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10 **SUPERIOR COURT OF CALIFORNIA**  
11 **COUNTY OF VENTURA**

12 NORMAN ROUSSEAU AND ORIANE  
13 ROUSSEAU,

14 Plaintiffs,

15 vs.

16 WELLS FARGO BANK, N.A.;  
17 WACHOVIA MORTGAGE; REGIONAL  
18 SERVICE CORPORATION, and DOES 1  
19 to 20, inclusive,

20 Defendants.

21 ) Case No. 56-2011-00398799-CU-OR-VTA  
22 )  
23 ) SECOND AMENDED COMPLAINT FOR  
24 ) BREACH OF CONTRACT; BREACH OF  
25 ) GOOD FAITH AND FAIR DEALING;  
26 ) WRONGFUL FORECLOSURE; TO  
27 ) CANCEL INSTRUMENTS; TO QUIET  
28 ) TITLE; FRAUD, MISREPRESENTATION  
AND DECEIT; UNFAIR BUSINESS  
PRACTICES; VIOLATIONS OF THE  
ROSENTHAL FAIR DEBT COLLECTION  
PRACTICES ACT.

BY FAX

Unlimited Jurisdiction  
JURY TRIAL DEMANDED

20 Comes now Plaintiffs NORMAN ROUSSEAU and ORIANE ROUSSEAU and allege as  
21 follows against Defendants WELLS FARGO BANK, N.A., WACHOVIA MORTGAGE, and  
22 REGIONAL SERVICE CORPORATION:

23  
24 **PARTIES**

25  
26 1. At all times relevant herein, Plaintiffs NORMAN ROUSSEAU and ORIANE  
27 ROUSSEAU were and are the owners in joint tenancy of real property commonly known as 580  
28 Wilshire Place, Newbury Park, CA 91320, County of Ventura (Hereafter, "Subject Property").

1 2. Plaintiffs are informed and believe, and thereon allege that Defendant WELLS FARGO  
2 BANK, N.A. (Hereinafter “WFB”), a national bank association with a principle place of business  
3 in Sioux Falls, South Dakota, is the successor in interest to Wachovia Mortgage, FSB, who in  
4 turn was the successor in interest to the originator of the Subject Loan, World Savings Bank,  
5 FSB. WF purportedly acquired title to the Subject Property at a foreclosure sale on November  
6 22, 2010.

7 3. Plaintiffs are informed and believe, and thereon allege that Defendant WACHOVIA  
8 MORTGAGE, form unknown, is now a division of WELLS FARGO BANK. WACHOVIA was  
9 the originator of the Subject Loan (using the WORLD SAVINGS BANK tradename); after it  
10 acquisition/merger with WFB, WACHOVIA purportedly serviced the loan on behalf of WFB.

11 4. Plaintiffs are informed and believe, and thereon allege that Defendant REGIONAL  
12 SERVICE CORPORATION, (Hereafter “RSC”), organized under the state of California, with its  
13 principle place of business in Seattle, Washington, is a licensed California Corporation in the  
14 business of acting as a non-judicial foreclosure trustee. RSC purportedly acted as a duly  
15 substituted trustee in conducting the foreclosure sale of the Subject Property.

16 5. Defendant DOES 1 - 20 are sued by their fictitious names pursuant to C.C.P. §494. Their  
17 true names and capacities are unknown to Plaintiff. Plaintiff will amend this complaint to allege  
18 their true names and capacities when ascertained.

19 6. Plaintiff believes that each fictitiously named Defendant DOE 1-10 is a person or entity  
20 who participated in, assisted, advised, was retained by, or counseled by one of the other  
21 Defendants herein in connection with the acts alleged herein of which Plaintiff complains. Said  
22 fictitiously named Defendants were agents, servants, employees, alter egos, superiors, successors  
23 in interest, joint venturers and/ or co-conspirators of each of their co-defendants and in doing the  
24 things herein after mentioned, or acting within the course and scope of their authority of such  
25 agents, servants, employees, alter egos, superiors, successors in interest, joint venturers and/ or  
26 co-conspirators with the permission and consent of their co-defendants and, consequently, each  
27 Defendant named herein, and those Defendants named herein as DOES 1 through 10, inclusive,  
28 are jointly and severally liable to Plaintiff for the damages and harm sustained as a result of their

1 wrongful conduct.

2 7. Plaintiff herein names as Defendants DOES 11-20 in this action all unknown persons  
3 claiming: a) any legal or equitable right, title, estate, lien, or interest in the Subject Property  
4 described in the complaint adverse to Plaintiff's title; or b) any cloud on Plaintiff's title to the  
5 Subject Property. The claims of each unknown Defendant and fictitiously named Defendant are  
6 without any right, and these Defendants have no right, title, estate, lien, or interest in the Subject  
7 Property. Plaintiff seeks by way of this complaint to extinguish and eliminate each and every  
8 claim of right by fictitiously named DOES 11- 20.

9  
10 RELATIONSHIP OF DEFENDANTS WORLD, WACHOVIA and WELLS

11  
12 8. Although the Subject Loan was originated in the name of WORLD SAVINGS BANK,  
13 FSB, ("WORLD") at the time of the loan origination in November 2007, WORLD had already  
14 been purchased by WACHOVIA MORTGAGE, FSB, (Hereafter, "WACHOVIA"). In October  
15 2008, WELLS FARGO BANK, N.A. agreed to purchase WACHOVIA. The acquisition was  
16 completed in January 2009. WELLS FARGO acquired title to the Subject Property as "Wells  
17 Fargo Bank, NA, also known as Wachovia Mortgage, a division of Wells Fargo Bank, NA,  
18 formerly known as Wachovia Mortgage, FSB, formerly known as World Savings Bank, FSB."

19 9. Plaintiffs are informed and believe, and thereon allege, that while the specific acts and  
20 omissions referenced herein were committed by WACHOVIA (f.k.a. WORLD), liability is  
21 imputed upon WELLS FARGO, as their successor to interest.

22  
23  
24 FACTUAL ALLEGATIONS

25  
26 10. In March 2000, Plaintiffs NORMAN ROUSSEAU ("N. ROUSSEAU") and ORIANE  
27 ROUSSEAU, ("O. ROUSSEAU") (collectively, the "ROUSSEAUS" or Plaintiffs), husband and  
28 wife, acquired the Subject Property, a single family residence commonly known as 580 Wilshire

1 Place, Newbury Park, CA 91320 and whose legal description is as follows:

2 All that certain real property situated in the County of Ventura,  
3 State of California, described as follows:

4 Lot 21 of Tract No. 2159, in the City of Thousand Oaks, as shown  
5 on map recorded in Book 57, Pages 74 to 79 inclusive of Maps, in  
6 the office of the County Recorder of said County.

7 EXCEPT therefrom all oil, gas, minerals and other hydrocarbon  
8 substances lying below the surface of said land, but with no right  
9 of surface entry, as provided in deeds of record.

10 Assessor's Parcel Number: 661-0-162-100

11 11. A down payment of nearly thirty percent (30%), representing the couple's life savings,  
12 was used for the purchase. At all times since, the Subject Property has been their sole and  
13 primary residence.

14 12. In or about April 2002 and again in or about September 2006, Plaintiffs were solicited by  
15 WORLD SAVINGS BANK ("Hereafter, "WORLD") to refinance their mortgage and were  
16 steered into Payment Option ARMs.

