

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

[Redacted]

Attorney for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

[Redacted]

Case No.:

Plaintiffs,

COMPLAINT FOR:

vs.

- 1. DECLARATORY RELIEF;
- 2. CONTRACTUAL BREACH OF GOOD FAITH FAIR DEALING;
- 3. VIOLATIONS OF TILA;
- 4. VIOLATIONS OF RESPA;
- 5. VIOLATION OF CALIFORNIA CIVIL CODE § 1916.7(10)(c) *INDEX*;
- 6. VIOLATION OF CALIFORNIA CIVIL CODE § 1916.7 b(2)
- 7. VIOLATION OF CALIFORNIA CIVIL CODE § 1918-1920.1921
- 8. VIOLATION OF CALIFORNIA CIVIL CODE § 1916.7 B
- 9. VIOLATION OF CALIFORNIA CIVIL CODE § 1916.7 a(8);
- 10. VIOLATION OF CALIFORNIA CIVIL CODE § 1637;
- 11. VIOLATION OF CALIFORNIA CIVIL CODE § 226.23(3)
- 12. RECISSION;
- 13. FRAUD;
- 14. UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP);
- 15. BREACH OF FIDUCIARY DUTY;

WORLD SAVINGS, a Business Entity, form unknown; ALLIANCE TITLE COMPANY, a Business Entity, form unknown; MERIDIAN CAPITAL INC., a California Corporation, form unknown; and DOES 1 through 50, inclusive.

Defendants.

SAMPLE COMPLAINT FOR CALIFORNIA, LLC

16. UNCONSCIONABILITY;
17. PREDATORY LENDING; CALIFORNIA
BUSINESS AND PROFESSIONS CODE §
17200;

Unlimited Jurisdiction

Jury Trial Demanded

INTRODUCTION

COMES NOW the Plaintiffs B[REDACTED] hereinafter referred to collectively as “Plaintiffs”), alleges as follows:

PARTIES

1. At all times relevant herein, Plaintiffs were over the age of eighteen and is and were a resident of [REDACTED] 4, County of Los Angeles, State of California (hereinafter referred to as “Subject Property”).

2. Plaintiffs purportedly entered into a loan repayment and security agreement on or about, March 28, 2005 with Defendant WORLD SAVINGS, (hereinafter referred to as “WORLD”), which required Plaintiff to repay a loan of \$712,000.00 to WORLD. The loan program consisted of a Pay Option Adjustable Rate Mortgage (Stated Rate, Reduced Initial Payments, based on World Saving’s “Cost of Savings” Index) with a Start Rate of 1.50% Annual Percentage Rate (APR). Plaintiffs had a choice of four (4) monthly payment options, a) Less than Principal & Interest payment (Negative Amortization), b) Interest Only payment, c) Principal & Interest payment, and d) Principal & Interest payment amortized over fifteen (15) years instead of thirty (30) years. The Interest Rate adjusts monthly, but the Loan payment adjusts annually, with an cap of 7.5% above the previous year’s payment, and with a 11.950% cap for the lifetime of the loan (with a cap on the

1 negative amortization of 125% above the Original Loan Amount). The loan was purportedly secured
2 by the Subject Property.

3
4 3. Plaintiffs are informed and therefore believe that Defendant WORLD, a business
5 entity, form unknown, is a corporation, authorized to do business in the State of California.
6 WORLD is the original mortgage lender with business addresses of: P.O. Box 60129, Los Angeles,
7 CA 90060

8
9 4. Plaintiffs are informed and therefore believe that Defendant MERIDIAN CAPITAL
10 INC., (hereinafter referred to as "MERIDIAN"), a California corporation, form unknown, is a
11 corporation, authorized to do business in the State of California. MERIDIAN is the original
12 mortgage broker with business addresses of: 3000 Executive Pkwy #445 San Ramon, CA 94583.

13
14 6. Plaintiff is informed and therefore believes that Defendant ALLIANCE TITLE
15 COMPANY, (hereinafter referred to as "ALLIANCE"), a California Corporation, form unknown, is,
16 authorized to do business in the State of California. ALLIANCE is the current title company for the
17 loan and has a business address of 200 Pringle Avenue, 3rdFloor, Walnut Creek, CA 94596.

