

1 Michael T. Pines (SBN 77771)  
 2 PINES & ASSOCIATES  
 3 732 N. Coast Highway 101, Suite B  
 4 Encinitas, California 92024  
 Telephone: 760-642-0414  
 Facsimile: 760-301-0093  
 michaeltpines@gmail.com

ORIGINAL FILED

2010 JUN 15 P 12:11

RICHARD W. WILKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Plaintiffs

E-filing

6  
 7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

JL

CV 10 2622

11 URSULA MCCOMAS, an individual; GREGORY  
 12 STRANGE, an individual; DEBORAH  
 13 MCINTYRE, an individual; IMSOON KIM, an  
 individual; TIMOTHY HIROU, an individual;  
 14 NORA HIROU, an individual; RENE ZEPEDA, an  
 individual; OTILIA ZEPEDA, an individual;  
 15 CARLOS MARROQUIN, an individual; SUSANA  
 MARROQUIN, an individual; TRUNG TAN  
 16 HUYNH, an individual; THUY THANH  
 NGUYEN, an individual; CUONG TAN  
 17 NGUYEN, an individual; DAVE E. PEREZ, an  
 individual; VIRGINIA V. PEREZ, an individual;  
 18 MARIE C. LIME, an individual; ANNIE ANH  
 NGUYEN, an individual; JULIANN MINH-THAO  
 19 TRAN, an individual; THANH NGOC BUI, an  
 individual; THANH THI NGUYEN, an individual;  
 20 TAMIE HUYNH, an individual; JIM EARL, an  
 individual; DANIELLE EARL, an individual; HUE  
 21 THI CAM PHAM, an individual; RACHAEL  
 EARL, an individual, NANCY SHAW an  
 22 individual, MCCCELL SHAW, an individual,  
 STEPHEN DAY, an individual,

Case No.: \_\_\_\_\_

COMPLAINT FOR VIOLATIONS OF:

- 1) FAIR DEBT COLLECTION PRACTICES ACT;
- 2) ROSENTHAL ACT;
- 3) WRONGFUL FORECLOSURE;
- 4) CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200

CLASS ACTION

JURY DEMAND

Plaintiffs,

24 vs.

25 EARL R. WALLACE, an individual; RUZICKA  
 26 & WALLACE, LLP, a California law firm;  
 LUNDBERG AND ASSOCIATES, a Utah law  
 27 firm; DEANNA L. WARDEN, an individual;  
 RICHARD GUNNERSON, an individual;  
 28 DEMARTINI AND WALKER, a California law  
 firm; VINCENT J. DEMARTINI, an individual;

1 BARRETT SCHAEFER, an individual; LEWITT, )  
HACKMAN, SHAPIRO, MARSHALL & )  
2 HARLAN, a California law firm; NICHOLAS )  
KANTOR, an individual; NAIMAN LAW )  
3 GROUP, a California Law Firm; RANDALL )  
NAIMAN, an individual; MALCOLM AND )  
4 CISNEROS, a California Law Corporation; )  
WILLIAM G. MALCOLM, an individual; )  
5 NICOLAS BRUTOCAO, an individual; KEVIN )  
HAHN, an individual; MILES, BAUER, )  
6 BERGSTROM & WINTERS, LLP, a California )  
Partnership; RYAN W. STOCKING, and )  
7 individual; SILVERSTEIN EVICTION LAW, a )  
California law firm; STEVEN D. SILVERSTEIN, )  
8 an individual; JACKSON & ASSOCIATES, a )  
California law firm; ROBERT J. JACKSON, an )  
9 individual; DAVID J. BOYER, an individual; )  
DOUG V. PHAM, an individual; LAW OFFICES )  
10 OF LES ZIEVE, a California law firm; LES )  
ZIEVE, an individual; JAMES KNOLES, an )  
11 individual; ENDRES LAW FIRM, a California )  
law firm; DAVID R. ENDRES, an individual; )  
12 PITE DUNCAN, LLP, a California law firm; )  
STEVE W. PITE, an individual; JOHN D. )  
13 DUNCAN, an individual; DAVID E. )  
MCALLISTER, an individual; PETER J. )  
14 SALMON, an individual; JASON W. SHORT, an )  
individual; SIMIS LAW GROUP, a California )  
15 law firm; MICOLE SIMIS, an individual; )  
STANLEY YATES, TIFFANY & BOSCO, P.A., )  
16 an Arizona law firm; MARK S. BOSCO, an )  
individual; GAYLE E. JAMESON, an individual; )  
17 JESSICA PARTRIDGE, an individual; )  
REBECCA CARLE, an individual; MCCARTHY )  
18 AND HOLTHUS, LLP, a partnership; JOHN )  
SAGINAW, an individual, AMY STARRETT, an )  
19 individual; ROBERT JACKSON AND )  
ASSOCIATES, INC., a corporation; and DOES 1 )  
20 through 200, inclusive, )

21 Defendants. )  
22 )  
23 )  
24 )  
25 )  
26 )

27  
28

1 Plaintiffs suing on behalf of themselves and all others similarly situated, complain as follows.

2 **PRELIMINARY STATEMENT**

3 This is a class action brought under the Fair Debt Collection Practices Act, 15 U.S.C.  
4 §1692, *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in  
5 abusive, deceptive, and unfair practices and seeks primarily declaratory and injunctive relief for  
6 the individual Plaintiffs and the Class they represent, statutory damages, actual damages,  
7 punitive damages and attorneys fees.

8 **I. INTRODUCTION**

9 1. At its core, this case is about predatory lending practices, and the biggest fraud  
10 ever perpetrated in the U.S. – securitization. Specifically, this case is brought against all the  
11 above named Defendants whom were involved in the fraud by aiding and abetting in the  
12 subsequent fraudulent, deceptive and abusive evictions of Plaintiff home owners.

13 2. Plaintiffs’ loans were securitized. As is typical when a loan is securitized, the  
14 funds Plaintiffs borrowed did not come from any source that Plaintiffs could readily identify.  
15 Instead, the money came from “Investors,” the identity of who was concealed by those involved  
16 in originating the loan (“Originators”). Notably, some of the Investors who actually loaned  
17 Plaintiffs money in the first place, have filed their own legal actions based at least in part on the  
18 very same allegations of predatory lending Plaintiffs were subjected to. Some examples are:  
19 *Boilermaker National Annuity Trust Fund (“Boilermaker National”) v. WAMU Mortgage Pass*  
20 *Through Certificates, WMA., United States District Court, Western District of Washington at*  
21 *Seattle, Case # C090037; New Orleans Employees’ Retirement System et al v. Federal Deposit*  
22 *Insurance Corporation, et al., United States District Court, Western District of Washington at*  
23 *Seattle, Case No: 2:09-cv-00134-MJP; filed on August 14, 2009; New Orleans Employees*  
24 *Retirement System et al v. First American Corporation et al., United States District Court,*  
25 *Western District of Washington at Seattle, Case No: 2:09-cv-00137-MJP, filed on August 14,*  
26 *2009; and Doral Bank Puerto Rico v. Washington Mutual Asset Acceptance Corporation et al;*  
27 *United States District Court, Western District of Washington at Seattle, Case No:2:09-cv-*  
28 *01557-MJP, filed on March 24, 2010 (collectively, “Investor Cases”).*

1           3.       Even before the loans were made, the “Securitizers” had planned and arranged to  
2 securitize the loans. In the course of securitizing the loans, Plaintiffs are informed and believe  
3 that the Securitizers had a practice of taking more money from the Investors than was loaned to  
4 the home owners, and that they concealed this practice from both the home owners (including  
5 Plaintiffs and those similarly situated) and the Investors. In addition, there were usually “credit  
6 enhancements” which could take several forms including such things as “excess spreads”, over  
7 collateralization, reserve accounts, surety bonds, wrapped securities, letters of credit, and cash  
8 collateral accounts. (See, [http://en.wikipedia.org/wiki/Credit\\_enhancement](http://en.wikipedia.org/wiki/Credit_enhancement) for a more detailed  
9 description). On information and belief, Plaintiffs allege that the well known problems with  
10 American International Group (AIG), relate to credit enhancements. Both the Plaintiffs and the  
11 Investors have claims to the credit enhancement funds as well as undisclosed fees taken by the  
12 Originators and Securitizers and possible credits and offsets for other items. As to Plaintiffs,  
13 such funds should be credited against their loans. Based upon information and belief, Plaintiff  
14 alleges that once a proper accounting is done and proper credits applied, Plaintiffs will owe  
15 nothing on their loans making the unlawful detainer actions simply a part of the ongoing fraud.