17 13. A third consecutive Payment Option Loan by WORLD/WACHOVIA, consummated on  
18 November 14, 2007, is the Subject Loan at issue in this case.

19 14. For several months prior to the Subject Loan, Plaintiffs were solicited to refinance their  
20 mortgage each month when they went to a local WORLD branch office to make their monthly  
21 payment for the previous Pick-A-Pay Loan. The teller urged Plaintiffs to meet with a WORLD  
22 loan consultant to discuss new loan products available to valued, long-term and well-qualified  
23 customers such as the ROUSSEUAS. In or about October of 2007, Plaintiffs agreed to meet  
24 with WORLD/WACHOVIA loan officer ERIC COOPER (Hereafter, "COOPER").

25 15. Plaintiffs stated that they were only interested in obtaining a conventional 30-year, fixed-  
26 rate loan, and explained their desire to have consistent payments over the life of the loan.

27 16. After reviewing Plaintiffs' account and discussing their financial situation, COOPER  
28 assured Plaintiffs that they could significantly reduce their monthly payments, by more than  
\$600 per month, with a lower interest refinance loan.

17. COOPER advised Plaintiffs that a new Pick-A-Payment loan product was better suited to

1 their situation. Describing the Payment Option ARM as the new industry standard, COOPER  
2 pointed out that the lower interest rate and payment flexibility were valuable advantages not  
3 available with other loan products. More importantly, unlike the previous WORLD loans, the  
4 interest was tied to an index with historically low rates that were continuing to decrease.  
5 According to COOPER, industry experts projected the interest rates to continue to fall, and  
6 Plaintiffs monthly payments would be even lower than the initial payments.

7 18. Even under the worst case scenario, COOPER assured Plaintiffs that historical data for  
8 the index indicated that changes in interest rate were slight, and if an increase should occur it  
9 would have a negligible effect on their monthly payments of no more than a few dollars.

10 19. In any event, the loan would almost certainly be short-term, as Plaintiffs should expect to  
11 refinance within the next two years to take advantage of even more favorable interest rates and as  
12 the steadily rising housing values increased the amount their equity in the property.

13 20. COOPER offered to personally walk Plaintiffs through the process and to be available to  
14 answer any questions or concerns that might arise, but expected quick approval given their  
15 excellent account history and superior qualifications. On the condition that Plaintiffs begin the  
16 application process that day, COOPER agreed to waive the pre-payment penalty, stating that  
17 there would be virtually no costs beyond a \$35.00 application fee.

18 21. COOPER also convinced Plaintiffs that it was in their best financial interests to  
19 consolidate approximately \$25,000 in unsecured debt in the refinance transaction, citing the  
20 benefit of the lower interest rate and the convenience of having only one payment.

21 22. Plaintiffs provided COOPER with accurate and truthful information regarding their  
22 income and assets, and COOPER represented that he would complete the Quick Qualifying Loan  
23 Application on their behalf.

24 23. On or about November 1, 2007, WACHOVIA arranged for a notary to complete the  
25 closing at the ROUSSEAU's home. Although the notary discouraged review of the documents  
26 and directed Plaintiffs to the signature lines, Plaintiffs noticed that a pre-payment penalty in  
27 excess of \$4000.00 was including in the closing costs, contrary to COOPER's representation.

28 24. Plaintiff's contacted COOPER by telephone, who apologized for the oversight, but

1 encouraged Plaintiffs to sign anyway, stating that the mistake would only add a few dollars to  
2 their monthly payment. Plaintiffs opted to reschedule the closing after the documents had been  
3 corrected.

4 25. On or about November 14, 2007, the notary returned to the ROUSSEAU's home and  
5 consummated the loan transaction, executing a promissory note in the amount of \$368,000  
6 secured by a Deed of Trust in favor of WORLD. The Deed of Trust, recorded November 21,  
7 2007, as Instrument No. 20071131-00213907-0, is attached as Exhibit "1" and incorporated  
8 herein by reference.

9 26. Unknown to Plaintiffs at the time, COOPER had acted contrary to the interests of the  
10 ROUSSEAU's and misrepresented several aspects of the Subject Loan, including:

- 11 A. The 7.2% interest rate for the Subject Loan was actually higher than the 2006 loan  
12 and greater than the 6.8% quoted by COOPER; an illusion of a "significant reduction  
13 in monthly payments" was accomplished by comparing the fully amortized payment  
14 of the 2006 loan with the negative amortizing minimum payment due under the 2007  
15 refinance loan.
- 16 B. The Subject Loan was a fixed rate loan, not a variable. At annual change dates,  
17 deferred interest was added to principle and the loan amortized, with payment  
18 increases capped at 7.5% for ten years. The loan recast when negative amortization  
19 reached 125%.
- 20 C. The fully amortizing payment of \$2,497.94 per month was never disclosed to  
21 Plaintiffs and was intentionally misrepresented by COOPER. The monthly payment  
22 could never decrease because it represented the minimum, negatively amortizing  
23 option that insured payments would increase at each change date.
- 24 D. Plaintiffs were charged \$2,640.00 in origination fees for the "low cost" refinance.  
25 These costs included "junk fees" solely designed to increase profits for WORLD:
  - 26 1. Document fee of \$150.00.
  - 27 2. Application fee of \$75.00.
  - 28 3. Redraw fee of \$200.00, charged to Plaintiffs to re-draft documents caused by

1 WORLD's "mistake" in including prepayment penalties at initial closing.

2 E. An undisclosed, and therefore unlawful Yield Spread Premium ("YSP") of \$4,195.00  
3 was charged to Plaintiff's for placing them in a loan with an interest rate .50% higher  
4 than what they qualified for. The YSP increased monthly payments by \$123.32, or  
5 \$44,395.20 over the life of the loan.

6 F. Contrary to COOPER's assurances, the ROUSSEAU's were far from well-qualified  
7 for the Subject Loan. The fully amortized payment represented a total debt-to-  
8 income ratio of 27.91%, but as detailed below, the percentage was based on income  
9 figures that were grossly overstated by COOPER.

10 G. Consolidation of Plaintiff's unsecured debt into long-term, secured debt was contrary  
11 to Plaintiffs' interests and increased the risk of default.

12  
13 27. Plaintiffs were also unaware at the time that their financial information on the loan  
14 application had been fraudulently doctored without their knowledge or consent, and contrary to  
15 the truthful and accurate information provided to COOPER. In particular:

16 A. The couple's income was grossly inflated. Their total gross annual income, reported  
17 accurately to COOPER as \$76,000, was listed as \$136,800 on the application.

18 Notably, this represents an increase of \$5200 in monthly income as reported on the  
19 2006 WORLD loan application less than a year prior.

20 B. Liquid assets of \$4500 are listed without account information, while the couple's  
21 \$25,000 of debt is not listed as liabilities.

22 C. In addition, the ROUSSEAU's net worth, listed as over \$600,000, is based on the  
23 market value of the Subject Property as if unencumbered by existing mortgages.

24  
25 28. Plaintiffs are informed and believe, and thereon allege that COOPER stepped outside the  
26 typical role of lender in soliciting the refinance, recommending the particular loan as the most  
27 suitable based on an assessment of Plaintiffs financial circumstances, and making assurances that  
28 COOPER was acting in the best interests of Plaintiffs. Such representations were intended to,

1 and did, create trust reliance and trust on the part of Plaintiffs. COOPER's misrepresentations  
2 were intentionally designed to induce Plaintiff to enter into an unconscionable contract for the  
3 sole benefit of WORLD/WACHOVIA and its agents.

