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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

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10 *Additional counsel listed in signature block*

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

13 TIMOTHY R. PEEL AND CHERYL
14 G. PEEL, RUSS BEBOUT,
15 MICHAEL SANFORD AND
16 MARILYN SANFORD and
DESIREE MCILRATH on behalf of
themselves and all others similarly
situated,

17 Plaintiffs,

18 v.

19 BROOKSAMERICA MORTGAGE
20 CORPORATION; WASHINGTON
21 MUTUAL MORTGAGE
22 SECURITIES CORPORATION;
23 WAMU ASSET ACCEPTANCE
CORPORATION; RESIDENTIAL
FUNDING COMPANY LLC,

24 Defendants.

Case No. **SACV11-00079** **JVS** (RNBx)
**NOTICE OF REMOVAL OF CIVIL
ACTION (CLASS ACTION FAIRNESS
ACT, 28 U.S.C. § 1332(d))**

Removed from Orange County Superior
Court Case No.: 30-2010-00348134

1 Defendant Washington Mutual Mortgage Securities Corporation
2 ("WMMSC"), through its undersigned counsel, hereby gives notice of its removal of
3 the above-captioned action, Case No. 30-2010-00348134, currently pending in the
4 Superior Court of California, County of Orange (the "Action"), to the United States
5 District Court for the Central District of California, Southern Division. Removal is
6 based on 28 U.S.C. § 1332, as amended in relevant part by the Class Action Fairness
7 Act of 2005 ("CAFA") and authorized by 28 U.S.C. §§ 1441 and 1453. As grounds
8 for removal, WMMSC states as follows:

9 **I. BACKGROUND.**

10 1. This is a putative class action challenging so-called Option ARM
11 loans made by defendant BrooksAmerica Mortgage Corporation
12 ("BrooksAmerica") or sold to or owned by WMMSC, defendant WaMu Asset
13 Acceptance Corporation ("WAAC"), or defendant Residential Funding Company
14 LLC ("RFC").

15 **A. Previous Federal Court Action.**

16 2. This is not the first lawsuit filed by plaintiffs Timothy and Cheryl
17 Peel (the "Peels") against BrooksAmerica challenging their Option ARM loan.
18 On January 16, 2008, the Peels filed a putative class action against
19 BrooksAmerica in the Central District of California (the "Previous Federal Court
20 Action") challenging Option ARM loans based on the same facts, predicated
21 upon the same theories, and raising nearly the same claims. *See Peel v.*
22 *BrooksAmerica Mortg. Corp.*, Case No. 8:08-cv-00049-JVS-MLG. As discussed
23 in detail. That lawsuit was dismissed twice, once by Judge James V. Selna on
24 February 9, 2009, and the second time voluntarily on January 7, 2010. *See Peel*
25 *v. BrooksAmerica Mortg. Corp.*, Case No. 8:08-cv-00049-JVS-MLG (Dkt. Nos.
26 53, 78.) WMMSC, WAAC, and RFC were not named as defendants in the Previous
27 Federal Court Action.
28

1 **B. The State Court Action.**

2 3. Less than a month after voluntarily dismissing the Previous Federal
3 Court Action, on or about February 5, 2010, the Peels, on behalf of themselves
4 and purportedly on behalf of a putative California class of similarly situated
5 borrowers of BrooksAmerica, filed a Class Action Complaint ("Complaint") with
6 the Clerk of the Superior Court of California, County of Orange. The Action was
7 assigned Case No. 30-2010-00348134. The Complaint did not name WMMSC,
8 WAAC, or RFC as defendants.

9 4. On October 20, 2010, the Peels filed a First Amended Complaint
10 ("FAC"), adding Russ Bebout ("Bebout"), Michael and Marilyn Sanford (the
11 "Sanfords"), and Desiree McIlrath ("McIlrath") (collectively, the Peels, Bebout, the
12 Sanfords, and McIlrath are the "Plaintiffs").

13 5. The FAC added WMMSC, WAAC, and RFC as defendants, and it was
14 the first complaint in the Action or the Previous Federal Court Action to name any of
15 those three entities as defendants.

16 6. The FAC was served on WMMSC and WAAC on December 16, 2010,
17 and the FAC was served on RFC on December 15, 2010.

18 7. The FAC purports to assert claims against Defendants for fraudulent
19 omissions, violation of all three prongs of the California Unfair Competition Law,
20 Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and for breach of contract.

21 8. Plaintiffs' claims arise out of four mortgage transactions – one
22 involving the Peels, Bebout, the Sanfords, and McIlrath, respectively, and
23 BrooksAmerica. (Exs. 1-4 to FAC.) Plaintiffs allege the Peels' loan was sold to
24 either WMMSC or WAAC, and that Bebout's, the Sanfords', and McIlrath's
25 respective loans were sold to RFC. (FAC paras. 3-6.)

26 9. Each Plaintiff is, "and at all times relevant to [the FAC]," has been a
27 resident of California. (*Id.* paras. 3-6.)
28

1 10. Plaintiffs allege BrooksAmerica is a California corporation with its
2 principal place of business in California. (*Id.* para. 7.)

3 11. WMMSC is a Delaware corporation with its principal place of
4 business in Washington. (FAC para. 9; Declaration of Jei Nagamatsu, para. 2
5 ("Nagamatsu Decl."; attached as Ex. A).) Therefore, WMMSC is a citizen of
6 Delaware and Washington, and no other state. 28 U.S.C. § 1332(c)(1).

7 12. WAAC is a Delaware corporation with its principal place of
8 business in Washington. (FAC para. 9; Nagamatsu Decl., para. 3.) Therefore,
9 WMMSC is a citizen of Delaware and Washington, and no other state. 28 U.S.C.
10 § 1332(c)(1).

11 13. Plaintiffs allege RFC is a Delaware limited liability company with
12 its principal place of business in Minnesota. (FAC para. 10.) Thus, for purposes
13 of diversity jurisdiction under CAFA, RFC is a citizen of Delaware and
14 Minnesota, and no other state. 28 U.S.C. § 1332(d)(10).

15 **II. THIS COURT HAS JURISDICTION OVER THIS ACTION UNDER**
16 **THE CLASS ACTION FAIRNESS ACT.**

17 **A. CAFA is Applicable to This Action.**

18 14. Pursuant to 28 U.S.C. § 1332, as amended by CAFA, a putative
19 "class action" commenced after February 18, 2005 – the effective date of CAFA
20 – may be removed to the appropriate United States District Court if (1) any
21 member of the putative class is a citizen of a state different from any defendant,
22 and (2) the amount in controversy exceeds the sum or value of \$5,000,000,
23 exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).

24 15. CAFA is applicable to the Action because the Action was
25 commenced on or about February 5, 2010, after the effective date of the Act. See
26 Notes to 28 U.S.C. § 1332, 1453 ("The amendments made by this Act shall
27
28

1 apply to any civil action commenced on or after the date of enactment of this Act
2 [February 18, 2005]"), citing Pub. L. 109-2, 89, 119 Stat. 14.

3 16. In addition, the Action is a "class action" within the meaning of
4 CAFA because it is filed under California Code of Civil Procedure § 382 (FAC
5 para. 58) – California's analog to Federal Rule of Civil Procedure 23 and a "rule
6 of judicial procedure authorizing an action to be brought by 1 or more
7 representative persons as a class action." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a).

8 **B. The Citizenship of The Parties is Diverse Under CAFA.**

9 17. The requisite diversity of citizenship exists under 28 U.S.C. §§
10 1332(d)(2) and (d)(7).

11 18. WMMSC and WAAC are citizens of Delaware and Washington.
12 (FAC para. 9; Nagamatsu Decl. paras. 2, 3.)

13 19. Plaintiffs allege RFC is a citizen of Delaware and Minnesota. (FAC
14 para. 10.)

15 20. Plaintiffs are, upon information and belief, citizens of the state of
16 California, and seek to represent a class of California residents. (FAC paras. 3-6,
17 57.)

18 21. Thus, based upon Plaintiffs' own allegations, it is evident that three
19 defendants are citizens of states different from at least one class member
20 (California). The diversity of citizenship requirement of 28 U.S.C. § 1332(d)(2)
21 and (d)(7) is thus met.

22 **C. The CAFA Amount in Controversy Requirement is Met.**

23 22. Although Plaintiffs do not plead a specific damages amount, there is
24 more than \$5,000,000 in controversy in this action.

25 23. Under 28 U.S.C. § 1332(d), as amended by CAFA, the amount in
26 controversy in a putative class action is determined by aggregating the amount at
27 issue in the claims of all members of the putative class. 28 U.S.C. § 1332(d)(6).
28

1 24. While WMMSC denies that Plaintiffs or any putative class member
2 are entitled to recover any amount, and specifically deny that Plaintiffs or any
3 putative class member are entitled to the relief in the various forms sought, given
4 the FAC's allegation of a California statewide class of thousands of individuals
5 and the relief sought, the aggregate amount in controversy exceeds \$5,000,000,
6 exclusive of interest and costs.

7 25. Plaintiffs purport to sue on behalf of themselves and "[a]ll
8 individuals who, from January 16, 2004 through the date that notice is mailed to
9 the Class, have or had an Option ARM loan on their home located in the State of
10 California . . . that was (1) originated by BrooksAmerica; or (2) sold to or owned
11 by WMMSC, WAAC or RFC." (FAC para. 57.) Thus, Plaintiffs' putative class
12 includes not only all Option ARM loans originated by BrooksAmerica in
13 California during the Putative Class Period, but also all Option ARM loans in
14 California held by WMMSC, all Option ARM loans in California held by
15 WAAC, and all Option ARM loans in California held by RFC.

16 26. Plaintiffs further allege that this putative class is "so numerous that
17 their individual joinder is impracticable" and that the putative class "consists of
18 thousands of citizens and residents of California." (*Id.* para. 59.)

19 27. As relief in this lawsuit, Plaintiffs plead that they and the putative
20 class are entitled to actual damages, compensatory damages, consequential
21 damages, punitive damages, unjust enrichment, restitution, "restitutionary
22 disgorgement of all profits obtained by Defendants as a result of their unfair
23 competition," interest, declaratory relief, injunctive relief, and attorneys' fees and
24 costs. (FAC *ad damnum* clause.) These amounts, as a matter of law, all count
25 toward the jurisdictional amount. 28 U.S.C. § 1332(d)(6); *Brady v. Mercedes-*
26 *Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1011 (N.D. Cal. 2002) ("a reasonable
27 estimate of fees likely to be incurred to resolution" counts toward the amount in
28 controversy).

1 28. WMMSC's research reveals that it held 29,375 Option ARM loans
2 secured by property located in California that were originated on or after January
3 16, 2004 and the date of the filing of this lawsuit (the "Putative Class Period").
4 (Nagamatsu Decl. para. 4.) Using this figure, the aggregate amount of the various
5 forms of damages, disgorgement of profits and attorneys' fees sought on behalf of
6 each class members would need to be less than \$170.22 on average per loan for
7 the \$5,000,000 jurisdictional threshold to be met, taking into account WMMSC
8 alone. There is more than \$170.22 on average, per loan, at issue in this case.

9 29. As just one category of damages, Plaintiffs seek to recover the
10 amount of increases to their and all putative class members' loan balances
11 resulting from negative amortization. (FAC paras. 1, 93, *ad damnum* clause.)
12 Plaintiffs allege they "have suffered injury and lost money and property,
13 including but not limited to the amount of negative amortization resulting from
14 Defendants' scheme." (*Id.* para. 93.) This category alone well exceeds the
15 \$5,000,000 jurisdictional threshold without consideration of any of the other
16 forms of relief Plaintiffs seek.

17 30. WMMSC purchased 29,375 Option ARM loans secured by property
18 in California that were originated between January 16, 2004 and the present.
19 (Nagamatsu Decl. para. 4.) The current, aggregate amount of accumulated
20 negative amortization on these 29,375 loans is in excess of \$905,817,603.72. (*Id.*
21 para. 5.) This amount is only a fraction of the aggregate accumulated negative
22 amortization "in controversy," because it does not include accumulated negative
23 amortization on the substantial number of these loans that ceased to be serviced
24 by a WMMSC affiliate prior to July 1, 2008 (because, for example, the loans
25 were paid off). (*Id.* para. 6.)

26 31. Furthermore, this amount does not include: (1) Option ARM loans
27 originated by BrooksAmerica that were not sold to WMMSC; (2) Option ARM
28

1 loans sold to or owned by WAAC; or (3) Option ARM loans sold to or owned by
2 RFC.

3 32. WMMSC's research also reveals that the Peels' principal balance has
4 increased by \$9,142.39 as a result of negative amortization. (Nagamatsu Decl.
5 para. 7.) Using this figure, the \$5,000,000 jurisdictional threshold is met if just
6 547 (or 1.862 %) of the 29,375 Option ARMS loans held by WMMSC during
7 the Putative Class Period have experienced negative amortization in this or a
8 larger amount.

9 33. Therefore, it is reasonable to conclude that, when aggregating the
10 alleged negative amortization of all of the WMMSC loans during the Putative
11 Class Period with all of the BrooksAmerica, WAAC, and RFC loans during the
12 class period, the \$5 million threshold is met by the negative amortization figure
13 alone.

14 34. As another category of damages, Plaintiffs also seek "lost equity" in
15 their homes as result of the challenged conduct. (FAC paras. 1, 85, 103, 115.)
16 Plaintiffs further allege that this amount alone is as much as "millions of dollars."
17 (*Id.* para. 103.) This amount must be added to the other categories of damages
18 and relief Plaintiffs seek.

19 35. Beyond the tens of millions of dollars Plaintiffs seek in damages for
20 lost equity and negative amortization, they also seek punitive damages, as well as
21 attorneys' fees.

22 36. "Special" or "punitive" damages are treated as part of the amount in
23 controversy for purposes of removal. "Where both actual and punitive damages
24 are recoverable under a complaint each must be considered to the extent claimed
25 in determining jurisdictional amount." *Bell v. Preferred Life Assurance Soc'y*,
26 328 U.S. 238, 240 (1943). *See also Amezcua v. Cellco P'ship*, No. 08-cv-04390,
27 2009 WL 1190553, at *3 (N.D. Cal. May 3, 2009) (stating that claims for
28 punitive damages are generally considered part of the amount in controversy,

provided that the underlying compensatory damages are not "speculative"); *Coren v. Mobil Entm 't, Inc.*, No. 08-cv-05264, 2009 WL 764883, at *2 (N.D. Cal. Mar. 19, 2009) (same). In light of Supreme Court precedent, and while WMMSC denies that punitive damages are recoverable in any amount, Plaintiffs' FAC puts them in controversy and it is reasonable to assume that Plaintiffs will seek to recover punitive damages at least equal to twice the amount of alleged actual damages. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (recognizing that the Court has upheld punitive damages awards up to four-times the amount of compensatory damages). Thus, just using the low end of the claim of actual damages of "millions of dollars" – \$2,000,000 – Plaintiffs seek in lost equity, the jurisdictional threshold is met if Plaintiffs seek punitive damages of just \$4,000,000. Moreover, if Plaintiffs seek punitive damages of \$170.22 per putative class member for a class of 29,375 members, the jurisdictional amount is satisfied based on the punitive damages demand alone.

37. Plaintiffs also seek attorneys' fees. (FAC, *ad damnum* clause.) It is reasonable to conclude that, if successful in recovering the millions of dollars in damages sought in this lawsuit, Plaintiffs will seek attorneys' fees in an amount exceeding six figures. *See Fredercio v. Home Depot*, 507 F.3d 188 (3d Cir. 2007) (noting that attorneys' fees in class actions can exceed six figures). This amount also counts toward the jurisdictional threshold.

38. In light of the above, the amount in controversy in this case exceeds \$5,000,000.¹

¹ While WMMSC does not bear the burden of rebutting potential exceptions to CAFA jurisdiction, *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1019, 1024 (9th Cir. 2007), no exception applies. Plaintiffs allege in their FAC that both the "home state exception," 28 U.S.C. § 1332(d)(4)(A), and the "local controversy exception," *id.* § 1332(d)(4)(B), apply here. However, the home state exception does not apply because three of the "primary defendants" – WMMSC, WAAC, and RFC – are not citizens of California. *Id.* § 1332(d)(4)(A); *Rader v. Teva Parental Meds., Inc.*, No. 2:10-CV-818 JCM (RJJ), 2010 WL 3463652, at *2 (D. Nev. Aug. 27, 2010) (explaining "primary

III. PROCEDURAL REQUIREMENTS AND LOCAL RULES.

A. Removal to Proper Court.

39. This Court is part of the "district and division" embracing the place where this action was filed – Orange County, California. See 28 U.S.C. § 1446(a).

B. Removal is Timely.

40. WMMSC is entitled to remove the Action at any time up to thirty days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief on which the action is based, or within thirty days after service of the summons, whichever is shorter. 28 U.S.C. § 1446(b).

defendants" means any defendant from whom relief is sought or who is a target of the lawsuit); *Corsino v. Perkins*, No. CV 09-09031 MMM (CWx), 2010 WL 317418, at *5 (C.D. Cal. Jan. 19, 2010) (same); *Grimmelmann v. Pulte Home Corp.*, No. CV-08-1878-PHX-FJM, 2009 WL 1211771, at *2 (D. Ariz. May 1, 2009) (same). The local controversy exception does not apply because, during the three-year period preceding the filing of this Action, there have been other putative class actions filed against Defendants "asserting the same or similar factual allegations . . . on behalf of the same or other persons." 28 U.S.C. § 1332(d)(4)(B); *Corsino*, 2010 WL 317418, at *4 (local controversy exception did not apply where similar suit was filed against one of the defendants); *Grimmelmann v. Pulte Home Corp.*, No. CV-08-1878-PHX-FJM, 2009 WL 1211771, at *2 (D. Ariz. May 1, 2009) ("local controversy" exception did not apply where another class action suit was pending against two of the defendants with similar allegations and overlapping classes). Specifically, there are at least four other putative class actions similar to this Action that have been filed in the last three years. *Amparan, et al. v. Plaza Home Mortg., Inc., et al.*, N.D. Cal. Case No. 07-cv-04498-JF (RSx) (WMMSC and WAAC); *Avila, et al. v. Stearns Lending, Inc., et al.*, C.D. Cal. Case No. CV 08-0419 AG (CTx) (RFC); *Baker, et al. v. Aegis Wholesale Corp., et al.*, N.D. Cal. Case No. CV 09-05280-PJH (RFC); *Peel v. BrooksAmerican Mortg. Corp.*, C.D. Cal. Case No. 8:08-cv-00049-JVS-MLG (BrooksAmerica). Furthermore, the exception in 28 U.S.C. § 1332(d)(5)(B) does not apply because the number of putative class members is alleged to be in excess of 100 (28 U.S.C. § 1332(d)(5)(B); FAC para. 59), and the exception in 28 U.S.C. § 1332(d)(9) does not apply because this case does not involve a claim under the securities laws and does not relate to the internal affairs and governance of a corporation or other form of business enterprise. 28 U.S.C. § 1332(d)(9); *see generally* FAC.

1 41. The FAC in the Action was filed on October 20, 2010, and served on
2 WMMSC and WAAC on December 16, 2010 and served on RFC on December
3 15, 2010. WMMSC, WAAC, and RFC were not previously parties to the Action.

4 42. WMMSC is filing this Notice of Removal within thirty days of
5 service of the FAC on the first-served defendant. Therefore, removal is timely.

6 **C. Pleadings and Process.**

7 43. Attached hereto as Exhibit B is a copy of all process, pleadings, and
8 orders filed in the Action. See 28 U.S.C. § 1446(a).