18 Plaintiffs are informed and believe that ALLIANCE is the title company

19
20 7. The Defendants (each of them named in paragraphs 1 through 6 above, shall
21 collectively be referred to as "DEFENDANTS") named herein "all persons unknown", claiming any
22 legal or equitable right, title estate, lien or interest in the property described in this Complaint
23 adverse to Plaintiff's title thereto and as DOES I through 50 (hereinafter referred to as "UNKNOWN
24 DEFENDANTS") are unknown to Plaintiffs. These unknown Defendants and each of them claim
25 some right, title, estate, lien or interest in the Subject Property hereinafter described adverse to
26 Plaintiff's title and their claims and each of them constitute a cloud on Plaintiff's title to the Subject
27 Property. Plaintiff is informed and therefore believes, and on that basis alleges that each fictitiously
28

1 named herein as a DOE is responsible for the events happening hereinafter alleged. Plaintiffs will
2 seek leave of the Court to amend this Complaint to allege the true names and capacities of said
3 fictitiously named Defendant's when ascertained.

4
5 8. Plaintiffs are informed and therefore believe and on that basis allege that at all times
6 mentioned herein, the UNKNOWN DEFENDANTS are individuals and/or business entities whose
7 forms are unknown and were agents, principals, employees, employers and co-conspirators of each
8 and every other named or unnamed Defendant in this Complaint. Plaintiffs are informed and
9 therefore believe and on that basis allege that each of said Defendants is and at all relevant times
10 herein, was acting within the scope and consent of the remaining named and unnamed Defendants.

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

18
19 10. As a result of their mortgage activities, Defendants and each of them are and were
20 subject to and must comply with the Federal Truth In Lending Act (hereinafter referred to as
21 "TILA")[15 U.S.C. §1601-1666j] and with the Act's corresponding Regulation Z (hereinafter
22 referred to as "RegZ")[24 C.F.R § 3500.1-3500.17]; the Real Estate Settlement Procedures Act
23 (hereinafter referred to as "RESPA")[12 U.S.C. § 2601 et.seq.]; California Business and Professions
24 Code [§ 17200; Federal Trade Commission § 5]; 24 Code of Federal Regulations § 3500.10; Unfair
25 and Deceptive Business Practices and Acts [UDAP Statutes];; and California Civil Codes § 1916.7 –
26 [multiple sections] § 1637; §1918-21; § 337; and§226.23(3).
27
28

1 **JURISDICTION**

2 11. The transactions and events which are the subject matter of this Complaint all
3 occurred within the County of Los Angeles, State of California.

4 12. The Subject Property, is located within the County of Los Angeles, State of
5 California.
6

7 **FACTUAL ALLEGATIONS**

8 13. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
9 fully set forth herein.

10 14. For years, mortgage brokers and lenders have been selling loan products that they
11 knew or should have known would never be able to be repaid by the borrower and would prevent
12 borrowers from ever actually owning the home. Instead, borrowers were offered interest-only,
13 negative amortization, and/or other subprime loan products that amounted to no more than a short
14 term lease until the payments became so unaffordable that the borrowers are now faced with either
15 bankruptcy or foreclosure. The housing bubble of the past decade was created by predatory lending
16 practices, such as charging excessive fees, incorporating payment penalties, negative amortization
17 payments, or other abusive terms in the agreements, providing kickbacks to brokers, flipping loans,
18 using balloon payments to conceal the true burden of the financing, requiring unnecessary insurance
19 and other products, including mandatory arbitration clauses, steering borrowers to subprime loans
20 when they qualify for conventional loans, and using bait and switch tactics. All were rampant within
21 the industry without oversight or good judgment and found to be inconsistent with important national
22 objectives, including the goals of fair access to credit, community development, and stable
23 homeownership by the broadest spectrum of America. Rather than offering a loan product that was
24 viable and long-term for the borrower and lender, brokers and lenders greedily sold whatever they
25
26
27
28

1 could get away with, arguably the primary catalyst for what is now this country's worst economic
2 crisis since the Great Depression.

3
4 15. The loan product sold to Plaintiff in this case was exactly the kind of loan that has
5 contributed to our national problem. The Defendants were aware of this trend, and possessed the
6 foresight to advise Plaintiffs of this risk. They intentionally concealed the negative implications of
7 the loan they were offering, and as a result, Plaintiffs face the potential of losing their home to the
8 very entity and entities who placed them in this position.

9
10 16. On or about August 25, 2006 (hereinafter referred to as "Closing Date") Plaintiffs
11 entered into a consumer credit transaction with WORLD by obtaining a \$712,000.00 mortgage loan
12 secured by Plaintiff's principal residence, (Subject Property). This note was secured by a First Trust
13 Deed on the Property in favor of WORLD.