4 29. The conduct of WORLD/WACHOVIA constituted predatory lending practices,  
5 including, inter alia: loan flipping, equity stripping, loan steering, negative amortization,  
6 excessive fees and costs, using a stated income application for W2 wage earners, and relying on  
7 equity in the collateral rather than consideration of the borrower's ability to repay.

8 30. Plaintiffs are informed and believe, based on industry-wide practices,  
9 WORLD/WACHOVIA supplied specific criteria for loan approval to loan officers and  
10 processors, and that during the application process COOPER and/or one or more employees of  
11 WORLD/WACHOVIA colluded to falsify income, assets, mitigating factors and/or other criteria  
12 necessary for approval of the payment option ARM loan. Further, that WORLD/WACHOVIA  
13 provided the eligibility minimums with the knowledge and expectation that its loan officers and  
14 processors would doctor the loan application to ostensibly conform to underwriting guidelines.

15 31. From the inception of the Subject Loan, Plaintiffs remitted their monthly payment in the  
16 form of cash or cashier's check at the local WACHOVIA branch in Thousand Oaks, California.  
17 Plaintiffs timely made all monthly payments for 2007 and 2008.

18 32. From January to December of 2009, Plaintiffs minimum monthly payment was  
19 \$1,615.00.

20 33. In their monthly statement for May 2009, dated April 9, 2009, Plaintiff's account showed  
21 a delinquency for the April payment of \$1,615.00, plus a \$15.00 fee for a check returned for non-  
22 sufficient funds.

23 34. On or about May 5, 2009, while making the monthly payment at the WACHOVIA  
24 branch, Plaintiff O. ROUSSEAU the teller confirmed that their account still showed a missing  
25 payment for April. At Plaintiff's request, Branch Manager PERI KERMANI called the  
26 corporate office to inquire about the disputed payment. Plaintiff was given a facsimile number to  
27 send a written dispute and proof of payment.

28 35. Plaintiff sent the dispute as instructed, providing the teller's receipt of payment received



1 by WACHOVIA on April 1, 2009, together with a copy of the cancelled Washington Mutual  
2 cashier's check, (No. 2158603223, dated March 23, 2009), showing that the check had been  
3 cashed on April 2, 2009. Plaintiff re-faxed the documentation numerous times, as WACHOVIA  
4 repeated claimed that it had not been received.

5 36. Beginning in or about the middle of May 2009 and continuing until at least September of  
6 2009, Plaintiffs received numerous telephone calls and voice mails from WACHOVIA collection  
7 department regarding the disputed payment. On average, Plaintiffs' received 6-8 phone calls per  
8 day, demanding payment on the account. Plaintiffs did not respond to the messages, believing  
9 that the dispute would be resolved after WACHOVIA reviewed the documented proof of  
10 payment. On numerous occasions, the calls from WACHOVIA were made well after 9:00 p.m.

11 37. Plaintiffs received a Notice of Intent to Foreclose, dated August 3, 2009, from  
12 WACHOVIA, claiming no payments had been made for June or July, and stating a deficiency in  
13 the amount of \$3,406.50.

14 38. On or about August 8, 2009, Plaintiff O. ROUSSEAU contacted WACHOVIA collection  
15 department and spoke with JOHN NICKELLS (Hereafter, "NICKELLS"). After researching the  
16 account history, NICKELLS stated that the account was current and apologized for the mistake.  
17 Plaintiff believed the dispute had been resolved and the April payment finally applied to their  
18 account.

19 39. However, Plaintiff N. ROUSSEAU received a letter from WACHOVIA, dated August  
20 21, 2009, sent certified mail, claiming unsuccessful attempts to contact Plaintiffs regarding the  
21 past due amount of \$3,487.25. Plaintiffs were urged to contact a WACHOVIA Mortgage Loan  
22 Counseling Representative immediately to discuss various payment options and assistance  
23 programs.

24 40. Completely frustrated in their dealings with WACHOVIA, Plaintiffs decided to seek  
25 professional assistance. In addition to the payment dispute, Plaintiffs wanted to explore the  
26 possibility of a loan modification. Plaintiffs retained the law firm of USMAC LAW GROUP  
27 (Hereafter, "USMAC") to act as their agent.

28 41. Representatives of USMAC explained some of the true terms of the Subject Loan, and

1 for the first time, in or about September of 2009, Plaintiffs began to discover the  
2 misrepresentations made by COOPER. Plaintiffs did not learn the true extent of the  
3 misrepresentations and other fraudulent acts until sometime after foreclosure, when the loan  
4 origination documents were thoroughly examined.

5 42. Plaintiffs received a letter from the WACHOVIA Cashiering Department, dated August  
6 26, 2009, stating that the results of their research determined that Check No. 1900319572, for  
7 April 2009 payment, had not been returned for insufficient funds, but instead a stop payment had  
8 been placed on the cashier's check. Plaintiffs were entirely confused and frustrated, especially  
9 because the proof of payment they submitted bore check No. 2158603223, and no cashier's  
10 check remitted as payment in 2009 bore the check number referenced by WACHOVIA.

11 43. An examination of Check No. 2158603223 reveals that "Not Used for Purpose Intended"  
12 was inexplicably stamped above the endorsement line. Until very recently, Plaintiffs were  
13 unaware of the legal significance of the stamped notation. However, the endorsement signature  
14 is not that of either Plaintiff, and Plaintiffs did not cancel the check or receive the funds.  
15 Furthermore, the cashier's check was cashed on April 2, 2009, after it had been personally  
16 presented to WACHOVIA.

17 44. Since the teller's receipt establishes that the cashier's check was in the custody and  
18 control of WACHOVIA on April 1, 2009, the research by the Cashiering Department should  
19 have concluded that WACHOVIA erred in not applying the cash-equivalent funds to Plaintiff's  
20 account. After deliver and acceptance to the branch office, it was WACHOVIA's responsibility  
21 to safeguard the instrument; WACHOVIA itself effectively stopped payment on the cashier's  
22 check.

23 45. Plaintiffs have initiated an investigation with the issuing bank, Washington  
24 Mutual/Chase, and are awaiting the results.

25 46. After failing to properly apply the April payment to their account, WACHOVIA sent  
26 monthly statements and letters that were confusing, contradictory, and incomprehensible, and  
27 could not be reconciled by the misapplication of one payment.

28 47. For example, Plaintiffs received two monthly statements for payments due in June, July

1 and October of 2009. In each of these months, the two statements were sent less than weeks  
2 apart, yet without explanation claimed a different total payment necessary to bring the account  
3 current.

4 48. The two monthly statements for the payment due for October 2009 are particularly  
5 notable. Despite being current on their loan payments, Plaintiffs received the following  
6 information regarding the November 2009 payment:

7 A. Statement dated October 20, 2009: The account is reported delinquent by three (3)  
8 monthly payments totaling \$4,845.00, with \$257.25 in assessed late fees. The  
9 transaction history shows that on October 1, 2009, a "MISC APPL PAY" of \$1615.00  
was applied to the account.

10 B. Statement dated October 29, 2009: The account is reported as two payments behind.  
11 The transaction history states that on October 23, 2009, the payment for August 1,  
2009 was applied to the account. Plaintiffs made the August payment with a  
12 cashier's check at the WACHOVIA branch.

13 49. On or about September 1, 2009, Plaintiffs attempted to make their monthly mortgage  
14 payment at a local WACHOVIA branch office. The teller stated that WACHOVIA could not  
15 accept the September 2009 payment because the loan was under review for a loan modification.