9 44. WMMSC has paid the appropriate filing fee to the Clerk of this
10 Court upon the filing of this Notice.

11 **D. Notice.**

12 45. WMMSC shall serve a copy of this Notice of Removal on all parties
13 to this action and shall promptly file a Notice of Filing of Notice of Removal with
14 the Clerk of the Superior Court of California, County of Orange. See 28 U.S.C.
15 §§ 1446(a), (d).
16

17
18 **E. Consent to Removal.**

19 46. Consent to removal is not required for removal under CAFA. See 28
20 U.S.C. § 1453(b); *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 681-82
21 (9th Cir. 2006).

22 **F. Signature.**

23 47. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.
24 See 28 U.S.C. § 1446(a).

25 48. Based upon the foregoing, this Court has jurisdiction over this
26 matter pursuant to 28 U.S.C. § 1332, and the claims may be removed to this
27 Court under 28 U.S.C. §§ 1441 and 1453.
28

1 **IV. REQUEST FOR ADDITIONAL ARGUMENTS AND EVIDENCE, IF**
2 **NECESSARY.**

3 49. In the event that Plaintiffs file a request to remand, or the Court
4 considers remand *sua sponte*, WMMSC respectfully requests the opportunity to
5 submit additional argument or evidence in support of removal, including
6 evidence as to the amount in controversy.

7 WHEREFORE, this action should proceed in the United States District
8 Court for the Central District of California, as an action properly removed
9 thereto.

10 Dated: January 14, 2011

11 Respectfully submitted,

12 By: 

13 ~~FK~~ Shannon Z. Petersen
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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25 ACCEPTANCE CORPORATION
26
27
28

EXHIBIT A

A 12

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10 Attorneys for Defendants
11 WASHINGTON MUTUAL MORTGAGE SECURITIES CORPORATION and
12 WAMU ASSET ACCEPTANCE CORPORATION

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

15 TIMOTHY R. PEEL AND CHERYL
16 G. PEEL, RUSS BEBOUT,
17 MICHAEL SANFORD AND
18 MARILYN SANFORD and
19 DESIREE MCILRATH on behalf of
20 themselves and all others similarly
21 situated,

22 Plaintiffs,

23 v.

24 BROOKSAMERICA MORTGAGE
25 CORPORATION; WASHINGTON
26 MUTUAL MORTGAGE
27 SECURITIES CORPORATION;
28 WAMU ASSET ACCEPTANCE
CORPORATION; RESIDENTIAL
FUNDING COMPANY LLC,

Defendants.

Case No.

**DECLARATION OF JEI H.
NAGAMATSU IN SUPPORT OF
WASHINGTON MUTUAL
MORTGAGE SECURITIES
CORPORATION'S NOTICE OF
REMOVAL OF CIVIL ACTION
(CLASS ACTION FAIRNESS ACT, 28
U.S.C. § 1332(D))**

Removed from Orange County Superior
Court Case No.: 30-2010-00348134

Judge:

1 I, Jei H. Nagamatsu, declare as follows:

2 1. I am an Assistant Vice President in the Legal and Compliance
3 Department for JPMorgan Chase Bank, N.A. ("Chase"), a national banking
4 subsidiary of JPMorgan Chase & Co. Washington Mutual Mortgage Securities
5 Corporation ("WMMSC") and WaMu Asset Acceptance Corporation ("WAAC")
6 are subsidiaries of Chase. I have been employed by Chase or one of its affiliated
7 and/or acquired companies in a similar capacity since 1996. I have personal
8 knowledge of the facts set forth in this Declaration. My knowledge is based in
9 part on my review of records maintained by Chase, WMMSC and WAAC in the
10 ordinary course of its business. I am familiar with the computer systems used by
11 Chase and its subsidiaries to maintain information relating to the origination,
12 servicing and characteristics of mortgage loans purchased by WMMSC, and the
13 records reflected in those systems. I could competently testify to all facts set
14 forth herein if called as a witness in this matter. I make this declaration in
15 support of WMMSC's Notice of Removal in the above-captioned action.

16 2. WMMSC is a Delaware corporation with its principal place of
17 business at 1301 Second Avenue, Seattle, Washington.

18 3. WAAC is a Delaware corporation with its principal place of
19 business at 1301 Second Avenue, Seattle, Washington.

20 4. WMMSC purchased 29,375 Option ARM loans secured by property
21 in California that were originated between January 16, 2004 and the present.

22 5. The current, aggregate amount of accumulated negative amortization
23 on these 29,375 loans is in excess of \$905,817,603.72.

24 6. This amount does not include accumulated negative amortization on
25 the substantial number of these loans that ceased to be serviced by a WMMSC
26 affiliate prior to July 1, 2008 (because, for example, the loans were paid off).
27
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1 7. Timothy and Cheryl Peel (the "Peels") obtained a residential
2 mortgage from BrooksAmerica Mortgage Corporation on November 21, 2006
3 that was later sold to WMMSC (the "Peel Loan").

4 8. As of the date of this declaration, the (a) principal balance of the
5 Peel Loan has increased by approximately \$9,142.39 since its origination as a
6 result of negative amortization resulting from the Peels' election to make certain
7 minimum payments (as opposed to fully-amortizing or interest-only payments),
8 and (b) the accumulated negative amortization charged on the Peel Loan to date
9 is in excess of \$16,079.78.

10
11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct. Executed in Seattle, Washington on January 13,
13 2011.


14 
15 _____
16 Jei H. Nagamatsu
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EXHIBIT B

b16

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): J. Mark Moore (SBN 180473) SPIRO MOSS LLP 11377 W. Olympic Boulevard, Fifth Floor Los Angeles, CA 90064 TELEPHONE NO.: 310-235-2468 FAX NO.: 310-235-2456 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY ELECTRONICALLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CIVIL COMPLEX CENTER Feb 05 2010 ALAN CARLSON, Clerk of the Court by R. Vavra
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Civil Complex Center		
CASE NAME: PEEL v. BROOKSAMERICA MORTGAGE CORPORATION		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	

Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2010-00348134
JUDGE THIERRY PATRICK COLAW DEPT: DEPT. CX104	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W (23) Non-PI/PD/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|---|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **Three (3)**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 5, 2010

J. Mark Moore

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

b18

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BROOKSAMERICA MORTGAGE CORPORATION, a California Corporation; and DOES 1 through 200 inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

TIMOTHY R. PEEL AND CHERYL G. PEEL, on behalf of themselves and others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Feb 05 2010

ALAN CARLSON, Clerk of the Court
by R. Vavra

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información en continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Orange County Superior Court

751 West Santa Ana Blvd
Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso): 30-2010-00348134

JUDGE THIERRY PATRICK COLAW
DEPT. CX104

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
J. Mark Moore, 11377 W. Olympic Blvd., 5th Floor, Los Angeles, CA 90063, (310) 235-2468

DATE:
(Fecha) February 05, 2010 ALAN CARLSON

Clerk, by
(Secretario) R. VAVRA

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):



B 19

\$355.00
\$550.00

SPIRO MOSS LLP
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Attorneys for Plaintiffs and all others similarly situated.

**ELECTRONICALLY
FILED**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Feb 05 2010

ALAN CARLSON, Clerk of the Court
by R. Vavra

THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO RULE 308 OF THE LOCAL RULES
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

TIMOTHY R. PEEL AND CHERYL G. PEEL,
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

BROOKSAMERICA MORTGAGE
CORPORATION, a California Corporation; and
DOES 1 through 200 inclusive,

Defendants.

CASE NO. 30-2010-00348134

**JUDGE THIERRY PATRICK COLAW
DEPT. CX104**

CLASS ACTION COMPLAINT FOR:

- (1) **Fraudulent Omissions;**
- (2) **Violation of Bus. & Prof. Code §17200, et seq. - "Unlawful," "Unfair" and "Fraudulent" Business Practices; and**
- (3) **Breach of Contract.**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1520

1 Plaintiffs, TIMOTHY R. PEEL AND CHERYL G. PEEL ("Plaintiffs"), individually, and on
2 behalf of all others similarly situated, allege as follows:

3
4 **I.**

5 **INTRODUCTION**

6 1. This is an action pursuant to California's Unfair Competition Law (the "UCL"), Bus. &
7 Prof. Code §§ 17200, *et seq.*, and other California statutory and common law. Plaintiffs, individually,
8 and on behalf of all others similarly situated, bring this action against BROOKS AMERICA
9 MORTGAGE CORPORATION ("BROOKS AMERICA"); and DOES 1 through 200 (collectively
10 "Defendants"), based upon Defendants' non-disclosure and fraudulent concealment of material
11 information relating to Defendants' Option Adjustable Rate Mortgage ("Option ARM") loan documents,
12 and in the accompanying required disclosure statements. The material facts that Defendants failed to
13 disclose included:

- 14 • the loans were designed to cause negative amortization to occur;
- 15 • the monthly payment amounts listed in the loan documents for the first two to five years
16 of the loans were based entirely upon a low "teaser" interest rate (though *not* disclosed as
17 such by Defendants) which existed for only a single month and which was substantially
18 lower than the actual interest rate that would be charged, such that these payment
19 amounts would never be sufficient to pay the interest due each month; and
- 20 • when Plaintiff and Class Members followed the contractual payment schedule in the loan
21 documents, negative amortization was *certain* to occur, resulting in a significant loss of
22 equity in borrowers' homes, and making it much more difficult for borrowers to refinance
23 the loans¹; thus, as each month passed, the homeowners would actually owe more money
24 than they did at the outset of the loan, with less time to repay it.

25 In other words, the loans at issue were guaranteed and intended to result in the loss of the borrowers'
26 equity through negative amortization. Far from being merely a "possibility," as was deceptively

27
28 ¹ If borrowers attempted to refinance in the first 1-3 years of the loans, they would be required to pay another set of closing costs and would have to pay a substantial prepayment penalty.

represented, negative amortization was absolutely guaranteed to occur if Plaintiffs and Class Members adhered to the sole contractual payment schedule presented to them before entering into the loans. The Notes referenced potential, unquantified "options" that borrowers *might* be provided with after closing, and, in fact, to the extent such options or alternative payment schedules were actually provided to some borrowers, they were not provided until *after* the loans closed. By that time, borrowers were, as Defendants intended, effectively trapped in the equity-sucking loans due to draconian prepayment penalties in the tens of thousands of dollars. (Hereinafter, shall the omitted facts referenced above shall be referred to as "The Material Omissions"). All of Defendants' unfair, deceptive and wrongful conduct in this case arises directly from the Option Arm Loan documents themselves, and, more specifically, from the material omissions and deceptive partial representations contained in those documents.

II.

THE PARTIES

2. Plaintiffs TIMOTHY R. PEEL AND CHERYL G. PEEL, are, and at all times relevant to this Complaint were, California citizens residing in Lancaster, California. On or about November 21, 2006, Mr. and Mrs. Peel refinanced their existing home loan and entered into an Option ARM loan agreement with Defendant BROOKS AMERICA. The Option ARM loan was secured by Plaintiffs' residence. Attached hereto as Exhibit 1 is a true and correct copy of the Note and Truth and Lending Disclosure Statement ("TILDS") (collectively the "Loan Documents") pertinent to this action.

3. Defendant BROOKS AMERICA, is a California corporation licensed to do, and doing, business in California, with its principal place of business located at 2 Ada, Suite 100, Irvine California. At all relevant times hereto Defendant was engaged in the business of originating and selling the Option ARM loans that are the subject of this Complaint. Defendant transacts business in Orange County, California and at all relevant times originated and sold Option ARM loans throughout the United States, including Orange County, California. Defendant has significant contacts with Orange County, California, and the activities complained of herein occurred, in whole or in part, in Orange County, California.

1 4. From its headquarters in Irvine, California, Defendant BROOKS AMERICA created,
2 approved and sold the Option ARM loans that are the subject of this complaint. Defendant sold a
3 significant number of the subject Option ARM loans to California residents. Plaintiffs are informed and
4 believe and thereon allege that Defendant's employees and/or agents responsible for the creation,
5 approval and sale of the subject Option ARM loans are located in California and/or that the decisions
6 concerning approval of the loan forms and/or approval of the Plaintiffs' and the Class Members' loans
7 were authorized and/or approved by Defendant's corporate officers, executives and employees located in
8 California.

9 5. At all times mentioned herein, Defendants BROOKS AMERICA, and DOES 1 through
10 200 ("Defendants") were engaged in the business of originating, selling, servicing, and/or owning,
11 and/or are or were the assignees of, the Option ARM loans that are the subject of this Complaint,
12 throughout the State of California, including in Orange County, California.

13 6. Plaintiffs are informed, believe, and thereon allege, that each of the Defendants are
14 responsible in some manner, either by act or omission, strict liability, fraud, deceit, fraudulent
15 concealment, negligence, respondeat superior, joint venture principles, breach of contract or otherwise,
16 for the occurrences herein alleged, and that Plaintiffs' injuries, as herein alleged, were proximately
17 caused by the conduct of Defendants.

18 7. Plaintiffs are informed, believe, and thereon allege, that at all times material hereto and
19 mentioned herein, each of the Defendants sued herein was the agent, servant, employer, joint venturer,
20 partner, division, owner, subsidiary, alias, assignee and/or alter-ego of each of the remaining Defendants
21 and was at all times acting within the purpose and scope of such agency, servitude, joint venture,
22 division, ownership, subsidiary, alias, assignment, alter-ego, partnership or employment and with the
23 authority, consent, approval and ratification of each remaining defendant.

24 8. Plaintiffs are informed, believe, and thereon allege, that at all times herein mentioned,
25 each defendant was acting in concert or participation with each other, or was a joint participant and
26 collaborator with the others in the acts complained of, and/or was the agent or employee of the others in
27 doing the acts complained of herein, each and all of them acting within the course and scope of said
28 agency and/or employment by the others, each and all of them acting in concert one with the other and

1 all together. Each defendant was the co-conspirator, agent, servant, employee, assignee and/or joint
2 venturer of each of the other defendants and was acting within the course and scope of said conspiracy,
3 agency, employment, assignment and/or joint venture and with the permission and consent of each of the
4 other defendants.

5 9. Plaintiffs are informed, believe, and thereon allege, that DOES 1 through 200, inclusive,
6 are securitized trusts, equity funds, collateralized debt obligations (CDO), CDO underwriters, CDO
7 trustees, hedge funds or other entities that acted as additional lenders, loan originators and/or are
8 assignees to the loans which are the subject of this action. Plaintiffs will seek leave of Court to replace
9 the fictitious names of these entities with their true names when they are discovered.

10 10. The true names and capacities, whether individual, corporate, associate or otherwise, of
11 defendants DOES 1 through 200, inclusive, and each of them, are unknown to Plaintiffs at this time, and
12 Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs allege, on information and
13 belief, that each Doe defendant is responsible for the actions herein alleged. Plaintiffs will seek leave of
14 Court to amend this Complaint when the names of said DOE defendants have been ascertained.

15 16 III.

17 JURISDICTION AND VENUE

18 11. This Court has jurisdiction over this matter pursuant to the California Constitution,
19 Article XI, Section 10 and California Code of Civil Procedure ("CCP") §410.10 because Defendants
20 transacted business and committed the acts complained of herein in California. The allegations are
21 sufficient to sustain the causes of action without resort to federal law. More than two-thirds of the Class
22 Members are citizens of California, own property in California which is or was financed and/or secured
23 by the Option ARM loans at issue, all Defendants are located in California, and BROOKS AMERICA
24 has its principal place of business in and is headquartered in California; thus, this case is not subject to
25 removal under the Class Action Fairness Act of 2005 under both the "home state exception" and the
26 "local controversy exception." 28 U.S.C. §1332(d)(4)(A) (home state exception); 28 U.S.C. §1332
27 (d)(4)(B) (local controversy exception).
28

12. Venue is proper in Orange County, California pursuant to CCP §395 and because many of the acts complained about occurred in Orange County and Defendant BROOKS AMERICA resides in, and is headquartered in Orange County, California.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

A. The Subject "Option ARM" Loans

13. The Option ARM loans that are the subject of this Complaint are the loans created and designed with the following common characteristics: (i) the Monthly Payment Amount stated in the Note is based upon a low "teaser" interest rate which ranges from 1% to 3%; (ii) the payment schedule listed in the TILDS, for the first 3-5 years of the Note, is based upon a fully amortizing payment at the "teaser" interest rate; (iii) the interest rate "adjusts" after only 30 days to a rate which is the (far higher) sum of the "index" and the "margin"; and (iv) after the first 3-5 years, the amount of monthly payments increases.

B. Defendant Failed to Disclose to Borrowers, Before They Entered into the Subject Option ARM Loans, the Certainty of Negative Amortization and Other Important Material Facts

14. At all times material hereto, Defendants knew that for Plaintiffs' and Class Members' Option ARM loans, the sum of the index and the margin would necessarily result in an interest rate that always exceeded the "teaser" rate by several percentage points. The "teaser" rate (2.50% for the named Plaintiffs) lasted only a month. As soon as the teaser rate ended, shortly after the loan was consummated, the interest accruing on the Note *more than doubled* from an amount which was usually below 3% (2.50% in the case of Plaintiffs) to an amount of at least 4%, and in some cases up to 8%.

15. The sole payment schedule provided to Plaintiffs and Class Members, in the TILDS accompanying the Note, was for the first five years calculated based on a fully amortizing payment at the low, temporary teaser rate. However, Defendant did not disclose that the payment schedule was calculated based on the low, temporary teaser rate. Instead, the TILDS referenced a different and much higher APR [box in upper left corner], without any suggestion that the payment schedule was based on a

1 “teaser” rate of 1-3% that would in fact expire after only a month. For example, the TILDS for Mr. and
2 Mrs. Peel lists a “yearly” APR of 7.7232. Plaintiffs and other similarly situated borrowers were *not*
3 provided, before entering into the loans, with any other payment schedule or with any informed option to
4 make payments different than those listed in the payment schedule.

5 16. Thus, only a month into the life of the loan, because of the dramatic, immediate
6 interest rate increase, the borrower’s monthly *payment* was no longer sufficient to even pay the interest
7 accruing on the Note. Accordingly, the balance owed began increasing even if the payments were made
8 as scheduled pursuant to the Note and the TILDS. This process is known as negative amortization, and
9 Defendants knew it was certain to occur because of the large spread between the temporary teaser rate
10 and the combined index and margin. Indeed *the margin alone* was consistently higher than the “teaser”
11 rate. Thus, even if the index went down to zero, which has never occurred since the index started being
12 recorded, the combined total of the margin (2.80% in the case of the Peels) and index would never be
13 close to the “teaser” rate. Accordingly, based on the sole payment schedule that Defendant provided to
14 the borrowers before they entered into the loans (before the borrowers became subject to a large
15 prepayment penalty), **the Option ARM loans at issue would *always* cause, and were designed to**
16 **cause, negative amortization.** These facts were not disclosed to Plaintiffs and the Class Members
17 before they entered into the loans. Had Defendant disclosed these material facts to Plaintiffs, they would
18 not have entered into the loans.