14
15 17. The terms of the finance transaction with WORLD are not clear or conspicuous, nor
16 consistent, and are illegal, and include, for example, a "Pick A Pay" Payment Option on an
17 Adjustable Rate Mortgage loan, which violates several statutes and is in essence creates an illegal
18 loan. Further, this loan was underwritten without proper due diligence by WORLD as evidenced by
19 their failure to verify borrower's income utilizing signed IRS Income Tax Disclosure Form 4506T
20 which would have provided past borrower tax returns. WORLD also used a "GDW Cost of
21 Savings" as the Index for the basis of this loan, because the Lender controls this Index and it is
22 directly based upon the average rate of interest WORLD parent company, Golden West Financial.
23

24 18. In addition, and unbeknownst to Plaintiffs, WORLD illegally, deceptively and/or
25 otherwise unjustly, qualified Plaintiff for a loan which WORLD knew or should have known that
26 Plaintiffs could not qualify for or afford by, for example, the underwriter has approved this loan
27 based upon credit scores and the borrower's Stated Income only. Had WORLD used a more accurate
28

1 and appropriate factor, such as Tax Forms and a more determinative level of scrutiny of determining
2 the debt to income ratio, Plaintiff would not have qualified for the loan in the first place.

3 Consequently, WORLD sold Plaintiff a loan product that it knew or should have known would never
4 be able to be fully paid back by Plaintiff. WORLD ignored long-standing economic principals of
5 underwriting and instead, knowingly, liberally, greedily and without any regard for Plaintiff's rights
6 sold Plaintiff a deceptive loan product.
7

8 19. There was no determination of the ability of the borrower to repay the loan, with
9 complete disregard for the Guidance Letters issued by Federal Agencies and even Federal and State
10 Law.
11

12 20. Defendants, and each of them, neither explained the workings of the entire mortgage
13 loan transaction, how the rates, finance charges, costs and fees were computed, nor the inherent
14 volatility of the loan product(s) provided by Defendants.
15

16 21. The purpose of entering into the above-described mortgage loan transactions was for
17 Plaintiffs to eventually own the Property. That purpose was knowingly and intentionally thwarted
18 and indeed made impossible by Defendants' actions alleged herein.
19

20 22. A expert, certified, forensic audit of the Plaintiff's loan documents revealed the
21 following legal violations which were incurred during the handling and processing of Plaintiff's
22 loan:
23

24 23. Plaintiffs are informed and believe and therefore allege that Defendants did not
25 comply with the requirement to provide Plaintiffs with a Mortgage Loan Origination Agreement.
26

27 24. Plaintiffs are informed and believe and therefore allege that the underwriter approved
28

1 this loan based only upon a stated income and a medium to high risk credit score and a belief that the
2 property would continue to increase in value and that the Plaintiff should have been declined for this
3 loan.

4
5 25. Plaintiffs are informed and believe and therefore allege that that based on a Real
6 Income Analysis, with the type of take home income Plaintiffs possess and that was clearly disclosed
7 to Defendants, that the borrower would not be able to support the home payment over an extended
8 period.

9
10 26. Plaintiffs are informed and believe and therefore allege that by the very use of World
11 Saving's "GDW Cost of Savings" as the Index for the basis of this loan, WORLD is in violation of
12 this subsection (CA CIV § 1916.7 10 (c) INDEX) because the Lender controls this Index and it is
13 directly based upon the average rate of interest World Saving's parent company, Golden West
14 Financial.

15
16 27. Plaintiffs are informed and believe and therefore allege that Defendants failed to
17 provide Plaintiffs with written notice of the furnishing of negative credit information to consumer
18 reporting agency after Defendants furnished such negative credit information about Plaintiffs.

19
20 28. Plaintiffs are informed and believe and therefore allege that a California Insurance
21 Disclosure as mandated by law was not provided to the Plaintiffs prior to the consummation of this
22 loan.

23
24 29. Plaintiffs are informed and believe and therefore allege that Defendants breached their
25 fiduciary duty to Plaintiff because they knew or should have known that the Plaintiff will or had a
26 strong likelihood of defaulting on this loan, they have a fiduciary duty to the borrower to not place
27 them in that loan (in harms way).

28 30. Plaintiffs are informed and believe and therefore allege that it was in the best interest

1 of the Defendants to promote the particular program for which they approved the Plaintiff. It led to a
2 maximization of profits for the Defendants, with no concern for the Plaintiffs financial position or
3 livelihood.

4
5 31. Plaintiffs are informed and believes and therefore alleges that as a result of the
6 practices of Defendants, and each of them throughout the handling of this loan, that such practices
7 are consistent with the definition of predatory lending, and encompass numerous characteristics that
8 indicate such.

9
10 32. Plaintiffs are informed and believe and therefore allege that Defendants provided
11 inadequate disclosure of the true costs, risks and, where necessary, appropriateness to the borrower
12 of loan transactions in violation of the Federal Trade Commission Act.

13
14 33. Plaintiffs are informed and believe and therefore allege that Defendants engaged in
15 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
16 advertising in violation, rising to unfair and deceptive business practices, in violation of California
17 Business and Professions Code § 17200 and the Unfair and Deceptive Acts and Practices statutes.