16 50. Plaintiffs' agent, USMAC, contacting WACHOVIA, and informed Plaintiffs that while  
17 payments would no longer be accepted at the bank branch, WACHOVIA would accept a  
18 payment, in cashier's check form only, mailed to WACHOVIA at the address listed on the  
19 monthly statement. Plaintiffs mailed the payment and later received confirmation that the check  
20 had been cashed.

21 51. Plaintiffs are informed and believe, and thereon allege that USMAC sent a request for  
22 loan modification to WACHOVIA by facsimile on or about September 8, 2009, together with  
23 supporting financial documentation.

24 52. Plaintiffs' affidavit of hardship included a significant decrease in income due to N.  
25 ROUSSEAU's unemployment and O. ROUSSEAU's decrease in work hours.

26 53. On or about October 1, 2009, Plaintiffs payment was again refused by the WACHOVIA  
27 branch teller. Plaintiffs mailed a cashier's check for the full amount of the monthly payment  
28 due.

1 54. On or about November 1, 2009, Plaintiffs went to the WACHOVIA branch office and  
2 were surprised that the teller accepted their monthly payment, a cashier's check in the full  
3 amount of the payment due.

4 55. Nevertheless, Plaintiffs received a letter from WACHOVIA, dated November 9, 2009,  
5 titled "Pre-Foreclosure Reinstatement Quote," advising Plaintiffs that their "loan has been  
6 approved for commencement of foreclosure which may cause you to lose your property and any  
7 owner's equity." Plaintiffs were given until November 21, 2009 to remit certified funds to cure  
8 an alleged deficiency in the amount of \$5,102.25.

9 56. On or about November 10, 2009, N. ROUSSEAU spoke with WACHOVIA customer  
10 service representative KEN by telephone. KEN informed Plaintiff that WACHOVIA had not  
11 received requested documentation for the loan modification. When Plaintiff inquired about the  
12 pre-foreclosure notice, KEN stated that they were routine and automatically generated as a  
13 reminder that the loan modification needed updated information.

14 57. Plaintiffs are informed and believe, and thereon allege that USMAC promptly responded  
15 to each and every request for additional documentation from WACHOVIA by sending  
16 documents via facsimile to the loss mitigation department. However, WACHOVIA repeatedly  
17 claimed that documents were not received, requiring multiple submissions. In addition,  
18 WACHOVIA persistently required certain documents to be "updated" unnecessarily, including  
19 IRS Form 4605T authorization. Also, although the third party authorization has no expiration  
20 date, WACHOVIA required re-submission of the form and letter of representation from USMAC  
21 every three months. Furthermore, WACHOVIA derailed the loan modification process  
22 numerous times for failure to submit documentation that was not requested prior.

23 58. On or about December 1, 2009, Plaintiff s attempted to make a monthly mortgage  
24 payment at the local WACHOVIA branch, but the cash payment was refused. The branch  
25 manager arranged a conference call with a representative of the loss mitigation department, who  
26 informed Plaintiffs that WACHOVIA was prohibited from accepting payments while the loan  
27 modification review process was pending. The WACHOVIA representative also stated that the  
28 review process was expected to take two months.

1 59. Although WACHOVIA refused to accept any payments, collection letters continued,  
2 demanding payment of the alleged arrearages.

3 60. In or about January to March of 2010, Plaintiffs contacted WACHOVIA several times by  
4 telephone to obtain the status of the loan modification review. WACHOVIA representatives  
5 refused to provide information to Plaintiffs, stating that WACHOVIA could only release  
6 information to Plaintiffs' authorized agents at USMAC. During this same time, WACHOVIA  
7 refused to talk with USMAC until another re-authorization was submitted by Plaintiffs.

8 61. On or about March 10, 2010, Plaintiffs and their agent contacted WACHOVIA by  
9 telephone. Claiming yet again that documentation had not been received, Plaintiffs were told  
10 that their modification was no longer being considered. Plaintiffs eventually obtained  
11 confirmation that the information had been received, but had not yet been entered into the system  
12 by the processing department.

13 62. Plaintiffs contacted WACHOVIA again on or about April 15, 2010, and received verbal  
14 confirmation that all information had been received and was in the review process.

15 63. In a letter dated May 26, 2010, titled "Final decision on the Home Affordable  
16 Modification Program," WACHOVIA informed Plaintiffs that they were ineligible for HAMP,  
17 claiming that required documents were not provided as requested.

18 64. Upon receipt of the letter, Plaintiffs immediately contacted WACHOVIA customer  
19 service and were told that WACHOVIA never received requested information, the same  
20 information that WACHOVIA in March and April had confirmed as received.

21 65. Plaintiffs are informed and believe, and thereon allege that WACHOVIA reopened the  
22 application and confirmed receipt of requested documents on or about May 28, 2010.

23 66. In a letter dated June 8, 2010, WACHOVIA acknowledged the "recent request for  
24 payment assistance," and stated that their request had resulted in a request for loan modification.  
25 Inexplicably, WACHOVIA states, "Unfortunately, the loan modification request was  
26 withdrawn."

27 67. A Notice of Intent to Foreclose, also dated June 8, 2010, was sent to Plaintiffs from  
28 WACHOVIA.

1 68. Upon receipt of the Notice, Plaintiffs again contacted WACHOVIA for an explanation.  
2 A customer service confirmed that the loan modification was being processed and that the recent  
3 correspondence was automatically generated and mailed by the computer system.

4 69. A Notice of Default, (“NOD”), dated July 28, 2010 was recorded on July 29, 2010, as  
5 Instrument No. 20100729-00110969-0. The amount stated in the NOD as due and owing is  
6 \$17,348.52. The NOD is fatally defective for at least the following reasons:

7 A. The Subject Loan was not in default. The alleged arrearages were caused by  
8 WACHOVIA’s breach of contract in refusing to accept Plaintiffs’ monthly payments.

9 B. The alleged default was overstated by at least \$1,630.00, because the April 2009  
10 monthly payment, not applied to the account despite Plaintiffs proof, was included in  
11 the amount of default.

12 C. The alleged default was overstated by the amount of any late fees charged to  
13 Plaintiffs during the several months that WACHOVIA refused to accept their  
14 payments.

15 D. The alleged default as of 7/28/2010 in NOD contradicts the monthly statement  
16 provided to Plaintiffs, which claims the total amount due as of August 1, 2010, is  
17 \$16,062.02.

18 70. The NOD was executed as follows:

19 Regional Service Corporation, Trustee  
20 By LPS DEFAULT TITLE & CLOSING,  
as agent.

21 However, at the time the NOD was executed, Golden West was the trustee under the  
22 DOT. Although signing in the purported capacity of trustee, a Substitution of Trustee naming  
23 RSC as successor trustee, was not recorded until October 28, 2010.

24 71. The NOD was executed by MENGHONG BUT of LPS. Plaintiffs are informed and  
25 believe, and thereon allege that MENGHONG BUT is a notorious “robo-signer,” and appears to  
26 have executed the NOD with a signature stamp.

27 72. Plaintiffs are informed and believe, and thereon allege that the loan modification process  
28 was active, and Plaintiffs continued to send requested information to WACHOVIA by facsimile  
after the NOD was filed.