## 16           **II. SECURITIZATION OF MORTGAGE LOANS INCLUDING PLAINTIFFS**

17           4.       Securitization is intentionally complex and the details and even some of the  
18 mathematical calculations involved cannot be succinctly set forth in a complaint.

19           5.       As set forth in the Investor Cases, the securities that the Securitizers sold are so-  
20 called asset-backed securities, or ABS, created in a process known as securitization. More  
21 specifically, they involved a complex financial instrument product known generically in the  
22 securities industry as collateralized debt obligations (“CDOs”). “Synthetic” CDOs are even more  
23 complex instruments that are “derivates” based only indirectly on the CDOs (i.e., Credit Default  
24 Swaps).

25           6.       Securitization begins with the sale of bonds to Investors (usually they are sold  
26 “forward” meaning they are sold to the investors before the Investors’ funds are given to  
27 mortgage borrowers such as the Plaintiffs.) Only some of the funds were then used to fund

28       ///

1 loans such as Plaintiffs'. Investors were led to believe all of their funds except for reasonable  
2 fees were forwarded, but this was false.

3 7. The entities involved in making the loans are known as the Originators. The  
4 process by which the Originators decide whether or not to make particular loans is known as the  
5 underwriting of loans. Plaintiff is informed and believes that during the loan underwriting  
6 process, representations were made to the Investors that the originators would apply various  
7 criteria to try to ensure that the loan will be repaid. However, they did not do so and instead, the  
8 way the securitization scheme was structured, it was actually in the best interests of the  
9 "Securitizers" (including Originators) for the loans to fail. They were clearly not acting with  
10 the interests of Plaintiffs or the Investors in mind.

11 8. Until the loans are securitized, the borrowers on the loans sometimes make their  
12 loan payments to an Originator, but this may never occur or only be for a very short time.  
13 Collectively, the payments on the loans are known as the cash flow from the loans.

14 9. A large number of loans, usually of a similar type, are grouped into a collateral  
15 pool. The Originator of those loans claims it sells them (and, with them, the right to receive the  
16 cash flow from them) to a special purpose vehicle called a trust by the Securitizers. The trust is  
17 supposed to pay the Originator cash for the loans. As mentioned, the trust raises the cash to pay  
18 for the loans by selling bonds, in the form of certificates, to Investors. Each certificate  
19 purportedly entitles its holder to an agreed part of the cash flow from the loans in the collateral  
20 pool.

21 10. There are tranches of investment bonds sold.<sup>1</sup> Typically, "Tranche A" is a veneer  
22 of conventional mortgages where the borrowers appear creditworthy. Other tranches had much  
23 less credit worthy borrowers. Using the creditworthy borrowers, the Securitizers obtained  
24 ratings on the bonds that were inaccurate at best. It has now become public knowledge that the

---

25  
26 <sup>1</sup> "Tranche" is a French word for "slice". A tranche is a piece, portion, or slice of a deal or structured financing.  
27 Different tranches have different risks, rewards, and/or maturities.

1 Securitizers conspired with the rating agencies to mislead investors. Thus, schematically, these  
2 are some of the steps in a securitization in no specific order:

- 3 1. Investments are created for Investors usually in the form of Bonds.
- 4 2. Credit Enhancements are obtained.
- 5 3. Rating agencies are provided misleading information and paid to rate the
- 6 Bonds as “safe” and provide misleading information.
- 7 4. Investors pay money to the trust.
- 8 5. The trust issues certificates to the Investors.
- 9 6. The trust pays money to the parties up the chain toward the
- 10 borrower/property owner through the Originators.
- 11 7. Only part of the funds are used to fund mortgage loans such as the one
- 12 made to plaintiff.
- 13 8. The rest of the money is kept by the Originators and Securitizers in the
- 14 scheme. In other words, by way of example, the Investors might think
- 15 they are funding a loan for \$1 million, however, only \$500,000 is actually
- 16 loaned to borrowers such as the plaintiff, and the Securitizers keep the
- 17 rest through a complex series of transactions.
- 18 9. The Originator and Securitizers plan in advance for the loans to default.
- 19 10. Loans made to persons like Plaintiff are placed into one or more pools.
- 20 11. The Originator was supposed to assign to the trust the loans which were
- 21 placed into a collateral pool, including the right to receive the cash flow
- 22 from those loans, but a proper assignment/transfer was never done.
- 23 12. The trust is supposed to collect cash flow from payments on the loans in
- 24 the collateral pool; however it has no legal right to do so even under the
- 25 lengthy, complex documents used in securitization.
- 26 13. When the mortgage loans go into default, the Securitizers demand that
- 27 payment be made to the Investors by the “credit enhancements.”

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

14. In “Credit Default Swaps” the Securitizers also placed “bets” that the loans would not pay off (as was planned), in order to cover the difference between what was loaned to borrowers such as Plaintiff and what was funded by the Investors and make another hidden profit for the Securitizers. According to some published reports, these unregistered securities were frequently more than 30 times the principal on the mortgage loans (such as Plaintiffs’.) Thus, if the borrowers such as Plaintiffs did not perform on the loans, the Securitizers would make more money than if they did.

15. After default, even though the mortgage loan is technically paid in full if a proper accounting were done, the Securitizers pretend the loan is still owed by the borrowers such as Plaintiffs to the original named “beneficiary” on the deed of trust, and try to foreclose on the mortgage and steal the mortgaged real property from borrowers such as the Plaintiffs.

16. Securitizers hire law firms such as Defendants who know or should know collection of loans such as the Subject Loan is improper and routinely conceal information concerning such to the courts. (See, *In Re Nosek*, 406 B.R. 434.)

17. Recently, the U.S. Supreme Court has found that these law firms may be held liable in class actions under the Fair Debt Collection Practices Act. (See, *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich Lpa, et al.*, 130 S. Ct. 1605; April 21, 2010).

11. At the risk of being redundant, but also more specific and adding that the taxpayers are paying for this, the order of things is usually as follows:

- The first transactions that occurred were the sale of securities to unsuspecting investors.

///

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

- The second transaction that occurred was that the investor money was put into an account at an investment banking firm.
- The third transaction was that the investment banker divided the money between fees for itself and then distributing the funds to aggregators or a Depository Institution.
- The fourth transaction was the closing with the borrower. The loan was funded with the money from the investor after deducting large undisclosed fees and also because of the disparity between the interest payable to the investor and the interest payable by the borrower, a yield spread was created, adding huge sums to what the investment banker took without disclosure to the investors or the borrowers.
- The fifth was the assignment and acceptance of the loan generally into between 1 and 3 asset pools, each bearing distinctive language describing the pool such that they appeared to be different assets than already presumed to exist in the first pool.
- The sixth was the receipt of insurance or counter-party payments on behalf of the pool pursuant to the documents creating the securitization structure.
- The seventh was the resecuritization of the pooled assets between one and three times.
- The eighth was the federal bailout payments and receipts allocable to the balances owed on the loans that were claimed to be part of the pool.
- The ninth are the foreclosures by parties who never provided any money which is often the original named beneficiary on the trust deed.
- In the alternative fraudulent and forged assignments allegedly represent investors which practice is currently the subject of a criminal

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

investigation.<sup>2</sup>

- Lastly, attorneys are hired to evict the home owners such as plaintiffs.
- After eviction, the house is sold and no one knows at this point where the proceeds from the sales go.
- It is unlikely it goes back to the government which has at least indirectly funded all this through “bail outs”.