19 17. For example, for Mr. and Mrs. Peel’s loan (Exhibit 1), the Note at ¶2(A) states “**I will**
20 **pay a yearly rate of 2.50%.** The interest rate I will pay may change.” ¶2(B) of the Note states “The
21 interest rate I will pay may change on the first day of January 2007,” ¶2(D) of the Note states “Before
22 each Interest Change Date, the Note Holder will Calculate my new interest rate by adding **Two and**
23 **Eight Tenths** percentage point(s) (2.800%) (“Margin”) to the Current Index” (hereafter “The Margin”).
24 ¶3(B) of the Note states “Each of my initial monthly payments until the first Payment Change Date will
25 be in the amount of U.S. \$1,289.67 ...” (The term “initial monthly payments” is not defined.) Because
26 the initial monthly payment amount was calculated by Defendant BROOKS AMERICA at the purported
27 “**yearly rate of 2.50%**” and because the Margin which Defendant added to Plaintiffs’ indexed rate on
28 that day every month thereafter, was 2.800%, in order for Plaintiffs’ legal obligation/interest rate to

1 remain the same (not change), the Index on January 1, 2007, and every month thereafter, would have to
2 be negative 30/100 (-.30) percentage points, an absolute impossibility. [-.30% + 2.80% = 2.50% or the
3 initial interest rate]

4 18. Thus, according to the sole payment schedule provided to the Peels before they were
5 induced to enter into the subject Option ARM loan, negative amortization was an absolute certainty.
6 Defendant knew this but did not disclose it. Such a fact - the certain loss of equity in one's home -
7 would be material to any borrower, and was material to the Peels. Instead of disclosing the truth,
8 Defendant made the deceptive partial representation that negative amortization was only a mere
9 possibility. Had Defendant disclosed that negative amortization was an absolute certainty if the
10 Boschmas made the payments identified under the sole payment schedule provided to them by
11 Defendant, they would not have entered into the loan.

12 19. As alleged above, the Loan Documents did not disclose that negative amortization was
13 certain to occur if borrowers followed the payments schedule provided to them by Defendant. Stated
14 differently, Defendant did not disclose that the borrower's interest rate and the payment it would
15 generate, were absolutely certain to increase shortly after the loan contract was consummated. Instead,
16 Defendant deceptively suggested that, under the facts as they existed at the time the loan was entered
17 into (i.e., using the sole payment schedule provided), negative amortization was only a mere possibility,
18 and, thus, also possibly might *not* occur.

19 20. The Loan Documents deceptively and misleadingly stated that the interest rate
20 and payment amounts "may" change. This was a half truth since the term "may" necessarily means and
21 implies "may not," when in reality the undisclosed truth was that, at the time the loans closed based on
22 the one payment schedule provided to borrowers, there was no uncertainty whatsoever as to whether
23 negative amortization would occur. Representing that negative amortization "may" occur was deceptive
24 and misleading because it implied that negative amortization was only a mere possibility, and subject to
25 some future contingency, such as an increase in the Current Index on which the Interest Rate was
26 purportedly based, when, in fact, negative amortization was *guaranteed* to occur almost immediately,
27 even if the Current Index stayed the same or went down significantly.
28

21. In addition, the Note itself commenced with the following deceptive and misleading partial representation, in bolded, capitalized text: **"THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED . . ."** (Italics added.) The Note further stated, in ¶ 3(B), that "[e]ach of my initial monthly payments until the first Payment Change Date will be in the amount of [the first payment amount identified in the TILDS payment schedule] unless adjusted under Section 3 (F)" (which contains a recast provision when the loan balance reaches 115%). In reality, assuming borrowers made their required monthly payments identified in the Note, negative amortization was an absolute certainty. Thus, asserting that the principal amount to repay "could" be greater than the amount originally borrowed was misleading and deceptive, at best.

22. Similarly, the Notes at issue also deceptively represented that the "my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe at the monthly payment date [and] each month that my payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid principal, and interest will accrue on the amount of this difference ..." [Ex. 1 ¶3(E)]. The monthly payments referred to in section 3(E) of the Promissory Note were the payments based upon the "teaser" interest rate that was only in existence for a single month. Even the increases in the yearly payment were based upon the artificially low payment based upon the ephemeral teaser rate. Defendant's statement in ¶3(E) was thus another statement that negative amortization "could" occur if Plaintiffs made the payments identified in the TILDS. In reality, Defendant knew with 100% certainty, before Plaintiffs entered into the loans, that after the first Payment Change Date, the monthly payment amounts stated in the Note and TILDS would *always* be less, and could never be anything other than less, than the amount of the interest being charged on a monthly basis. Defendant failed to disclose this material information to Plaintiffs and Class Members before they entered into the loans. Had the Loan Documents clearly and conspicuously disclosed this material information to Plaintiffs before they entered into the loan contracts, they would not have entered into the subject Option ARM loans.

23. The Notes further state, in ¶3(B), under "Amount of My Initial Monthly Payments" that "Each of my initial monthly payments will be in the amount of . . . [e.g., \$1,289.67, in the case of the

1 Peels]. However, under the terms of the subject Option ARM loans, the amount actually owed by
2 Plaintiffs and Class Members under the loan was absolutely guaranteed to go up the very next month. In
3 particular, the Loan Documents failed to disclose and omitted the material fact that while the initial
4 monthly payment amount would remain constant for at least one year, the actual amount owed to satisfy
5 Plaintiffs' and other borrowers' full obligation on the loans was absolutely guaranteed to go up. Had
6 Defendants disclosed this information, Plaintiffs and Class Members would not have purchased the loan
7 products.

8 24. The Notes (loan contracts) also repeatedly suggest that payments by borrowers would be
9 applied to *both* principal and interest. For example, each of the Notes at issue states at ¶3(A): "I will
10 make a payment every month. ... until I have paid all **the Principal and Interest ...**" At ¶7(A), under the
11 heading "BORROWERS FAILURE TO PAY AS REQUIRED," the Notes state: "[t]he amount of the
12 charge will be 6.0000% of my overdue **payment of Principal and Interest.**" These partial
13 representations (half truths) concealed and failed to disclose that the payment amounts prescribed in the
14 Loan Documents were certain to be insufficient to pay both principal and interest and were certain to
15 result in negative amortization. Had Defendants disclosed this information, Plaintiffs and Class
16 Members would not have purchased the subject Option ARM loans.

17 25. Because of the way BROOKS AMERICA structured these Option ARM loans, it was
18 certain that, as scheduled payments were made each month, each Class Member would owe more money
19 than he or she did at the start of the loan, and have less time to pay it back. Indeed, every time Plaintiffs
20 and Class Members made a payment in the amount reflected in the TILDS, the principal balance on their
21 loans increased. To make matters worse, this negative amortization or "deferred interest" was added to
22 the principal balance and, in turn, accrued more interest – in effect using compound interest to increase
23 the balance owed by each borrower.

24 26. Although Defendants knew that negative amortization was certain to occur, the Loan
25 Documents that Defendant BROOKS AMERICA created and designed did not disclose this to Plaintiffs
26 or Class Members, who refinanced their homes and/or entered into these loans without ever receiving
27 this material information. Had the Loan Documents disclosed this material information, Plaintiffs and
28 Class Members would not have purchased the subject Option ARM loans.

1 27. The two most important pieces of information in any mortgage loan are the interest rate
2 and the amount of the monthly payments. For the subject Option ARM loans, the disclosures of both
3 pieces of this information were misleading and omitted material facts. The Loan Documents disclosed a
4 teaser interest rate, but they did not disclose that this rate would *sharply increase* a month into the life of
5 the loan. The Loan Documents disclosed a low monthly payment for the first 3-5 years of the loan,
6 which was based on the teaser rate, but this did not reflect the actual amount of interest being charged or
7 the amount Plaintiffs and Class Members actually owed each month.

8 28. Plaintiffs and Class Members were not informed of the sharp increase in the interest rate,
9 and the fact that their monthly payments were not enough to pay the interest accruing on the loan, until
10 they had made multiple payments following the closing of the loan, at which time they would receive a
11 statement showing that the principal balance had increased with each month that had passed since the
12 loan closed, despite the fact that they had made all payments as scheduled.

13 29. By the time this material information was disclosed to Plaintiffs and Class Members, they
14 were "locked" into the loan by a draconian prepayment penalty consisting of a prepayment charge equal
15 to the interest rate that would accrue during a six-month period of the amount prepaid (if the prepayment
16 amount was greater than 20% of the original principal amount stated in the Note), which was calculated
17 at the rate of interest in effect under the terms of the Note at the time of the prepayment for a prepayment
18 occurring during the first two to three years of the loan. This draconian provision was designed by
19 Defendants to deter anyone from refinancing the loan during the applicable time period.

20 30. Before Plaintiffs and Class Members entered into the subject Option ARM loans, the
21 Loan Documents failed to disclose and concealed the amount by which the borrowers' loan balances
22 would increase over the first two or three years of the loan, even though Defendants actually performed
23 this calculation internally. This increase in the loan balance is material information to any consumer
24 entering into these loans, because it effectively strips the homeowners of equity in their homes, while
25 greatly impairing their ability to refinance these loans once they recast to substantially higher monthly
26 payments. Thus, the loans were structured so that once borrowers actually discovered the material
27 information that their loans were in fact negatively amortizing, the borrowers could only get out of the
28 loans if they (1) incurred a substantial prepayment penalty, or (2) waited two to three years [until the

1 prepayment penalty no longer applied], in which case they would have to refinance a substantially larger
2 principal amount. The Loan Documents did not disclose to borrowers that once their loans began
3 negatively amortizing (almost immediately), as Defendant had designed them to do, the borrowers would
4 not be able to extricate themselves from the loans unless they either paid a substantial prepayment
5 penalty or waited until three years into the loan's life, at which time they would have to refinance a
6 substantially larger principal amount due to the negative amortization. Had the Loan Documents
7 disclosed this material information, Plaintiffs and Class Members would not have purchased the subject
8 Option ARM loans.

9 31. Each of the subject Option ARM loans has so-called payment caps, which provide that,
10 even after the monthly payment increases, it will not increase by more than 7.5% per year. *See* Exhibit
11 1, ¶ 3(D). These payment caps are, however, subject to an overall cap on principal of 115% of the
12 original loan amount. *See* Exhibit 1, ¶ 3(F). Once the loan principal reaches this 115% cap, the 7.5%
13 limitation on payment increases no longer applies, and the payment generally will increase by more
14 (possibly far more) than that amount. This built-in "payment shock" is more than many borrowers,
15 including Plaintiffs and Class Members, can afford, and, by design puts them at risk of losing their
16 homes to foreclosure.

17 32. The undisclosed fact that negative amortization was absolutely certain to occur on the
18 subject loans, and the undisclosed information regarding the interest rate to be charged on the loans, was
19 information that Plaintiffs and Class Members would have found material when deciding whether to
20 purchase the subject Option ARM loans. Despite this, the Loan Documents never disclosed this material
21 information to Plaintiffs and Class Members. Had the Loan Documents disclosed this material
22 information, Plaintiffs and Class Members would not have purchased the subject Option ARM loans.

23 **C. Borrowers Were Not Given Any "Option" to Pay More than the Scheduled**
24 **Payments Before Entering into the Loans, and Before Being Subjected to the**
25 **Loans' Draconian Prepayment Penalties**

26 33. Importantly, nowhere in the Note (i.e., the loan contract) were Plaintiffs and Class
27 Members provided with any "option" to voluntarily choose to pay some amount in addition to or
28 different from the amount identified as their contractual payment obligation in ¶ 3(B) of the Note and in

1 the sole payment schedule provided in the TILDS. The most that Defendant's Loan Documents said is
2 that "[a]fter the first Interest Rate Change Date, Lender *may* provide me with up to three (3) additional
3 payment options." [Note, ¶3(H)] Because the referenced "options" were not in fact provided until *after*
4 the loans were executed, borrowers were deprived of material information by which they could make an
5 informed use of credit. (Note: While Plaintiffs use the phrase "OPTION ARM" herein to describe the
6 loans at issue, they do so merely because that phrase is a term of art used in the lending industry to
7 describe a category of loans in which these loans fall, not to suggest that Plaintiffs and Class Members
8 were given any "option," prior to closing, to make payments other than those set forth in the Notes and
9 the accompanying TILDS payment schedule.)

10 **D. The Truth-In-Lending Disclosure Statement ("TILDS") Was Deceptive and**
11 **Misleading**

12 34. The TILDS that accompanied each of the subject Option ARM loans was deceptive and
13 misleading because it stated an interest rate ("Annual Percentage Rate" or "APR") along with a payment
14 schedule which was not calculated using that rate, but, rather, was generated by Defendant using the low
15 teaser rate identified in the Note (but not mentioned in the TILDS). For example, for Mr. and Mrs. Peel,
16 the TILDS stated a "yearly" APR of 7.7232%, but the payment schedule in the TILDS was based on a
17 completely different rate, 2.50%. No law or regulation prevented Defendant from stating the truth,
18 namely, that "The Interest Rate Used to Generate this Payment Schedule Was 2.50% and Making
19 Payments According to this Payment Schedule after the First Payment Change Date WILL CAUSE
20 NEGATIVE AMORTIZATION TO OCCUR." That disclosure would have been accurate, non-
21 deceptive, and fair to borrowers. Instead, Defendant remained silent and failed to disclose this material
22 information to Plaintiffs and Class Members before they entered into the loans, thereby trapping them in
23 the loans with their harsh prepayment penalties. Had Defendant disclosed to Plaintiffs and Class
24 Members before the loans were consummated that if they made payments according to the payment
25 schedule listed in the TILDS, negative amortization was certain to occur after one month, and would
26 continue occur for the first three to five years of the loan, Plaintiffs and Class Members would not have
27 entered into the subject Option ARM loans.

28

E. The Prepayment Penalty Addendum Trapped Borrowers In the Loans

35. In order to lock borrowers into to the subject Option ARM loans, Defendants included a Prepayment Addendum to each of the Notes that stated: "If within the first 36 month(s) of this Note I/we make full prepayment, or partial prepayment in any 12 month period during the prepay term of more than 20% of the original principal, the Note Holder may collect a penalty. That penalty will be equal to 6 months interest at the yearly rate of Interest at the time the prepayment is made, on the amount of the prepayment which is more than 20% of the original principal."

36. At all times relevant, this draconian Prepayment Penalty Addendum was purposefully designed by BROOKS AMERICA to deter Plaintiffs and Class Members from escaping from the subject Option ARM loans due to the harsh exit penalties that it extracted from anyone who sought to get out of the loan through refinancing. Thus, once hooked into the subject Option ARM loans, Defendant purposefully and intentionally made it extremely difficult, if not impossible, for Plaintiffs and Class Members to extricate themselves from the Option ARM loan fraud scheme as alleged herein.

V.

CLASS ACTION ALLEGATIONS

37. Plaintiffs bring this action on behalf of themselves, on behalf of all others similarly situated, and on behalf of the General Public. The Class that Plaintiffs seek to represent is presently defined as follows:

All California citizens and residents who, from January 16, 2004 through the date that notice is mailed to the Class Members, entered into a BROOKS AMERICA Option ARM loan on their home located in the State of California. Excluded from the California Class are Defendants' employees, officers, directors, agents, representatives, and their family members, as well as the Court and its officers, employees, and relatives.

Plaintiffs reserve the right to amend or otherwise alter the class definitions presented to the Court at the appropriate time, or to propose or eliminate sub-Classes in response to facts learned through discovery or legal arguments advanced by Defendants or otherwise.

1 38. This action has been brought and may be properly maintained as a class action pursuant
2 to the provisions of California Code of Civil Procedure § 382 and other applicable law.

3 39. **Numerosity:** - Code of Civ. Proc. § 382: Members of the Class are so numerous that
4 their individual joinder is impracticable. While the exact number of Class Members is unknown at this
5 time, Plaintiffs are informed and believe that the entire Class consists of approximately 2,000-3,000
6 individuals residing in California. Also, while Plaintiffs do not presently know the current addresses of
7 all Class Members, Plaintiffs are informed and believe that this information, and other information
8 identifying the Class Members, can be obtained from the Defendants' records. Class Members may be
9 notified of the pendency of this action by electronic mail, the Internet, other mail, or published notice.

10 40. **Commonality:** - Code of Civ. Proc. § 382: Common questions of law or fact are shared
11 by Class Members. This action is suitable for class treatment, because these common questions of fact
12 and law predominate over any individual issues. Such common questions include, but are not limited to,
13 the following questions including questions related to the subject BROOKS AMERICA Option ARM
14 loans:

- 15 (a) Whether Defendants engaged in unlawful, unfair and/or fraudulent business acts
16 or practices likely to deceive Plaintiffs and Class Members before and during the
17 loan application process;
- 18 (b) Whether Defendants concealed, omitted and/or otherwise failed to disclose
19 information they were mandated to disclose under state consumer protection
20 statutes, and/or California common law;
- 21 (c) Whether Defendants failed to disclose to Plaintiffs and Class Members, before
22 they entered into the subject Option ARM loans, that negative amortization was
23 certain to occur;
- 24 (d) Whether Defendants had a duty to disclose the undisclosed material facts
25 regarding the subject Option ARM loans;
- 26 (e) Whether Defendants' failure to apply Plaintiffs' and Class Members' payments to
27 principal as promised in the form Notes constitutes a breach of contract;
- 28

- (f) Whether Defendants' conduct in immediately raising the interest rate on the loans so that no payments were made to the principal balance breached the loan contract;
- (g) Whether the terms and conditions of the Loan Documents are unconscionable;
- (h) Whether the Loan Documents are non-negotiable instruments;
- (i) Whether Plaintiffs and Class Members are entitled to damages;
- (j) Whether Plaintiffs and Class Members are entitled to punitive damages; and
- (k) Whether Defendants' affirmative defenses, if any, raise common issues of fact or law as to Plaintiff and Class Members as a whole.

41. **Typicality:** Plaintiffs' claims are typical of the claims of absent Class Members.

Plaintiffs and the other Class Members were subjected to the same kind of unlawful conduct and the claims of Plaintiffs and the other Class Members are based on the same legal theories.

42. **Adequacy:** Plaintiffs are adequate representatives of the Class because their interests do not conflict with those of the other members of the Class Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation and Plaintiffs intend on prosecuting this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

43. **Ascertainable Class:** The proposed classes are ascertainable in that the members can be identified and located using information contained in Defendants' mortgage lending records.

44. **Superiority and Substantial Benefit:** A class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and the Class Members' claims. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class Members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system, due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of

1 single adjudication, economy of scale, and comprehensive supervision by a single court.

2 45. In the alternative, the Class should be certified because:

3 (a) The prosecution of separate actions by individual members of the Class would
4 create a risk of inconsistent or varying adjudications with respect to individual Class Members which
5 would establish incompatible standards of conduct for Defendants;

6 (b) The prosecution of separate actions by individual members of the Class would
7 create a risk of adjudications with respect to them, which would, as a practical matter, be dispositive of
8 the interests of the other Class Members not parties to the adjudications, or substantially impair or
9 impede their ability to protect their interests; and

10 (c) Defendants have acted or refused to act on grounds generally applicable to the
11 Class, and/or the General Public, thereby making appropriate final and injunctive relief with respect to
12 the Class as a whole.

13
14 **VI.**

15 **FIRST CAUSE OF ACTION**

16 **Fraudulent Omissions**

17 **(Against All Defendants)**

18 46. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

19 47. Under California common law, and based upon Defendants partial representations,
20 BROOKS AMERICA had a duty to disclose to Plaintiffs, and each Class Member that: (i) the promised
21 low rate [2.50% in Plaintiffs' case] was only available for thirty days if at all; (ii) the payment amount
22 for the first two to five years provided to Plaintiffs and Class Members on the TILDS was insufficient to
23 pay both principal and interest; (iii) negative amortization was absolutely certain to occur if Plaintiffs
24 and Class Members made payments according to the contractual payment schedule provided by
25 Defendants; and that (iv) loss of equity and/or loss of Plaintiffs' and Class Members' residences was
26 certain to occur if Plaintiffs and Class Members made payments according to the contractual payment
27 schedule provided by Defendants. These facts constitute material information that Plaintiffs and Class
28 Members would have found material when deciding whether to purchase the loan product. Had

1 Defendants disclosed this information, Plaintiff and Class Members would not have entered into the
2 subject BROOKS AMERICA Option ARM Loan on these terms.