1 73. A Debt Validation Notice from REGIONAL TRUSTEE SERVICES CORPORATION,  
2 dated August 4, 2010, was sent to Plaintiffs, claiming total of debt due to WELLS FARGO  
3 BANK in the amount of \$406,745.01. Plaintiffs are informed and believe, and thereon allege  
4 that amount of alleged debt was overstated by at least \$1615.00, the April 2009 payment that was  
5 never applied to the loan account, as well as improper late fees and foreclosure costs in an  
6 unknown amount.

7 74. On October 28, 2010, a Notice of Trustee Sale (“NOTS”) was recorded in the Ventura  
8 County Recorder’s Office, with a scheduled sale date of November 22, 2010 at 10 a.m. The  
9 NOTS was recorded two days before it was purportedly executed by JEAN GREAGOR on  
10 October 30, 2010, purporting to act as agent of RSC.

11 75. Plaintiffs are informed and believe, and thereon allege that the loan modification process  
12 was active, and Plaintiffs continued to send requested information to WACHOVIA by facsimile  
13 after the NOTS was filed.

14 76. On or about November 10, 2010, Plaintiffs were informed by USMAC that WACHOVIA  
15 had denied their loan modification. Plaintiffs allege on information and belief that the denial was  
16 provided only verbally to USMAC. Plaintiffs did not receive a verbal or written denial directly  
17 from WACHOVIA, nor were they provide the reason for denial.

18 77. Plaintiffs and their agent contacted WACHOVIA by telephone and were told by customer  
19 service representative MARY that they were ineligible due to insufficient income. Plaintiffs  
20 were astonished and questioned why it took so long to make that determination when their  
21 income had been the same for past fourteen months. Moreover, Plaintiffs wanted to know why  
22 WACHOVIA waited until just twelve days prior to the trustee sale. MARY responded by  
23 abruptly hanging up on Plaintiffs.

24 78. In a complete panic facing the potential loss of their home, Plaintiffs consulted with a real  
25 estate attorney and learned about their right to reinstate the loan. On or about November 11,  
26 Plaintiffs contacted WACHOVIA and were given a telephone number to obtain a reinstatement  
27 quote.

28 79. Unfortunately, the contact information from WACHOVIA was incorrect, and Plaintiffs

1 were repeatedly re-routed to different departments and entities. Plaintiffs finally reached RSC by  
2 telephone on or about November 12, 2010.

3 80. Plaintiff explained that he had sufficient funds to cure the default, and was prepared to  
4 immediately remit the amount given on the last monthly statement. The RSC auditor informed  
5 Plaintiff that there were additional fees and costs, and that the reinstatement quote would take a  
6 couple of weeks. When Plaintiff explained that the trustee sale date was in ten days, the RSC  
7 representative apologized, but stated that there was no way to expedite the process. RSC agreed  
8 to send the quote to Plaintiff by facsimile.

9 81. On November 17, 2010, at 11:17 a.m., an email was sent from REGIONAL TRUSTEE  
10 SERVICES CORPORATION to Plaintiff N. ROUSSEAU. Plaintiffs do not know how RSC or  
11 REGIONAL TRUSTEE SERVICES CORPORATION obtained the email address. Expecting  
12 the reinstatement quote by facsimile, Plaintiff did not check his email until late that afternoon.

13 82. The reinstatement quote, dated November 15, 2010, two days prior to the email  
14 transmission, was attached to the email. The quote states in bold, underscored print that the  
15 quote expires in two days, and that funds must be received by WACHOVIA'S office in San  
16 Antonio by the close of business day on November 19, 2010.

17 83. A total amount of \$26,373.49 is alleged necessary to for reinstatement. In addition to  
18 monthly payments, this amount includes the following fees totaling \$4,046.17:

- 19 A. Late fees of \$1000
- 20 B. Foreclosure costs of \$2,619.75
- 21 C. Additional Costs (unspecified) of \$350.00
- 22 D. Corporate Advance Fee of \$30.00
- 23 E. Property preservation/inspection fee of \$30.00
- 24 F. Non-Sufficient Funds Fee of \$15.00 (April 2009 cashier's check)

25  
26 84. PLAINTIFFS WERE READY, WILLING AND ABLE TO TENDER THE FULL  
27 AMOUNT ALLEGED NECESSARY TO REINSTATE THE LOAN, EVEN THOUGH  
28 PLAINTIFFS DISPUTED THE AMOUNT CLAIMED BY DEFENDANTS.



1 85. However, by the time Plaintiffs received the reinstatement quote, they had approximately  
2 one (1) hour to send funds by overnight mail, or nine (9) business hours to wire the funds, to  
3 meet WACHOVIA's deadline. Plaintiffs were not able obtain and deliver certified funds to  
4 Texas under the conditions imposed.

5 86. In particular, the majority of funds were held in an account that restricted the total  
6 amount of cash withdrawals. Although Plaintiffs tried frantically to liquidate the account, given  
7 the sizeable amount to reinstate, they were unable to access sufficient funds by the expiration  
8 date.

9 87. A Trustee's Sale was purportedly held on November 22, 2010, with WELLS FARGO  
10 acquiring title to the Subject Property with a credit bid of \$416, 285.35, the alleged amount of  
11 unpaid debt.

12 88. A Trustee's Deed Upon Sale was recorded on December 1, 2010.

13 89. Defendant WFB initiated an unlawful detainer action against Plaintiffs, Case No. 56-  
14 2011-00390800-CL-UD-VTA. A preliminary injunction staying the UD proceedings is  
15 presently in effect.

16  
17 FIRST CAUSE OF ACTION

18 **BREACH OF CONTRACT (DEED OF TRUST/NOTE)**

19 (Against Defendants WELLS and WACHOVIA)

20  
21 90. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

22 91. On or about November 12, 2007, Plaintiffs and WORLD entered into an agreement with  
23 terms memorialized in a Promissory Note and Deed of Trust. Defendant WFB became a party  
24 to the contracts as successor and/or assignee, with Defendant WACHOVIA acting as its agent.

25 92. Plaintiffs fully performed their obligations under the contract, including making their  
26 monthly loan payments and real property taxes, and maintaining insurance.

27 93. Defendants breached the terms of the contract by failing to properly apply the April 2009  
28 payment to their account, and by refusing to accept Plaintiffs' December 2009 payment and all

1 subsequent monthly loan payments thereafter. At all times, Plaintiffs were ready, willing and  
2 able to make their contractual payments.

3 94. Defendants also breached the contract by charging late penalty fees and other charges for  
4 the April 2009 payment that had not been properly applied to their account as well as for  
5 payments that Defendants refused to accept.

6 95. Paragraph 22 of the Deed of Trust, allows the Lender to exercise the power of sale only  
7 upon a breach of the Borrower's duties. Defendants breached this provision by initiating and  
8 conducting a foreclosure sale when there had been no breach on the part of Plaintiffs.

9 96. Paragraph 15 incorporates applicable California law as governing the Deed of Trust.  
10 California Civil Code §2924c(a) entitled Plaintiffs to reinstate the loan by tendering the full  
11 amount necessary to cure the default. Although Plaintiffs were not in default and disputed the  
12 amount alleged by Defendants, Plaintiffs were ready, willing and able to cure the alleged  
13 deficiency. However, Defendants effectively denied Plaintiffs from exercising their right to  
14 reinstate by denying their loan modification application just twelve (12) days prior to the  
15 Trustee's Sale, resulting in insufficient time for Plaintiffs to obtain a payoff statement and tender  
16 the amount allegedly necessary to cure.