18
19 34. Plaintiffs are informed and believe and therefore allege that WORLD was required to
20 provide for an Open Ended Credit Plan, including a 15-year table showing the effects of the index
21 used on loan payments however failed to provide such a plan or advisal.

22 **FIRST CAUSE OF ACTION**

23 **Declaratory Relief**

24 **(Against All Defendants)**

25
26 35. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
27 fully set forth herein.

28 36. An actual controversy has arisen and now exists between Plaintiff and Defendants

1 regarding their respective rights and duties, in that Plaintiff contends that Defendants did not have
2 the right to foreclose on the Subject Property because Defendants' security interest in the Subject
3 Property has been rendered void by operation of law, pursuant to 24 Code of Federal Regulations
4 3500.10, the California Civil Code, the Equal Opportunity Credit Act, the Federal Trade
5 Commission Act, California Business and Professions Code, UDAP, TILA and RESPA. Thus the
6 purported power of sale by Defendants no longer applies. Plaintiff further contends that Defendants
7 do not have the right to foreclose on the Subject Property because Defendants did not properly
8 comply with proper delivery procedures under RESPA. Plaintiff further contends that the
9 Defendants perpetrated a fraudulent loan transaction.
10

11
12 37. Plaintiffs requests that this Court find the purported power of sale contained in the
13 Loan of no force and effect at this time, because Defendants actions in the processing, handling and
14 attempted foreclosure of this loan has contained numerous violations of State and Federal laws
15 designed to protect borrowers, which has directly caused Plaintiffs to be at an equitable disadvantage
16 to Defendants. Plaintiffs further requests that title to the Subject Property remain in Plaintiff's name,
17 with said Deed of Trust remaining in beneficiaries' name, during the pendency of this litigation
18

19 38. As a result of the Defendants' actions, Plaintiffs have suffered damages according to
20 proof, and seeks declaratory relief that Defendants' purported power of sale is void and has no force
21 or effect against the Subject Property.

22 39. Further, Defendants' actions have been willful, knowing and malicious.

23 WHEREFORE, Plaintiffs pray for relief as set forth below.
24

25 ///

26 ///

27 ///

28

1 **SECOND CAUSE OF ACTION**

2 **Contractual Breach of Implied Covenant of Good Faith and Fair Dealing**

3 **(Against All Defendants)**

4 40. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
5 fully set forth herein.
6

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

15 42. The terms of the Loan imposed upon Defendants a duty of good faith and fair dealing in
16 this matter.
17

18 43. Defendants enjoyed substantial discretionary power affecting the rights of Plaintiff during
19 the events alleged in this Complaint. Defendants were required to exercise such power in good faith.
20

21 44. Defendants willfully breached their implied covenant of good faith and fair dealing with
22 Plaintiff when Defendants:

23 I. Willfully withheld numerous disclosures;

24 II. Willfully withheld notices in regard to Underwriting standards, the use of

25 World Saving's "GDW Cost of Savings" as the Index for the basis of this

26 loan, Disclosures of additional income due to interest rate increases, and

27 failure to disclose when negative credit scores were disseminated;
28

1 III. Willfully placed Plaintiffs in a loan that they did not qualify for, could not
2 afford, and subjected them to further financial detriment, while providing
3 Defendants with financial benefits they would not have otherwise enjoyed.
4

5 45. As a result of Defendants' breach of this covenant, Plaintiffs have suffered injury and has
6 caused Plaintiffs the threat of loss of their home. Plaintiffs have incurred and continue to incur legal
7 fees, including attorney fees and costs, as well as expenses to right this wrong.
8

9 46. Defendants' actions in this matter have been willful, knowing, malicious, fraudulent and
10 oppressive, entitling Plaintiff to punitive damages in an amount appropriate to punish Defendants
11 and to deter others from engaging in the same behavior.

12 WHEREFORE, Plaintiffs pray for relief as set forth below.

13 **THIRD CAUSE OF ACTION**

14 **Violation of TILA, 15 U.S.C. § 1601, et.seq.**

15 **(Against All Defendants)**

16 47. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
17 fully set forth herein.
18

19 48. Defendants violated TILA by failing to provide Plaintiffs with accurate material
20 disclosures required under TILA and not taking into account the intent of the State Legislature in
21 approving this statute which was to fully inform home buyers of the pros and cons of adjustable rate
22 mortgages in a language (both written and spoken) that they can understand and comprehend; and
23 advise them to compare similar loan products with other lenders. It also requires the lender to offer
24 other loan products that might be more advantageous for the borrower under the same qualifying
25 matrix.
26
27
28

1 two-part test for determining the legality of lender payments to mortgage brokers for table funded
2 transactions and intermediary transactions under RESPA:

