much higher than warranted for the Morenos. Plaintiffs are
26 informed and believe that the \$7,082.25 amount discount cost actually were
27 broker commissions, being pocketed by AMERIQUEST and Jason Jones.

1 29. There was no disclosure of Yield Spread Premiums in the January 10,
2 2008 loan documents. The yield spread premiums paid were concealed from
3 Gloria and Carlos Moreno.

4 30. Ameriquest quoted an interest rate change of 7.75% for the first
5 adjustment after 2 years its in Truth in Lending disclosure, not 9% as actually
6 occurred. Ameriquest and Jason Jones mis-represented the interest rate
7 adjustment to make the payment look lower than what it would be.

8 31. Two years later, in January 2006, Ameriquest notified the Morenos that
9 their monthly mortgage payment was going to adjust up, and be substantially
10 more than what was suppose to be \$1,268.02. Gloria Moreno then contacted
11 Ameriquest in an effort to speak to Jason Jones. However, she was advised that
12 Mr. Jones was no longer with Ameriquest, and the unidentified representatives of
13 Ameriquest refused to assist Mrs. Moreno in this matter.

14 32. In March 2006, the interest rate increased from 7% to 9%, making the
15 required monthly mortgage \$1,428.21 instead of the promised \$1,268.02.

16 33. Gloria's and Carlos' mortgage payments continued to climb. In
17 September 2006, the Morenos experienced another payment increase. The
18 interested rate increased to 10%, making the monthly mortgage payment
19 \$1,564.65.

20 //

21 //

Truth in Lending Payment Disclosure		Actual
24 Months	\$1,182.92	The first interest upon increase after 2 years will be no more than 9%. Thereafter, 1% increase every 6 months to a ceiling of 13%. Interest rate to based on the "Index." Index is the "offered bank interest rates for six month U.S. Dollar-denominated deposits in the London Market (LIBOR) as published in the Wall Street Journal."
335 months	\$1,268.02	
Last Payment	\$1,260.84	

34. Then again, in March 2007, the monthly mortgage payment increased yet again. The interest rate increased to 11%, making the monthly mortgage payment, excluding impounds and other charges, \$1,667.32. Within one year, the mortgage payment had soared to \$400 more than what had originally been promised to Mr. and Mrs. Moreno. This adjustment was a death blow to the modest income Morenos. They no longer could afford this soaring mortgage payment and went into default.

35. Six months later, in September 2007, the interest rate increased another 1% to an interest rate of 12%. By this time, the Morenos were in default, could no longer afford the exploding monthly mortgage payments. Ameriquest, AMC, ACC and CITI refused to accept the TILA promised payments of \$1,268.02.

36. During June 2007, defendant CR recorded a notice of default on the home of Gloria and Carlos Moreno on behalf of AMERIQUEST, AMC, ACC and CITI.

37. On or about September 13, 2007, defendant CR recorded and caused to be recorded a notice of trustee sale on the home of Gloria and Carlos Moreno on behalf of AMERIQUEST, AMC, CITI, and ACC. The sale was initially set for

1 October 3, 2007 at 10:00 a.m.. This Trustee Sale notice is Exhibit 4 to this
2 complaint. The sale was continued, however, and is currently scheduled for
3 January 17, 2007 at 10:00 a.m..

4 38. The Morenos have paid increasing amounts of mortgage payments and
5 other costs and impounds for at least two years. The principal balance of the
6 initial loan was \$177,500. Despite this, the Notice of Trustee Sale stated that the
7 amount of the unpaid balance and other charges was \$188,643.63. On or about
8 December 5, 2007, defendant CITI submitted a payoff demand to the Morenos
9 demanding fees and payments in the amount of \$196,208.20. This amount is
10 \$18,708.82 greater than the initial principal of the loan of January 2004, despite
11 the fact that the Morenos did make mortgage payments for at least the first two
12 years of the loan.

13 39. The promissory note of January 10, 2004 and the trust deed contain an
14 attorney fee provision whereby the prevailing party in this matter will have their
15 attorney fees paid by the adverse party.

