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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KEITH AND YING FORSTER, SONYA
FOSTER, GREGORY MCNUTT, WENDY
SCRIBNER, MICHELLE WILKINSON, DANA
MOODY, FLORIN MOLDOVAN, JOHN
JONES and MARTINE SONON-JONES,
RALPH and NANCY IANNUZZI, BRYAN
WEISZ, ALMA QUEZADA, and TODD and
LISA PHILLIPS, Individually and on behalf of
all others similarly situated,,

Plaintiffs,

WELLS FARGO & CO., WELLS FARGO
HOME MORTGAGE, and WELLS FARGO
BANK, N.A. D/B/A AMERICA'S SERVICING
COMPANY,

Defendants,

CLASS ACTION COMPLAINT

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

BZ

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CV 10 5321

1 Plaintiffs Keith and Ying Forster, Sonya Foster, Gregory McNutt, Wendy Scribner,
2 Michelle Wilkinson, Dana Moody, Florin Moldovan, John Jones and Martine Sonon-Jones, Ralph
3 and Nancy Iannuzzi, Bryan Weisz, Alma Quezada, and Todd and Lisa Phillips ("Plaintiffs"), by
4 their undersigned attorneys, bring this class action complaint against Wells Fargo & Co., Wells
5 Fargo Home Mortgage, and Wells Fargo Bank, N.A. (collectively, "Wells Fargo") d/b/a America's
6 Servicing Company ("ASC"). Plaintiffs' allegations are based upon knowledge as to their own
7 acts and upon information and belief as to all other matters. Plaintiffs' information and belief is
8 based upon, among other things, the investigation undertaken by Plaintiffs' attorneys, which has
9 included, without limitation: (a) interviews of witnesses; (b) review of ASC's published materials
10 and information available on the internet; (c) analysis of public records and documents; (d) news
11 sources, articles, and other publications; and (e) information contained in various newspapers,
12 magazines and other publications concerning the conduct alleged herein. Plaintiffs believe that
13 substantial evidentiary support will exist for the allegations set forth herein after a reasonable
14 opportunity for discovery.

15 NATURE OF THE ACTION

16 1. Plaintiffs bring this class action against Defendants for breach of the implied
17 covenant of good faith and fair dealing, equitable estoppel, inducing breach of contract, unjust
18 enrichment, and for unlawful, unfair, or fraudulent business practices in violation of California
19 Business & Professions Code §17200, *et seq.*

20 2. Defendants have engaged in a common business practice and have a policy of
21 improperly inducing Plaintiffs and members of the Class into breaching the terms of their mortgage
22 agreements and causing them to default on their mortgage loans. Defendants have engaged in this
23 business practice with the intention of collecting and retaining substantial late fees, interest and
24 penalties from mortgage borrowers arising from the very same mortgage defaults that Defendants
25 induced.

26 3. Plaintiffs and Class members have or have had a residential mortgage serviced by
27 ASC for which they sought a loan modification. At the time of their loan modification requests,
28 Plaintiffs and Class members had been current on all of their mortgage payments. However, they

1 were informed by ASC that they would not become eligible for a loan modification until they
2 defaulted on their mortgage payments.

3 4. ASC's policy and practice of representing that Plaintiffs and Class members must
4 breach their mortgage agreements to become eligible for loan modification caused Plaintiffs and
5 Class members to cease making timely mortgage payments and to fall into default. As a
6 consequence of complying with ASC's requirement that they breach their mortgage agreements,
7 Plaintiffs and Class members incurred substantial fees, interest and penalties.

8 5. While their loan modification requests were being reviewed—an agonizing and
9 frustrating process that can take up to six months or more while borrowers send and resend financial
10 information and constantly get the runaround from ASC employees—Plaintiffs and Class members
11 continued to accrue late fees, interest, and penalties. Regardless of whether their loan modification
12 requests were ultimately granted (a very slim minority) or denied, Plaintiffs and Class members
13 were stuck with the late fees, interest, and penalties accrued during the time their requests for
14 modification were being considered.