12. Securitization involves many documents. In broad brush, it involves the closing documents between loan Originators, Servicers, Special Purpose Vehicles, Aggregators, etc. including the Pooling and Service Agreements, the Assignment and Assumption Agreements, the Master Service Agreements [if separate]. None of these include the borrower as party or references any specific debtor or borrower because the debtor is unknown when the securitization structure is created.

13. Each securitization has a Sponsor, a prime mover of the securitization. Sometimes the sponsor is the Originator or an affiliate. In Originator-sponsored securitizations, the collateral pool usually contains loans made by the Investors. Sometimes, the Sponsor may be an investment bank.

14. The two important documents in the mortgage loan made to the home owner/borrower are the promissory note and the mortgage (usually a deed of trust as in Plaintiffs’ loans in California).

15. The Sponsor is supposed to arrange for title to the mortgage loans to be transferred to an entity known as the depositor, which then was supposed to transfer title to the loans to the trust.

///  
///

---

<sup>2</sup>See, [http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html?mod=WSJ\\_hps\\_LEF](http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html?mod=WSJ_hps_LEF)  
TWhatsNews

1           16. As mentioned, the assignment of the mortgages never properly occurred and this  
2 is the subject of countless lawsuits by the borrowers such as Plaintiffs.<sup>3</sup>

3           17. The obligor of the certificates in a securitization is supposed to be the trust that  
4 purchases the loans in the collateral pool. However, this cannot be true because title to the  
5 mortgage loans was never perfected. The trust is a mere conduit that has no power to do  
6 anything, and has no real trustee.

7           18. The Pooling and Service Agreements provide certain time deadlines by which  
8 transfers were to be made, and these were not met.

9           19. When a trust has no assets it cannot satisfy the liabilities of an issuer of securities  
10 (the certificates). According to the Investor Cases, the law therefore treats the depositor as the  
11 issuer of an asset-backed certificate.

12           20. According to the Investor Cases, securities dealers, represented that they would  
13 underwrite the sale of the certificates. Most important, securities underwriters provided to  
14 potential investors the information that they need to decide whether to purchase certificates.

15           21. Because the cash flow from the loans in the collateral pool of a securitization is  
16 purportedly the source of funds to pay the holders of the certificates issued by the trust, the  
17 credit quality of those certificates, if this were true, would be dependent upon the credit quality  
18 of the loans in the collateral pool. According to the Investor Cases, the most important  
19 information about the credit quality of those loans is contained in the files that the Originator  
20 develops while making the loans, the so-called loan files. For residential mortgage loans, each  
21 loan file normally contains the information in such important documents as the borrower's  
22 application for the loan, credit reports on the borrower, and an appraisal of the property that will  
23 secure the loan.

---

24  
25 <sup>3</sup> This is the point where the Mortgage Electronic Registration System (“MERS”) became a part of the scheme  
26 which is itself subject to countless lawsuits including class actions. Recently, Fannie Mae issued new rules stating  
27 the MERS has no authority concerning its loans.



1           30. Plaintiff DEBORAH MCINTYRE is a natural person who resides in the City of  
2 Norco, County of Riverside, State of California, and is a “consumer” as that term is defined by  
3 U.S.C. § 1692a(3).

4           31. Plaintiff RENE ZEPEDA is a natural person who resides in the City of Newport  
5 Beach, County of Orange, State of California, and is a “consumer” as that term is defined by  
6 U.S.C. § 1692a(3).

7           32. Plaintiff OTILIA ZEPEDA is a natural person who resides in the City of  
8 Newport Beach, County of Orange, State of California, and is a “consumer” as that term is  
9 defined by U.S.C. § 1692a(3).

10          33. Plaintiff CARLOS MARROQUIN is a natural person who resides in the City of  
11 Lancaster, County of Los Angeles, State of California, and is a “consumer” as that term is  
12 defined by U.S.C. § 1692a(3).

13          34. Plaintiff SUSANA MARROQUIN is a natural person who resides in the City of  
14 Lancaster, County of Los Angeles, State of California, and is a “consumer” as that term is  
15 defined by U.S.C. § 1692a(3).

16          30. Plaintiff TRUNG TAN HUYNH is a natural person who resides in the City of  
17 Garden Grove, County of Orange, State of California, and is a “consumer” as that term is  
18 defined by U.S.C. § 1692a(3).

19          31. Plaintiff THUY THANH NGUYEN is a natural person who resides in the City  
20 of Fountain Valley, County of Orange, State of California, and is a “consumer” as that term is  
21 defined by U.S.C. § 1692a(3).

22          32. Plaintiff CUONG TAN NGUYEN, is a natural person who resides in the City of  
23 Garden Grove, County of Orange, State of California, and is a “consumer” as that term is  
24 defined by U.S.C. § 1692a(3).

25          33. Plaintiff DAVE E. PEREZ is a natural person residing in the City of West Hills,  
26 County of Los Angeles, State of California, and is a “consumer” as that term is defined by  
27 U.S.C. § 1692a(3).

28 ///

1           34. Plaintiff VIRGINIA V. PEREZ is a natural person residing in the City of West  
2 Hills, County of Los Angeles, State of California, and is a “consumer” as that term is defined  
3 by U.S.C. § 1692a(3).

4           35. Plaintiff MARIE C. LIME is a natural person residing in the City of Tustin,  
5 County of Orange, State of California, and is a “consumer” as that term is defined by U.S.C. §  
6 1692a(3).

7           36. Plaintiff ANNIE ANH NGUYEN is a natural person who resides in the City of  
8 Stanton, County of Orange, State of California, and is a “consumer” as that term is defined by  
9 U.S.C. § 1692a(3).

10          37. Plaintiff JULIANN MINH-THAO TRAN is a natural person who resides in the  
11 City of Midway City, County of Orange, State of California, and is a “consumer” as that term  
12 is defined by U.S.C. § 1692a(3).

13          38. Plaintiff THANH NGOC BUI is a natural person who resides in the City of  
14 Santa Ana, County of Orange, State of California, and is a “consumer” as that term is defined  
15 by U.S.C. § 1692a(3).

16          39. Plaintiff THANH THI NGUYEN is a natural person who resides in the City of  
17 Santa Ana, County of Orange, State of California, and is a “consumer” as that term is defined  
18 by U.S.C. § 1692a(3).

19          40. Plaintiff TAMIE PHUONG HUYNH is a natural person who resides in the City  
20 of La Palma, County of Orange, State of California, and is a “consumer” as that term is defined  
21 by U.S.C. § 1692a(3).

22          41. Plaintiff HUE THI CAM PHAM is a natural person who resides in the City of  
23 La Palma, County of Orange, State of California, and is a “consumer” as that term is defined  
24 by U.S.C. § 1692a(3).

25          35. Plaintiff JIM EARL is a natural person who resides in the County of Ventura,  
26 State of California, and is a “consumer” as that term is defined by U.S.C. § 1692a(3).  
27

28 ///

1           36. Plaintiff DANIELLE EARL is a natural person who resides in the County of  
2 Ventura, State of California, and is a “consumer” as that term is defined by U.S.C. § 1692a(3).

3           37. Plaintiff RACHEL EARL is a natural person who resides in the City of Gilbert,  
4 State of Arizona, and is a “consumer” as that term is defined by U.S.C. § 1692a(3).

5           38. Plaintiff NANCY SHAW is is a natural person who resides in the City of Gilbert,  
6 State of Arizona, and is a “consumer” as that term is defined by U.S.C. § 1692a(3).

7           39. Plaintiff MCELL SHAW is a natural person who resides in the City of Gilbert,  
8 State of Arizona, and is a “consumer” as that term is defined by U.S.C. § 1692a(3).

9           40. Plaintiff STEPHEN DAY is a natural person who resides in the City of Gilbert,  
10 State of Arizona, and is a “consumer” as that term is defined by U.S.C. § 1692a(3).