16 **CONSPIRACY**

17 40. During the period of January 2004 through the present, defendants,
18 AMERIQUEST, AMC, CIT, ACC, Jason Jones, and CR, and each one of them,
19 knowingly and wilfully conspired and agreed among themselves to conceal from
20 plaintiffs Gloria and Carlos Moreno the true nature of the exploding adjustable
21 rate loan. They misrepresented and concealed the correct mortgage payments
22 which were to be paid by the Morenos after the two year period and the true
23 interest rate to be charged on the loan. They concealed from the Morenos the fact
24 that this was initially a negative amortization loan. They concealed from the
25 plaintiffs the fact that the Morenos in reality qualified for a better loan. They
26 concealed from the plaintiffs the fact that this loan could never be paid off by its
27 terms by the payments as set forth in the Truth in Lending Disclosure, Exhibit 3.
28

1 They convinced the Morenos that the interest rate was to be approximately 7% for
2 the loan and the payment scheduled was to be that disclosed in the Truth in
3 Lending disclosure. In fact, the true interest rate soared to 12% and had a ceiling
4 of 14.95%. Each and every month, defendants collected unwarranted additional
5 interested and money from plaintiffs. All defendants, each and every month,
6 concealed the nature and unlawfulness of these additional payments, fees and
7 costs from plaintiff.

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

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

15 43. Plaintiff is informed and believes and thereon alleges that the overt acts
16 in pursuance of the above-described conspiracy occurred and are occurring by
17 each defendants' continued actions, including non-judicial foreclosure, and its
18 consequential costs to plaintiffs. Plaintiffs have incurred substantial legal costs to
19 protect their legal rights.

20 UNCONSCIONABLENESS

21 44. Plaintiffs reallege and incorporates by reference paragraphs 1 to x1 of
22 this complaint.

23 45. Civil Coded §1670.5(a) states:

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

1 46. The January 2004 loan agreement is unconscionable for the following
2 reasons:

3 ● Defendants AMERIQUEST, JASON JONES, AMC, ACC, CITI, and CR
4 misrepresented and continue to misrepresent the terms of the January 2004 loan.
5 The defendants, through Jason Jones and AMERQUEST, represented that the
6 Morenos would have a 2 year fixed rate mortgage at 7% . This interest rate
7 would make their mortgage payment \$1,182.92 a month for two years. After the
8 two years, the payment would be slightly higher. It would be \$1,268.02 for 335
9 months. The final payment was \$1,260.84. They confirmed this representation
10 with the disclosures set forth in the Truth in Lending disclosure, which is attached
11 as Exhibit 3 to this complaint. In fact, the interest rate exploded in excess of the
12 promised 7%, rising to 12% at the time of the foreclosure process and having a
13 true cap of 14.95%. Additionally, the monthly mortgage payments exploded
14 beyond the amount promised in the verbal representations and the Truth in
15 Lending disclosures. Defendants concealed from the Morenos the fact that this
16 was initially a negative amortization loan. They concealed from the plaintiffs the
17 fact that this loan could never be paid off by its terms by the payments as set forth
18 in the Truth in Lending Disclosure, Exhibit 3.

19 ● Defendants' actions extorted these unlawfully demanded sums from the
20 plaintiffs. This was done by threat of and then by initiating foreclosure
21 proceedings on the home of the plaintiffs to obtain these unlawful amounts of
22 money.

23 ● Gloria and Carlos Moreno qualified for loans with substantially better
24 terms, a fact known by and concealed by the defendants.

25 ● Defendants' AMERIQUEST and Jason Jones presentation to the
26 Morenos in January 2004 and then AMC's, CITI's and CR's requiring
27 performance under a loan document which was intentionally incomprehensible,
28

1 filled with legalese. This incomprehensibility was intended to insure that the
2 plaintiffs did not comprehend its terms nor understand their rights, which in turn
3 permitted the defendant AMERIQUEST, Jason Jones, and their successors to
4 mislead the plaintiffs and thereby financially profit from its terms. The
5 defendants, and each of them, continued this action by demanding performance
6 and payment of money, justifying these demands by the incomprehensible
7 language of the January 2004 loan.

8 • Defendants AMERIQUEST and Jason Jones and thereafter AMC's,
9 CITI's and CR's failing to comply with the Federal Truth in Lending Act (15
10 U.S.C .§§1601-1666j) and with the Act's corresponding Regulation Z (24 C.F.R.
11 §§3500.1-3500.17).