15 6. Defendants' policy and practice of inducing Plaintiffs and Class members to breach
16 their mortgage agreements constitutes an unlawful, unfair, and fraudulent business practice under
17 California law. Defendants' unlawful, unfair, and fraudulent business practices have deceived and
18 are likely to continue to deceive borrowers whose loans are serviced by ASC.

19 7. Accordingly, Plaintiffs, on their own behalf, and as representatives of the Class, seek
20 to recover compensatory damages resulting from Defendants' inducement of breach of mortgage
21 agreements, as well as restitution in the amount of fees, interest, and related penalties that
22 Defendants have collected and retained as a result of their unlawful, unfair, and fraudulent business
23 practices. Plaintiffs also seek injunctive relief to prevent Defendants from continuing to engage in
24 the unlawful, unfair, and fraudulent business practices described herein.

25 JURISDICTION AND VENUE

26 8. This Court has diversity subject-matter jurisdiction over this class action pursuant to
27 the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 ("CAFA"), which, *inter alia*,
28 amends 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions

1 where, as here: (a) there are 100 or more members in the proposed Class; (b) at least some members
2 of the proposed class have a different citizenship from Defendants; and (c) the claims of the
3 proposed Class members exceed the sum or value of five million dollars (\$5,000,000) in the
4 aggregate. *See* 28 U.S.C. § 1332(d)(2) and (6).

5 9. This Court has personal jurisdiction over the parties because Plaintiffs submit to the
6 jurisdiction of the Court, Defendants principal place of business is the State of California, and by
7 virtue of the fact that Defendants systematically and continually conduct business throughout the
8 State.

9 10. Venue is proper because Defendants' principal place of business is in this District,
10 they conduct substantial business in this District, and because certain of the violations affecting
11 Class members occurred in this District.

12 11. Intradistrict Assignment: Pursuant to Northern District of California Civil Local
13 Rules 3-2 and 3-5, assignment to the San Francisco Division of the Northern District of California is
14 appropriate. Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A. are headquartered in San
15 Francisco, and thus a substantial part of the events or omissions which give rise to the claims
16 occurred in San Francisco County.

17 **PARTIES**

18 12. Plaintiffs Keith and Ying Forster have had a residential mortgage serviced by ASC
19 for which they had sought a loan modification during the Class Period. Plaintiffs are residents of
20 San Jose, California.

21 13. Plaintiff Sonya Foster has had a residential mortgage serviced by ASC for which she
22 has sought a loan modification during the Class Period. Plaintiff Foster is a resident of Morganton,
23 North Carolina.

24 14. Plaintiff Gregory McNutt has had a residential mortgage serviced by ASC for which
25 he has sought a loan modification during the Class Period. Plaintiff McNutt is a resident of
26 Raymond, New Hampshire.

1 15. Plaintiff Wendy Scribner has had a residential mortgage serviced by ASC for which
2 she has sought a loan modification during the Class Period. Plaintiff Scribner is a resident of
3 Hidden Springs, Idaho.

4 16. Plaintiff Michelle Wilkinson has had a residential mortgage serviced by ASC for
5 which she has sought a loan modification during the Class Period. Plaintiff Wilkinson is a resident
6 of Loomis, California.

7 17. Plaintiff Dana Moody has had a residential mortgage serviced by ASC for which she
8 has sought a loan modification during the Class Period. Plaintiff Moody is a resident of Louisville,
9 Kentucky.

10 18. Plaintiff Florin Moldovan has had a residential mortgage serviced by ASC for which
11 he has sought a loan modification during the Class Period. Plaintiff Moldovan is a resident of Las
12 Vegas, Nevada.

13 19. Plaintiffs John Jones and Martine Sonon-Jones have had a residential mortgage
14 serviced by ASC for which they have sought a loan modification during the Class Period. Plaintiffs
15 John and Martine Jones are residents of Raymond, New Hampshire.

16 20. Plaintiffs Ralph and Nancy Iannuzzi have had a residential mortgage serviced by
17 ASC for which they have sought a loan modification during the Class Period. Plaintiffs Ralph and
18 Nancy Iannuzzi are residents of Madison, Connecticut.

19 21. Plaintiff Bryan Weisz has had a residential mortgage serviced by ASC for which he
20 has sought a loan modification during the Class Period. Plaintiff Weisz is a resident of Sandy,
21 Oregon.