11           41. Defendant DEMARTINI AND WALKER is a California law firm, entity  
12 unknown, specializing in unlawful detainer prosecution in this state with its principal place of  
13 business in San Rafael, California. Defendant DeMartini and Walker are “debt collectors” as  
14 defined by 15 U.S.C. § 1692a(6). (See also, *Jerman v. Carlisle, McNellie, Rini, Kramer &*  
15 *Ulrich, LPA, et al.*, 130 S. Ct. 1605; April 21, 2010). On or about January 25, 2010, Defendant  
16 DeMartini and Walker filed Unlawful Detainer action after an improper foreclosure against  
17 Plaintiff Imsoon Kim.

18           42. Defendant VINCENT J. DEMARTINI is an individual attorney, employed by  
19 Defendant DEMARTINI AND WALKER as a collector at all relevant times, with his principal  
20 place of business in San Rafael, California. Defendant Vincent J. DeMartini is a “debt collector”  
21 as defined by 15 U.S.C. § 1692a(6). Defendant Vincent DeMartini personally signed the  
22 verified complaint for Unlawful Detainer.

23           43. Defendant BARRETT SCHAEFER is an individual attorney, employed by  
24 Defendant DeMartini and Walker as a collector at all relevant times, with his principal place of  
25 business in San Rafael, California. Defendant, Barrett Schaefer, is a “debt collector” as defined  
26 by 15 U.S.C. § 1692a(6).

27           44. Defendant RUZICKA & WALLACE, LLP, is a California law firm, organized  
28 as a limited liability partnership and specializing in unlawful detainer prosecution, with its

1 principal place of business located in Irvine, California. Defendant RUZICKA & WALLACE,  
2 LLP, is “debt collector” as defined by 15 U.S.C. § 1692a(6). On or about March 31, 2010,  
3 Defendants RUZICKA & WALLACE, LLP, filed an Unlawful Detainer action after an  
4 improper foreclosure against Plaintiff URSULA MCCOMAS.

5 45. Defendant EARL WALLACE is an individual attorney, employed by Defendant  
6 Ruzicka & Wallace, LLP, with his principal place of business located in Irvine, California.  
7 Defendant, Earl Wallace, is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
8 Earl Wallace personally signed the verified complaint for Unlawful Detainer.

9 46. Defendant LUNDBERG AND ASSOCIATES is a Utah law firm, entity  
10 unknown, specializing in foreclosures and evictions with its principal place of business in Salt  
11 Lake City, Utah. Defendant Lundberg and Associates, is a “debt collector” as defined by 15  
12 U.S.C. § 1692a(6). On or about March 18, 2010, Defendant Lundberg and Associates filed an  
13 Unlawful Detainer action after an improper foreclosure against Plaintiff Gregory Strange.

14 47. Defendant DEANNA L. WARDEN is an individual attorney, employed by  
15 Defendant Lundberg and Associates, with her principal place of business in Salt Lake City,  
16 Utah. Defendant, Deanna L. Warden, is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
17 Defendants Deanna L. Warden personally signed the complaint for Unlawful Detainer.

18 48. Defendant RICHARD GUNNERSON is an individual attorney, employed by  
19 Defendant Lundberg and Associates, with his principal place of business in Salt Lake City,  
20 Utah. Defendant, Richard Gunnerson, is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
21 Defendant Richard Gunnerson personally signed the verified complaint for Unlawful Detainer.

22 49. Defendant NAIMAN LAW GROUP is a California law firm, entity unknown,  
23 specializing in unlawful detainer prosecution in this state with its principal place of business in  
24 La Jolla, California. Defendant, Naiman Law Group, is a “debt collector” as defined by 15  
25 U.S.C. § 1692a(6). On or about August 4, 2010, Defendant Naiman Law Group filed an  
26 Unlawful Detainer action after an improper foreclosure against Plaintiffs Rene Zepeda and  
27 Otilia Zepeda.

28 ///

1           50. Defendant RANDALL NAIMAN is an attorney, employed by Defendant  
2 Naiman Law Group, with his principal place of business in La Jolla, California. Defendant  
3 Randall Naiman is a “debt collector” as defined by 15 U.S.C. § 1692a(6). Defendant Randall  
4 Naiman personally signed the complaint for Unlawful Detainer.

5           51. Defendant LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN is a  
6 California law firm, entity unknown, specializing in unlawful detainer prosecution in this state  
7 with its principal place of business in Moreno Valley, California. Defendant Lewitt, Hackman,  
8 Shapiro & Harlan are “debt collectors” as defined by 15 U.S.C. § 1692a(6). On or about March  
9 18, 2010 Defendant Lewitt, Hackman, Shapiro, Marshall & Harlan filed Unlawful Detainer  
10 action after an improper foreclosure against Plaintiff Deborah McIntyre.

11           52. Defendant NICHOLAS KANTOR is an individual attorney, employed by  
12 Defendant LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN, with his principal  
13 place of business in Moreno Valley, California. Defendant Nicholas Kantor is a “debt collector”  
14 as defined by 15 U.S.C. § 1692a(6). Defendant Nicholas Kanter personally signed the verified  
15 complaint for Unlawful Detainer.

16           53. Defendant MALCOLM AND CISNEROS is a California Law Corporation, with  
17 its principal place of business in Irvine, California. Defendant Malcolm and Cisneros are “debt  
18 collectors” as defined by 15 U.S.C. § 1692a(6). On or about November 20, 2009, Defendant  
19 Malcom and Cisneros filed Unlawful Detainer action after an improper foreclosure against  
20 Plaintiffs Carlos Marroquin and Suzanna Marroquin.

21           54. Defendant, WILLIAM G. MALCOLM, is an individual attorney, employed by  
22 Defendant Malcom and Cisneros with his principal place of business in Irvine, California.  
23 Defendant, William G. Malcolm, is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

24           55. Defendant NICHOLAS BRUTOCAO is an individual attorney, employed by  
25 Defendant MALCOM AND CISNEROS, with his principal place of business in Irvine,  
26 California. Defendant Nicholas Brutocao is a “debt collector” as defined by 15 U.S.C. §  
27 1692a(6). Defendant Nicholas Brutocao personally signed the complaint for Unlawful Detainer.

28 ///

1           56. Defendant KEVIN HAHN is an individual attorney, employed by Defendant  
2 Malcom and Cisneros, with his principal place of business in Irvine, California. Defendant  
3 Kevin Hanh is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

4           57. Defendant MILES, BAUER, BERGSTROM & WINTERS, LLP, is a California  
5 limited liability partnership, with its principal place of business in Santa Ana, California.  
6 Defendant MILES, BAUER, BERGSTROM & WINTERS, LLP, is a “debt collector” as  
7 defined by 15 U.S.C. § 1692a(6). On or about March 30, 2010, Defendant Miles, Bauer,  
8 Bergstrom & Winters, LLP, filed Unlawful Detainer action after an improper foreclosure  
9 against Plaintiffs Timothy Hirou and Nora Hirou.

10           58. Defendant RYAN STOCKING is an individual attorney, employed by Defendant  
11 MILES, BAUER, BERGSTROM & WINTERS, LLP, with his principal place of business in  
12 Santa Ana, California. Defendant, Ryan Stocking, is a “debt collector” as defined by 15 U.S.C.  
13 § 1692a(6). Defendant Ryan Stocking personally signed the complaint for Unlawful Detainer.

14           59. Defendant SILVERSTEIN EVICTION LAW is a California law firm, entity  
15 unknown, specializing in unlawful detainer prosecution in this state with its principal place of  
16 business located at 14351 Redhill Avenue, Suite G, Tustin, California 92780. Defendant  
17 SILVERSTEIN EVICTION LAW is a “debt collector” as defined by 15 U.S.C. § 1692a(6). On  
18 or about February 10, 2010, Defendant Silverstein Eviction Law filed three (3) separate  
19 Unlawful Detainer actions after improper foreclosures against Plaintiffs Trung Tan Huynh,  
20 Thuy Thanh Nguyen and Cuong Tan Nguyen.