17 97. Defendants also violated California Civil Code §2943 in failing to provide a true and  
18 accurate statement of the amount necessary to reinstate the loan.

19 98. Defendants violated California Civil Code §§1478 and 1489 by restricting the form of  
20 payment and place where performance was required to be made.

21 99. The pyramiding of fees by Defendants, charging late fees for each monthly payment  
22 subsequent to the alleged unpaid April 2009 payment, was in violation of California Civil Code  
23 §2954.4(b).

24 100. Defendants breaches and other misconduct rendered performance on the part of Plaintiffs  
25 impossible.

26 101. As a direct and proximate result of Defendants' breaches, Plaintiffs have incurred  
27 significant costs, including the loss of title to their home, and legal fees and costs to defend  
28 against eviction and to pursue legal remedies for the wrongful foreclosure.

1 102. By the terms of said written agreement, Plaintiffs are entitled to recover reasonable  
2 attorney fees and costs incurred in the enforcement of the provisions of the agreement.

3 Wherefore, Plaintiff is entitled to damages according to proof at trial.  
4

5 SECOND CAUSE OF ACTION

6 **CONTRACTUAL BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

7 (Against Defendants WFB and WACHOVIA)  
8

9 103. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

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

17 105. Plaintiff alleges that at all times there existed an implied covenant of good faith and fair  
18 dealing represented by the terms of the Promissory Note, and the Deed of Trust which imposed  
19 upon Defendants a duty of good faith and fair dealing in this matter to safeguard, protect, or  
20 otherwise care for the assets and rights of plaintiff. Said covenant prohibited Defendants from  
21 activities interfering with, or contrary to, the rights of plaintiff.

22 106. In addition, Defendants enjoyed substantial discretionary power affecting the rights of  
23 plaintiff during the events alleged in this complaint; Defendants were required to exercise such  
24 power in good faith.

25 107. Defendants WFB and WACHOVIA breached the covenant of good faith and fair dealing  
26 by, inter alia:

27 A. Manufacturing a default of Plaintiffs' contractual payment obligation: initially by  
28 misapplying the April 2009 payments made with a cash-equivalent instrument, and refusing

1 Plaintiffs' tender of the December 2009 payment and all subsequent monthly loan payments.

2 B. Intentionally or negligently misrepresenting the importance and effect of  
3 correspondence and legal documents evincing that Defendants were proceeding with foreclosure  
4 while the Subject Loan was supposedly in review for a loan modification.

5 C. Charging fees and costs not allowed under the Deed of Trust or under California law,  
6 and demanding that improper fees and costs be paid as a condition of reinstatement.

7 D. Denying the loan modification application just twelve (12) days prior to the Trustee's  
8 Sale; providing a beneficiary statement a mere five days before the sale, even though the  
9 reinstatement quote was prepared and available two days earlier; and refusing to grant a  
10 postponement to allow sufficient time for Plaintiffs to tender reinstatement.

11 108. Defendants completely obstructed Plaintiffs' ability to perform their obligations and then  
12 used a "default" of their own creation to deny Plaintiffs their contractual rights. The bad faith  
13 and unconscionable conduct on the part of Defendants has damaged Plaintiffs, including the loss  
14 of title to the Subject Property.

15 Wherefore, Plaintiff is entitled to damages according to proof at trial.

16  
17 THIRD CAUSE OF ACTION

18 **WRONGFUL FORECLOSURE**

19 (Against WFB, WACHOVIA and RSC)

20  
21 109. Plaintiff incorporates herein by reference allegations made in all previous paragraphs as  
22 though fully set forth herein.

23 110. Defendants obtained title to the Subject Property pursuant to an illegal, fraudulent and  
24 willfully oppressive sale of property under a power of sale contained in the Deed of Trust.

25 111. Material non-compliance with California statutes governing non-judicial foreclosure and  
26 provisions of the Deed of Trust governing the exercise of sale rendered the purported trustee sale  
27 illegal and void.

28 112. As discussed more fully above, Defendants were not authorized to exercise the power of

1 sale because Plaintiffs had not defaulted on the Subject Loan.

2 113. Defendants also violated California Codes governing non-judicial foreclosures,  
3 including:

4 A. The cure amount in the NOD is significantly overstated, by at least \$1,872.25. Even  
5 if Plaintiffs could somehow be responsible for Defendants' refusal to accept  
6 payments, the alleged amount of default improperly included \$1615.00 for the April  
7 2009 payment that was never properly credited to Plaintiffs' account, and illegal  
8 pyramid fees of at least \$257.25.

9 B. In addition, the NOD is defective because it was executed by RSC in its capacity as  
10 trustee, when GOLDEN WEST was still the trustee under the DOT.

11 C. The Substitution of Trustee ("SOT") also did not comply with the notice requirements  
12 under §2934a. The SOT was executed on the same day that the NOD was recorded,  
13 July 29, 2010. Pursuant to 2934a(b), a copy of the SOT should have been mailed  
14 with the NOD. The Affidavit of Mailing, however, states that the SOT was mailed on  
15 September 23, 2010.

16 D. The Notice of Trustee's Sale is also defective, having been recorded two (2) days  
17 prior to the date of execution. Plaintiffs allege based on information and belief that  
18 the sloppy, careless defects are most likely the result of Defendants utilization of  
19 default management providers and "robo-signer" to speed up the foreclosure process.

20  
21 114. As dual tracking of non-judicial foreclosure proceeded concurrently with loan  
22 modification review, Defendants misrepresented correspondence and legal documents related to  
23 foreclosure as an ordinary and routine part of the loss mitigation process. Lulled into a false  
24 sense of security and believing that Defendants were conducting the loan review in good faith,  
25 Plaintiffs were completely surprised when the modification was denied days before the  
26 foreclosure sale, leaving Plaintiffs insufficient time to obtain a reinstatement quote and tender the  
27 cure amount.

28 115. As the result of Defendants' unconscionable conduct in exercising the power of sale not

1 authorized under the Deed of Trust and in violation of California law, Plaintiffs have suffered  
2 damages, including emotional distress and the loss of their home to foreclosure.

3 FOURTH CAUSE OF ACTION

4 **TO CANCEL INSTRUMENTS**

5 **[NOTICE OF DEFAULT, NOTICE OF TRUSTEE'S SALE**  
6 **AND TRUSTEE'S DEED UPON SALE]**

7 (Against WFB, WACHOVIA and RSC)

8  
9 116. Plaintiff incorporates herein by reference allegations made in all previous paragraphs as  
10 though fully set forth herein.

11 117. As discussed above, Defendant WFB acquired title to the Subject Property at a  
12 foreclosure sale that was not authorized by the terms of the Deed of Trust and in violation of  
13 California codes. The Trustee's Sale was therefore illegal and the Trustee's Deed Upon Sale  
14 void and without any legal force or effect.

15 118. There was no default as declared in the Notice of Default or Notice of Trustee Sale.  
16 Plaintiffs were ready, willing and able to make each and every monthly payment as contractually  
17 required, but Defendants refused to accept their tender of payment.

18 Wherefore, Plaintiff is entitled to an Order Cancelling the Notice of Default, Notice of  
19 Trustee's Sale, and Trustee's Deed Upon Sale.

20  
21 FIFTH CAUSE OF ACTION

22 **TO QUIET TITLE**

23 (Against All Defendants and DOES 1-25)

24  
25 119. Plaintiffs incorporate herein by reference allegations made in all previous paragraphs as  
26 though fully set forth herein.