22 22. Plaintiff Alma Quezada has had a residential mortgage serviced by ASC for which
23 she has sought a loan modification during the Class Period. Plaintiff Quezada is a resident of
24 Ocoee, Florida.

25 23. Plaintiffs Todd and Lisa Phillips have had a residential mortgage serviced by ASC
26 for which they have sought a loan modification during the Class Period. Plaintiffs Todd and Lisa
27 Phillips are residents of Rodanthe, North Carolina.

28

24. Defendant Wells Fargo Bank, N.A. ("Wells Fargo") is Wells Fargo & Co.'s principal subsidiary and primary operating unit in the United States. Wells Fargo is a Delaware Corporation with its principal place of business located at 420 Montgomery Street, San Francisco, California 94163. Wells Fargo is a diversified financial services company that provides retail, commercial, and corporate banking services through banking stores located in 39 states and the District of Columbia. Wells Fargo also provides financial services through subsidiaries engaged in various businesses, principally: wholesale banking, mortgage banking, consumer finance, equipment leasing, agricultural finance, commercial finance, securities brokerage and investment banking, insurance agency and brokerage services, computer and data processing services, trust services, investment advisory services, mortgage-backed securities servicing, and venture capital investment.

25. Defendant Wells Fargo Home Mortgage, a wholly owned division of Wells Fargo, is headquartered in West Des Moines, Iowa, and maintains operations/servicing centers in Springfield, Illinois, West Des Moines, Iowa, and Minneapolis, Minnesota.

26. Defendant ASC is a wholly owned division of Wells Fargo Home Mortgage and Wells Fargo that services loans for investors, trustees, and lenders under the ASC name on behalf of Wells Fargo. According to Wells Fargo Home Mortgage, "America's Servicing Company is the generic label used for this business because some of our competitors do not want the Wells Fargo name associated with their loans. By using the America's Servicing Company name, we avoid this problem." Defendant ASC conducts significant amounts of business within the State of California, including the County of San Francisco in which Wells Fargo is headquartered.

27. Defendants Wells Fargo, Wells Fargo Home Mortgage, and ASC are hereinafter referred to collectively as "ASC" or "Defendants."

CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action on behalf of all persons who: (1) have or had a residential mortgage that is currently being serviced or was previously serviced by ASC during the applicable statute of limitations (the "Class Period"); (2) sought a loan modification from ASC; (3) were current on their mortgage payments at the time they sought a loan modification from ASC; (4) were informed by ASC that they were not eligible for a loan modification unless and until they defaulted

1 on their mortgage payments; (5) defaulted on their mortgage payments in order to become “eligible”
2 for a loan modification, as falsely represented by ASC; and (6) were charged fees, interest, and
3 related penalties by ASC arising from their default on their mortgage payments (the “Class”).

4 29. This action is properly maintainable as a class action pursuant to Fed. Rule. Civ. P.
5 Rule 23. The Class is so numerous that joinder of all members is impracticable. By recent
6 estimates, ASC services tens of thousands of mortgage loans throughout the nation. Upon
7 information and belief, thousands of ASC’s mortgage holders were induced by ASC into defaulting
8 on their mortgage payments for the purpose of becoming “eligible” for a loan modification with
9 ASC, and were consequently charged fees, interest and penalties by ASC.

10 30. The number and identities of the loan borrowers whose mortgages are serviced by
11 ASC and who defaulted on their mortgage payments and sought loan modifications can easily be
12 determined from the mortgage records maintained by ASC or its agents. The disposition of their
13 claims in a class action will be of benefit to the parties and to the Court.