12 47. Defendants' actions in engaging in the actions alleged in this complaint
13 have been wilful and malicious.

14
15 **FIRST CAUSE OF ACTION**
16 **REQUEST FOR DECLARATORY JUDGMENT**
17 **(All Defendants)**

18 48. Plaintiffs Gloria and Carlos Moreno reallege and incorporate by
19 reference paragraphs 1 to x1 of this complaint.

20 49. An actual controversy has arisen and now exists between plaintiffs and
21 defendants concerning their respective rights and duties. Plaintiffs desire a
22 judicial determination of their rights and duties.

23 50. A valid foreclosure by the private power of sale requires strict
24 compliance with the requirements of California Civil Code §2924 et seq..

25 51. California Civil Code §2924f mandates that the Notice of Trustee Sale
26 contain an *accurate* statement of the total amount of the unpaid balance and
27 reasonably estimated costs, expenses, advances at the time of the initial
28 publication of the notice of sale.

52. California Civil Code §2924f(b)(1) requires that defendants state the

1 total amount of the unpaid balance of the secured obligation and a reasonable
2 estimate of the costs, expenses, and advances as of the initial publication of the
3 notice in the notice of sale.

4 53. California Civil Code §2924c(e) permits plaintiffs the right to reinstate
5 the loan at any time up to five business days before the trustee sale.

6 54. Defendants have charged amounts in excess of those permitted by non-
7 judicial foreclosure law. They attempted to extract well in excess of \$20,000 in
8 inflated and unlawful fees, interest and mortgage payments. The fees they are
9 charging soar significantly every six months. The fees and charges being
10 demanded are in excess of those permitted by law, and are fraudulent.

11 55. The amounts stated in the Notice of Trustee Sale is grossly inaccurate.
12 This inaccuracy is significant and invalidates the foreclosure process. These
13 inaccuracies made it impossible for plaintiff to undertake effective action to
14 reinstate or redeem the secured obligation and to make the lawful monthly
15 mortgage payments. These inaccuracies denied plaintiff of the protections and
16 procedures of California Civil Code §2924 et seq..

17 56. Defendants have currently scheduled a trustee sale and intend to
18 proceed with the sale on January 17, 2008 despite their violations of California
19 Non-Judicial Foreclosure Law, California Civil Code §2924 et seq..

20 57. Plaintiffs also request that this court find that the loan agreement
21 which defendant AMERIQUEST with plaintiffs be found to be unconscionable as
22 defined by California Civil Code §1670.5.

23 58. A judicial declaration is necessary and appropriate at this time and
24 under these circumstances in order that plaintiffs may ascertain their rights and
25 duties and avoid the specter of a foreclosure sale and the loss of their home. Such
26 trustee's sale, absent a judicial determination negating the Notice of Trustee Sale,
27 or the issuance of a restraining order, will occur on Thursday, January 17, 2008 at
28

1 10:00 a.m., or thereafter. Such a trustee's sale would for surely cause Gloria and
2 Carlos Moreno the unjust loss of their home.

3 59. Defendants' actions in this matter have been wilful and knowing.

4 **SECOND CAUSE OF ACTION**
5 **CONTRACTUAL BREACH OF THE COVENANT OF GOOD FAITH**
6 **AND FAIR DEALING**
7 (All Defendants)

8 60. Plaintiff realleges and incorporates by reference paragraphs 1 to x1 of
9 this complaint.

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

18 62. The terms of the promissory note and trust deed imposed upon the
19 defendants a duty of good faith and fair dealing in this matter.

20 63. Defendants enjoyed substantial discretionary power affecting the rights
21 of plaintiff during the events alleged in this complaint. Defendants were required
22 to exercise such power in good faith.

23 64. California foreclosure law and procedure is based on the social policy.
24 The goal of California non-judicial foreclosure law under California Civil Code
25 §2924 et seq. is to provide fast, efficient and non-judicial remedies to
26 beneficiaries while at the same time providing protection to trustors. California
27 non-judicial foreclosure law also is intended to protect the trustor from the
28 wrongful or unfair loss of his property.

65. California non-judicial foreclosure law requires strict compliance on

1 the part of beneficiaries and trustees.