3 (1) Whether goods or facilities were actually furnished or services were actually performed
4 for the compensation paid and;

5 (2) Whether the payments are reasonably related to the value of the goods or facilities that
6 were actually furnished or services that were actually performed.
7

8 In applying this test, HUD believes that total compensation should be scrutinized to assure
9 that it is reasonably related to the goods, facilities, or services furnished or performed to determine
10 whether it is legal under RESPA. The interest and income that Defendants have gained is
11 disproportionate to the situation Plaintiffs find themselves in due directly to Defendant's failure to
12 disclose that they will gain a financial benefit while Plaintiffs suffer financially as a result o the loan
13 product sold to Plaintiffs.
14

15 57. No separate fee agreements, regarding the use of World Saving's "GDW Cost of
16 Savings" as the Index for the basis of this loan, Disclosures of additional income due to interest rate
17 increases or the proper form and procedure in relation to the Borrower's Rights to Cancel were
18 provided
19

20 58. Defendants violated RESPA because the payments between the Defendants were
21 misleading and designed to create a windfall. These actions were deceptive, fraudulent and self
22 serving.
23

24 59. As a proximate result of Defendants' actions, Plaintiff has been damages in an amount
25 not yet ascertained, to be proven at trial.

26 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
27 forth herein.
28

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Civil Code § 1916.7 10(c) INDEX**

3 **(Against All Defendants)**

4 60. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
5 fully set forth herein.
6

7 69. Adjustments to interest rate of an adjustable-payment, adjustable-rate mortgage loan
8 must correspond directly to the movement of an index which is selected, but not controlled, by the
9 lender. Any adjustments to the interest rate are subject to limitations provided in the loan contract. If
10 the index moves down, the lender must reduce the interest rate by at least the decrease in the index.
11 If the index moves up, the lender has the right to increase the interest rate by that amount.
12

13 70. Here, by the very use of World Saving's "GDW Cost of Savings" as the Index for the
14 basis of this loan is in violation of California Civil Code CIV § 1916.7 10 (c) INDEX, because the
15 Lender controls this Index as it is directly based upon the average rate of interest World Saving's
16 parent company, Golden West Financial, pays its Saving Account depositors.
17

18 71. As a proximate result of Defendants' actions, Plaintiff has been damages in an
19 amount not yet ascertained, to be proven at trial.

20 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
21 forth herein.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Civil Code § 1916.7b(2)**

24 **(Against All Defendants)**

25 72. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
26 fully set forth herein.
27
28

1 73. Changes in interest and monthly payment shall not occur more often than twice during
2 any annual period and at least six months shall elapse between any two changes. The rate of interest
3 and monthly payments shall not change during the first semiannual period. The amount of any
4 increase in monthly payment shall not exceed 7.5 percent annually.

5
6 74. Option ARM mortgages are tied to indexes that can change monthly. As the index
7 changes, so does the interest rate. Therefore, by the fact that the interest rate can change monthly, the
8 Option ARM Mortgage is in violation of the above statute.

9 75. Here, the Adjustable Rate Mortgage Note disclosed that the payments adjust monthly and
10 not semiannually as mandated by this subsection and therefore is in violation.

11
12 76. In addition, the Note sets the adjustment cap at 11.950%. Since the adjustments occur
13 monthly, this section limits the 11.950% to the maximum annually; it is in violation of this section to
14 set the 11.950% cap on a monthly basis.

15 77. As a proximate result of Defendants' actions, Plaintiffs have been damages in an
16 amount not yet ascertained, to be proven at trial.

17
18 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
19 forth below.

20 **SEVENTH CAUSE OF ACTION**

21 **Violation of California Civil Code § 1918.5-1921.1920**

22 **(Against All Defendants)**

23
24 78. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully
25 set forth herein.

26 79. According to California Civil Code § 1918.5-1921.1920(a) any mortgage instrument
27 that is made pursuant to the provisions of this chapter shall meet the following requirements:
28

1 Standards for the adjustment of interest rates or monthly payments shall consider factors, which can
2 reasonably be deemed to affect the ability of borrowers to meet their mortgage obligations.

3 80. This loan was based only upon a credit score, stated income (without verification) and
4 a belief that the property would continue to increase in value. No consideration of the ability of
5 Plaintiff to repay this loan with a realistic means test has been made.

6
7 81. Additional documentation was available in the form of W-2's, income information,
8 tax records, etc. to determine the ability of the borrower to repay the loan. The failure to do so by
9 Defendants violates California Civil Code § 1918.5-1921.1920.

10 82. Further, the lender must notify borrowers of any changes in the interest rate and
11 monthly payment of a loan. The fully amortized rate changes monthly, so the borrower should be
12 notified monthly, in accordance with the above statute. Lender has failed to do so and violates the
13 above law.