3 48. At all relevant times, Defendants actively concealed and suppressed these material facts
4 from Plaintiffs and Class Members. At all relevant times, Defendants had superior, if not exclusive,
5 knowledge of the concealed facts. In those cases where Defendants did make some disclosures about the
6 "subjects" at issue, Defendants made only partial representations while suppressing materials facts, as
7 alleged herein. Defendants' concealment, omissions and partial representations occurred prior to the
8 consummation of the loan transactions with Plaintiffs and Class Members, in the loan documents
9 themselves. Plaintiffs are not presently aware of the identities of all the specific executives and
10 employees responsible for the fraudulent scheme at issue; however, Defendants know such facts, which
11 can be determined in discovery.

12 49. In each of the Loan Documents at issue, Defendants actively concealed and failed to
13 disclose to the borrower that each payment in years 1-3 is insufficient to pay all of the interest, let alone
14 any of the principal.

15 50. The Loan Documents further state that, "my Minimum Payment *could be less* or greater
16 than the amount of the interest portion of the monthly payment that would be sufficient to repay the
17 unpaid Principal I owe" (Emphasis added.) (See Exhibit 1 [Note], ¶ 3E). However, the Loan
18 Documents fail to disclose the material fact that the payment schedules provided by Defendants in the
19 TILDS could not possibly cover the amount of interest due under *any* conceivable index rate plus the
20 margin after the first 30 days.

21 51. The Notes list an interest rate and a payment amount based on the initial teaser interest
22 rate. However, the TILDS Defendants gave to Plaintiffs and Class Members before they entered into the
23 subject loans included a schedule of payments (including that initial payment amount) but disclose a
24 different, much higher interest rate. By stating the low teaser rate and associated monthly payment in the
25 Note, and stating the much higher interest rate in the TILDS accompanied by a payment schedule based
26 on the low teaser rate, Defendants confused and obscured the actual interest costs that borrowers were
27 going to accrue on their loans.
28

11 31

52. Defendants purposefully and intentionally devised this Option ARM loan scheme of flatly omitting material information and, in some cases, making partial representations while omitting material facts, in order to deceive consumers into believing that these loans would provide a low payment and corresponding interest rate for the first two to five years of the Note and that, if they made their payments according to the payment schedule provided by Defendants, this would be sufficient to pay both principal and interest.

53. Defendants also actively concealed, suppressed and failed to disclose information regarding the payment caps associated with the loans, and *concealed and failed to disclose that during the entire time the payment caps were in effect, negative amortization was certain to occur if the payment schedule provided prior to entering into the loans was followed*. Defendants knew that this loan product had a variable rate with payment caps and that the Loan Documents omitted the Material Omissions, including that negative amortization was a certainty if borrowers adhered to the sole payments schedule proffered by Defendants before borrowers signed up for the loans. Defendants also knew that the loans were guaranteed to result in negative amortization, because Defendant, BROOKS AMERICA and Defendants DOES 1-200 accrued the negative amortization as income for accounting and/or tax purposes. BROOKS AMERICA also knew that negative amortization was certain to occur, because, in computing the total finance charge payable over the full life of the loan for purposes of compiling the TILDS payment schedule, Defendants included the interest on "deferred interest," which would accrue because the scheduled payments were insufficient to pay all interest due on the loan. The Loan Documents did not disclose the fact that negative amortization was a certainty, or the amount of the total finance charge that resulted from this negative amortization.

54. As previously alleged, to the extent the Notes even inferentially referenced negative amortization, they suggested, deceptively, that negative amortization was merely a possibility, rather than an absolute certainty. For instance, Defendants stated in the Notes, at ¶ 3(E), that the borrower's "Minimum Payment *could be less or greater than* the amount of the interest portion" necessary to cover all of the interest due on the Notes, which was at best a half-truth, and intended to conceal the whole truth, because it did not state that adhering to the payment schedule provided by Defendants would absolutely guarantee that negative amortization was going to occur on these loans.

1 55. The Loan Documents also were deceptive and misleading in that the payments for up to
2 the first five years of the loans bear no relationship to the APR listed in the TILDS.

3 56. At all times relevant during the liability period, the Loan Documents were misleading,
4 omitted and concealed material information, and were unlawful, in that the Notes and TILDS did not
5 disclose that the liability that Plaintiffs and Class Members were incurring was substantially greater than
6 the amount of their scheduled payments.

7 57. Defendants did not disclose that the initial interest rate would *sharply increase* after one
8 month. To the extent that Defendants did in any way provide a disclosure stating that the initial payment
9 was not based on the index, they failed to do so in a manner that was clear and conspicuous, and that did
10 not obscure its importance, or that was designed to be reasonably understood by the ordinary consumer.
11 The Loan Documents misleadingly stated that the initial payments borrowers would make were based on
12 a "yearly rate" of 1-3% [2.50% in the case of the named Plaintiffs].

13 58. Defendants also failed to disclose to Plaintiffs and Class Members before they entered
14 into the subject Option ARM loans all of the ways by which the interest rate applicable to the subject
15 loans could increase.

16 59. At all times relevant during the liability period, Defendants provided Plaintiffs and Class
17 Members with Notes that state: "I will pay interest at a yearly rate of [1.000% - 3.000%]." See Exhibits
18 1-2, ¶ 2(A). However, in the TILDS, the box entitled "ANNUAL PERCENTAGE RATE" describes the
19 APR as "[t]he cost of your credit as a yearly rate" and then lists a much higher APR than the rate listed
20 in the Notes. For instance, in the case of Mr. and Mrs. Peel, the TILDS lists an APR of "7.7232." See
21 Exhibit 1, TILDS.

22 60. Thus, the listed APR in the Notes would actually conflict with the APR stated in the
23 TILDS. For instance, in the case of Mr. and Mrs. Peel, the "2.50%" APR stated in the Note contradicts
24 the "7.7232" APR that Defendant stated in the TILDS.

25 61. At all times relevant during the liability period, Defendants failed to clearly and
26 conspicuously explain in the Note or TILDS that the low rate identified in the Note (the same rate upon
27 which Defendant based the written payment schedule provided to Plaintiffs) was offered *only for the*
28 *first thirty (30) days of the loan*. Any reasonable borrower would find such omitted information

1 material.

2 62. Defendants also concealed and failed to disclose to Plaintiffs and Class Members that the
3 APR listed in the TILDS was not the APR used to determine the first approximately five years of
4 payments listed in the very same TILDS, and that the listed payment amounts for the first approximately
5 five years of the loan were based on the artificially low interest rate stated in the Note, which Defendants
6 knew would actually apply for no more than thirty days.

7 63. The disclosures are required because they are material, and indeed, provide the core basis
8 for Plaintiffs and Class Members to make an informed decision by comparing the cost of credit to other
9 proposals. It therefore was incumbent upon Defendants to clearly and accurately disclose to Plaintiffs
10 and the Class Members, before they entered into the subject Option ARM loans, the composite interest
11 rate, and the amount of payments based thereon, so that these borrowers could understand exactly what
12 they would be paying for the loan.

13 64. At all times relevant, BROOKS AMERICA had a duty to disclose to Plaintiffs and the
14 Class Members, before they entered into the subject Option ARM loans: (i) that the payment schedule
15 for the first two to five years was not based upon the APR listed on the TILDS; (ii) that negative
16 amortization will occur and that the "principal balance will increase"; (iii) that the initial interest rate on
17 the Note was discounted; and (iv) the applicable annual percentage rate ("APR").

18 65. As a direct and proximate result of Defendants' failures to disclose and omission of
19 material facts, as alleged herein, Plaintiffs and Class Members have suffered damages, which include,
20 but are not limited to, the loss of equity in their homes, which Plaintiffs and each Class Member had in
21 their homes prior to entering these loans.

22 66. The wrongful conduct of Defendants, as alleged herein, including Defendants' placing of
23 their corporate and/or individual profits over the rights of others, was willful, oppressive, immoral,
24 unethical, unscrupulous, substantially injurious, malicious and in conscious disregard for the well-being
25 of Plaintiffs and Class Members, and particularly vile, base, contemptible, and wretched. Defendants'
26 scheme, though couched as part of a legitimate bank's legitimate lending operations, was in fact like any
27 other financial fraud scheme intended to deprive unwitting consumers of their money by concealing
28 material, truthful facts about the financial transactions at issue. Defendants' acts and/or omissions were

1 performed by officers, directors, and/or managing agents of each corporate defendant and/or taken with
2 the advance knowledge of the officers, directors, and/or managing agents who authorized and/or ratified
3 said acts and/or omissions. Defendants thereby acted with malice and complete indifference to and/or
4 conscious disregard for the rights and safety of others, including Plaintiffs and the general public.
5 Accordingly, Plaintiffs and Class Members are entitled to an award of punitive damages against
6 Defendants in an amount sufficient to deter them from similar conduct in the future.

7 67. WHEREFORE, Plaintiffs and Class Members are entitled to all legal and equitable
8 remedies provided by law, including but not limited to actual damages, exemplary damages, unjust
9 enrichment (legal restitution), prejudgment interest and costs.

10
11 VII.

12 **SECOND CAUSE OF ACTION**

13 **Violation of California's Unfair Competition Law,**

14 **Bus. & Prof. Code §§ 17200 *et seq.***

15 **"Unlawful", "Unfair" and "Fraudulent" Business Acts or Practices**

16 **(Against All Defendants)**

17 68. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

18 69. Plaintiffs bring this cause of action on behalf of themselves, on behalf of the Class
19 Members, and in their capacity as private attorneys general against all Defendants for their unlawful,
20 unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California Business &
21 Professions Code section 17200 *et seq.* ("UCL") which prohibits all unlawful, unfair and/or fraudulent
22 business acts and/or practices.

23 70. Plaintiffs assert these claims as they are representatives of an aggrieved group and as
24 private attorneys general on behalf of the general public and other persons who have expended funds that
25 the Defendants should be required to pay or reimburse under the restitutionary remedy provided by
26 California Business & Professions Code §§ 17200, *et seq.*

27 71. Plaintiffs and Class Members were consumers who applied for mortgage loans through
28 Defendants. During the loan application, loan closing and consummation process, in each case,

1 Defendants uniformly failed to disclose and omitted material information that was known only to
2 themselves and that could not reasonably have been discovered by Plaintiffs and Class Members as set
3 forth in the preceding counts.

4 72. By engaging in the above-described acts and practices, Defendants have committed one
5 or more acts of unfair competition within the meaning of Business & Professions Code §§ 17200, *et seq.*

6 73. As a result of the Material Omissions and Defendants' other partially true statements and
7 failures to disclose as alleged herein, Plaintiffs have suffered injury and lost money and property,
8 including but not limited to the amount of negative amortization resulting from Defendants' scheme.

9 74. Unlawful: The unlawful acts and practices of Defendants alleged above constitute
10 unlawful business acts and/or practices within the meaning of California Business & Professions Code
11 §§ 17200, *et seq.* Defendants' unlawful business acts and/or practices as alleged herein have violated
12 numerous laws including state statutory and/or common law - and said predicate acts are therefore *per se*
13 violations of §17200, *et seq.* These predicate unlawful business acts and/or practices include, but are not
14 limited to, the following: California Civil Code §§ 1572 (Actual Fraud - Omissions), 1573 (Constructive
15 Fraud by Omission), and 1710 (Deceit), and other statutory and common law in effect.

16 75. Unfair: Defendants' omissions and misconduct as alleged in this action constitute
17 negligence and other tortious conduct and gave Defendants an unfair competitive advantage over their
18 competitors which did not engage in such practices. Said misconduct, as alleged herein, also violated
19 established law and/or public policies which seek to promote the informed use of credit through full and
20 complete disclosures. Failing to disclose the Material Omissions to Plaintiffs and Class Members,
21 before they entered into the subject Option ARM loans, as alleged herein, was and is directly contrary to
22 established legislative goals and policies promoting the informed use of credit and thus, Defendants' acts
23 and/or practices alleged herein were and are unfair within the meaning of Bus. & Prof. Code 17200, *et*
24 *seq.*

25 76. The harm to Plaintiffs, members of the general public and Class Members outweighs the
26 utility, if any, of Defendants' acts and/or practices as alleged herein. Thus, Defendants' deceptive and
27 sharp business acts and/or practices, as alleged herein, were unfair within the meaning of Bus. & Prof.
28 Code 17200, *et seq.*

1 77. As alleged herein, Defendants' business acts and practices offend established public
2 policies, including, public policies against making partial half truths and failing to disclose important
3 material facts to borrowers before they entered into the subject Option ARM loans. In addition, as
4 alleged herein, Defendants intended that Plaintiffs and Class Members would be misled and/or deceived
5 into believing that, if they made payments based on the payment schedule provided to them, in the Note
6 and TILDS, the principal balance would not increase with each payment when in fact it actually
7 increased with each payment. This practice is and was immoral, unethical, oppressive, unscrupulous or
8 substantially injurious to consumer and thus unfair within the meaning of Bus. & Prof. Code 17200, et
9 *seq.*

10 78. At all times relevant, Defendants' misconduct and omissions alleged herein caused: 1)
11 substantial injury to Plaintiffs and the public, 2) had no countervailing benefit to consumers or to
12 competition that could possibly outweigh this substantial injury; and 3) caused injury that could not have
13 been avoided or even discovered by ordinary consumers, because it resulted from Defendants' failure to
14 disclose and/or omission of material information that only the Defendants knew or could have known.
15 Thus, Defendants' acts and/or practices as alleged herein were unfair within the meaning of Bus. & Prof.
16 Code 17200, *et seq.*

17 79. Fraudulent: Defendants' acts and practices, as alleged herein, were likely to, and did
18 deceive Plaintiffs and members of the public. The Material Omissions, acts, practices and
19 non-disclosures, as alleged herein, therefore constitute fraudulent business acts and/or practices within
20 the meaning of California Business & Professions Code §§ 17200, *et seq*

21 80. Mr. and Mrs. Peel were actually deceived by The Material Omissions as alleged herein.
22 Mr. and Mrs. Peel, and similarly situated members of the public, suffered injury and lost money as a
23 direct result of the deceptive conduct as alleged herein.

24 81. As a direct and proximate result of the aforementioned omissions, acts and/or practices,
25 Defendants received monies and continue to hold the monies expended by Plaintiffs and Class Members
26 who purchased the Option ARM loans as alleged herein

27 82. The unlawful, unfair, deceptive and/or fraudulent business acts and practices of
28 Defendants, as fully described herein, present a continuing threat to members of the public to be misled

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1 and/or deceived by Defendants' as alleged herein. Plaintiffs and other members of the general public
2 have no other remedy of law that will prevent Defendants' misconduct as alleged herein from occurring
3 and/or reoccurring in the future.

4 83. As a direct and proximate result of Defendants' unlawful, unfair and/or fraudulent
5 conduct alleged herein, Plaintiffs and Class Members have lost hundreds of thousands if not millions of
6 dollars of equity in their homes. Plaintiffs and Class Members are direct victims of the Defendants'
7 unlawful, unfair and fraudulent conduct, and the named Plaintiffs have suffered injury in fact, and have
8 lost money or property as a result of Defendants' unfair competition.

9 84. WHEREFORE, Plaintiffs and Class Members are entitled to equitable relief, including
10 restitution, restitutionary disgorgement of all profits accruing to Defendants because of their unfair,
11 unlawful and deceptive acts and/or practices, attorney's fees and costs, declaratory relief, and a
12 permanent injunction enjoining Defendants from engaging in the wrongful activity alleged herein.

13
14 **VIII.**

15 **THIRD CAUSE OF ACTION**

16 **Breach of Contract**

17 **(Against All Defendants)**

18 85. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

19 86. Plaintiffs and Class Members entered into a written home loan agreement – the contract
20 or Note – with Defendants which describe terms and respective obligations applicable to the parties
21 herein.

22 87. Defendants drafted the Notes and did not allow Plaintiffs or Class Members any
23 opportunity to make changes to the Notes and, due to Defendants' superior bargaining position, the
24 Notes were offered on a "take it or leave it" basis. As such, the Notes and the prepayment penalty riders
25 to the Notes are contracts of adhesion.

26 88. Each Note and TILDS expressly and impliedly required Defendants to apply Plaintiffs'
27 and Class Members' monthly payments to both principal and interest on a fully-amortized basis (i.e., so
28 that negative amortization would not occur) as long as those payments were in the amount reflecting in

1 the Note and the TILDS. The Notes and the TILDS identified the monthly payments Plaintiffs and the
2 Class Members were required to make. Defendants were not permitted to impose or charge any different
3 payment amount. As alleged herein, the Notes expressly state and/or imply that those payments would
4 be applied to pay both Principal and interest on the loan.

5 89. Paragraph 7(A) of the Note identifies Plaintiffs' monthly payments as payments of
6 "principal and interest". There, the Note states that if Plaintiffs failed to make their payments on time,
7 they would be required to pay a late charge equal to "6.000% of my overdue payment of principal and
8 interest." In the TILDS, Defendants confirmed that the payment of "principal and interest" are the
9 payments identified in the payment schedule. The TILDS states: "Late Charge: If payment is more than
10 15 days late, you will be charged 6.000% of the payment in default." The only payments that statement
11 could refer to are the specific payment amounts identified in the TILDS, each of which is to be made in
12 specified months of the loan term.

13 90. Paragraph 7(B) reaffirms that the monthly payments identified in the Note and TILDS are
14 the monthly payments of "principal and interest." There, the Note states: "If I do not pay the full amount
15 of each monthly payment on the date it is due, I will be in default." At the time the Note was provided,
16 the only monthly payments were those identified in the Note and the TILDS. This indicates that those
17 payments were the full amount of Plaintiffs' legal liability under the Notes each month. Moreover
18 Defendants' subsequent conduct confirmed that, by paying monthly payments in the amounts identified
19 in the payment schedule contained in the TILDS, Plaintiffs were paying "the full amount of each
20 monthly payment." At no time did Defendants declare Plaintiffs in default based upon their payment of
21 the amounts identified in the payment schedule in the TILDS.

22 91. In Paragraph 3(D) of the each borrower's Note, the parties' agreement provided that "the
23 amount of my new monthly payment effective on a Payment Change Date, will not increase by more
24 than 7.5% of my prior monthly payment. This 7.5% limitation is called the 'Payment Cap.' This
25 Payment Cap applies only to the Principal and Interest payment..." Yet the only payment listed in
26 both the Note and TILDS, and the only payment the payment cap could apply to, is the payment made by
27 the Peels.
28

1 92. Paragraph 3(A) of the Note also provides that "Each monthly payment will be ... applied
2 to interest before principal." Thus, under the terms of the Note, for any portion of a monthly payment to
3 be applied to principal, the payment first had to be applied by defendants to extinguish all of the interest
4 that accumulated on the loan during that month. As a result, by referring to the Plaintiffs' payments as
5 "principal and interest," these loan documents necessarily promised that negative amortization would not
6 occur if Plaintiffs made the monthly payments asked of them.

7 93. The Option ARM loan terms described above were uniform for Plaintiffs and Class
8 members in all material respects throughout the liability period.

9 94. Once Plaintiffs and Class Members entered into these loans, Defendants switched the
10 interest rate charged on the loans to a much higher rate than the one they promised to Plaintiffs and Class
11 Members as a "yearly rate." They also demanded payments in amounts that exceeded those permitted by
12 the Note and TILDS.