2 66. Defendants wilfully breached their implied covenant of good faith and
3 fair dealing with plaintiffs. Defendants' statement of amount due in their notice
4 of trustee sale in the amount of \$188,643.63, defendants' initially scheduling of
5 the trustee sale for October 3, 2007 and their subsequent scheduling of the trustee
6 sale, defendants demand for a payoff of \$196,208.20 as manifested in their payoff
7 demand of December 5, 2007, and manifest this breach.

8 67. Defendants further breached their covenant of good faith and fair
9 dealing by the misrepresentations they made about the terms of the January 2004
10 loan. The defendants, through Jason Jones and AMERQUEST, represented that
11 the Morenos would have a 30 year mortgage as set forth in the Truth-in-Lending
12 disclosure, Exhibit 3. This was false. The interest rate exploded in excess of the
13 promised 7%, rising to 12% at the time of the foreclosure process and having a
14 true cap of 13% and beyond the Morenos' ability to pay.

15 68. Defendants concealed from the Morenos the fact that this was initially a
16 negative amortization loan. They concealed from the plaintiffs the fact that this
17 loan could never be paid off by its terms by the payments as set forth in the Truth
18 in Lending Disclosure, Exhibit 3.

19 69. The defendants AMERQUEST and Jason Jones further qualified the
20 Morenos at the initial teaser rate rather than the maximum rate of the loan, 13%.

21 70. Defendants AMERQUEST and Jason Jones secured for Gloria and
22 Carlos Moreno a more expensive and higher interest rate loan than what they
23 would have and should have qualified for and lied to the Morenos in doing so.
24 They concealed the true nature of the commissions which Jason Jones and
25 Amerquest received, to include the yield spread premium. Defendants ACC,
26 CITI and CR continued this concealment.

27 71. The January 2004 AMERQUEST promissory note was
28

1 incomprehensible and filled legalese. This incomprehensibility was intended to
2 insure that the plaintiffs did not understand its terms, which in turn permitted the
3 defendant AMERIQUEST, Jason Jones, and their successors to mislead the
4 plaintiffs and thereby financially profit from its terms. The defendants, and each
5 of them, continued this action by demanding performance and payment of money,
6 justifying these demands by the mumbo-jumbo language of the January 2004
7 loan. In this manner, defendants further breached their duty of good faith and fair
8 dealing.

9 72. Defendants further breached their duty of good faith and fair dealing by
10 violating the accurate disclosure requirements of the loan and by failing to
11 comply with the Federal Truth in Lending Act (15 U.S.C . §§1601-1666j) and
12 with the Act's corresponding Regulation Z (24 C.F.R. §§3500.1-3500.17) and
13 then by wilfully failing to correct these inaccuracies.

14 73. Defendants' actions in this matter have been wilful and knowing.

15 74. As a result of defendants' breach of this covenant, plaintiffs Gloria and
16 Carlos Moreno have suffered injury. The injury has caused plaintiffs to suffer the
17 specter of a foreclosure sale of their home and incur attorney fees and other costs
18 and expenses in order to prevent this sale.

19 **THIRD CAUSE OF ACTION**
20 **FRAUD**
21 (All Defendants)

22 75. Plaintiffs reallege and incorporate by reference paragraphs 1 to x1 of
23 this complaint.

24 76. California Civil Code §1572 states that fraud exists when any of the
25 following act and situations occur. Actual fraud consists in any of the following
26 acts, committed by a party to the contract, or with his connivance, with intent to
27 deceive another party:

- 28 a. The suggestion, as a fact, of that which is not true, by one who
does not believe it to be true; b. The positive assertion, in a manner

1 not warranted by the information of the person making it, of that
2 which is not true, though he believes it to be true; c. The suppression
3 of that which is true, by one having knowledge or belief of the fact;
4 d. A promise made without any intention of performing it; or, e. Any
5 other act fitted to deceive.