14 31. There is a well-defined community of interest in the questions of law and fact
15 involved affecting the members of the Class. Among the questions of law and fact which are
16 common to the Class, and which predominate over questions affecting any individual Class member,
17 are, *inter alia*, the following:

18 (a) Whether ASC has a policy and/or practice of inducing Plaintiffs and Class
19 members to breach the terms of their mortgage agreements by representing to Plaintiffs and Class
20 members that they must default on their mortgage payments as a prerequisite for having their loan
modification requests considered by ASC;

21 (b) Whether, and to what extent, Plaintiffs and members of the Class have been
22 damaged by breaching their mortgage agreements and being charged late fees, interest, and related
penalties by ASC, and the proper measure of damages;

23 (c) Whether ASC’s conduct constitutes an unlawful, unfair, or fraudulent
business practice;

24 (d) Whether Plaintiffs and the Class members are entitled to restitution in the
25 form of recovery of fees, interest, and related penalties that were unlawfully, unfairly, or
fraudulently collected and retained by ASC; and

26 (e) Whether Plaintiffs and the Class members are entitled to injunctive relief.
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33. Plaintiffs are adequate Class representatives because they are members of the Class and are committed to prosecuting this action. Plaintiffs will fairly and adequately represent and protect the interest of the members of the Class in that Plaintiffs do not have interests antagonistic to or in conflict with those they seek to represent. In addition, Plaintiffs have retained counsel that is competent and experienced in class-action litigation.

34. A class action is superior to other methods for the fair and efficient adjudication of the claims asserted herein, and no unusual difficulties are likely to be encountered in the management of this action as a class action. The likelihood of individual Class members prosecuting separate individual actions is remote due to the relatively small loss suffered by each Class member as compared to the burden and expense of prosecuting litigation of this nature and magnitude. Absent a class action, ASC is likely to avoid liability for its wrongdoing, and Class members are unlikely to obtain redress for the wrongs alleged herein. ASC's improper and deceptive business practices as described herein are continuing, capable of repetition, and will continue unless restrained and enjoined by the Court. Furthermore, the class action device would present far fewer management difficulties than individual trials and would provide the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

35. In February 2009, President Obama's Administration introduced a comprehensive Financial Stability Plan to address the key problems at the heart of the current crisis to get the nation's economy back on track. A critical piece of that effort is Making Home Affordable, a plan aimed at stabilizing the housing market and helping struggling homeowners get relief and avoid foreclosure. The Making Home Affordable Program offers strong options for homeowners, including among others, modifying first and second mortgage loans through the Home Affordable

1 Modification Program ("HAMP") to provide eligible homeowners with the opportunity to make
2 their mortgages more affordable.

3 36. A mortgage borrower can become eligible for a loan modification under the HAMP if
4 the borrower:

- 5 • Is the owner-occupant of a one-to-four unit home.
- 6 • Has an unpaid principal balance that is equal to or less than:
 - 7 ○ 1 Unit: \$729,750
 - 8 ○ 2 Units: \$934,200
 - 9 ○ 3 Units: \$1,129,250
 - 10 ○ 4 Units: \$1,403,400
- 11 • Has a first lien mortgage that was originated on or before January 1, 2009.
- 12 • Has a monthly mortgage payment (including taxes, insurance, and home owners
13 association dues) greater than 31% of his or her monthly gross (pre-tax) income.
- 14 • Has a mortgage payment that is not affordable due to a financial hardship that can be
15 documented.

16 37. Under the HAMP, there is no requirement that a mortgage borrower be in default in
17 their mortgage payments before they can become eligible for consideration of a loan modification.

18 38. At the time when Plaintiffs and the other members of the Class requested loan
19 modifications with ASC under either the HAMP or directly with ASC, they were current in their
20 mortgage payments. Thus, at the time they sought loan modifications with ASC, Plaintiffs and
21 members of the Class had fully performed their contractual obligations under their mortgage
22 agreements to make timely mortgage payments.

23 39. However, throughout the Class Period, ASC engaged in a common business practice
24 of inducing Plaintiffs and the Class to breach their mortgage agreements by requiring them to
25 default on their mortgage payments as a prerequisite to requesting a loan modification. Indeed, ASC
26 directly communicated with Plaintiffs and members of the Class that they would not be eligible for a
27 loan modification until they defaulted on their mortgage payments—regardless of whether there was
28 a provable financial hardship.

40. By enforcing this policy, ASC intended to deceive mortgage borrowers into believing
that they are not permitted to request a loan modification while they remain current on their

1 mortgage loans. ASC engaged in this business practice with the intent to induce borrowers to
2 default on their mortgage loans and to subsequently charge them substantial fees, interest and
3 penalties in connection with that default.