13 95. As a result of Defendants' breach of the agreement, Plaintiffs and Class Members have
14 suffered harm. Plaintiffs and Class Members have incurred and will continue to incur additional interest
15 charges on the principal loan balance and surplus interest added to Plaintiffs and Class Members'
16 principal loan balance. Furthermore, Defendants' breach has placed Plaintiffs and Class Members in
17 danger of losing their homes through foreclosure, as Defendants have caused Plaintiffs and Class
18 Members' principal loan balances to increase and limited these consumers' ability to make their future
19 house payments or obtain alternative home loan financing.

20 96. At all times relevant, there existed a gross inequality of bargaining power between the
21 parties to The Loan Documents. At all times relevant, Defendants unreasonably and unconscionably
22 exploited their superior bargaining position and foisted upon Plaintiffs and Class Members extremely
23 harsh, one-sided provisions in the contract, which Plaintiffs and Class Members were not made aware of
24 and could not reasonably have comprehended (e.g., Defendants' fraud and failures to disclose as alleged
25 herein), and which attempt to severely limit Defendants' obligations under the contracts at the expense of
26 Plaintiffs and Class Members, as alleged herein.

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1 97. WHEREFORE, Plaintiffs and Class Members are entitled to declaratory relief,
2 compensatory damages proximately caused by Defendants' breach of contract as alleged
3 herein, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.
4

5 **XI.**

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs and all Class Members pray for judgment against each defendant,
8 jointly and severally, as follows:

- 9 A. An order certifying this case as a class action and appointing Plaintiffs and their counsel
10 to represent the Class;
11 B. For actual damages according to proof;
12 C. For compensatory damages as permitted by law;
13 D. For consequential damages as permitted by law;
14 E. For punitive damages as permitted by law;
15 F. For unjust enrichment and/or legal restitution;
16 G. For equitable relief, including restitution;
17 H. For restitutionary disgorgement of all profits Defendants obtained as a result of their
18 unfair competition;
19 I. For interest as permitted by law;
20 J. For Declaratory Relief;
21 K. For Injunctive Relief;
22 L. For reasonable attorneys' fees and costs; and
23 M. For such other relief as is just and proper.

24 DATED: February 5, 2010

SPIRO MOSS LLP
ARBOGAST & BERNIS LLP

25 By: 
26 J. Mark Moore
27 of SPIRO MOSS LLP
28

David M. Arbogast
Jeffrey K. Berns
of ARBOGAST & BERNS LLP

Attorneys for Plaintiffs and all others Similarly
Situated

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury to the full extent permitted by law.

DATED: February 5, 2010

**SPIRO MOSS LLP
ARBOGAST & BERNS LLP**

By: 

J. Mark Moore
of SPIRO MOSS LLP

David M. Arbogast
Jeffrey K. Berns
of ARBOGAST & BERNS LLP

Attorneys for Plaintiffs and all others Similarly
Situated

EXHIBIT NO. 1

EXHIBIT 1

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Loan No: 160558
MIN Number: 100044300001605583

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

November 21, 2006
[Date]

Irvine
[City]
4621 Jade Court
Lancaster, CA 93336

California
[State]

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 325,400.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (115.00) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is **BrooksAmerica Mortgage Corporation, a California Corporation**. I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note, Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 2.5000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1st day of January 2007 and on that day every month hereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H, 15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding Two and Eight Tenths percentage point(s) 2.8000 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.9500 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1st day of each month beginning on January 2007. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on December 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2 Ada, Suite 100, Irvine, CA 92618

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,289.67 unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1st day of January 2012, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date.

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The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any Escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3 (D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3 (A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to One Hundred Fifteen percent (115.00 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the first Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

- (i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

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(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 6.0000% of my overdue payment of Principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

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(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

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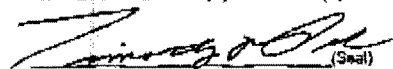
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


 Timothy R. Peel (Seal)
 - Borrower


 Cheryl G. Peel (Seal)
 - Borrower

 (Seal)
 - Borrower

 (Seal)
 - Borrower

 (Seal)
 - Borrower

 (Seal)
 - Borrower



08/24/2007 11:51 5517235456

STAPLES0288

PAGE 01/02

TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS (VARIABLE RATE OPTION)

NAME(S) OF BORROWER(S) (Last, first, and middle initial) Timothy R. Peel, Cheryl G. Peel		NAME(S) OF LENDER (Last, first, and middle initial) BrooksAmerica Mortgage Corporation 2 Ads, Suite 100 Irvine, CA 92618	
PROPERTY ADDRESS 4621 Jade Court, Lancaster, CA 93536			
LOAN NUMBER 160558	TRANSACTION DATE 11/21/08		
<input type="checkbox"/> Preliminary		<input checked="" type="checkbox"/> Final	

Words, numbers or periods preceded by a [] are optional only if the [] is marked.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate 7.722%	The dollar amount the lender will cost you \$ 599,486.64	The amount of credit provided to you or on your behalf \$ 321,430.30	The amount you will have paid after you have made all payments as scheduled \$ 920,921.04

	# of Payments	Amount of Payments	When Payments Are Due	# of Payments	Amount of Payments	When Payments Are Due
YOUR PAYMENT SCHEDULE WILL BE:	54	1,345.87	01/01/07			
	368	2,751.98	07/01/11			

VARIABLE RATE: ☐ Not Applicable ☒ Applicable, variable rate disclosures have been provided at an earlier time.

The annual percentage rate may increase during the term of this transaction if the average of the annual monthly yields of U.S. Treasury Securities, adjusted to a constant maturity of one year as made available by the Federal Reserve increases. Please refer to the Adjustable Rate Mortgage Documents for specific information concerning the variable rate provisions of this transaction. The monthly payment may increase during the term of this transaction if the average of the annual monthly yields of U.S. Treasury Securities, adjusted to a constant maturity of one year as made available by the Federal Reserve increases. The rate may not increase to more than 9.50 percent. Any increase may take the form of a payment increase.

SECURITY: You may obtain property insurance from anyone acceptable to the lender. You are giving a security interest in the real property and any of the following items checked:

☐ Goods being purchased. ☐ Funds on deposit with the lender.
☐ Other (Specify) ☐ Collateral securing other loans with us may also secure this loan.

LATE CHARGE:
If you are more than 15 days late in making any payment, in addition to your payment, you will pay a late charge of:
☐ the lesser of ☒ the greater of ☐ an amount equal to ☐ \$ or ☒ 6.000% of the payment in default.

PREPAYMENT:
If you pay off early, you ☒ may ☐ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION:
If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☒ someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on its original terms.
If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☐ someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and Creditor's policy regarding assumption of the obligation. ☐ means an estimate.

☐ Please refer to the "Good Faith Estimate" for a breakdown of fees, charges and amount financed. ☒ Please refer to the Itemization of Amount Financed Statement.

SIGNATURES:
By signing you acknowledge receipt of a controlled copy of this disclosure. You understand that this is not a contract and does not reflect all of the terms and conditions of the mortgage transaction to which the disclosure reflected on this form relate.

X _____ DATE _____	X _____ DATE _____
X _____ DATE _____	X _____ DATE _____
X _____ DATE _____	X _____ DATE _____

Form 1634L

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Loan #: 160558

ADDENDUM TO NOTE

This addendum is made **November 21, 2006**, and is incorporated into and deemed to amend and supplement the Note of the same date.

Covering the property described in the security instrument and located at:

4621 Jade Court
Lancaster, CA 93536

Amended Provisions. In addition to the provisions and agreements made in the Note, I/we further covenants and agrees as follows:

Penalty Upon Full or Partial Prepayment:

If, within the first **36** month(s) of the date of this Note I/we make full prepayment, or partial prepayment in any 12 month period during the prepay term of more than 20% of the original principal, the Note Holder may collect a penalty. That penalty will be equal to

6 months interest at the yearly rate of interest at the time the prepayment is made, on the amount of the prepayment which is more than 20% of the original principal, unless otherwise prohibited by applicable law or regulation. The penalty will be collected upon full prepayment, unless otherwise provided by applicable law or regulation.

In Witness Whereof, Trustor has executed this addendum.

Timothy R. Peal

Date

Cheryl G. Peal

Date

Date

Date

Date

Date

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL

MB

10009L1

1357



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

751 W. Santa Ana Blvd
Santa Ana, CA 92701

PAYMENT RECEIPT

Receipt #: 10404581

Clerk ID: rvavra

Transaction No: 10580708

Transaction Date: 02/25/2010

Transaction Time: 02:49:46 PM

Case Number	Fee Type	Qty	Fee Amount	Balance Due	Amount Paid	Remaining Balance
30-2010-00348134-CU-FR-CXC	133- Complaint or other 1st paper	1	\$355.00	\$355.00	\$355.00	\$0.00
30-2010-00348134-CU-FR-CXC	35 - Complex Case Fee - Response	1	\$550.00	\$550.00	\$550.00	\$0.00
Sales Tax:					\$0.00	
Total:					\$905.00	Total Rem. Bal: \$0.00
Credit Card:					\$905.00	
Total Amount Tendered:					\$905.00	
Change Due:					\$0.00	
Balance:					\$0.00	

\$25 will be charged for each returned check. www.occourts.org

ORIGINAL

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SUPERIOR COURT OF CALIFORNIA

ORANGE

751 W. Santa Ana Blvd

Santa Ana, CA 92701

(714) 568-4700

www.occourts.org

NOTICE OF CASE ASSIGNMENT AND SCHEDULING INFORMATION

Case Number: 30-2010-00348134-CU-FR-CXC

A has been scheduled for your case as indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action. Disregard hearing date if that date has expired.

Hearing:	Date:	Time:
JUDGE	COURT LOCATION	DEPARTMENT/ROOM
Hon.	CIVIL COMPLEX CENTER	PHONE
		(714) 568-4700

[x] ADR Information attached.

SCHEDULING INFORMATION

Judicial Scheduling Calendar Information

Individual courtroom information and the items listed below may be found at: www.occourts.org.

Case Information, Court Local Rules, filing fees, forms, Civil Department Calendar Scheduling Chart, Department phone numbers, Complex Civil E-filing, and Road Map to Civil Filings and Hearings.

Ex Parte Matters

Rules for Ex Parte Applications can be found in the California Rules of Court, rules 3.1200 through 3.1207 at: www.courtinfo.ca.gov. Trials that are in progress have priority; therefore, you may be required to wait for your ex parte hearing.

Noticed Motions

Hearing dates and times can be found on the Civil Department Calendar Scheduling Chart.

All fees and papers must be filed in the Clerk's Office of the Court Location address listed above.

Other Information

- * The following local Orange County Superior Court rules are listed for your convenience:
 - Rule 307 - Telephonic Appearance Litigants - Call CourtCall, LLC at (310) 914-7884 or (888) 88-COURT.
 - Rule 380 - Fax Filing, Rule 450 - Trial Pre-Conference (Unlimited Civil)
- * All Complex Litigation cases are subject to mandatory Electronic Filing, unless excused by the Court.
- * Request to Enter Default and Judgment are strongly encouraged to be filed as a single packet.

Date: 02/25/2010

Rachelle Vavra, Deputy Clerk

NOTICE OF CASE ASSIGNMENT AND SCHEDULING INFORMATION

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**SUPERIOR COURT OF CALIFORNIA
ORANGE**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO LITIGANTS – ADR INFORMATION PACKAGE

Rule 10.782 of the California Rules of Court require you to serve a copy of the ADR information package along with the complaint and/or cross-complaint.

California Rules of Court - Rule 10.782
Information about ADR

- (a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR information package that includes, at a minimum, all of the following:
- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.
 - (2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.
 - (3) In counties that are participating in the Dispute Resolution Programs Act (DRPA), information about the availability of local dispute resolution programs funded under the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.
 - (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.
- (b) The plaintiff shall serve a copy of the ADR information package on each defendant along with the complaint. Cross-complainants shall serve a copy of the ADR information package on any new parties to the action along with the cross-complaint.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF [COURT NAME]
Did you know that most civil lawsuits settle without a trial?

Introduction

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody? These alternatives to a lawsuit are known as alternative dispute resolution (ADR). The most common forms of ADR are mediation, arbitration, and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court. ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit. ADR can be speedier. A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years. ADR can save money. Court costs, attorneys fees, and expert fees can be saved. ADR can permit more participation. The parties may have more chances to tell their side of the story than in court and may have more control over the outcome. ADR can be flexible. The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.

ADR can be cooperative. This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other. ADR can reduce stress. There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.

ADR can be more satisfying. For all the above reasons, many people have reported a high degree of satisfaction with ADR. Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

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Disadvantages of ADR

ADR may not be suitable for every dispute. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Three Common Types of ADR

This pamphlet describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

MEDIATION

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do.

Mediation is a cooperative process, in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other, where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how each other sees things. Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or cannot have enough bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

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ARBITRATION

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation, where the mediator helps the parties reach their own resolution. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Because of the large number of cases awaiting trial in many courts, a dispute normally can be heard much more quickly by an arbitrator than by a judge.

Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records), rather than by testimony.

There are two kinds of arbitration in California. Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and, normally, is binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. By contrast, a decision by an arbitrator in a case referred by the courts, known as "judicial arbitration," is not binding, unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to resolve their dispute by themselves, or with the aid of a neutral.

CASE EVALUATION

In case evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments, and makes an evaluation of the case. Each party gets a chance to present the case and hear the other side. This may lead to a settlement, or at least help the parties prepare to resolve the dispute later on.

Case evaluation, like mediation, can come early in the dispute and save time and money.

Case evaluation is most effective when someone has an unrealistic view of the dispute or when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Case evaluation may not be a good idea when it is too soon to tell what the case is worth or when the dispute is about something besides money, like a neighbor playing loud music late at night.

Additional Information

There are several other types of ADR beside mediation, arbitration, and case evaluation. Some of these are conciliation, settlement conferences, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering. Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge. You may wish to seek the advice of an attorney as to your legal rights and other matters relating to the dispute.

Whom Do You Call?

To locate a dispute resolution program or neutral in your community:

Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-952-5210, or contact the local bar association, or look in the Yellow Pages under "Arbitrators" or "Mediators."

For more information on local Arbitration Programs, please phone (714) 834-3774 (for court ordered arbitration only).

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding

There may be a charge for services provided by private arbitrators and mediators.
Presented by the Judicial Council of California and the State Bar of California - March 1998

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		FOR COURT USE ONLY
TELEPHONE NO.: FAX NO.:		
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
<input type="checkbox"/> ATTORNEY FOR <input type="checkbox"/> JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE		
STREET ADDRESS: 751 W. Santa Ana Blvd		
MAILING ADDRESS: P.O. Box 22028		
CITY AND ZIP CODE: Santa Ana, 92702		
BRANCH NAME: Civil Complex Center		
Plaintiff: Timothy R Peel et al.		
Defendant: BrooksAmerica Mortgage Corporation		
SHORT TITLE: PEEL VS. BROOKSAMERICA MORTGAGE CORPORATION		
STIPULATION FOR ALTERNATIVE DISPUTE RESOLUTION		CASE NUMBER: 30-2010-00348134-CU-FR-CXC

Plaintiff(s), _____ and defendant(s) agree to the following dispute resolution process:

- ☐ Mediation
- ☐ Arbitration (must specify code)
- ☐ Under Section 1141.11 of the Code of Civil Procedure
- ☐ Under Section 1280 of the Code of Civil Procedure
- ☐ Neutral Case Evaluation
- ☐ Other (specify):
- ☐ Plaintiff(s) and Defendant(s) further agree as follows:

We understand that there may be a charge for services provided by private arbitrators and mediators.

Date: _____

PLAINTIFF/ATTORNEY

Date: _____

DEFENDANT/ATTORNEY

ALTERNATE DISPUTE RESOLUTION (ADR) STIPULATION

Page: 4

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Case Number: 30-2010-00348134-CU-FR-CXC
Volume Number: 1
Case Short Title: Peel vs. BrooksAmerica Mortgage
Corporation
Will/Document ID Number:
Creation Date: 02/25/2010

Case Number: 30-2010-00348134-CU-FR-CXC
Volume Number: 1
Case Short Title: Peel vs. BrooksAmerica Mortgage
Corporation
Will/Document ID Number:
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Volume Number: 1
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Corporation
Will/Document ID Number:
Creation Date: 02/25/2010

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

Date: 03/16/2010

Time: 10:16:00 AM

Dept: CX104

Judicial Officer Presiding: Thierry Patrick Colaw

Clerk: P. Rief

Reporter/ERM: None

Bailiff/Court Attendant: None

Case No: 30-2010-00348134-CU-FR-CXC Case Init. Date: 02/05/2010

Case Title: Peel vs. BrooksAmerica Mortgage Corporation

Case Category: Civil - Unlimited

Case Type: Fraud

EVENT ID/DOCUMENT ID: 70939083

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Each party who has not paid the Complex fee of \$ 550.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

This case is subject to the Superior Court, County of Orange Local Rule 308 (Electronic Filing Program).

The Court hereby sets this matter for a Status Conference. The Status Conference is scheduled for 07/27/2010 at 10:30 AM in Department CX104.

Plaintiff shall, at least five court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the Case Management Statement form used for non-complex cases (Judicial Council Form CM-110).

Clerk to give notice to plaintiffs and plaintiffs to give notice to all other parties.

Date: 03/16/2010

MINUTE ORDER

Page: 1

Dept: CX104

Calendar No.:

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PEEL Plaintiff(s) v. BROOKSAMERICA MORTGAGE CORPORATION Defendant(s)	CASE NUMBER: 30-2010-00348134
	CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 03-16-10

I, ALAN CARLSON, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 03-16-10, I served the Minute Order, dated 03-16-10, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

J. Mark Moore, Esq.
Ira Spiro, Esq.
SPIRO MOSS, LLP
11377 West Olympic Boulevard, 5th Floor
Los Angeles, CA 90064-1683

David M. Arbogast, Esq.
Jeffrey K. Berns, Esq.
ARBOGAST & BERNs, LLP
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367-2263

ALAN CARLSON,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 03-16-10

By: 
P. Rief, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

3 6 6

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): J. Mark Moore (SBN 180473) SPIROMOSS LLP 11377 W. Olympic Blvd., 5th Floor Los Angeles, CA 90064 TELEPHONE NO.: 310-235-2468 FAX NO. (Optional): 310-235-2456 E-MAIL ADDRESS (Optional): mark@spiromoss.com ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY ELECTRONICALLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CIVIL COMPLEX CENTER Mar 22 2010 ALAN CARLSON, Clerk of the Court by G. Tavares
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Civil Complex Center		CASE NUMBER: 30-2010-00348134
PLAINTIFF/PETITIONER: TIMOTHY R. PEEL AND CHERYL G. PEEL DEFENDANT/RESPONDENT: BROOKSAMERICA MORTGAGE CORPORATION		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL		

TO (insert name of party being served): BROOKSAMERICA MORTGAGE CORPORATION

NOTICE

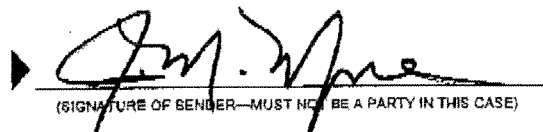
The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: March 1, 2010

J. Mark Moore

(TYPE OR PRINT NAME)


(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☒ A copy of the summons and of the complaint.
- ☒ Other (specify):

Civil Case Cover Sheet; Complex Guidelines; Class Action/B&P 17200 Questionnaire;
Civil Complex Grid; ADR Package

(To be completed by recipient):

Date this form is signed: 3/19/2010


(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)


(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

b67

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

Date: 03/16/2010 Time: 10:16:00 AM Dept: CX104
Judicial Officer Presiding: Thierry Patrick Colaw
Clerk: P. Rief
Reporter/ERM: None
Bailiff/Court Attendant: None

Case No: 30-2010-00348134-CU-FR-CXC Case Init. Date: 02/05/2010
Case Title: **Peel vs. BrooksAmerica Mortgage Corporation**

Case Category: Civil - Unlimited Case Type: Fraud

EVENT ID/DOCUMENT ID: 70939083
EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Each party who has not paid the Complex fee of \$ 550.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

This case is subject to the Superior Court, County of Orange Local Rule 308 (Electronic Filing Program).