6 77. Defendants AMERIQUEST, Jason Jones, AMC, CITI, CR and ACC
7 committed fraud in the following ways:

8 ● By misrepresenting the terms of the January 2004 loan. The defendants,
9 through Jason Jones and AMERQUEST, represented that the Morenos would
10 have a 2 year fixed rate mortgage at 7% . This interest rate would make their
11 mortgage payment \$1,182.92 a month for two years. After the two years, the
12 payment would be slightly higher. It would be \$1,268.02 for 335 months. The
13 final payment was \$1,260.84. They confirmed this representation with the
14 disclosures set forth in the Truth in Lending disclosure, which is attached as
15 Exhibit 3 to this complaint. In fact, the interest rate exploded in excess of the
16 promised 7%, rising to 12% at the time of the foreclosure process and having a
17 true cap of 13%. Additionally, the monthly mortgage payments exploded beyond
18 the amount promised in the verbal representations and the Truth in Lending
19 disclosures.

20 ● By concealing from the Morenos the fact that this was a negative
21 amortization loan. They concealed from the plaintiffs the fact that this loan could
22 never be paid off by its terms by the payments as set forth in the Truth in Lending
23 Disclosure, Exhibit 3.

24 ● Defendants AMERIQUEST and Jason Jones secured for Gloria and
25 Carlos Moreno a more expensive and higher interest rate loan than what they
26 would have and should have qualified for and lied to the Morenos in doing so.
27 They concealed the true nature of the commissions which Jason Jones and
28 Ameriquest received, to include the yield spread premium. Defendants ACC,
CITI and CR continued this concealment.

1 ● By extorting these unlawful sums from the plaintiffs by threatening to
2 foreclosure upon and then by initiating foreclosure proceedings on the home of
3 the plaintiffs to obtain these amounts of money, a right that they did not legally
4 enjoy.

5 ● By violating California Civil Code §§2924f in demanding sums they
6 were not entitled to.

7 ● By presenting to the Morenos in January 2004 and then requiring
8 performance under a loan document which was intentionally incomprehensible
9 and filled legalese. This incomprehensibility was intended to insure that the
10 plaintiffs did not comprehend its terms, which in turn permitted the defendant
11 AMERIQUEST, Jason Jones, and their successors to mislead the plaintiffs and
12 thereby financially profit from its terms. The defendants, and each of them,
13 continued this action by demanding performance and payment of money,
14 justifying these demands by the incomprehensible language of the January 2004
15 loan.

16 ● By violating the accurate disclosure requirements of the loan and by
17 failing to comply with the Federal Truth in Lending Act (15 U.S.C
18 .§§1601-1666j) and with the Act’s corresponding Regulation Z (24 C.F.R.
19 §§3500.1-3500.17) and thereafter by wilfully failing to correct these inaccuracies.

20 78. Defendants’ actions in engaging in the actions alleged in this complaint
21 have been wilful and malicious.

22 **FOURTH CAUSE OF ACTION**
23 **UNFAIR BUSINESS PRACTICES**
24 (All Defendants)

25 79. Plaintiffs reallege and incorporate by reference paragraphs 1 to x1 of
26 this complaint.

27 80. California Business and Professions Code §17200 prohibits any
28 unlawful, unfair or fraudulent business act or practice and unfair, deceptive,

1 untrue or misleading advertising and any act prohibited by Business and
2 Professions Code §17500 et seq..

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

9 82. Defendants AMERQUEST, JASON JONES, AMC, CITI, CR and
10 ACC misrepresented and continue to misrepresent the terms of the January 2004
11 loan. The defendants, through Jason Jones and AMERQUEST, represented that
12 the Morenos would have a 2 year fixed rate mortgage at 7% . This interest rate
13 would make their mortgage payment \$1,182.92 a month for two years. After the
14 two years, the payment would be slightly higher. It would be \$1,268.02 for 335
15 months. The final payment was \$1,260.84. They confirmed this representation
16 with the disclosures set forth in the Truth in Lending disclosure, which is attached
17 as Exhibit 3 to this complaint. In fact, the interest rate exploded in excess of the
18 promised 7%, rising to 12% at the time of the foreclosure process and having a
19 true cap of 13%. Additionally, the monthly mortgage payments exploded beyond
20 the amount promised in the verbal representations and the Truth in Lending
21 disclosures. The remaining defendants continued their misrepresentations.

22 83. They concealed from the Morenos the fact that this was initially a
23 negative amortization loan. They concealed from the plaintiffs the fact that this
24 loan could never be paid off by its terms by the payments as set forth in the Truth
25 in Lending Disclosure, Exhibit 3. In fact, defendants represented and continued
26 to represent that the loan could be paid off according to the Truth in Lending
27 disclosure.