14
15 83. As a proximate result of Defendants' actions, Plaintiffs have been damaged in an
16 amount not yet ascertained, to be proven at trial.

17 WHEREFORE, Plaintiff prays for relief as set forth below.

18
19 **EIGHTH CAUSE OF ACTION**

20 **Violation of California Civil Code § 1916.7 B**

21 **(Against All Defendants)**

22 84. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
23 fully set forth herein.

24
25 85. Violation of California Civil Code § 1916.7 B states that: "the difference added to the
26 principal of the loan as of the due date of the installment and thereafter shall bear interest as part of the

1 principal. In no instance shall the difference which is added to the principal be an amount which causes the
2 resulting loan-to-value ratio to exceed the loan-to-value ratio at the time of loan origination”.

3 86. The current loan is a negative amortizing loan and subject to the loan to value being
4 greater than the original loan to value. As each minimum payment is made, the balance increases,
5 increasing the loan to value ratio, thus violation thus violating the above-statute.

6
7 87. As a proximate result of Defendants’ actions, Plaintiffs have been damages in an amount
8 not yet ascertained, to be proven at trial.

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
10 forth herein.

11 **NINTH CAUSE OF ACTION**

12 **Violation of California Civil Code § 1916.7 a(8)**

13 **(Against All Defendants)**

14
15 88. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
16 fully set forth herein.

17 89. A Borrower is permitted to prepay the loan in whole or in part without a prepayment
18 charge at any time, and no fee or other charge may be required by the lender of the Borrower as a
19 result of any change in the interest rate or the exercise of any option or election extended to the
20 Borrower.

21
22 90. The current loan contains an Adjustable Rate Mortgage. Within that Adjustable rate
23 Mortgage, a prepayment penalty was incorporated in to this loan and therefore in violation of the law
24 because the interest adjusts monthly on this loan. Further, Defendant’s prefer the loan not be paid
25 back rapidly as it will decrease their profit margin. As such, they have incorporated a pre-payment
26 penalty.
27
28

1 91. As a proximate result of Defendants' actions, Plaintiffs have been damages in an amount
2 not yet ascertained, to be proven at trial.

3 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
4 forth herein.

5
6 **TENTH CAUSE OF ACTION**

7 **Violation of California Civil Code § 1637**

8 **(Against All Defendants)**

9 92. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
10 fully set forth herein.

11 93. Disclosure requirements for open end consumer credit plans secured by consumer's
12 principle residence subject to a table, based on a \$10,000.00 extension of credit, showing how the
13 annual percentage rate and the minimum periodic payment amount under each repayment option of
14 the plan would have been affected during the preceding 15-year period by changes in any index used
15 to compute such rate
16

17 94. An Option Adjustable Rate Mortgage is actually an Open Ended Credit Plan by
18 definition. The balance of the mortgage can increase, and the credit can be reused as paid off, which
19 is the definition of such a plan. As required by this statute, a lender must provide for an Open Ended
20 Credit Plan, a 15-year table showing the effects of the index used on loan payments. Here, no
21 disclosures were provided to demonstrate an Open Ended Credit Plan.
22

23 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
24 forth herein.
25

26 ///

27 ///

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Civil Code § 226.23 (3).**

3 **(Against All Defendants)**

4 95. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
5 fully set forth herein.
6

7 96. Pursuant to California Code Of Civil Procedure § 337.3, an action based upon the
8 rescission of a contract in writing, the time begins to run from the date upon which the facts that
9 entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake,
10 the time does not begin to run until the discovery by the aggrieved party of the facts constituting the
11 fraud or mistake. The time does not begin to run until the representation becomes false.
12

13 97. The federal doctrine of fraudulent concealment operates to toll the "statute of
14 limitations" where a plaintiff has been injured by fraud and 'remains in ignorance of it without any
15 fault or want of diligence or care on his part. Holmberg v. Armbrrecht, 327 U.S. 392, 397 (1946)
16 (quoting Bailey v. Glover, 88 U.S. (21 Wall.) 342, 348 (1874)); see Maggio v. Gerard Freezer & Ice
17 Co., 824 F.2d 123, 127 (1st Cir. 1987).
18

19 98. Here, Plaintiffs have only two copies of the Notice of Right to Cancel. Each borrower
20 should have received two copies each of the Notice of Right to Cancel. Therefore, the borrowers
21 have an extended 3-year right to cancel this loan in accordance with § 226.23 (3).
22

23 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
24 forth herein.

25 **TWELFTH CAUSE OF ACTION**

26 **Rescission**

27 **(Against All Defendants)**

1 99. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
2 fully set forth herein.