The Court hereby sets this matter for a Status Conference. The Status Conference is scheduled for 07/27/2010 at 10:30 AM in Department CX104.

Plaintiff shall, at least five court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the Case Management Statement form used for non-complex cases (Judicial Council Form CM-110).

Clerk to give notice to plaintiffs and plaintiffs to give notice to all other parties.

Date: 03/16/2010
Dept: CX104

MINUTE ORDER

Page: 1
Calendar No.:

b 65

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PEEL	CASE NUMBER: 30-2010-00348134
Plaintiff(s)	
v.	
BROOKSAMERICA MORTGAGE CORPORATION	CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 03-16-10
Defendant(s)	

I, ALAN CARLSON, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify, that I am not a party to the within action or proceeding; that on 03-16-10, I served the Minute Order, dated 03-16-10, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

J. Mark Moore, Esq.
Ira Spiro, Esq.
SPIRO MOSS, LLP
11377 West Olympic Boulevard, 5th Floor
Los Angeles, CA 90064-1683

David M. Arbogast, Esq.
Jeffrey K. Berns, Esq.
ARBOGAST & BERNs, LLP
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367-2263

ALAN CARLSON,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 03-16-10

By: 
P. Rief, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

11 69

PROOF OF SERVICE

Peel vs. BrooksAmerica

OC Superior Court CASE NO. 30-2010-00348134

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP.

On the date set forth below I served the document(s) described as **NOTICE OF ORDER** on all the interested parties in this action, by placing: [xx] the original [] true copies thereof enclosed in sealed envelopes, addressed to the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP, as follows:

Mark Johnson
12232 East Kings Canyon Road
Sanger, CA 93557
mdjlaw@verizon.net

[X] BY MAIL: I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service. On the date set forth below, at the firm of Spiro Moss LLP at the above address, I placed the envelope(s) containing said document(s), sealed, for collection and mailing on that date with the United States Postal Service following ordinary business practices. Under the above-mentioned practice of Spiro Moss LLP, the above document(s) would be deposited with the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

[] BY MAIL: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

[] BY EXPRESS MAIL On the date set forth below I deposited such envelope(s) in an Express Mail mailbox, maintained by the U.S. Postal Service for receipt of Express Mail in Los Angeles County, California. The envelope(s) was/were deposited with Express Mail with postage thereon fully prepaid.

[] BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

[] (BY PERSONAL SERVICE): I personally caused said document(s) on the date set forth below, inside the envelope(s) clearly labeled to identify the attorney(s) to be served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

[] BY FACSIMILE On the date set forth below, I transmitted the above document(s) from facsimile machine number (310) 235-2456, in compliance with transmission as provided in California Rule of Court 2008. The fax number(s) that I used are shown above or on the attached Service List, along with the names of recipients and the interested parties. The Facsimile Machine I used complied with California Rule of Court 2003(3). The transmission was reported as complete and without error by the machine, which properly

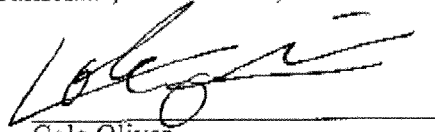
B 70

1 issued the transmission report.

2 [x] (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

3 [] (FEDERAL) I declare that I am employed in the office of a member of the bar of this
4 court at whose direction the service was made.

5 Executed at Los Angeles County, California, on March 16, 2010

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8 Cole Oliver

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1 **SPIRO MOSS LLP**
J. Mark Moore (SBN 180473)
2 mark@spiromoss.com
Ira Spiro (SBN 67641)
3 ira@spiromoss.com
11377 W. Olympic Boulevard, Fifth Floor
4 Los Angeles, CA 90064-1683
Phone: (310) 235-2468
5 Fax: (310) 235-2456

6 **ARBOGAST & BERNIS LLP**
David M. Arbogast (SBN 167571)
7 darbogast@law111.com
Jeffrey K. Bernis (SBN 131351)
8 jberns@law111.com
6303 Owensmouth Ave., 10th Floor
9 Woodland Hills, CA 91367-2263
Phone: (818) 961-2000
10 Fax: (818) 936-0232

11 Attorneys for Plaintiffs and all others similarly situated.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ORANGE**

15 **TIMOTHY R. PEEL AND CHERYL G. PEEL,**
16 on behalf of themselves and others similarly
17 situated,

18 Plaintiffs,

19 v.

20 **BROOKSAMERICA MORTGAGE**
21 **CORPORATION, a California Corporation; and**
22 **DOES 1 through 200 inclusive,**

23 Defendants.
24
25
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28

**ELECTRONICALLY
FILED**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

Mar 22 2010

**ALAN CARLSON, Clerk of the Court
by G. Tavares**

CASE NO. 30-2010-00348134

Assigned to Hon. Thierry Patrick Colaw CX-104

NOTICE OF ORDER

Date: July 27, 2010
Time: 10:30 a.m.
Dept.: CX-104

NOTICE OF ORDER
B 72

1 PLEASE TAKE NOTICE that the Court has issued an Order finding the case exempt from the
2 case disposition and setting a status conference. Please see the March 16, 2010 Order attached hereto.

3 DATED: March 22, 2010

SPIRO MOSS LLP
ARBOGAST & BERNIS LLP

By: 

J. Mark Moore
of SPIRO MOSS LLP

David M. Arbogast
Jeffrey K. Bernis
of ARBOGAST & BERNIS LLP

Attorneys for Plaintiffs and all others Similarly
Situated

1
NOTICE OF ORDER

87 13

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
On Behalf of: Cheryl Peel; CCMS ID: 71806364, Timothy Peel; CCMS ID: 71806363
Transaction Number: 24881
Court Received Date: 07/19/2010
Court Received Time: 04:24:44 PM
Filed Date: 07/19/2010
Filed Time: 04:24:00 PM
Fee Amount Assessed: \$0.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Case Management Statement	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: 8009388815

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
MINUTE ORDER

Date: 07/27/2010 Time: 10:30:00 AM Dept: CX104

Judicial Officer Presiding: Thierry Patrick Colaw
Clerk: Mary Lou Correa
Reporter/ERM: None
Bailiff/Court Attendant: Servando Garcia, Jr

Case No: **30-2010-00348134-CU-FR-CXC** Case Init. Date: 02/05/2010
Case Title: **Peel vs. BrooksAmerica Mortgage Corporation**

Case Category: Civil - Unlimited Case Type: Fraud

EVENT ID/DOCUMENT ID: 70939088
EVENT TYPE: Status Conference

APPEARANCES

James Mark Moore, from Spiro Moss LLP, present for Plaintiff(s) telephonically.

Status Conference held.

Counsel informed the Court that counsel for defendant informed him that they will be filing an answer.

Status Conference continued to 11/18/2010 at 01:30 PM in this department.

Court orders plaintiff to give notice.

13 175

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
 On Behalf of: Cheryl Peel; CCMS ID: 71806364, Timothy Peel; CCMS ID: 71806363
 Transaction Number: 25566
 Court Received Date: 07/27/2010
 Court Received Time: 11:09:57 AM
 Filed Date: 07/27/2010
 Filed Time: 11:09:00 AM
 Fee Amount Assessed: \$0.00
 Case Number: 30-2010-00348134-CU-FR-CXC
 Case Title: Peel vs. BrooksAmerica Mortgage Corporation
 Location: Civil Complex Center
 Case Type: Fraud
 Case Category: Civil - Unlimited
 Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Notice of Hearing (of case management conference)	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: OneLegal
 Email: support@onelegal.com
 Contact Person: Customer Support
 Phone: 8009388815

B 76

SUMMONS for First Amended Complaint
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

BROOKSAMERICA MORTGAGE CORPORATION, a California Corporation; WASHINGTON MUTUAL MORTGAGE SECURITIES CORP., formerly sued as DOE 1; WAMU ASSET ACCEPTANCE CORP., formerly sued as DOE 2; RESIDENTIAL FUNDING COMPANY, LLC, formerly sued as DOE 3; and DOES 4 through 200 inclusive,

YOU ARE BEING SUED BY PLAINTIFF: TIMOTHY R. PEEL AND (LO ESTÁ DEMANDANDO EL DEMANDANTE): CHERYL G. PEEL, RUSS BEBOUT, MICHAEL SANFORD AND MARILYN SANFORD and DESIREE MCILRATH on behalf of themselves and others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desestimar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Orange County Superior Court, Civil Complex Center
751 West Santa Ana Blvd.
Santa Ana, CA 92701

CASE NUMBER:

(30-2010-00348134-CU-FR-CXC)

Judge Thierry Patrick Colaw

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

J. Mark Moore and Ira Spiro
SPIRO MOORE LLP

11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064

Tel: (310) 235-2468 Fax: (310) 235-2456

DATE: 10/20/2010 ALAN CARLSON, Clerk of the Court
(Fecha)

Clerk, by *Alan Carlson*
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Maarit H Nordman

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

SPIRO MOSS LLP
 J. Mark Moore (SBN 180473)
mark@spiomoss.com
 Ira Spiro (SBN 67641)
ira@spiomoss.com
 11377 W. Olympic Boulevard, Fifth Floor
 Los Angeles, CA 90064-1683
 Phone: (310) 235-2468
 Fax: (310) 235-2456

ELECTRONICALLY FILED
 Superior Court of California,
 County of Orange
10/20/2010 at 04:44:00 PM
 Clerk of the Superior Court
 By Maarit H Nordman, Deputy Clerk

BLOOD HURST & O'REARDON LLP
 Timothy G. Blood (SBN 149343)
Tblood@bholaw.com
 Thomas Joseph O'Reardon II (SBN 247952)
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 San Diego, CA 92101
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jbernes@law111.com
 6303 Owensmouth Ave., 10th Floor
 Woodland Hills, CA 91367-2263
 Phone: (818) 961-2000
 Fax: (818) 936-0232

[Additional Counsel identified on signature page]
 Attorneys for Plaintiffs and all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

TIMOTHY R. PEEL AND CHERYL G. PEEL,
 RUSS BEBOUT, MICHAEL SANFORD AND
 MARILYN SANFORD and DESIREE
 MCILRATH on behalf of themselves and others
 similarly situated,

Plaintiffs,

v.

BROOKSAMERICA MORTGAGE
 CORPORATION, a California Corporation;
 WASHINGTON MUTUAL MORTGAGE
 SECURITIES CORP., formerly sued as DOE 1;
 WAMU ASSET ACCEPTANCE CORP.,
 formerly sued as DOE 2; RESIDENTIAL
 FUNDING COMPANY, LLC, formerly sued as
 DOE 3; and DOES 4 through 200 inclusive,

Defendants.

CASE NO. 30-2010-00348134

[Assigned to the Hon. Thierry Patrick Colaw,
 Dept. CXI]

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

- (1) Fraudulent Omissions;
- (2) Violation of Bus. & Prof. Code §17200, *et seq.* – “Unlawful,” “Unfair” and “Fraudulent” Business Practices; and
- (3) Breach of Contract.

JURY TRIAL DEMANDED

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1 Plaintiffs, Timothy R. Peel and Cheryl G. Peel, Russ Bebout, Michael Sanford and Marilyn
2 Sanford and Desiree McIlrath ("Plaintiffs"), individually, and on behalf of all others similarly situated,
3 allege as follows:

4 I.

5 **INTRODUCTION**

6 1. This is an action pursuant to California's Unfair Competition Law (the "UCL"), Bus. &
7 Prof. Code §§ 17200, *et seq.*, and other California statutory and common law. Plaintiffs, individually,
8 and on behalf of all others similarly situated ("Class Members"), bring this action against
9 BrooksAmerica Mortgage Corporation ("BrooksAmerica"), Residential Funding Company, LLC,
10 formerly known as Residential Funding Corporation ("RFC"), Washington Mutual Mortgage Securities
11 Corporation ("WMMSC"), WaMu Asset Acceptance Corp. ("WAAC"), and DOES 4 through 200
12 (collectively "Defendants"), based upon Defendants' conduct that permitted BrooksAmerica and other
13 originators to originate Option Adjustable Rate Mortgage ("Option ARM") loans using loan documents
14 and accompanying required disclosure statements that failed to clearly, unambiguously and
15 conspicuously disclose to Plaintiffs and Class Members material facts, including that:

- 16 • the loans were designed to cause negative amortization to occur;
- 17 • the monthly payment amounts listed in the loan documents for the first two to five years
18 of the loans were based entirely upon a low "teaser" interest rate (though *not* disclosed as
19 such by Defendants) which existed for only a single month and which was substantially
20 lower than the actual interest rate that would be charged, such that these payment
21 amounts would never be sufficient to pay the interest due each month; and
- 22 • when Plaintiff and Class Members followed the contractual payment schedule in the loan
23 documents, negative amortization was *certain* to occur, resulting in a significant loss of
24 equity in borrowers' homes, and making it much more difficult for borrowers to
25 refinance the loans;¹ thus, as each month passed, the homeowners would actually owe
26 more money than they did at the outset of the loan, with less time to repay it.

27
28 ¹ If borrowers attempted to refinance in the first 1-3 years of the loans, they would be required to pay
another set of closing costs and would have to pay a substantial prepayment penalty.

1 In other words, the loans at issue were guaranteed and intended to result in the loss of the borrowers'
2 equity through negative amortization. Far from being merely a "possibility," as was deceptively
3 represented in the loan documents, negative amortization was absolutely guaranteed to occur if Plaintiffs
4 and Class Members adhered to the sole contractual payment schedule presented to them before entering
5 into the loans. While the mortgage notes (the "Notes") also referenced potential, unquantified payment
6 "options" with which borrowers *might* be provided after closing, to the extent such options or alternative
7 payment schedules were ever actually provided to some borrowers, they were not provided until well
8 *after* the loans closed. By the time the loans closed, the borrowers were, as Defendants intended,
9 effectively trapped in the equity-sucking loans due to draconian prepayment penalties in the tens of
10 thousands of dollars. (Hereinafter, the omitted facts referenced above shall be referred to as "The
11 Material Omissions"). All of Defendants' unfair, deceptive and wrongful conduct in this case arises
12 directly from the Option ARM Loan documents themselves, and, more specifically, from the material
13 omissions and deceptive partial representations contained in those documents.

14 2. As alleged below, without the active participation of defendants WMMSC, WAAC
15 (collectively, "the WaMu defendants"), RFC, and other well-capitalized financial institutions,
16 BrooksAmerica and other originators would not have been able to issue a single Option ARM loan to
17 Class Members. Despite serving as a loan originator, BrooksAmerica did not use its own assets to fund
18 Option ARM loans. Instead, it borrowed money from warehouse lenders (which often were affiliates of
19 Defendants) to fund the loans at closing and then sold those loans to Defendants shortly after closing.
20 The funds paid by Defendants to purchase the loans were then paid to the warehouse lenders, with the
21 remainder going to BrooksAmerica. Because BrooksAmerica's business was wholly dependent on the
22 WaMu defendants and RFC, along with other financial institutions, purchasing its loans shortly after
23 origination, BrooksAmerica did not have, or utilize, any discretion in the origination of Option ARM
24 loans. Instead, it was required to, and did, use loan documents and underwriting guidelines dictated and
25 approved by the WaMu defendants and RFC. Thus, the WaMu defendants and RFC are liable, both
26 directly and as aiders and abettors, for the damages caused by the deceptive loan documents at issue in
27 this action.

28 ///

II.

THE PARTIES

3. Plaintiffs Timothy R. Peel and Cheryl G. Peel are, and at all times relevant to this Complaint were, California citizens residing in Lancaster, California. On or about November 21, 2006, Mr. and Mrs. Peel refinanced their existing home loan and entered into an Option ARM loan agreement with BrooksAmerica. The Option ARM loan was secured by Mr. and Mrs. Peel's residence. Attached hereto as Exhibit 1 is a true and correct copy of the Note, Truth and Lending Disclosure Statement ("TILDS") and Prepayment Penalty Rider (collectively the "Loan Documents") pertinent to this action. On or about November 21, 2006 – the same day that it originated the Peel's Option ARM loan – BrooksAmerica, Plaintiffs are informed and believe, sold the loan to one of the WaMu defendants.² The source of Plaintiffs' belief is BrooksAmerica, which has informed Plaintiffs that it sold the loan to WaMu, but to date has not identified the precise entity to which it sold the loan. According to public documents, including a statement to a Congressional subcommittee discussed below, WaMu purchased loans from originators through the WaMu defendants.

4. Plaintiff Russ Bebout is, and at all times relevant to this Complaint was, a California citizen residing in Grass Valley, California. On or about December 21, 2006, Mr. Bebout refinanced his existing home loan and entered into an Option ARM loan agreement with BrooksAmerica. The Option ARM loan was secured by Mr. Bebout's residence. Attached hereto as Exhibit 2 is a true and correct copy of the Note, TILDS, Program Disclosure and Prepayment Penalty Rider pertinent to this action. Shortly after originating Mr. Bebout's Option ARM loan, on January 16, 2007, BrooksAmerica sold the loan to RFC.

5. Plaintiffs Michael Sanford and Marilyn Sanford are, and at all times relevant to this Complaint were, California citizens residing in Menefee, California. On or about February 13, 2007, Mr. and Mrs. Sanford refinanced their existing home loan and entered into an Option ARM loan agreement with BrooksAmerica. The Option ARM loan was secured by Mr. and Mrs. Sanford's residence. Attached hereto as Exhibit 3 is a true and correct copy of the Note, TILDS, Program

² Now defunct Washington Mutual Bank, the parent of the WaMu defendants, also took over servicing of the Peels' loan shortly after origination.

1 Disclosure and Prepayment Penalty Rider pertinent to this action. On or about February 13, 2007 – the
2 same day that it originated Mr. and Mrs. Sanford’s Option ARM loan – BrooksAmerica sold the loan to
3 RFC.

4 6. Plaintiff Desiree McIlrath is, and at all times relevant to this Complaint was, a California
5 citizen residing in Wildomar, California. On or about February 1, 2007, Ms. McIlrath refinanced her
6 existing home loan and entered into an Option ARM loan agreement with BrooksAmerica. The Option
7 ARM loan was secured by Ms. McIlrath’s residence. Attached hereto as Exhibit 4 is a true and correct
8 copy of the Note, TILDS, Program Disclosure and Prepayment Penalty Rider pertinent to this action.
9 On or about February 1, 2007 – the same day that it originated Ms. McIlrath’s Option ARM loan –
10 BrooksAmerica sold the loan to RFC.

11 7. Defendant BrooksAmerica is a California corporation licensed to do, and doing, business
12 in California, with its principal place of business located at 2 Ada, Suite 100, Irvine California. At all
13 relevant times hereto BrooksAmerica was engaged in the business of originating and selling the Option
14 ARM loans that are the subject of this Complaint. BrooksAmerica transacts and/or transacted business
15 in Orange County, California and at all relevant times originated and sold Option ARM loans
16 throughout the United States, including in Orange County, California. BrooksAmerica has and has had
17 significant contacts with Orange County, California, and the activities complained of herein occurred, in
18 whole or in part, in Orange County, California.