21           60. Defendant STEVEN D. SILVERSTEIN is an individual attorney, specializing in  
22 unlawful detainer prosecution in this state with his principal place of business located at 14351  
23 Redhill Ave., Suite G, Tustin, California 92780. Defendant STEVEN D. SILVERSTEIN is a  
24 “debt collector” as defined by 15 U.S.C. § 1692a(6). On or about February 10, 2010, Defendant  
25 STEVEN D. SILVERSTEIN personally signed the verified complaints for each of the three  
26 Unlawful Detainer Complaints filed.

27           61. Defendant JACKSON & ASSOCIATES, INC., is a California law firm, entity  
28 unknown, specializing in unlawful detainer prosecution in this state with its principal place of

1 business located 4199 Campus Drive, Suite 700, Irvine, California 92612. Defendant  
2 JACKSON & ASSOCIATES, INC., is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
3 On or about December 10, 2009, Defendant Jackson & Associates, Inc., filed an Unlawful  
4 Detainer action after an improper foreclosure against Plaintiffs Dave E. Perez and Virginia V.  
5 Perez. In addition, on or about March 20, 2009, Defendant Jackson & Associates, Inc., filed an  
6 Unlawful Detainer action after an improper foreclosure against Plaintiff Marie C. Lime.

7 62. Defendant ROBERT J. JACKSON is an individual attorney, employed by  
8 Defendant Jackson & Associates, Inc., with his principle place of business at 4199 Campus  
9 Drive, Suite 700, Irvine, California, 92612. Defendant ROBERT J. JACKSON is a “debt  
10 collector” as defined by 15 U.S.C. § 1692a(6).

11 63. Defendant DAVID J. BOYER is an individual attorney, employed by Defendant  
12 Jackson & Associates, Inc., with his principle place of business at 4199 Campus Drive, Suite  
13 700, Irvine, California 92612. Defendant David J. Boyer is a “debt collector” as defined by 15  
14 U.S.C. § 1692a(6). Defendant David J. Boyer personally signed the verified complaint for  
15 Unlawful Detainer against Plaintiffs Dave and Virginia Perez.

16 64. Defendant DOUG V. PHAM is an individual attorney, employed by Defendant  
17 Jackson & Associates, Inc., with his principle place of business at 4199 Campus Drive, Suite  
18 700, Irvine, California, 92612. Defendant James Knoles is a “debt collector” as defined by 15  
19 U.S.C. § 1692a(6). Defendant Doug V. Pham personally signed the verified complaint for  
20 Unlawful Detainer against Plaintiff Marie C. Lime.

21 65. Defendant LAW OFFICES OF LES ZIEVE is a California law firm, entity  
22 unknown, specializing in unlawful detainer prosecution in this state with its principal place of  
23 business located at 18377 Huntington Blvd., Suite 201, Huntington Beach, California 92648.  
24 Defendant Law Offices of Les Zieve is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
25 On or about December 15, 2009, Defendant Law Offices of Les Zieve filed an Unlawful  
26 Detainer action after an improper foreclosure against Plaintiff Annie Anh Nguyen.

27 66. Defendant LES ZIEVE is an individual attorney, employed by Defendant Law  
28 Offices of Les Zieve, with his principle place of business located at 18377 Huntington Beach.,

1 Suite 201, Huntington Beach, California 92648. Defendant Les Zieve is a “debt collector” as  
2 defined by 15 U.S.C. § 1692a(6).

3 67. Defendant JAMES KNOLES is an individual attorney, employed by Defendant  
4 Law Offices of Les Zieve, with his principle place of business at 4199 Campus Drive, Suite  
5 700, Irvine, California 92612. Defendant James Knoles is a “debt collector” as defined by 15  
6 U.S.C. § 1692a(6). Defendant James Knoles personally signed the verified complaint for  
7 Unlawful Detainer against Plaintiff Annie Anh Nguyen.

8 68. Defendant ENDRES LAW FIRM, APC, is a California law firm, organized as a  
9 Professional Law Corporation, specializing in unlawful detainer prosecution in this state with its  
10 principal place of business located at 2121 2<sup>nd</sup> Street, Suite C105, Davis, California 95618.  
11 Defendant Endres Law Firm is a “debt collector” as defined by 15 U.S.C. § 1692a(6). On or  
12 about October 9, 2009, Defendant Endres Law Firm filed an Unlawful Detainer action after an  
13 improper foreclosure against Plaintiff Juliann Minh-Thao Tran.

14 69. Defendant DAVID R. ENDRES is an individual attorney, employed by  
15 Defendant Endres Law Firm, with his principle place of business located at 2121 2<sup>nd</sup> Street,  
16 Suite C105, Davis, California 95618. Defendant David R. Endres is a “debt collector” as  
17 defined by 15 U.S.C. § 1692a(6). Defendant David R. Endres personally signed the verified  
18 complaint for Unlawful Detainer against Plaintiff Juliann Minh-Thao Tran.

19 70. Defendant PITE DUNCAN, LLP, is a California law firm, organized as a limited  
20 liability partnership and specializing in unlawful detainer prosecution, with its principal place of  
21 business located at 4375 Jutland Drive, Suite 200, P.O. Box 17934, San Diego, California  
22 92177. Defendant Pite Duncan, LLP, is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
23 On or about November 5, 2009, Defendant Pite Duncan, LLP, filed an Unlawful Detainer action  
24 after an improper foreclosure against Plaintiffs Thanh Ngoc Bui and Thanh Thi Nguyen.

25 71. Defendant STEVE W. PITE is an individual attorney, employed by Defendant  
26 Pite Duncan LLP, with his principle place of business located at 4375 Jutland Drive, Suite 200,  
27 San Diego, California 92177. Defendant Steve W. Pite is a “debt collector” as defined by 15  
28 U.S.C. § 1692a(6).

1           72. Defendant JOHN D. DUNCAN is an individual attorney, employed by  
2 Defendant Pite Duncan LLP, with his principle place of business located at 4375 Jutland Drive,  
3 Suite 200, San Diego, California 92177. Defendant John D. Duncan is a “debt collector” as  
4 defined by 15 U.S.C. § 1692a(6).

5           73. Defendant DAVID E. MCALLISTER is an individual attorney, employed by  
6 Defendant Pite Duncan LLP, with his principle place of business located at 4375 Jutland Drive,  
7 Suite 200, San Diego, California 92177. Defendant David E. McAllister is a “debt collector” as  
8 defined by 15 U.S.C. § 1692a(6).

9           74. Defendant PETER J. SALMON is an individual attorney, employed by  
10 Defendant Pite Duncan, LLP, with his principle place of business located at 4375 Jutland Drive,  
11 Suite 200, San Diego, California 92177. Defendant Peter J. Salmon is a “debt collector” as  
12 defined by 15 U.S.C. § 1692a(6).

13           75. Defendant JASON W. SHORT is an individual attorney, employed by Defendant  
14 Pite Duncan LLP, with his principle place of business located at 4375 Jutland Drive, Suite 200,  
15 San Diego, California 92177. Defendant Jason W. Short is a “debt collector” as defined by 15  
16 U.S.C. § 1692a(6). Defendant Jason W. Short personally signed the verified complaint for  
17 Unlawful Detainer against Plaintiffs Thanh Ngoc Bui and Thanh Thi Nguyen.

18           76. Defendant SIMIS LAW GROUP is a California law firm, entity unknown,  
19 specializing in unlawful detainer prosecution in this state with its principal place of business  
20 located at 31877 Del Obispo Street, Suite 201, San Juan Capistrano, California 92675.  
21 Defendant Simis Law Group is a “debt collector” as defined by 15 U.S.C. § 1692a(6). On or  
22 about November 6, 2009, Defendant Simis Law Group filed an Unlawful Detainer action after  
23 an improper foreclosure against Plaintiffs Tamie Huynh and Hue Thi Cam Pham.