4 41. As a loan servicer, ASC has no vested interest in loans that are current or in
5 approving modifications. In fact, because ASC collects and retains late fees, interest, and penalties
6 from borrowers who default on their mortgage loans, regardless of whether those borrowers' loan
7 modification requests are granted or denied, ASC is motivated to induce borrowers to default.
8 Stated otherwise, ASC makes more money off borrowers facing foreclosure than it does from
9 borrowers in good standing. In short, ASC sets up borrowers to fail.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Covenant of Good Faith and Fair Dealing)**

12 42. Plaintiffs incorporate by reference and re-allege each and every allegation set forth
13 above, as though fully set forth herein.

14 43. For the purpose of this action, the mortgage agreements and notes (collectively
15 "mortgage agreements") forming the basis of the loans serviced by ASC are deemed to be valid and
16 enforceable contracts. Pursuant to the mortgage agreements, a borrower was required to make
17 monthly mortgage payments to ASC in an amount specified. Prior to requesting a loan modification
18 from ASC, each Plaintiff and member of the Class had performed his or her obligations under the
19 mortgage agreements and were current on his or her monthly mortgage payments.

20 44. Defendants have a duty of good faith and fair dealing that is implied in each of
21 mortgage agreements serviced by ASC, including the duty to permit Plaintiffs and Class members to
22 perform their obligations under their mortgage agreements free from inducement to breach those
23 mortgage agreements.

24 45. ASC breached its duty of good faith and fair dealing by, *inter alia*, inducing Plaintiffs
25 and members of the Class to breach their mortgage agreements by defaulting on their monthly
26 mortgage payments, thereby subjecting Plaintiffs and members of the Class to substantial fees,
27 interest, and penalties collected and retained by ASC.

1 from ASC, each Plaintiff and member of the Class had performed his or her obligations under the
2 mortgage agreements and were current on his or her monthly mortgage payments.

3 54. Despite acting as the loan servicer for each of the mortgage agreements binding
4 Plaintiffs and members of the Class, ASC acted independently of and antagonistically to the
5 interests of its principal for its own fraudulent and deceptive financial interests.

6 55. ASC took advantage of its knowledge of the existence of the mortgage agreements,
7 the terms thereof, and the fact that a borrower's failure to make mortgage payments in the specified
8 amount would constitute a breach of the mortgage agreements and result in increased revenue for
9 ASC and a financial loss for their principals (i.e., note holders/investors of the mortgages).

10 56. ASC intentionally induced Plaintiffs and members of the Class to default on their
11 mortgage payments through its practice and policy of willfully misrepresenting that defaulting on
12 the loan was a prerequisite for requesting a loan modification.

13 57. As a proximate cause of ASC's practice and policy of misrepresenting that borrowers
14 must default on their mortgage payments in order to request a loan modification, Plaintiffs and
15 members of the Class defaulted on their mortgage payments, thereby breaching their mortgage
16 agreements.

17 58. As a result of breaching their mortgage agreements, as induced by ASC, Plaintiffs
18 and members of the Class suffered harm by incurring exorbitant fees, interest and penalties. ASC
19 has collected and retained those fees, interest, and penalties from Plaintiffs and members of the
20 Class regardless of whether their requested loan modification was granted or denied.

21 59. Plaintiffs and members of the Class are therefore entitled to recover such amounts
22 that were collected and retained by ASC as a result of their inducement of Plaintiffs and members of
23 the Class to breach their mortgage agreements.
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FOURTH CAUSE OF ACTION

(Unjust Enrichment)

60. Plaintiffs incorporate by reference and re-allege each and every allegation set forth above, as though fully set forth herein.

61. As a result of ASC's inducement of breach of contract described above, ASC will be and has been unjustly enriched at the expense of Plaintiffs and the Class, resulting in fees, interest and penalties unlawfully collected and retained by ASC.

62. ASC wrongly charged Plaintiffs and the members of the Class, and directed and/or permitted its agents to retain fees, interest, and penalties that were collected and retained from Class members as a consequence of Class members' breach of their mortgage agreements, as induced by ASC.