19 8. From its headquarters in Irvine, California, BrooksAmerica sold the Option ARM loans
20 that are the subject of this complaint. Using loan documents and underwriting guidelines designed and
21 approved by the WaMu defendants or RFC, BrooksAmerica approved and sold a significant number of
22 the subject Option ARM loans to California residents. Plaintiffs are informed and believe and thereon
23 allege that BrooksAmerica’s employees and/or agents responsible for the approval and sale of the
24 subject Option ARM loans are and/or were located in California, and/or that the decisions concerning
25 approval of the Plaintiffs’ and the Class Members’ loans were authorized and/or approved by
26 BrooksAmerica’s corporate officers, executives and employees located in California.

27 9. Defendant Washington Mutual Mortgage Securities Corp. (“WMMSC”), previously
28 named and sued herein as DOE 1, is and/or was a Delaware Corporation. Defendant WaMu Asset

1 Acceptance Corp. ("WAAC"), previously named and sued herein as DOE 2, is and/or was a Delaware
2 Corporation. According to congressional testimony on April 13, 2010 by Washington Mutual Bank's
3 representative and former WAAC officer David Beck, WMMSC and WAAC were subsidiaries of
4 Washington Mutual Bank which purchased and held loans from Washington Mutual Bank and other
5 mortgage originators (such as BrooksAmerica), and held them until they were sold on the secondary
6 market, often through securitization deals underwritten by another Washington Mutual Bank subsidiary.
7 Based upon information provided by BrooksAmerica, Plaintiffs are informed, believe and thereon allege
8 that defendant BrooksAmerica sold the Peels' loan that is the subject of this action, and other Class
9 Members' loans that are the subject of this action, to either WMMSC or WAAC. Discovery will
10 determine which of the WaMu defendants actually purchased the Peels loan, which the WaMu
11 defendants' parent company Washington Mutual Bank began servicing in early 2007. Plaintiffs are
12 informed, believe, and thereon allege that the WaMu defendants purchased or otherwise are and were an
13 assignee of some of the Option ARM loans that are the subject of this Complaint, including the Peels'
14 loan.

15 10. Defendant RFC, previously named and sued as DOE 3 herein, was formerly known as
16 Residential Funding Corporation. RFC is a Delaware limited liability company, with its principal place
17 of business in Minnesota. At all relevant times, RFC was doing business in California. On January 16,
18 2007, BrooksAmerica sold Mr. Bebout's Option ARM loan at issue in this action to RFC. On February
19 13, 2007, BrooksAmerica sold Mr. and Mrs. Sanford's Option ARM loan at issue in this action to RFC.
20 On February 1, 2007, BrooksAmerica sold Ms. McIlrath's Option ARM loan at issue in this action to
21 RFC. Plaintiffs are therefore informed and believe that RFC purchased or otherwise is and was an
22 assignee of many of the Option ARM loans that are the subject of this Complaint, in addition to the
23 Option ARM loans of Mr. Bebout, Mr. and Mrs. Sanford, and Ms. McIlrath.

24 11. At all times mentioned herein, Defendants were engaged in the business of originating,
25 selling, servicing, and/or owning, and/or are or were the assignees of, the Option ARM loans that are the
26 subject of this Complaint, throughout the State of California, including in Orange County, California.

27 12. Plaintiffs are informed, believe, and thereon allege that each of the Defendants is
28 responsible in some manner, either by act or omission, strict liability, fraud, deceit, fraudulent

1 concealment, negligence, respondeat superior, joint venture principles, breach of contract or otherwise,
2 for the occurrences herein alleged, and that Plaintiffs' injuries, as herein alleged, were proximately
3 caused by the conduct of Defendants.

4 13. Plaintiffs are informed, believe, and thereon allege that at all times material hereto and
5 mentioned herein, each of the Defendants sued herein was the agent, servant, employer, joint venturer,
6 partner, division, owner, subsidiary, alias, assignee and/or alter-ego of each of the remaining Defendants
7 and was at all times acting within the purpose and scope of such agency, servitude, joint venture,
8 division, ownership, subsidiary, alias, assignment, alter-ego, partnership or employment and with the
9 authority, consent, approval and ratification of each remaining defendant.

10 14. Plaintiffs are informed, believe, and thereon allege that at all times herein mentioned,
11 each defendant was acting in concert or participation with each other, or was a joint participant and
12 collaborator with the others in the acts complained of, and/or was the agent or employee of the others in
13 doing the acts complained of herein, each and all of them acting within the course and scope of said
14 agency and/or employment by the others, each and all of them acting in concert one with the other and
15 all together. Each defendant was the co-conspirator, agent, servant, employee, assignee and/or joint
16 venturer of each of the other Defendants and was acting within the course and scope of said conspiracy,
17 agency, employment, assignment and/or joint venture and with the permission and consent of each of
18 the other defendants.

19 15. Plaintiffs are informed, believe, and thereon allege that DOES 4 through 200, inclusive,
20 include other entities that are assignees of the loans that are the subject of this action and/or other
21 culpable corporate affiliates of RFC and the WaMu defendants. The true names and capacities, whether
22 individual, corporate, associate or otherwise, of defendants DOES 4 through 200, inclusive, and each of
23 them, are unknown to Plaintiffs at this time, and Plaintiffs therefore sue said defendants by such
24 fictitious names. Plaintiffs allege, on information and belief, that each DOE defendant is responsible for
25 the actions herein alleged. Plaintiffs may seek leave of Court to amend this Complaint when the names
26 and culpability of said DOE defendants have been ascertained.

27 16. Pursuant to California Civil Code § 1459 and California Code of Civil Procedure § 368,
28 defendants RFC, the WaMu defendants, and at least some of DOES 4 through 200, are the subsequent

1 purchasers and/or assignees of Plaintiffs' and Class Members' Option ARM loans. (More specifically,
2 the WaMu defendants bought and/or were assigned the loans of the Peels and some other Class
3 Members; RFC bought and/or was assigned the loans of Mr. Bebout, Mr. and Mrs. Sanford and Ms.
4 McIlrath, and of some other Class Members; and, on information and belief, at least some of DOES 4
5 through 200 bought and/or were assigned the loans of certain other Class Members.) At all relevant
6 times, RFC, the WaMu defendants, and DOES 4 through 200 are and/or were sophisticated and
7 knowledgeable entities whose businesses included designing, purchasing, packaging, securitizing and
8 selling interests in the subject Option ARM loans. RFC, the WaMu defendants and DOES 4 through
9 200 purchased, packaged, directed, securitized and/or sold the subject Option ARM loans with full
10 knowledge of the failures to disclose and material omissions as alleged herein. RFC, the WaMu
11 defendants and DOES 4 through 200 therefore "stand in the shoes" of the assignor, taking their rights
12 and remedies, subject to any defenses that the obligor (Plaintiffs and Class Members) have against the
13 assignor prior to notice of the assignment.

14 15 III.

16 JURISDICTION AND VENUE

17 17. This Court has jurisdiction over this matter pursuant to the California Constitution,
18 Article XI, Section 10 and California Code of Civil Procedure ("CCP") §410.10 because Defendants
19 transacted business and committed the acts complained of herein in California. The allegations are
20 sufficient to sustain the causes of action without resort to federal law. More than two-thirds of the Class
21 Members are citizens of California, own property in California which is or was financed and/or secured
22 by the Option ARM loans at issue, all Defendants conduct substantial business in California, and
23 BrooksAmerica has its principal place of business in and is headquartered in California; thus, this case is
24 not subject to removal under the Class Action Fairness Act of 2005 under both the "home state
25 exception" and the "local controversy exception." 28 U.S.C. §1332(d)(4)(A) (home state exception); 28
26 U.S.C. §1332 (d)(4)(B) (local controversy exception).

27 18. Venue is proper in Orange County, California pursuant to CCP §395 because many of the
28 acts complained about occurred in Orange County and defendant BrooksAmerica resides in, and is

headquartered in, Orange County, California.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

A. The Subject "Option ARM" Loans

19. The Option ARM loans that are the subject of this Complaint are the loans originated by BrooksAmerica and other originators, which were purchased by the other Defendants, with the following common characteristics: (i) the Monthly Payment Amount stated in the Note is based upon a low "teaser" interest rate which ranges from 1% to 3%; (ii) the payment schedule listed in the TILDS, for the first 3-5 years of the Note, is based upon a fully amortizing payment at the "teaser" interest rate; (iii) the interest rate "adjusts" after only 30 days to a rate which is the (far higher) sum of the "index" and the "margin"; and (iv) after the first 3-5 years, the amount of monthly payments increases.

B. Defendants Failed to Disclose to Borrowers, Before Borrowers Entered into the Subject Option ARM Loans, the Certainty of Negative Amortization and Other Important Material Facts

20. At all times material hereto, Defendants knew that for Plaintiffs' and Class Members' Option ARM loans, the sum of the index and the margin would necessarily result in an interest rate that always exceeded the "teaser" rate by several percentage points. The "teaser" rate was in effect only for one month. After one month, the interest accruing on the Note *more than doubled* from an amount which was usually below 3% (2.50% in the case of Plaintiffs Peel and Bebout, 2.00% in the case of Plaintiff Sanford, and 1.500% in the case of Plaintiff McIlrath) to an amount of at least 4%, and in some cases as much as 8%.

21. The sole payment schedule provided to Plaintiffs and Class Members, in the TILDS accompanying the Note, was, for the first five years of the loans, calculated based upon a fully amortizing payment at the low, temporary teaser rate. However, Defendants did not disclose that the payment schedule was calculated based on the teaser rate. Instead, the TILDS referenced a different and much higher APR [in a box in upper left corner], without any suggestion that the payment schedule did not bear any relation to that APR, but instead, was based on a teaser rate that would expire after only

1 a month. For example: the TILDS for the Peels lists a "yearly" APR of 7.7232, but the payment
2 schedule on that TILDS is based upon the teaser rate of 2.5%; the TILDS for Mr. Bebout lists a yearly
3 APR of 7.8963, but the payment schedule on that TILDS is based upon the teaser rate of 2.5%; the
4 TILDS for the Sanfords lists a yearly APR of 8.5072, but the payment schedule on that TILDS is based
5 upon the teaser rate of 2.0%; the TILDS for Ms. McIlrath lists a yearly APR of 8.6381, but the payment
6 schedule on that TILDS is based upon the teaser rate of 1.5%; Plaintiffs and other similarly situated
7 borrowers were *not* provided, before entering into the loans, with any other payment schedule or with
8 any informed option to make payments different than those listed in the payment schedule in the TILDS.

9 22. Thus, only a month into the life of the loan, because of the dramatic, immediate
10 interest rate increase, the borrower's scheduled monthly payment was no longer sufficient to even pay
11 the interest accruing on the Note. Accordingly, the principal balance owed by the borrower began
12 increasing even as the payments were made as scheduled pursuant to the Note and the TILDS. This
13 process is known as negative amortization, and Defendants knew it was certain to occur because of the
14 large spread between the temporary teaser rate and the combined index and margin. Indeed, *the margin*
15 *alone was consistently higher than the teaser rate*. Thus, even if the index went down to zero, which
16 has never occurred since the index started being recorded, the combined total of the margin (2.80% in
17 the case of the Peels; 3.025% in the case of Mr. Bebout, 3.4% in the case of the Sanfords, and 3.55% in
18 the case of Ms. McIlrath) and index would never be close to the "teaser" rate. Accordingly, based on
19 the sole payment schedule provided to the borrowers before they entered into the loans (before the
20 borrowers became subject to a large prepayment penalty), **the Option ARM loans at issue would**
21 **always cause, and were designed to cause, negative amortization**. These facts were not disclosed to
22 Plaintiffs and the Class Members before they entered into the loans. Had these material facts been
23 disclosed, Plaintiffs and Class Members would not have entered into the loans, and/or would not have
24 agreed upon the terms in the Loan Documents.

25 23. Negative amortization was certain to occur pursuant to the payment schedule because of
26 the large spread between the teaser rate and the combined index and margin. Indeed, the margin alone
27 was consistently higher than the teaser rate. For example, for the Peels' loan (Exhibit 1), the Note at
28 ¶2(A) states "I will pay a yearly rate of 2.50%. The interest rate I will pay may change." ¶2(B) of the

1 24. Thus, according to the sole payment schedule provided to Plaintiffs before they entered
2 into the subject Option ARM loans, negative amortization was an absolute certainty. Defendants knew
3 this but did not disclose it. Such a fact -- the certain loss of equity in one's home -- would be material
4 to any borrower, and was material to Plaintiffs. Instead of disclosing the truth, Defendants made the
5 deceptive partial representation that negative amortization was only a mere possibility. Had Defendants
6 disclosed that negative amortization was an absolute certainty if Plaintiffs made the payments identified
7 under the sole payment schedule provided to them by Defendants, the Plaintiffs would not have entered
8 into the loans and/or would not have agreed upon the terms in the Loan Documents.

9 25. As alleged above, the Loan Documents did not disclose that negative amortization was
10 certain to occur if borrowers followed the payments schedule provided to them. Stated differently, the
11 Loan Documents did not disclose that the borrower's interest rate and the payment it would generate
12 were absolutely certain to increase shortly after the loan contract was consummated. Instead, the Loan
13 Documents deceptively suggested that, under the facts as they existed at the time the loan was entered
14 into (*i.e.*, using the sole payment schedule provided), negative amortization was only a mere possibility,
15 and, thus, also possibly might *not* occur.

16 26. The Loan Documents deceptively and misleadingly stated that the interest rate
17 and payment amounts "may" change. This was a half truth since the term "may" necessarily means and
18 implies "may not," when in reality the undisclosed truth was that, at the time the loans closed based on
19 the one payment schedule provided to borrowers, there was no uncertainty whatsoever as to whether
20 negative amortization would occur pursuant to that sole contractual payment schedule. Representing
21 that negative amortization "may" occur was deceptive and misleading because it implied that negative
22 amortization was only a mere possibility, and subject to some future contingency, such as an increase in
23 the Current Index on which the Interest Rate was purportedly based, when, in fact, negative amortization
24 was *guaranteed* to occur almost immediately, even if the Current Index stayed the same or went down
25 significantly.

26 27. In addition, the Note itself commenced with the following deceptive and misleading
27 partial representation, in bolded, capitalized text: "**THE PRINCIPAL AMOUNT TO REPAY**
28 **COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED . . .**" (*Italics*

1 added.) The Note further stated, in ¶ 3(B), that “[e]ach of my initial monthly payments until the first
2 Payment Change Date will be in the amount of [the first payment amount identified in the TILDS
3 payment schedule] unless adjusted under Section 3 (F)” (which contains a recast provision when the
4 loan balance reaches 115%). In reality, pursuant to the required monthly payment schedule identified in
5 the Note, negative amortization was an absolute certainty. Thus, asserting that the principal amount to
6 repay “could” be greater than the amount originally borrowed was misleading and deceptive, at best.

7 28. Similarly, the Notes at issue also deceptively represented that the “my Minimum
8 Payment could be less than or greater than the amount of the interest portion of the monthly payment
9 that would be sufficient to repay the unpaid principal I owe at the monthly payment date [and] each
10 month that my payment is less than the interest portion, the Note Holder will subtract the amount of my
11 monthly payment from the amount of the interest portion and will add the difference to my unpaid
12 principal, and interest will accrue on the amount of this difference ...” [Ex. 1 through 4, ¶3(E)]. The
13 monthly payments referred to in section 3(E) of the Promissory Note were the payments based upon the
14 “teaser” interest rate that was only in existence for a single month. Even the increases in the yearly
15 payment were based upon the artificially low payment based upon the ephemeral teaser rate.
16 Defendants’ statement in ¶3(E) was thus another statement that negative amortization “could” occur if
17 Plaintiffs made the payments identified in the TILDS. And, indeed, the language falsely suggests that
18 Plaintiffs’ minimum payments could be *greater* than the interest portion – a mathematical impossibility
19 unless the subject indices fell below zero . In reality, Defendants knew with 100% certainty, before
20 Plaintiffs entered into the loans, that after the first Payment Change Date, the monthly payment amounts
21 stated in the Note and TILDS would *always* be less, and could never be anything other than less, than
22 the amount of the interest being charged on a monthly basis. The Loan Documents failed to disclose
23 this material information to Plaintiffs and Class Members before they entered into the loans. Had the
24 Loan Documents clearly and conspicuously disclosed this material information to Plaintiffs before they
25 entered into the loan contracts, they would not have entered into the subject Option ARM loans.

26 29. The Notes further state, in ¶3(B), under “Amount of My Initial Monthly Payments” that
27 “Each of my initial monthly payments will be in the amount of ... [e.g., \$1,289.67, in the case of the
28 Peels]. However, under the terms of the subject Option ARM loans, the amount actually owed by

1 Plaintiffs and Class Members under the loan was absolutely guaranteed to go up the very next month.
2 In particular, the Loan Documents failed to disclose and omitted the material fact that while the initial
3 monthly payment amount would remain constant for at least one year, the actual amount owed to satisfy
4 Plaintiffs' and other borrowers' full obligation on the loans was absolutely guaranteed to go up. Had the
5 Loan Documents disclosed this information, Plaintiffs and Class Members would not have entered into
6 the subject Option ARM loans.

7 30. The Notes also repeatedly suggest that payments by borrowers would be applied to *both*
8 principal and interest. For example, each of the Notes at issue states at ¶3(A): "I will make a payment
9 every month. ... until I have paid all the **Principal and Interest** ..." At ¶7(A), under the heading
10 "BORROWERS FAILURE TO PAY AS REQUIRED," the Notes state: "[t]he amount of the charge will
11 be 6.0000% of my overdue **payment of Principal and Interest**." These partial representations (half
12 truths) concealed and failed to disclose that the payment amounts prescribed in the Loan Documents
13 were certain to be insufficient to pay both principal and interest and were certain to result in negative
14 amortization. Had the Loan Documents disclosed this information, Plaintiffs and Class Members would
15 not have entered into the subject Option ARM loans.

16 31. Because of the way Defendants structured these Option ARM loans, it was certain that,
17 as scheduled payments were made each month, each Class Member would owe more money than he or
18 she did at the start of the loan, and have less time to pay it back. Indeed, every time Plaintiffs and Class
19 Members made a payment in the amount reflected in the TILDS, the principal balance on their loans
20 increased. To make matters worse, this negative amortization or "deferred interest" was added to the
21 principal balance and, in turn, accrued more interest – in effect using compound interest to increase the
22 balance owed by each borrower.

23 32. Although Defendants knew that negative amortization was certain to occur, the Loan
24 Documents did not disclose this to Plaintiffs or Class Members, who refinanced their homes and/or
25 entered into these loans without ever receiving this material information. Had the Loan Documents
26 disclosed this material information, Plaintiffs and Class Members would not have purchased the subject
27 Option ARM loans.

28 ///

1 33. The two most important pieces of information in any mortgage loan are the interest rate
2 and the amount of the monthly payments. For the subject Option ARM loans, the disclosures of both
3 pieces of this information were misleading and omitted material facts. The Loan Documents disclosed a
4 teaser interest rate, but they did not disclose that this rate would *sharply increase* a month into the life
5 of the loan. The Loan Documents disclosed a low monthly payment for the first 3-5 years of the loan,
6 which was based on the teaser rate, but this did not reflect the actual amount of interest being charged or
7 the amount Plaintiffs and Class Members actually owed each month.