1 84. Defendants AMERIQUEST and Jason Jones secured for Gloria and
2 Carlos Moreno a more expensive and higher interest rate loan than what they
3 would have and should have qualified for and lied to the Morenos in doing so.
4 They concealed the true nature of the commissions which Jason Jones and
5 Ameriquest received, to include the yield spread premium. Defendants ACC,
6 CITI and CR continued this concealment.

7 85. Defendant AMERIQUEST, AMC, CITI, and CR have unlawfully
8 initiated a non-judicial foreclosure on the plaintiffs' home by recording without
9 legal basis a notice of default and notice of trustee sale.

10 86. California Civil Code §§2924 and 2924c(b)(1) require that the notice of
11 default contain an accurate statement that a breach of the secured obligation has
12 occurred and specification of the nature of the default. Amounts consisting of
13 foreclosure fees and other fees and charges which defendants have and are
14 demanding from plaintiffs are erroneous and fraudulent, a fact which defendants,
15 and each of them, knew and should have reasonably known.

16 87. Defendants AMERIQUEST, AMC, CITI, ACC and CR have falsely
17 stated in their notice of default that Carlos and Gloria Moreno failed to make
18 timely monthly mortgage payments in the amounts legally due, thereby incurring
19 additional charges in fees. These statements, allegations and insinuations are and
20 were untrue, a fact which defendants AMERIQUEST, AMC, CITI and CR knew
21 and should have reasonably known.

22 88. Defendants AMERIQUEST, AMC, CITI, ACC and CR have falsely
23 stated in their notice of sale that the reasonable estimate of costs, expenses, and
24 advances is \$188,643.34 and subsequently in a payoff demand, \$196,208.20.

25 89. Defendants AMERIQUEST, AMC, ACC, CITI and CR attempted to
26 mislead and defraud plaintiffs by requiring them to pay sums of money which
27 they did not and do not owe to defendants, and by requiring this money under
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1 threat of foreclosure, with the intent of taking possession of plaintiffs' home if
2 they did not pay these sums. These acts are unfair business practices.

3 90. Defendants' AMERIQUEST and Jason Jones presentation to the
4 Morenos in January 2004 and then AMC's, CITI's, ACC's and CR's requiring
5 performance under a loan document which was intentionally incomprehensible,
6 and filled legalese demonstrate these unfair business practices. This
7 incomprehensibility was intended to insure that the plaintiffs did not comprehend
8 its terms or their rights, which in turn permitted the defendant AMERIQUEST,
9 Jason Jones, and their successors to mislead the plaintiffs and thereby financially
10 profit from its terms. The defendants, and each of them, continued this action by
11 demanding performance and payment of money, justifying these demands by the
12 mumbo-jumbo language of the January 2004 loan.

13 91. Defendants AMERIQUEST and Jason Jones and thereafter AMC's,
14 CITI's and ACC's and CR's failing to comply with the Federal Truth in Lending
15 Act (15 U.S.C .§§1601-1666j) and with the Act's corresponding Regulation Z (24
16 C.F.R. §§3500.1-3500.17).

17 92. Defendants violated Business and Professions Code §17200 and
18 §17500 et seq. by violating California Civil Code §2924c(b)(1), California Civil
19 Code §2924f, subd. (b)(1), California Civil Code §2924 and by their actions as
20 alleged in this complaint.

21 **FIFTH CAUSE OF ACTION**
22 **UNJUST ENRICHMENT**
(All Defendants)

23 93. Plaintiffs reallege and incorporate by reference paragraphs 1 to x1 of
24 this complaint.

25 94. The January 10, 2004 loan compelled the plaintiffs to pay money to the
26 defendants. The money was the required monthly mortgage payment.

27 95. The defendants had no legal right to demand the inflated sums which
28

1 they have demanded and the lack of payment of which is the basis of the non-
2 judicial foreclosure of their home.

3 96. Defendants AMERIQUEST and Jason Jones secured for Gloria and
4 Carlos Moreno a more expensive and higher interest rate loan than what they
5 would have and should have qualified for and lied to the Morenos in doing so.
6 They concealed the true nature of the commissions which Jason Jones and
7 Ameriquest received, to include the yield spread premium. Defendants ACC,
8 CITI and CR continued this concealment.