27 120. Plaintiffs seek to quiet title against the claims of Defendants: WELLS FARGO BANK,  
28 NA, ALSO KNOWN AS WACHOVIA MORTGAGE, A DIVISION OF WELLS FARGO

1 BANK, NA, FORMERLY KNOWN AS WACHOVIA MORTGAGE, FSB, FORMERLY  
2 KNOWN AS WORLD SAVINGS BANK, FSB, the purported beneficiary under the Deed of  
3 Trust; WACHOVIA MORTGAGE, the purported servicer of the Subject Loan; REGIONAL  
4 SERVICES CORPORATION, the purported substituted trustee under the Deed of Trust; and  
5 DOES 1 to 25, Inclusive. Defendants claims are without right, and Defendants have no such  
6 right, title, estate, lien or interest in the Subject Property.

7 121. Plaintiff names as Defendants in this action all persons unknown claiming (a) any legal or  
8 equitable right, title, estate, lien, or interest in the Property adverse to Plaintiff's title, or (b) any  
9 cloud on Plaintiffs' title to the Property. The claims of each unknown defendant are without any  
10 right, and these defendants have no right, title, estate, lien or interest in the Property.

11 122. Plaintiff desires and is entitled to a judicial declaration quieting title in Plaintiff as of the  
12 date of the Complaint, June 21, 2011, and establishing Plaintiffs' ownership and possessory  
13 interests in the property, subject only to this Court's determination of those interests Defendants  
14 may have in a reinstated Deed of Trust and Promissory Note.

15  
16 SIXTH CAUSE OF ACTION

17 **FRAUD MISREPRESENTATION AND DECEIT**

18 (Against Defendants WFB and WACHOVIA)  
19

20 123. Plaintiff incorporates herein by reference allegations made in all previous paragraphs as  
21 though fully set forth herein.

22 124. COOPER committed the acts of fraud complained of herein during the origination of  
23 Subject Loan as an agent of, and working in concert with, WORLD/WACHOVIA.

24 125. The deceptive and fraudulent acts and concealment of material facts complained of above  
25 during the origination of the loan, including the true essential terms of the loan, the costs of  
26 refinancing, falsification of application information, the suitability of the loan to Plaintiffs'  
27 circumstances, Plaintiff's ability to repay, the advisability of consolidating unsecured debt,  
28 optimistic projections of continued housing boom, and promises of future refinancing, were

1 intentionally designed to induce Plaintiffs to enter into an unconscionable contract.

2 126. The representations were in fact false. The true facts were that Plaintiffs were targeted  
3 for the significant equity in their home, solicited to refinance, and then steered into an  
4 inappropriate, high-cost, loan that was against their financial interests. Plaintiffs paid thousands  
5 of dollars for a “better” loan to replace their previous Payment Option ARM with yet another  
6 Payment Option loan with a significantly higher principle balance and a higher interest rate.

7 127. At the time the representations were made and other fraudulent acts committed,  
8 COOPER knew of their falsity. The loan transaction was for the sole benefit of Defendants,  
9 whose profits from the commissions, costs and fees increased in direct proportion to a higher  
10 loan balance and excessive interest rate charged.

11 128. Plaintiffs believed and reasonable relied on COOPER representations that he was acting  
12 in their best interests and believe that he accurately and truthfully conveyed the terms, costs and  
13 suitability of the loan.

14 129. Had Plaintiffs known the essential terms of the loan, they would not have agreed to enter  
15 into the loan transactions or to sign the loan documents that contained onerous terms that  
16 increased the risk of default.

17 130. Plaintiffs did not discover the misrepresentations regarding the loan terms until on or  
18 about September 2009, when they sought assistance with the loan modification process from  
19 USMAC. The full extent of the fraud, including the falsification of loan application documents  
20 and the true costs of the loan were not discovered until after the foreclosure sale.

21 131. Tolling of the statute of limitations for the fraud claim is warranted in this case, as  
22 Plaintiffs could not have discovered the fraud and resulting harm through the exercise of due  
23 diligence prior to September 2009, for at least the following reasons:

- 24 A. The fraud committed by the WACHOVIA loan officer was concealed within the  
25 complicated terms of the payment option ARM loan. The Payment Option ARM is  
26 generally acknowledged to be the most complex, confusing and risky loan product,  
27 loaded with gimmicks and terms incomprehensible to even fairly sophisticated  
28 consumers and inadequately disclosed to homeowners. Plaintiffs necessarily relied



1 on COOPER to explain the terms, and COOPER took advantage of their reliance by  
2 intentionally misrepresenting loan features. For example, Plaintiffs believed that  
3 annual increases in their monthly payments were the result of an increase in the  
4 interest rate, based on the COOPER's elaborate explanation of a totally fictitious  
5 index rate. Plaintiffs did not understand until after filing suit that payment increases  
6 were due to partial re-amortization of deferred interest on the annual change dates, a  
7 concept not easily grasped by borrowers.

8 B. Plaintiffs could not have discovered that COOPER had grossly misrepresented the  
9 costs of the refinance loan based on the disclosures provided. The yield spread  
10 premium in excess of \$4000 was never disclosed to Plaintiffs, and could only be  
11 discovered by a trained mortgage auditor. Likewise, knowledge of industry practices  
12 was necessary to discover the junk fees.

13 C. Plaintiffs had no reason to believe or suspect that COOPER had falsified their income  
14 and assets, especially by inflating the couple's monthly income by more than \$5200.  
15 Because COOPER told them the loan would be processed under the "Quick  
16 Qualifying Loan Program" using information from their prior application, Plaintiffs  
17 did not submit updated financial information.

18 D. Plaintiffs relied on the numerous public relations pronouncements by WF that  
19 aggressive efforts were being made to rectify the problematic option ARM loans  
20 obtained from WF's predecessors. Plaintiffs engaged the services of USMAC in  
21 large part because of the media coverage exposing the predatory nature and inherent  
22 risk of option ARM loans.

23  
24 132. As a proximate result of Plaintiff's reasonable reliance on Defendants'  
25 misrepresentations, Plaintiff sustained damages including the loss of their home to foreclosure,  
26 loss of their savings, damages to their credit rating, and emotional distress, in an amount not yet  
27 ascertained to be proven at trial.

28 133. The fraud, deceit and concealment deprived Plaintiffs of property and legal rights and

1 otherwise caused injury. Said acts constitute malicious, despicable conduct that subjected  
2 Plaintiff to unjust hardship in conscious disregard of his rights sufficient as to justify an award of  
3 exemplary and punitive damages.

4 Wherefore, Plaintiff prays for judgment against Defendant as set forth herein.  
5  
6

7 SEVENTH CAUSE OF ACTION

8 **UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code 17200 et seq.)**

9 (Against Defendants WFB and WACHOVIA)  
10

11 134. Plaintiff incorporates herein by reference allegations made in all previous paragraphs as  
12 though fully set forth herein.