3 100. Plaintiff is entitled to rescind the loan for all of the foregoing reasons: 1) TILA
4 Violations; 2) Failure to provide a Mortgage Loan Origination Agreement; 3) Fraudulent
5 Concealment; and 4) Public Policy Grounds, each of which provides independent grounds for relief.
6

7 101. The Truth In Lending Act, 15 U.S.C §1601, et.seq. extends Plaintiff's right to rescind
8 a loan to three years from the date of closing if the borrower received false or incomplete disclosures
9 of either the loans terms or Borrower's right to rescind. Here, Defendants have failed to properly
10 disclose the details of the loan. Specifically, the initial disclosures do not initial TIL disclosures, and
11 lack of diligence and collusion on the part of the broker, lender and underwriter to place Plaintiffs in
12 a loan she could not afford and would ultimately benefit Defendants following the negative
13 amortization that accrued.
14

15 102. The public interest would be prejudiced by permitting the alleged contract to stand;
16 such action would regard an unscrupulous lender.
17

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

20 WHEREFORE, Plaintiffs pray for rescission of the stated loan in its entirety.
21

22 **THIRTEENTH CAUSE OF ACTION**

23 **Fraud**

24 **(Against All Defendants)**

25 104. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
26 fully set forth herein.

27 105. Defendants intentionally, willfully and wantonly engaged in the acts with the
28

1 purpose of deceiving Plaintiffs and inducing them to part with their personal and real property buy
2 using a stated income loan.

3 106. The credit application and or available W-2's provided by Plaintiffs were enough, in
4 addition to the application itself for Defendant's to know what type of loan should be offered, and
5 what the Plaintiff's could not afford. Any falsification of a credit application by a broker or seller for
6 the purposes of securing a loan is de facto fraud. U.S. v. Robinson, 4thCircuit, 2004.

8 107. Defendants engaged in the unlawful suppression of facts or circumstances by one of
9 the parties to a contract from the other, for self-serving purposes and financial gain, which in justice
10 ought to be made known.

11 108. Plaintiffs justifiably relied on Defendant's deception, which was the actual and
12 proximate cause of Plaintiff's damages.

14 109. Plaintiffs are entitled to exemplary and punitive damages for Defendants' fraudulent
15 conduct in the sum to be determined at trial. Further, fraudulent concealment avoids the contract.

16 WHEREFORE, Plaintiffs pray for relief as set forth below.

17
18 **FOURTEENTH CAUSE OF ACTION**

19 **Unfair And Deceptive Business Act Practices (UDAP)**

20 **(Against All Defendants)**

21 110. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
22 fully set forth herein.

24 111. Defendants failed to undergo a diligent underwriting process for this loan a alleged in
25 this complaint. They also failed to properly adjust and disclose facts and circumstances relating to
26 Plaintiff's Adjustable Rate Mortgage and placed Plaintiffs in a loan, by way of stated income and
27 misleading facts, which they should never have been approved for because they could not afford it.
28

1 Defendants did have that knowledge of these facts, circumstances and risks but failed to disclose
2 them.

3
4 112. By reason of Defendants fraudulent, deceptive, unfair, and other wrongful conduct
5 as herein alleged, said Defendant has violated California Business and Professions Code § 17200 et
6 seq. by consummating an unlawful, unfair, and fraudulent business practice, designed to deprive
7 Plaintiff of her home, equity, as well as her past and future investment.

8 113. By reason of the foregoing, Plaintiffs have suffered and continues to suffer damages
9 in a sum which is, as yet unascertained.

10
11 WHEREFORE, Plaintiff prays for relief as set forth below.

12 **FIFTEENTH CAUSE OF ACTION**

13 **Breach of Fiduciary Duty**

14 **(Against Defendants)**

15 114. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
16 fully set forth herein.

17
18 115 Defendants owed a fiduciary duty to Plaintiffs and breached that duty by ailing to
19 advise or notify Plaintiffs when Defendant's broker knew or should have known that Plaintiffs will
20 or has a likelihood of defaulting on the loan, Defendants have a fiduciary duty to the borrower to not
21 place them in that loan (in harms way).

22
23 116. Regarding this loan, it was in the best interest of the Defendants to promote the
24 particular program for which they approved the Plaintiffs. It led to a maximization of profits for the
25 Defendants, with no concern for the borrower. A 30-year fixed would have netted less return for the
26 lender, though better for the borrower.

1 117. Defendant failed to provide material disclosures regarding the loan and its interest rate
2 to Plaintiffs while in the capacity of Plaintiff's Lender.