63. By reason of the foregoing, Plaintiffs and each individual Class member are entitled to the return of the sums paid in fees, interest, and penalties that were incurred when Plaintiffs and Class members were induced by ASC into defaulting on their mortgage payments, which ASC mislead Plaintiffs and Class members to believe was a prerequisite for eligibility for a loan modification.

FIFTH CAUSE OF ACTION

(Violation of California Business & Professions Code, § 17200, *et seq.*,

Unlawful, Unfair, or Fraudulent Business Practices)

64. Plaintiffs incorporate by reference and re-allege each and every allegation set forth above, as though fully set forth herein.

65. California Business and Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which shall mean and include any "unlawful, unfair, or fraudulent business act of practice."

66. Defendants' conduct alleged herein constitutes unfair and fraudulent conduct under Cal. Bus. and Prof. Code § 17200, *et seq.* ASC has engaged in unfair and fraudulent business practices by inducing mortgage homeowners who were current on their mortgage payments to default on their mortgage payments in breach of their mortgage agreements. ASC has fraudulently

1 deceived Plaintiffs, and is likely to deceive members of the public, into defaulting on their mortgage
2 payments by informing mortgage homeowners who seek a loan modification that they are not
3 eligible for such modification until they default on their mortgage payments. ASC then charges
4 these borrowers exorbitant fees, interest, and penalties for defaulting on their mortgage payments.
5 ASC's inducement of Plaintiffs and members of the Class to breach their mortgage payments is also
6 unfair in that it is unethical, oppressive, unscrupulous and substantially injurious to Plaintiffs and
7 members of the Class.

8 67. In addition, ASC's conduct alleged herein constitutes, *inter alia*, breach of the
9 covenant of good faith and fair dealing and unjust enrichment, thus providing liability under the
10 "unlawful" prong of Cal. Bus. and Prof. Code § 17200, *et seq.*

11 68. Plaintiffs and members of the Class have been injured by Defendants' business
12 practices because Plaintiffs and members of the Class have lost a substantial amount of money in
13 fees, interest, and penalties that Defendants have collected and retained from them. Accordingly,
14 Plaintiffs seek restitution to recover all money paid to ASC by Plaintiffs and members of the Class
15 for fees, interest, and penalties that were unlawfully, unfairly, or fraudulently collected and retained
16 from them by ASC, as alleged herein.

17 69. Because Defendants' unlawful, unfair, or fraudulent business practices as described
18 herein are continuing, capable of repetition, and will continue unless restrained and enjoined by the
19 Court, Plaintiffs also seek injunctive relief requiring Defendants to cease from their unlawful, unfair,
20 or fraudulent business practices, as alleged above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

(a) Declaring that this lawsuit is properly maintainable as a class action and certifying Plaintiffs as representatives of the Class;

(b) Declaring that Defendants unlawfully induced Plaintiffs and the members of the Class to breach their mortgage agreements;

(c) Declaring that Defendants were unjustly enriched as a result of its inducement of Plaintiffs and members of the Class to breach their mortgage agreements, and that Defendants violated their duty of good faith and fair dealing towards Plaintiffs and the Class;

(d) Awarding damages against Defendants, in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law;

(e) Declaring that Defendants engaged in unlawful, unfair, and/or fraudulent business practices with Plaintiffs and the members of the Class;

(f) Awarding restitution to Plaintiffs and members of the Class (and disgorgement from Defendants) for all funds unlawfully acquired by Defendants by means of any business practices declared by this Court to violate Cal. Bus. & Prof. Code, § 17200, et seq.;

(g) Equitably estopping Defendants from retaining any funds obtained through misleading Plaintiffs and members of the Class as to the necessity of default on their mortgage payments prior to obtaining a modification and ordering disgorgement of the same;

(h) Permanently enjoining and restraining ASC directly or indirectly, through its sub-servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers and investors and others, from collecting any fees, interest, or penalties from mortgage homeowners who are induced by ASC into defaulting on their mortgage payments in order to have their loan modification requests considered by ASC;

(i) Awarding Plaintiffs and the Class their costs and disbursements and reasonable allowances for Plaintiffs' counsel and experts' fees and expenses; and

(j) Granting such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: November 23, 2010

SCHUBERT JONCKHEER & KOLBE LLP



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