13 135. Defendants WFB and WACHOVIA have engaged in, and continue to engage in a pattern  
14 and practice of conduct that constitutes unfair business practices and unfair competition as  
15 defined under Section 17200 of the Business and Professions Code, including the following:

- 16 A. Failing to perform loss mitigation efforts in good faith; including, inter alia: forcing  
17 homeowners into default status to be considered for eligibility; refusing to recognize  
18 authorized agents; intentionally and/or negligently failing to process submissions,  
19 requiring multiple submissions; and providing inaccurate and false information about  
20 the options available to homeowners; refusing to send written requests for  
21 information needed; failing to provide written notification of denial and reason for  
22 denial.
- 23 B. Continuing the use of “dual tracking,” proceeding with foreclosure while the loan  
24 modification application was pending, providing contradictory and confusing  
25 information regarding the status of foreclosure proceedings.
- 26 C. Intentionally and/or negligently misrepresenting the legal importance of documents  
27 regarding foreclosure and affecting homeowners’ rights in real property.
- 28 D. Engaging or utilizing the services of “robo-signers” and default management

1 providers, prioritizing speed over accuracy in the foreclosure process, resulting in  
2 errors and inaccuracies in recorded documents.

3 136. As a result of the misrepresentations, fraudulent acts and other misconduct on the part  
4 of COOPER and WACHOVIA, Plaintiffs were induced to enter into an unconscionable loan.  
5 Plaintiffs are saddled with a high interest, negatively amortizing loan, which will eventually  
6 recast and cause the monthly payments to skyrocket. The impossibility of performance over the  
7 life of the loan was known to Defendants at the time of origination, but intentionally concealed  
8 from Plaintiffs. Plaintiffs therefore seek reformation of the contract or other relief under  
9 California Civil Code § 1670.5(a), to avoid the unconscionable result created by Defendants'  
10 misconduct.

11 Plaintiff therefore seeks declaratory, injunctive, and other available relief necessary to  
12 protect Plaintiff and other Californians from the unfair practices of Defendants.

13  
14 EIGHTH CAUSE OF ACTION

15 **UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code 17200 et seq.)**

16 (Against Defendant RSC)

17  
18 137. Plaintiffs incorporate herein by reference the allegations made all previous paragraphs  
19 above as though fully set forth herein.

20 138. Defendant RSC has engaged in, and continues to engage in a pattern and practice of  
21 conduct that constitutes unfair business practices and unfair competition as defined under Section  
22 17200 of the Business and Professions Code, by disregarding and breaching the duty of fairness  
23 owed to the trustor and acting solely as the agent for the beneficiary. Such acts includes the  
24 following:

- 25 A. Failing to adhere to statutory requirements designed for the protection of  
26 homeowners, including notice requirements for the SOT under Civ. Code 2934(a)c.  
27 B. Effectively denying the right of reinstatement by providing a beneficiary statement a  
28 mere five days before the sale, even though the reinstatement quote was prepared and

1 available two days earlier;

2 C. Further making reinstatement impossible by placing unreasonable requirements to  
3 tender, including payment of certified funds to Texas;

4 D. Refusing to provide a short-term postponement of the sale to allow a reasonable time  
5 to remit the reinstatement funds;

6 E. Engaging or utilizing the services of “robo-signers” and default management  
7 providers, prioritizing speed over accuracy in the foreclosure process, resulting in  
8 errors and inaccuracies in recorded documents.

9 139. The conduct on the part of RSC was, and continues to be done with disregard to the rights  
10 of trustors, and in spite the foreseeable harm that the homeowner will lose their property at a  
11 willfully oppressive foreclosure sale.

12 Plaintiff therefore seeks declaratory, injunctive, and other available relief necessary to  
13 protect Plaintiff and other Californians from the unfair practices of Defendants.

14  
15 NINTH CAUSE OF ACTION

16 **VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

17 (Against Defendants WFB and WACHOVIA)

18  
19 140. Plaintiffs incorporate herein by reference the allegations made all previous paragraphs  
20 above as though fully set forth herein.

21 141. Plaintiff is a consumer and the debt owed pursuant to the subject note and trust deed is a  
22 consumer debt pursuant to the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”).

23 142. WFB and WACHOVIA are lenders and mortgage servicing companies that are in the  
24 business of collecting and processing mortgage payments.

25 143. Representative of WFB , and or WACHOVIA engaged in unfair collection practices in  
26 violation of the Rosenthal Act by, inter alia:

27 A. Failing to verify the debt following Plaintiffs’ written dispute. WACHOVIA’s  
28 “verification” that a stop payment had been placed on the cashier’s check for April

1 2009 payment did not reference the correct number of the cashier's check in dispute.

2 B. Defendants failed to conduct proper investigation of the disputed payment. Such  
3 research should have concluded that there was no debt owed to WACHOVIA; that if  
4 a stop payment was placed on the cashier's check for the April 2009 payment, it  
5 happened after the check was in the custody and control of WACHOVIA.

6 C. Defendants proceeded to attempt to collect a debt that was not owed, using abusive  
7 tactics, including excessive number of calls per day, and repeatedly contacting  
8 Plaintiffs by telephone after 9 p.m.

9 D. Defendants demanded payment for an invalid debt while simultaneously refusing to  
10 accept any payments from Plaintiffs.

11 E. Defendants also illegally charged late penalty fees for the April 2009 payment that  
12 had been made on time, and to all subsequent monthly loan payments.

13 F. Defendants repeatedly threatened Plaintiffs with foreclosure, when the loan was not  
14 delinquent and Defendants had no such right to initiate foreclosure.

15 144. As a proximate result of violations of the Rosenthal Act by Defendants WFB and  
16 WACHOVIA, Plaintiffs are entitled to actual and statutory damages, attorney's fees and costs,  
17 and such other relief as the court determines.

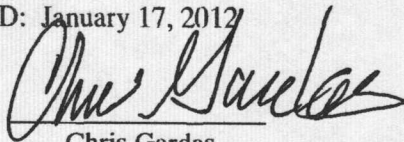
18  
19 **PRAYER**

20  
21 WHEREFORE, Plaintiff prays for judgment as follows:

- 22  
23 1. For a temporary and preliminary injunction enjoining Defendants from transferring the  
24 Subject Property of from taking any action to evict Plaintiffs from their home during the  
25 pendency of this action;
- 26 2. That the Court enter an Order to Cancel the Notice of Default, Notice of Trustee's Sale, and  
27 Trustee's Deed Upon Sale.
- 28

- 1 3. That the Court Order judgment quieting title in Plaintiffs, establishing Plaintiffs' ownership  
2 and possessory interests in the property.  
3 4. For cancellation of the Deed of Trust and Promissory Note.  
4 5. For reformation of the loan terms.  
5 6. For attorney fees and costs of suit.  
6 7. For general, special, and statutory damages.  
7 8. For punitive damages.  
8 9. For such other and further relief as the Court may deem proper.

9  
10 DATED: January 17, 2012

11 

12 Chris Gardas

13 Attorney for Plaintiffs

14 Norman Rousseau and Oriane Rousseau

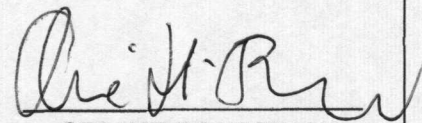
15  
16 VERIFICATION

17  
18 We, NORMAN ROUSSEAU and ORIANE ROUSSEAU, are the Plaintiffs in the above-  
19 entitled action. We have read the foregoing complaint and know the contents therein. The same  
20 is true of our personal knowledge, except for those statements made on information and belief,  
21 and as to those statements, we believe them to be true.

22 We declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct. This declaration was executed on January 17, 2012, in Newbury  
24 Park, Ventura County, California.

25 Dated: January 17, 2011

26   
27 NORMAN ROUSSEAU

28   
ORIANE ROUSSEAU

\_\_\_\_\_  
Verified Complaint / Rousseau v. Wells Fargo, Et Al.