3 118. Defendants failed to fully comply with TILA/RESPA regulations and laws designated
4 to protect Plaintiffs. The failure to do so placed Plaintiffs in a serious disadvantage and potential
5 loss of their home. Such actions are violations of a fiduciary responsibility owed to Plaintiffs by
6 Defendants.
7

8 WHEREFORE, Plaintiffs pray for relief as set forth below.

9 **SIXTEENTH CAUSE OF ACTION**

10 **Unconscionability – UCC-2-3202**

11 **(Against All Defendants)**

12
13 119. Plaintiff re-allege and incorporate by reference all preceding paragraphs as though
14 fully set forth herein.

15 120. If the court as a matter of law finds the contract or any clause of the contract to have
16 been unconscionable at the time it was made the court may refuse to enforce the contract, or it may
17 enforce the remainder of the contract without the unconscionable clause, or it may so limit the
18 application of any unconscionable clause as to avoid any unconscionable result.
19

20
21 121. When it is claimed or appears to the court that the contract or any clause thereof may
22 be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its
23 commercial setting, purpose and effect to aid the court in making the determination.
24

25 122. Here, based on the deception, unfair bargaining position, lack of adherence to the
26
27
28

1 regulations, civil codes and federal standards that the Defendants were require to follow; coupled
2 with the windfall that the Defendants reaped financially from their predatory practices upon
3 Plaintiff's, the court may find that the loan agreement and trust deed are unconscionable and of no
4 force or effect.

5 WHEREFORE, Plaintiffs pray for restitution and relief as set forth below.

6
7 **SEVENTEENTH CAUSE OF ACTION**

8 **Predatory Lending; California Business and Professions Code §17200**

9 **(Against All Defendants)**

10 123. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
11 fully set forth herein.

12
13 124. The Office of Comptroller of the Currency defines Predatory Lending as any lien
14 secured by real estate which shares well known common characteristics that result in Unfair and
15 Deceptive Business Practices under California Business and Professions Code § 17200.

16
17 125. Acts undertaken by the Defendants here that are consistent with the Office of the
18 Comptroller's definition include the fact that this loan was marketed in a way which fails to fully
19 disclose all material terms and includes terms and provisions which are unfair, fraudulent or
20 unconscionable.

21
22 126. This loan is marketed in whole or in part on the basis of fraud, exaggeration,
23 misrepresentation or the concealment of a material fact and was underwritten without due diligence
24 by the party originating the loan;

25 127. The loan does not does not plainly and prominently disclose on the good faith
26 estimate of closing costs the size of any yield spread premium paid directly or indirectly, in whole or
27 in part, to a mortgage loan officer;

1 128. Contains loan terms whereby the borrower can never realistically repay the loan,
2 representative of "Bait and Switch" tactics.

3 129. This loan lends and refines whereby equity is removed from the home through
4 repeated refinances, consolidation of short term debt into long term debt, negative amortization or
5 interest only loans whereby payments are not reducing principle, high fees and interest rates.
6 Eventually, borrower cannot refinance due to lack of equity. This results in equity stripping.
7

8 130. This loan is a Negative Amortization Loan, where the borrower is under the belief
9 that the payment and rate are actually such that the balance on the loan can increase monthly.
10

11 131. This loan is based on a loan application that is inappropriate for the borrowers. For
12 instance, the use of a No Income stated on the loan application from an employed individual who has
13 or can obtain pay stubs, W-2 forms and tax returns.

14 132. This loan is underwritten without due diligence by the party originating the loan.
15 There has been no realistic means test for determining the ability of the borrowers to repay the loan.
16 Further, there is a lack of documentation of income or assets and/or job verification.
17

18 133. In order to avoid making required disclosures to borrowers under the Truth in
19 Lending Act, WORLD made an "open-end" mortgage loan. Instead of creating a line of credit from
20 which the borrower may withdraw cash when needed, WORLD advanced the full amount of the loan
21 to the borrowers at the outset. The loan is non-amortizing, meaning that the payments are interest
22 only, so that the balance is never reduced.
23

24 WHEREFORE, Plaintiffs pray for relief as set forth below.

25 **PRAYER FOR RELIEF**
26

27 WHEREFORE Plaintiff will ask for the following for each Cause of Action sustained:
28

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

1. For Compensatory Damages in an amount to be determined by proof at trial.
2. For Special Damages in an amount to be determined by proof at trial.
3. For General Damages in an amount to be determined by proof at trial.
4. For Treble Damages in an amount to be determined by proof at trial.
5. For Punitive Damages as against the individual Defendants.
6. For Attorney's Fees and Costs of this action.
7. For Declaratory Relief, including a declaration that Plaintiff is the prevailing party.
8. For a judgment rescinding the Loan and Security Agreement and setting forth terms of restitution.
9. For any prejudgment or other interest according to law.
10. Any other and further relief that the Court considers just and proper.

August ____, 2009

SAMPLE COMPLAINT CELA, LLC