9 97. If plaintiffs did not pay the inflated and illegal amounts which the
10 defendants were demanding, defendants would foreclose upon their home and sell
11 it at auction. In fact, this is exactly what the defendants are attempting to do. As
12 a result, plaintiffs had to tender inflated and illegal monthly mortgage payments
13 to forestall a foreclosure of their home.

14 98. On or about December 10, 2007, plaintiffs through their counsel wrote
15 an eleven page letter to defendants AMERIQUEST, AMC, ACC and CITI. In
16 this letter, they detailed the unconscionableness of the January 10, 2004 loan. In
17 the letter, plaintiffs pointed out the loan was riddled with fraud and is was
18 rescindable under a number of legal theories. The letter detailed violations of
19 Truth in Lending, Fair Debt Collection, Unfair Business Practices law, Fraud,
20 breach of fiduciary relationship, predatory lending, and California non-judicial
21 foreclosure law. The letter also included a notice of rescission.

22 99. Thereafter, defendants AMERIQUEST, AMC, ACC, and CITI
23 responded with letters rejecting plaintiffs' claims.

24 100. Defendants' actions in this matter have been wilful and knowing.

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1 **SIXTH CAUSE OF ACTION**
2 **BREACH OF FIDUCIARY DUTY**
3 (All Defendants)

4 101. Plaintiffs reallege and incorporate by reference paragraphs 1 to x1 of
5 this complaint.

6 102. Jason Jones and Ameriquest held a fiduciary relationship with Gloria
7 and Carlos Moreno. As a fiduciary to the Morenos, Jason Jones and Ameriquest
8 had a duty to secure the best loan possible for Gloria and Carlos Moreno. They
9 had a duty to explain all the terms of the loan to and advise Gloria and Carlos
10 Moreno of the risks of the transaction. Particularly, Jason Jones and Ameriquest
11 had a duty to accurately explain the terms of the loan, such as the rate of interest,
12 late payments, and the effect of the adjustments on their monthly mortgage
13 payments. They also held a duty to advise Gloria and Carlos Moreno of material
14 risks or disadvantages of the loan terms.

15 103. As has been stated in this complaint, Jason Jones and Ameriquest
16 violated their fiduciary duties. The misrepresented the terms of the loan as well
17 as the nature of their monthly mortgage payments. They led Gloria and Carlos
18 Moreno to believe that their mortgage payments would be as described in the
19 Truth-in-Lending disclosure, Exhibit 3. They also secured for Gloria and Carlos
20 Moreno a more expensive and higher interest rate loan than what they would have
21 and should have qualified for. They concealed the true nature of the commissions
22 which Jason Jones and Ameriquest received, to include the yield spread premium.

23 104. Jason Jones and Ameriquest violated their fiduciary duties to Gloria
24 and Carlos Moreno wilfully and knowingly and with the malicious intent of
25 financially profiting from their malfeasance.

26 105. The remaining defendants aided and abetted AMERIQUEST and
27 Jason Jones in these violations by concealing them and attempting to conceal
28 them from the plaintiffs.

**SEVENTH CAUSE OF ACTION
ACCOUNTING
(All Defendants)**

106. Plaintiff realleges and incorporates by reference paragraphs 1 to x1 of this complaint.

107. There is and was a relationship between and among defendants AMERIQUEST, AMC, CITI, CR and plaintiffs Carlos and Gloria Moreno in which these defendants received mortgage payments from plaintiff. These defendants had a legal duty to accurately and timely account for these payments and apply these payments to the trust deed mortgage.

108. Only defendants AMERIQUEST, AMC, CITI, CR and ACC have the information as to how they received, accounted for, and applied the mortgage payments tendered by plaintiff in this matter. Only defendants AMERIQUEST, AMC, CITI, CR and ACC have information as to what charges and fees and costs they added to the amounts they were demanding from the Morenos and the justification for these amounts.

109. An accurate amount that plaintiffs Gloria and Carlos Moreno owe and owed to defendants AMERIQUEST, AMC, CITI, ACC, and CR can only be determined by information in the possession of these defendants, and by a detailed and itemized accounting. The amounts which the Morenos owe is uncertain at this time and cannot be determined without an accurate, detailed, and itemized accounting.