24           77. Defendant MICOLE SIMIS is an individual attorney, employed by Defendant  
25 Simis Law Group, with her principle place of business located at 31877 Del Obispo Street, Suite  
26 201, San Juan Capistrano, California 92675. Defendant Micole Simis is a “debt collector” as  
27 defined by 15 U.S.C. § 1692a(6). Defendant Micole Simis personally signed the verified  
28 complaint for Unlawful Detainer against Plaintiffs Thanh Ngoc Bui and Thanh Thi Nguyen.

1           78. Defendant STANLEY J. YATES is an attorney with his principal place of  
2 business located in Ventura, California. Defendant STANLEY J. YATES is a “debt collector”  
3 as defined by 15 U.S.C. § 1692a(6). Defendant STANLEY J. YATES personally signed the  
4 verified complaint for Unlawful Detainer against Jim Earl and Danielle Earl.

5           79. Defendant GAYLE JAMESON is an attorney with her principal place of  
6 business in San Diego, California. Defendant Gayle Jameson signed documents in the Unlawful  
7 Detainer action against Nancy and McCell Shaw.

8           80. Defendant JESSICA PARTRIDGE is an attorney with her principal place of  
9 business in San Diego, California. Defendant Jessica Partridge signed documents in the  
10 Unlawful Detainer action against Nancy and McCell Shaw.

11           81. Defendant REBECCA CARLE is an attorney with her principal place of business  
12 in San Diego, California. Defendant Rebecca Carle signed documents in the unlawful detainer  
13 action against Nancy and McCell Shaw.

14           82. Defendant MCCARTHY & HOLTHUS is a law firm that prosecuted the  
15 unlawful detainer against Nancy and McCell Shaw.

16           83. Defendant JOHN SAGINAW is an attorney with his principal place of business  
17 in Irvine, California. Defendant John Saginaw prosecuted the Unlawful Detainer against  
18 Stephen Day.

19           84. Defendant AMY STARRETT is an attorney with his principal place of business  
20 in Irvine, California. Defendant Amy Starrett prosecuted the Unlawful Detainer against Stephen  
21 Day.

22           85. Defendant ROBERT JACKSON AND ASSOCIATES is a law corporation with  
23 its principal place of business in Irvine, California. Defendant Robert Jackson and Associates  
24 prosecuted the Unlawful Detainer against Stephen Day.

25           86. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein  
26 as Does 1 through 200, inclusive, and, therefore, sue these Defendants by such fictitious names.  
27 Plaintiffs will amend this complaint to allege the true names and capacities of these Defendants  
28 when ascertained. Plaintiffs are informed and believe that each of the fictitiously named

1 Defendants is responsible in some manner for the occurrences alleged herein and proximately  
2 caused Plaintiffs damages.

3 87. Plaintiffs are informed and believe, and thereupon allege, that at all pertinent  
4 times each of the Defendants was the agent of each of the remaining Defendants, and /or acted  
5 with their consent, ratification and authorization, and/ or aided and abetted one another in doing  
6 the acts alleged herein, each of the Defendants acted in such capacity with respect to the  
7 remaining Defendants.

## 8 VI. CLASS ALLEGATIONS

9 88. This Class Action is being filed by Plaintiffs, pursuant to Federal Rule of Civil  
10 Procedure 23 on behalf of themselves and others similarly situated as against the defendant law  
11 firms and attorneys (collectively “Law Firm Defendants”) and other Defendants considered  
12 “debt collectors” within the meaning of the Fair Debt Collection Practices Act (“FDCPA”), and  
13 the Rosenthal Act.

14 89. Plaintiffs are currently unsure of which other defendants are debt collectors  
15 within the meaning of the FDCPA and Rosenthal Act because this is concealed by Defendants  
16 and Plaintiffs will amend this complaint when such is ascertained.

17 90. Plaintiffs bring this action on behalf of themselves and all other persons similarly  
18 situated, as members of a proposed Plaintiff Class. The class that Plaintiff seeks to represent is  
19 defined as: **All persons that have been named defendants in unlawful detainer actions by**  
20 **Law Firm Defendants, within 1 year preceding the filing of this complaint where the**  
21 **plaintiff brought the action after a foreclosure and trustee sale.**

22 91. This action has been brought and may properly be maintained as a class action  
23 under Rule 23 of the Federal Rules of Civil procedure.

24 92. This Court may maintain these claims as a class action pursuant to Fed. R. Civ.  
25 P. 23(b) (1), 23(b) (2), 23(b) (3), and/or 23(c) (4)(A), however, it is Plaintiffs’ current intent to  
26 seek certification under F.R.C.P 23(b)(2) seeking primarily equitable relief, statutory damages,  
27 and attorneys fees.

28 ///

1           93.     **Existence of an Identifiable Class** - The proposed Class definition is  
2 sufficiently definite so that it is administratively feasible for the Court to determine whether a  
3 particular individual is a member. Members of the Class may be identified from records  
4 maintained by Law Firm Defendants, various court records and by reviewing the named  
5 plaintiffs and defendants in all actions filed by the Law Firm Defendants within the last year.

6           94.     **Numerosity of the Class** - Fed. R. Civ. P. 23(a) (1): The members of all Classes  
7 are so numerous that joinder of all members is impracticable. The precise number of Class  
8 members and their addresses are unknown to Plaintiffs, but can be obtained from Defendants  
9 and from various court records. Class members can be notified of the pendency of this action  
10 based on those records, or by any means used by the defendants to notify them of the underlying  
11 unlawful detainer suits. The disposition of the claims of the Class members in a single action  
12 will provide substantial benefits to all parties and the Court.

13           95.     **Existence of Common Questions of fact and Law** - Fed. R. Civ. P. 23(a)(2)  
14 Plaintiffs, as Class Representatives, allege that the questions of law and fact relating to their  
15 claims are common to the claims of the class and the claims predominate over any questions  
16 affecting solely individual members, in satisfaction of rule 23(a)(2). These common legal and  
17 factual questions include:

- 18                     • Whether defendant debt collectors, by filing unlawful detainer actions, and  
19                     evicting or seeking to evict plaintiffs without having an assignment and/or  
20                     possession of the promissory note, without a proper assignment of the trust  
21                     deed mortgage, creating and using improper documents created by them to  
22                     foreclose, and when they knew or should have known of the fraudulent  
23                     scheme involved in securitization have violated:
  - 24                             - the Federal Fair Debt Collection Practices Act (“FDCPA”), 15  
25                             U.S.C. § 1692, *et seq.*, by engaging in unfair and unlawful debt  
26                             collection practices.
  - 27                             - the California Civil Code § 1788 - California Rosenthal Fair Debt  
28                             Collection Practices Act; and/or

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

- California Civil Code § 2924h; and/or
- California Business and Professions Code § 17200.

- Whether Plaintiffs and Class members have been injured by Defendants’ conduct;
- Whether Plaintiffs and Class members are entitled to compensatory damages, and the amount of such damages; and
- Whether Plaintiffs and Class members are entitled to statutory damages and the amount of such damages.
- Whether Plaintiffs and Class members are entitled to legal costs and fees.

96. **Typicality** - Fed. R. Civ. P. 23(a) (3): Plaintiffs claims are typical of the claims of the Class because defendants initiated suit against them without having an assignment of the note and mortgage, creating fraudulent documents to foreclose, and when they knew or should have known about the fraudulent scheme of securitization. Furthermore, all members of the Class are similarly affected by defendants’ wrongful conduct.

97. **Adequacy** - Fed. R. Civ. P. 23(a) (3) (4): Plaintiffs are an adequate representative of the Class because Plaintiffs’ interests overlap and are not in conflict with the interests of the Class. Plaintiffs have retained counsel competent in complex litigation, and Plaintiff intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

98. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(1). Class certification is appropriate pursuant to Rule 23(b)(1) because the prosecution of separate actions by individual members of the classes would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants and/or because adjudications respecting individual members of the classes would be a practical matter, be disparities of the interests of the other members or would risk substantially impairing or impeding their ability to prosecute their interests.

99. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(2). Class certification is appropriate pursuant to Rule 23(b)(2) because Defendants have acted or refused

1 to act on grounds generally applicable to all members of the class, thereby making final  
2 injunctive relief or declaratory relief as a whole appropriate. Plaintiffs and members of the Class  
3 have suffered, and will continue to suffer, harm and damages as a result of Defendants' unlawful  
4 and wrongful conduct. Plaintiffs currently intend to seek certification pursuant to Rule 23(b)(2).

5 100. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(3). A class action is  
6 superior to other available methods for the fair and efficient adjudication of the controversy  
7 under Rule 23(b)(3). Absent a class action, most members of the Class likely would find the  
8 cost of litigating their claims to be prohibitive, and will have no effective remedy at law. The  
9 class treatment of common questions of law and fact is also superior to multiple individual  
10 actions or piecemeal litigation in that it conserves the resources of the courts and the litigants  
11 and promotes consistency and efficiency of adjudication.

## 12 VII. FACTUAL ALLEGATIONS

13 101. The core of this action arises out of loans made to Plaintiffs (“the Subject  
14 Loans”) which were securitized and “predatory”.

15 102. Plaintiffs obtained the Subject Loans. During the closing, Originators acquired  
16 the Subject Loans, evidenced by promissory notes and secured by trust deeds on the homes.  
17 The terms of the Subject Loans were memorialized primarily in a promissory note.

18 103. The promissory notes were never properly assigned to anyone other than the  
19 original named promisee.

20 104. The funds for the loan were provided by Investors and fraud was committed in  
21 the securitization process as alleged above.

22 105. There was subsequent foreclosure related activity on the Subject Loans and  
23 unlawful detainer or other eviction suits filed.

24 106. The deed of trust identified various parties as the “lenders”. This was false and  
25 misleading because, *inter alia*, the funds came from Investors. In agreeing to sign the loan  
26 documents and to encumber the Subject Properties with deeds of trust, Plaintiffs relied upon  
27 promises made by the Originators.

28 ///

1           107. The Originators concealed from Plaintiffs their intent to securitize the loans and  
2 misrepresented the identity of the party providing the funds for his loan.

3           108. In many cases, assignments of a deed of trust were recorded which purportedly  
4 assigned the deeds of trust from the original named “lender” to third parties. These assignments  
5 were invalid, and possibly created fraudulently and/or forged.

6           109. In all cases, the amounts claimed to be in default are incorrect and/or includes  
7 charges not permitted under the loan documents.

8           110. Securitizers have made false statements concerning the amounts owing at various  
9 points in time to Plaintiffs. In fact, Defendants have never shown the proper amounts claimed  
10 owing on the loans and Plaintiffs are informed and believe Defendants cannot do so, due to the  
11 massively complex mathematical calculations that would be required.

12           111. In recording Notices of Defaults (“NODs”), Securitizers unlawfully initiated  
13 non-judicial foreclosure proceedings against Plaintiffs by improperly claiming amounts not  
14 owing.

15           112. The NODs state, inter alia: “NOTE(S) FOR THE ORIGINAL [Trust Deed]  
16 ...are presently held by the undersigned....” This was false. The foreclosing parties did not hold  
17 the notes.

18           113. Securitizers, in committing the acts alleged in this Complaint, are engaging in a  
19 pattern and practice of unlawful activity. In pursuing the non-judicial foreclosures, Securitizers  
20 represented that they had the right to payment under the note in connection with the Subject  
21 Loans, payment of which was secured by the deeds of trust. Whereas, in fact, the Securitizers  
22 were not in possession of the notes and they were neither holders of the note or assignees of the  
23 note or trust deed entitled to payment and therefore they were proceeding to foreclose without  
24 rights under the law.

25           114. The final stage of a foreclosure proceeding is a sale of the property through a  
26 public auction at which the current beneficial owner of the right to foreclose is the only lawful  
27 party who can provide instructions to the trustee on the amount of money to accept at the sale or  
28 to “credit bid” up to the amount owed on the loan. In fact, none of the Securitizers, or any of

1 their authorized agents, who have played a part in the non-judicial foreclosure proceedings were  
2 entitled to receive payment from the loan proceeds, or title to or possession of the Subject  
3 Properties. The making of the assertion in the foreclosure proceedings that the beneficiary  
4 named on the trust deed was entitled to foreclose and the NODs and trustee sale based on  
5 amounts not properly owing is an act of fraud or deceit within the meaning of Cal. Civ. Code  
6 §2924h.

7 115. The intent to securitize, the fraudulent acts and omissions involved in the  
8 origination, transfers of the Subject Loans, and securitization of the Subject Loans, were  
9 concealed from Plaintiffs.

10 116. Some of the Plaintiffs in the eviction actions claimed to have purchased the  
11 subject properties at the trustee sales (“Purchasers”), however, they are not Bona Fide  
12 Purchasers, had no legal right to possession, were informed of such in writing, and were asked  
13 to cooperate but instead pursued unlawful detainers.

14 117. Securitizers and Purchasers, by and through their attorneys, the Defendant Law  
15 Firms, filed Unlawful Detainer or other eviction actions against Plaintiffs claiming that their  
16 clients were the rightful owner of the subject properties and were entitled to possession. At the  
17 time these complaints were filed, Defendant Law Firms knew or should have known of the  
18 material defects of said foreclosure sales. *In fact, they were notified and had personal*  
19 *knowledge of such.* However, instead of ceasing their unlawful activities, the Law Firm  
20 Defendants personally verified the complaints, and in some cases other documents claiming to  
21 have personal knowledge of the complaints for eviction and asserted they knew their contents to  
22 be true. The real facts are that Defendant Law Firms were/are fully aware that Plaintiffs’ loans  
23 were securitized, and that their clients had no legal right to foreclose, and intentionally  
24 concealed this from the courts in the eviction actions in order to steal Plaintiffs’ properties.

25 118. Prior to this action being filed, Plaintiffs’ counsel sent letters to Defendant Law  
26 Firms, to give them actual notice of their involvement in furthering the fraud perpetrated on  
27 Plaintiffs and to warn them of their potential liability. Said letters requested that they cease their  
28 unlawful activities or stipulate to set-aside any judgments that had been entered in the Unlawful

1 Detainers. Defendants refused to stipulate or acknowledge their wrongdoing and, instead,  
2 proceeded with the wrongful eviction actions.

3 119. An example of the types of improper activities engaged in by Defendant Law  
4 Firms is illustrated by a recent decision in Utah, granting an injunction stopping all foreclosures  
5 by some of the Securitizers because of the failure of one of the Securizers co-conspirators to  
6 properly register in the State Of Utah.

7 **VIII. FIRST CAUSE OF ACTION**  
8 **VIOLATION OF THE FDCPA, 15 U.S.C. § 1692**  
9 **(Against Defendants Law Firms, and Other Loan Servicers Acting As Debt Collectors to**  
10 **Be Alleged By Amendment)**

11 120. Plaintiff repeats and re-alleges each and every allegation contained above.

12 121. Defendants have concealed the roles of the parties and Plaintiffs are unsure who  
13 the other “debt collectors” of the loans are. Plaintiffs will amend this complaint when the  
14 appropriate parties who were debt collectors are discovered.

15 122. Federal law prohibits the use of "any false, deceptive or misleading  
16 representation or means in connection with the collection of any debt..."

17 123. In foreclosing on Plaintiff's home, and prosecuting the subsequent unlawful  
18 detainers, the debt collector Defendants:

- 19 a. made false, deceptive and misleading representation concerning their  
20 standing to sue the plaintiffs and the interest in the debt;
- 21 b. falsely represented the status of the debt, in particular, that it was due and  
22 owing by defendants to plaintiffs at the time an eviction suit was filed;
- 23 c. falsely represented or implied that the debt was owing to defendants as an  
24 innocent purchaser for value, when in fact, such assignment had not been  
25 accomplished;
- 26 d. threatened to take action, namely engaging in collection activities and  
27 collection and foreclosure proceedings as trustees that cannot legally be  
28 taken by them, and

1 e. obtained access to state courts to evict home owners, under false  
2 pretenses, namely, that Defendants were duly authorized to engage in  
3 such activities when in fact they were not, and

4 f. in the case of Purchasers Law Firm Defendants, knew or should have  
5 known they did not acquire proper title and proceeded with eviction  
6 proceedings against Plaintiff home owners anyway.