110. *Whann v. Doell*¹ and *James Church v. Superior Court*² authorize an accounting when there is an unknown amount due that cannot be determined without an accounting.

¹ *Whann v. Doell* (1923) 192 Cal. 680, 684.

² *James Church v. Superior Court* (1955) 135 Cal.App.2d 352, 359.

1 111. *Anderson v. Heart Federal Savings*³ entitles the plaintiffs to a detailed
2 and itemized accounting of the amounts actually and legally owed, particularly
3 during a foreclosure. This information is in possession of the beneficiary. The
4 trustor, borrower, is under no obligation to second-guess the amount.

5 112. AMERIQUEST, AMC, CITI, CR and ACC are required to provide an
6 accurate, detailed and itemized accounting so that plaintiff can know with
7 certainty that the sums they are demanding are in fact lawfully due.

8 **PUNITIVE DAMAGES**

9 113. Plaintiff realleges and incorporates by reference paragraphs 1 to x1 of
10 this complaint.

11 114. Plaintiffs Gloria and Carlos Moreno allege that defendants, and each
12 of them, are guilty of malice, fraud and oppression as defined by California Civil
13 Code §3294, and that Gloria and Carlos Moreno should recover, in addition to
14 actual damages, damages to make an example of and to punish defendants and
15 each of them for their actions.

16 **PRAYER**

17 WHEREFORE, plaintiff prays judgment as follows:

18 1. For a declaration that the notice of trustee Sale filed on or about
19 September 13, 2007 and attached as Exhibit 4 is invalid, unlawful, and does not
20 provide the necessary foundation for the conduct of a trustee sale, as described in
21 California Civil Code §2924 et seq..

22 2. That the defendants, and each of them, be permanently enjoined from
23 conducting a non-judicial foreclosure sale upon the property of 2949 Cashew
24 Court, Antioch, CA 94509.

25 3. For a declaration that defendants have violated California Civil Code
26 §2924f and §2624d in this non-judicial foreclosure process.

27
28 ³ *Anderson v. Heart Federal Savings* (1989) 208 Cal.App.3d 202, 217.

1 4. For a declaration that the promissory note executed on or about January
2 4, 2004 and secured by Contra Costa trust deed 2004002467600 is
3 unconscionable.

4 5. For a declaration that the promissory note executed on or about January
5 4, 2004 and secured by Contra Costa trust deed 2004002467600 is unenforceable.
6 In the alternative, that the promissory note executed on or about January 4, 2004
7 and secured by Contra Costa trust deed 2004002467600 is no longer secured by
8 this trust deed but in fact is an unsecured note.

9 6. Defendants render a full, complete, detailed, and itemized accounting
10 reflecting the amounts they claim are past due, the principal, interest, taxes,
11 assessments, insurance premiums, or advances, and recurring obligations, and
12 particularly attorney and trustee fees. That they render proof of existence of their
13 alleged note and security interest on 2949 Cashew Court, Antioch, CA 94509.
14 That defendants substantiate their accounting with detailed documentation.

15 7. For a judgment rescinding the January 4, 2004 promissory note and
16 setting forth the terms of restitution.

17 8. That Plaintiffs Carlos and Gloria Moreno be declared to be the
18 prevailing party.

19 9. For attorney fees pursuant to California Civil Code §1717 and the
20 promissory note.

21 10. For general and special damages.

22 11. For punitive damages.

23 12. For such other and further relief as the court may deem proper.

24 SPIELBAUER LAW FIRM

25
26
27 Thomas Spielbauer, Esq.
28 Attorney for Plaintiffs

1 **VERIFICATION**

2 I, Gloria Moreno, am a plaintiff in the above-entitled action. I have read the
3 foregoing complaint and know the contents thereof. The same is true of my own
4 knowledge, except as to those matters which are therein alleged on information
5 and belief, and as to those matters, I believe it to be true.

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

8 January 15, 2008

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11 Gloria Moreno
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1 **VERIFICATION**

2 I, Carlos Moreno, am a plaintiff in the above-entitled action. I have read the
3 foregoing complaint and know the contents thereof. The same is true of my own
4 knowledge, except as to those matters which are therein alleged on information
5 and belief, and as to those matters, I believe it to be true.

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

8 January 15, 2008

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