7 124. Defendants did not, and cannot, obtain and/or file an assignment of the notes or  
8 mortgages of the named Plaintiffs or putative class members at this time as it would violate the  
9 "Pooling and Service Agreements" used in securitization.

10 125. Securitizers discovered that that the assignments and proper documents to collect  
11 the Subject Loans could not actually be located. To solve the problem of missing assignments,  
12 and other documents, new assignments were made and recorded. Most of these Assignments  
13 including those allegedly affecting the notes and mortgage for Plaintiffs residences contained  
14 false statements. The Assignments were prepared by specially selected law firms and companies  
15 that specialized in providing "mortgage default services" to banks and mortgage companies and  
16 which is the subject of a criminal investigation.

17 126. In all of these cases, the Assignments were prepared to conceal that no valid or  
18 proper assignments of the promissory notes or trust deeds ever occurred.

19 118. The foregoing acts and omissions of Defendants constitute violations of the  
20 FDCPA, including, but not limited to, 1692c, 1692d, 1692e, 1692f, 1692g, and 1692i.

21 127. Plaintiffs and Class members are entitled to recover equitable relief, statutory  
22 damages, actual damages, reasonable attorney's fees, and costs.

23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
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

**IX. SECOND CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA ROSENTHAL FAIR DEBT COLLECTION**  
**PRACTICES ACT (“Rosenthal Act”)**

**California Civil Code § 1788, et seq.**

**(Against Defendants Law Firms except those located outside California, And Other Loan Servicers Acting As Debt Collectors To Be Alleged By Amendment)**

128. Plaintiff repeats and re-alleges each and every allegation contained above.

129. “Debt collectors” named in this cause of action are subject to the Rosenthal Act.

130. Defendants have concealed the roles of the parties and Plaintiffs are unsure who the other “debt collectors” of the loan are, and Plaintiffs will amend this complaint when the appropriate parties who were debt collectors are discovered.

131. Defendants’ actions constitute a violation of California Civil Code § 1788, *et seq.*, also known as the Rosenthal Act, in that they threatened to take actions prohibited by law, including, without limitation: falsely stating the amount of a debt; increasing the amount of a debt by including amounts not permitted by law or contract; improperly foreclosing upon the Subject Residence; and using unfair and unconscionable means in an attempt to collect a debt.

132. Defendants’ misconduct has caused Plaintiffs to suffer actual damages.

133. As a result of Defendants’ misconduct, Plaintiffs and putative class are entitled to actual damages and statutory damages in an amount to be determined at trial. Moreover, said Defendants’ misconduct was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

134. Pursuant to the controlling contractual document(s) and applicable law, Plaintiffs and putative class are entitled to recover costs and reasonable attorneys’ fees.

**X. THIRD CAUSE OF ACTION**  
**WRONGFUL FORECLOSURE**

**(Against Defendants Law Firms, And Other Loan Servicers Acting As Debt Collectors To Be Alleged By Amendment)**

135. Plaintiff repeats and re-alleges each and every allegation contained above.

1           136. Because of the predatory nature of the loans, fraud in procuring the loans,  
2 securitizing it, and violations of federal and state law relating to the making of the loan, and  
3 improper assignments, Defendants had no right to foreclose on the Note or security, nor did they  
4 have any right to file an unlawful detainer or evict Plaintiffs and their efforts to do so constitute  
5 wrongful foreclosure.

6           137. Plaintiffs are informed and believe, and thereupon allege, that Securitizers, and  
7 each of them, were not in possession of the Notes pertaining to the Subject Residences, and are  
8 and were not otherwise entitled to payment.

9           138. Defendant Law Firms clients were not “person[s] entitled to enforce” the security  
10 interest on the Subject Properties.

11           139. The final stage of a foreclosure is a sale of the property at public auction  
12 pursuant to Cal. Civ. Code §2924, *et seq.*, and in particular Cal. Civ. Code §2924g(a), the  
13 trustee has the duty to make the sale fair and equitable to the trustors (Plaintiffs herein.) Any bid  
14 by the trustee for itself is suspect and unlawful. It is unlawful to offer to accept, or actually  
15 accept, consideration in order to not bid or to fix or restrain bidding. If an interested party is  
16 defrauded as a result, that party can recover damages and the wrongdoer can be fined,  
17 imprisoned, or both, pursuant to Cal. Civ. Code §2924h(g). At the auction third parties can bid  
18 to purchase the property. The current party entitled to obtain the money or property from the  
19 sale must give the trustee instructions on how much to accept at the sale, and/or whether to  
20 “credit bid” any specific amount, up to the full amount owed to the current beneficiary on the  
21 loan. Securitizers, and each of them, were not, and are not; the current beneficiaries on the deed  
22 of trust entitled to give instructions to the trustee, nor were they or are they entitled to keep the  
23 proceeds from any sale or the property. In commencing and processing a foreclosure said  
24 Securitizers committed deceit or fraud within the meaning of Cal. Civ. Code §2924h(g) and  
25 Law Firm Defendants knew or should have known of the violations of Cal. Civ. Code  
26 §2924h(g) entitling the plaintiffs to damages.

27           140. The NODs, Notices of Trustee Sales, and Trustee’s Deeds contained false  
28 statements. As more specifically set forth above, Defendants clients, and each of them, were not

1 in possession of the Notes in connection with the Subject Residences, are not the parties entitled  
2 to give instructions to the trustee, and were or are thus not entitled to enforce the security  
3 interests on the property.

4 141. Securitizers, and each of them, also failed to properly record and give notice of  
5 the Notice of Default, as provided by California Civil Code § 2923.5, subsection (b).

6 142. Securitizers, and each of them, did not have any legal right to foreclose upon the  
7 Subject Residences. The procedures implemented by said Securitizers in attempting to enforce  
8 the alleged security interest in the Subject Residences violated statutory requirements governing  
9 non-judicial foreclosure proceedings.

10 143. As a direct and proximate result of Defendants' misconduct, Plaintiffs and  
11 putative class have suffered damages, including, without limitation, direct monetary loss,  
12 consequential damages, and emotional distress.

13 144. In committing the wrongful acts alleged herein, Defendants, and each of them,  
14 acted with malice, oppression and fraud. Said Defendants' willful conduct warrants an award of  
15 exemplary damages in an amount sufficient to punish the wrongful conduct alleged herein and  
16 deter such misconduct in the future.

17 **XI. FOURTH CAUSE OF ACTION**

18 **VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**

19 **(Against Defendants Law Firms, except those located outside California And Other Loan**  
20 **Servicers Acting As Debt Collectors To Be Alleged By Amendment)**

21 145. Plaintiff repeats and re-alleges each and every allegation contained above.

22 146. Plaintiffs are informed and believe, and thereon allege, that Defendants  
23 committed unlawful, unfair and/or fraudulent business practices, as defined by California  
24 Business & Professions Code § 17200, by engaging in unlawful, unfair and fraudulent business  
25 practices as alleged herein.

26 147. As a result of Defendants' misconduct, Plaintiffs have suffered various damages  
27 and injuries according to proof at trial.

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

statutory law of unfair business practices;

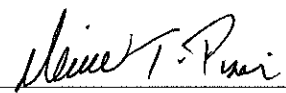
- 9. Any other further legal and/or equitable relief to which Plaintiff and Class members might be entitled at law or which the Court deems proper, including, according to proof, exemplary or punitive damages as may be necessary and appropriate to punish and deter any reprehensible or intentional misconduct.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury.

Dated: June 14, 2010

**PINES AND ASSOCIATES**

By:   
Michael T. Pine  
Attorneys for Plaintiffs