8 34. Plaintiffs and Class Members were not informed of the sharp increase in the interest rate,
9 and the fact that their monthly payments were not enough to pay the interest accruing on the loan, until
10 they had made multiple payments following the closing of the loan, at which time they would receive a
11 statement showing that the principal balance had increased with each month that had passed since the
12 loan closed, despite the fact that they had made all payments as scheduled.

13 35. By the time this material information was disclosed to Plaintiffs and Class Members, they
14 were "locked" into the loan by a draconian prepayment penalty consisting of a prepayment charge equal
15 to the interest rate that would accrue during a six-month period of the amount prepaid (if the prepayment
16 amount was greater than 20% of the original principal amount stated in the Note), which was calculated
17 at the rate of interest in effect under the terms of the Note at the time of the prepayment for a
18 prepayment occurring during the first two to three years of the loan. This draconian provision was
19 designed to deter anyone from refinancing the loan during the applicable time period.

20 36. Before Plaintiffs and Class Members entered into the subject Option ARM loans, the
21 Loan Documents failed to disclose and concealed the amount by which the borrowers' loan balances
22 would increase over the first two or three years of the loan, even though Defendants actually performed
23 this calculation internally. This increase in the loan balance is material information to any consumer
24 entering into these loans, because it effectively strips the homeowners of equity in their homes, while
25 greatly impairing their ability to refinance these loans once they recast to substantially higher monthly
26 payments. Thus, the loans were structured so that once borrowers actually discovered the material
27 information that their loans were in fact negatively amortizing, the borrowers could only get out of the
28 loans if they (1) incurred a substantial prepayment penalty, or (2) waited two to three years [until the

1 prepayment penalty no longer applied], in which case they would have to refinance a substantially larger
2 principal amount. The Loan Documents did not disclose to borrowers that once their loans began
3 negatively amortizing (almost immediately), as they were designed to do, the borrowers would not be
4 able to extricate themselves from the loans unless they either paid a substantial prepayment penalty or
5 waited until three years into the loan's life, at which time they would have to refinance a substantially
6 larger principal amount due to the negative amortization. Had the Loan Documents disclosed this
7 material information, Plaintiffs and Class Members would not have entered into the subject Option
8 ARM loans.

9 37. Each of the subject Option ARM loans has so-called payment caps, which provide that,
10 even after the monthly payment increases, it will not increase by more than 7.5% per year. See Exhibit
11 1, ¶ 3(D). These payment caps are, however, subject to an overall cap on principal of 115% of the
12 original loan amount. See Exhibit 1, ¶ 3(F). Once the loan principal reaches this 115% cap, the 7.5%
13 limitation on payment increases no longer applies, and the payment generally will increase by more
14 (possibly far more) than that amount. This built-in "payment shock" is more than many borrowers,
15 including Plaintiffs and Class Members, can afford, and, by design puts them at risk of losing their
16 homes to foreclosure.

17 38. The undisclosed fact that negative amortization was absolutely certain to occur in
18 connection with the subject loans, and the undisclosed information regarding the interest rate to be
19 charged on the loans, was information that Plaintiffs and Class Members would have found material
20 when deciding whether to purchase the subject Option ARM loans. Despite this, the Loan Documents
21 never disclosed this material information to Plaintiffs and Class Members. Had the Loan Documents
22 disclosed this material information, Plaintiffs and Class Members would not have entered into the
23 subject Option ARM loans.

24 **C. Borrowers Were Not Given Any "Option" to Pay More than the Scheduled**
25 **Payments Before Entering into the Loans, and Before Being Subjected to the Loans'**
26 **Draconian Prepayment Penalties**

27 39. Importantly, nowhere in the Note were Plaintiffs and Class Members provided with any
28 true "option" to voluntarily choose to pay some amount in addition to or different from the amount

1 identified as their contractual payment obligation in ¶ 3(B) of the Note and in the sole payment schedule
2 provided in the TILDS. The most that the Loan Documents said is that “[a]fter the first Interest Rate
3 Change Date, Lender *may* provide me with up to three (3) additional payment options” [Note,
4 ¶3(H).] Because the referenced “options” were not in fact provided, if they were provided at all, until
5 *after* the loans were executed, borrowers were deprived of material information by which they could
6 make an informed use of credit. (Note: While Plaintiffs use the phrase “OPTION ARM” herein to
7 describe the loans at issue, they do so merely because that phrase is a term of art used in the lending
8 industry to describe a category of loans in which these loans fall, not to suggest that Plaintiffs and Class
9 Members were given any “option,” prior to closing, to make payments other than those set forth in the
10 Notes and the accompanying TILDS payment schedule.)

11 **D. The TILDS Was Deceptive and Misleading**

12 40. The TILDS that accompanied each of the subject Option ARM loans was deceptive and
13 misleading because it stated an interest rate (“Annual Percentage Rate” or “APR”) along with a payment
14 schedule which was not calculated using that rate, but, rather, was generated using the low teaser rate
15 identified in the Note (but not mentioned in the TILDS). For example, for the Peels, the TILDS stated a
16 “yearly” APR of 7.7232%, but the payment schedule in the TILDS was based on a completely different
17 rate, 2.50%. No law or regulation prevented the TILDS from stating the truth, namely, that “The
18 Interest Rate Used to Generate this Payment Schedule Was 2.50% and Making Payments According to
19 this Payment Schedule after the First Payment Change Date WILL CAUSE NEGATIVE
20 AMORTIZATION TO OCCUR.” That disclosure would have been accurate, non-deceptive, and fair to
21 borrowers. Instead, the Loan Documents remained silent and failed to disclose this material information
22 to Plaintiffs and Class Members before they entered into the loans, thereby trapping them in the loans
23 with their harsh prepayment penalties. Had the Loan Documents disclosed to Plaintiffs and Class
24 Members before the loans were consummated that if they made payments according to the payment
25 schedule listed in the TILDS, negative amortization was certain to occur after one month, and would
26 continue occur for the first three to five years of the loan, Plaintiffs and Class Members would not have
27 entered into the subject Option ARM loans.

28 ///

1 **E. The Prepayment Penalty Addendum Trapped Borrowers In the Loans**

2 41. To lock borrowers into to the subject Option ARM loans, each Note included a
3 Prepayment Addendum that stated: "If within the first 36 month(s) of this Note I/we make full
4 prepayment, or partial prepayment in any 12 month period during the prepay term of more than 20% of
5 the original principal, the Note Holder may collect a penalty. That penalty will be equal to 6 months
6 interest at the yearly rate of Interest at the time the prepayment is made, on the amount of the
7 prepayment which is more than 20% of the original principal."

8 42. At all times relevant, this draconian Prepayment Penalty Addendum was purposefully
9 designed to deter Plaintiffs and Class Members from escaping from the subject Option ARM loans due
10 to the harsh exit penalties that it extracted from anyone who sought to get out of the loan through
11 refinancing. Thus, once hooked into the subject Option ARM loans, Defendants purposefully and
12 intentionally made it extremely difficult, if not impossible, for Plaintiffs and Class Members to extricate
13 themselves from the Option ARM loan fraud scheme as alleged herein.

14 **F. The WaMu Defendants Were A Primary Participant in the Wrongful Conduct**

15 43. At all relevant times, the BrooksAmerica Option ARM loans purchased by the WaMu
16 defendants which were sold to the Peels and many other Class Members, and the documents provided to
17 them in conjunction with those loans, were devised, designed and approved by the WaMu defendants, as
18 follows:

- 19 a. The WaMu defendants and related Washington Mutual entities are, and/or were,
20 in the business of, among other things, buying home mortgage loans and
21 securitizing at least some such loans by packaging them into trusts or other
22 vehicles in order to sell bonds to investors based on the income to be derived
23 from those loans.
- 24 b. To increase the number of loans that could be securitized, the WaMu defendants
25 and others devised a plan to have third party originators, such as BrooksAmerica,
26 sell loans to borrowers on their behalf.
- 27 c. At the same time, BrooksAmerica needed an outlet through which it could
28 quickly dispose of the Option ARM loans it sold. BrooksAmerica earned income

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1 in connection with its origination and re-sale of Option ARM loans, rather than in
2 connection with servicing and holding those loans. Because it needed to fund
3 new Option ARM loans as it issued them and because the monies available to
4 originators for that purpose were provided by warehouse lenders and needed to be
5 repaid promptly, BrooksAmerica needed assurance that it would be able to
6 promptly resell the Option ARM loans it originated to institutions like the WaMu
7 Defendants.

8 d. BrooksAmerica and the WaMu defendants agreed that BrooksAmerica would sell
9 certain Option ARM loans to borrowers. Pursuant to that understanding and
10 consistent with industry practice, on information and belief, BrooksAmerica
11 funded those Option ARM loans using monies available to it through its
12 warehouse lines of credit (often provided by the WaMu defendants or related
13 entities, or issued because of a guarantee by the WaMu defendants to purchase),
14 and the WaMu defendants would then purchase the loans from BrooksAmerica.
15 Under that arrangement, BrooksAmerica would collect fees from the homeowners
16 to whom it sold the Option ARM loans as well as from the WaMu defendants,
17 while the WaMu defendants would collect revenues through the securitization
18 process and in connection with servicing rights they or related entities retained on
19 the loans after they were securitized.

20 e. The WaMu defendants dictated and pre-approved loan and disclosure terms and
21 documents, including the Peels' Loan Documents and other Loan Documents at
22 issue in this action, with the intention that BrooksAmerica would provide them to
23 Class Members such as the Peels in connection with Option ARM loans that
24 BrooksAmerica would originate. The WaMu defendants approved the
25 characteristics of the Option ARM loans BrooksAmerica sold to the Peels and
26 other Class Members. In addition, the WaMu defendants and BrooksAmerica
27 agreed that BrooksAmerica would use the loan, terms, and disclosure documents
28 that the WaMu defendants approved as a condition to the WaMu defendants'

1 purchase of those loans from BrooksAmerica.

- 2 f. The WaMu defendants made the pre-approved loan and disclosure documents
3 available to originators through document service companies, thereby allowing
4 BrooksAmerica to merely insert the monthly payment amounts, interest rates and
5 principal amounts (which were required to comply with the WaMu defendants'
6 underwriting guidelines and rate sheets available to BrooksAmerica) into the
7 pre-approved loan documents, print the loan documents and provide them to
8 Class Members such as the Peels.
- 9 g. BrooksAmerica's compliance with this process, including its use of pre-approved
10 loan documents, was critical to its operations. It was only by using the WaMu
11 defendants' pre-approved Loan Documents that BrooksAmerica could be assured
12 that it would be able to promptly resell, to the WaMu defendants, the Option
13 ARM loans it issued to borrowers.
- 14 h. The WaMu defendants' agreement to purchase the Option ARM loans sold by
15 BrooksAmerica was critical to BrooksAmerica's ability to market and sell those
16 loans to Class Members such as the Peels, since BrooksAmerica lacked the
17 financial resources to issue the Option ARM loans without warehouse lines of
18 credit. Warehouse lenders required, as a condition to loaning BrooksAmerica the
19 funds, a guarantee that BrooksAmerica was able to promptly sell them to
20 investors such as the WaMu defendants, and, relatedly, required repayment
21 directly from investors such as the WaMu defendants.
- 22 i. As alleged below, while providing a stream of financing to BrooksAmerica, the
23 WaMu defendants were aware of The Material Omissions, and dictated and/or
24 approved of the specific language that was used to create those omissions.

25 **C. RFC Was A Primary Participant in the Wrongful Conduct**

26 **1. RFC's Securitization Business**

27 44. RFC is part of GMAC, LLC ("GMAC"), as it is a wholly-owned subsidiary of
28 Residential Capital, LLC ("ResCap"), a holding company for GMAC's residential mortgage business.

1 RFC is in the business of acquiring residential mortgages, home equity loans, and lines of credit
2 originated by other mortgage banks and financial institutions. The company (also known as
3 GMAC-RFC) then packages the loans as mortgage-backed securities, which it sells to institutional
4 investors. RFC also provides warehouse lending facilities to mortgage loan originators and
5 correspondent lenders to originate residential mortgage loans.

6 45. According to GMAC's Form 10-K for 2006, ResCap is one of the largest residential
7 mortgage producers in the United States and produced approximately \$162 billion in residential
8 mortgage loans in 2006. ResCap sources its residential mortgage loan production either by originating
9 loans through a direct lending network or purchasing loans in the secondary market from correspondent
10 lenders, such as BrooksAmerica. Loans purchased from correspondent lenders are originated or
11 purchased by the correspondent lenders who then sell the loans to ResCap. ResCap must approve any
12 correspondent lenders who participate in the correspondent lending program. In 2006, ResCap's
13 mortgage loan productions consisted of the purchase of 642,169 residential mortgage loans and the
14 origination of 408,070 residential mortgage loans.

15 46. ResCap re-sold most of the loans it purchased. According to the 2006 Form 10-K, in
16 2006, ResCap sold \$152.7 billion in mortgage loans. Of that, \$106.8 billion was generated through
17 sales to non-government sponsored investors in the form of whole loan sales and securitizations.

18 47. ResCap is also one of the largest providers of warehouse lending facilities to
19 correspondent lenders and other mortgage originators in the U.S. These lines of credit enable the
20 correspondent lenders and originators to finance residential mortgage loans until they are sold on the
21 secondary mortgage market. According to an unnamed source quoted in an article in Investment
22 Dealers Digest, warehouse lenders have detailed knowledge of the originator's operations -- "[t]hey
23 have that day-to-day pipeline exposure to what the mortgage lender's doing."

24 48. At all relevant times, the subject Option ARM loans that RFC purchased from
25 BrooksAmerica and other originators, which BrooksAmerica had originated and sold to Plaintiffs
26 Bebout, Sanford and McIlrath and many other Class Members, and the documents provided to such
27 borrowers in conjunction with those loans, were pre-approved by RFC as follows:

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- a. RFC is, and/or was, in the business of, among other things, securitizing residential mortgage loans by purchasing loans in the secondary mortgage market, packaging those loans into trusts or other vehicles, and selling securities to investors based on the income to be derived from those loans.
- b. Pursuant to mortgage loan purchase agreements (the "Client Contract") between RFC and BrooksAmerica, or other originators, RFC agreed to purchase and did purchase numerous Option ARM mortgages originated by BrooksAmerica and other originators.
- c. BrooksAmerica and other Option ARM loan originators did not fund their own loan originations; rather they obtained working capital through warehouse lenders such as RFC who held liens on mortgages that were awaiting securitization or were in the process of closing (sometimes referred to as "pipeline loans"). Thus, after originating a loan, BrooksAmerica and other originators immediately sold them to securitization arrangers such as RFC in order to pay back the lines of credit that they had used to fund the loans.
- d. BrooksAmerica and other originators earned income in connection with the issuance and re-sale of Option ARM loans, rather than in connection with servicing and holding those loans. Because they needed to fund new Option ARM loans as they issued them and because the monies available to originators for that purpose were provided by warehouse lenders and needed to be repaid promptly, BrooksAmerica and other originators needed assurance that they would be able to promptly resell the Option ARM loans that they originated to institutions like RFC.
- e. Pursuant to the Client Contract between BrooksAmerica, or other originators, and RFC, BrooksAmerica and other originators were guaranteed a buyer for the Option ARM loans they originated provided that the loans complied with RFC's standards, and RFC was guaranteed a pool of mortgage loans to securitize.

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11) 99

- 1 f. Pursuant to this arrangement, BrooksAmerica and other originators would collect
2 fees from the homeowners to whom they sold the Option ARM loans as well as
3 from RFC, while RFC would collect revenues through the securitization process
4 and in connection with servicing rights it retained on the loans after they were
5 securitized.
- 6 g. On information and belief, in the RFC Client Guide, RFC established the criteria
7 with which the Option ARM loans originated by BrooksAmerica and other
8 originators had to comply in order for RFC to purchase the loans, including
9 RFC's
10 underwriting guidelines. The Client Guide also included instructions for how the
11 Option ARM loans were to be delivered to RFC, including the specific legal
12 documentation that had to accompany each loan.
- 13 h. BrooksAmerica's and the other originators' compliance with the Client Contract
14 and Client Guide was important to BrooksAmerica's and the other originators'
15 operations, since many of the loans sold by BrooksAmerica and other originators
16 were then re-sold to RFC. Without ensuring that the Option ARM loans they
17 originated complied with RFC's standards, BrooksAmerica and other originators
18 could not be assured that they would be able to promptly resell the Option ARM
19 loans they issued to RFC.
- 20 i. RFC's agreement to purchase the Option ARM loans sold by BrooksAmerica and
21 other originators was critical to BrooksAmerica's and the other originators'
22 ability to market and sell those loans to plaintiffs Bebout, Sanford and McIlrath
23 and others, since BrooksAmerica and other originators did not fund the loans that
24 they originated. BrooksAmerica and other originators lacked the financial
25 resources to issue the Option ARM loans here at issue unless they were able to
26 promptly sell them to investors such as RFC to repay their warehouse lenders.
27 Warehouse lenders required, as a condition to loaning the funds to
28 BrooksAmerica and other originators, a guarantee that BrooksAmerica or other

1 originators would be able to promptly sell them to investors such as RFC, and
2 also required repayment directly from investors such as RFC.

3 j. While providing a stream of financing to BrooksAmerica and other originators,
4 RFC was aware of the Material Omissions, and dictated and/or approved the
5 specific language that was used to create those omissions.

6 **2. RFC's Role in the Option ARM Loan Origination Process**

7 49. BrooksAmerica and RFC had a longstanding relationship pursuant to which
8 BrooksAmerica agreed to originate Option ARM loans (using funds provided by RFC) and RFC agreed
9 to purchase those loans. Plaintiffs are informed and believe and on that basis allege that on a date that is
10 presently unknown but prior to the events in question, RFC, as buyer, and BrooksAmerica, as seller,
11 entered into a Client Contract.

12 50. Pursuant to the Client Contract, which on information and belief was identical for
13 BrooksAmerica and other Option ARM loan originators from whom RFC purchased loans, RFC
14 approved BrooksAmerica and other originators to originate and sell loans to RFC provided that the
15 loans complied with RFC's Client Guide:

16 The Customer [BrooksAmerica or other originator] acknowledges that it
17 has received and read the guides. All provisions of the Guides are
18 incorporated by reference into and made a part of this Contract, and shall
19 be binding upon the parties; provided, however, that [BrooksAmerica or
20 other originator] shall be entitled to sell Loans to and/or service Loans for
21 Residential Funding only if and for so long as it shall have been
22 authorized to do so by Residential Funding in writing. Specific reference
23 in this Contract to particular provisions of the Guides and not to other
24 provisions does not mean that those provisions of the Guides not
25 specifically cited in this Contract are not applicable.

26 Thus, pursuant to this paragraph, all of the Option ARM loans that RFC purchased from BrooksAmerica
27 and other originators were originated in compliance with the Client Contract and RFC's Client Guide.

28 ///

1 51. In its Client Guide, RFC dictated the terms of RFC's underwriting guidelines that
2 BrooksAmerica and other originators had to comply with in order for RFC to purchase the loans. The
3 Client Guide also included instructions concerning how the loans were to be delivered to RFC, including
4 the specific legal documentation that must accompany each loan file. In the event of a default, RFC
5 could exercise one or more of the remedies set forth in the Client Guide.

6 **3. RFC Knew that the Option ARM Loan Documents It Pre-Approved and**
7 **Required BrooksAmerica To Utilize Were Deceptive**

8 52. RFC and BrooksAmerica (and other originators) had a "B-to-B" relationship, meaning
9 that RFC typically bought Option ARM loans from BrooksAmerica and other originators "in bulk," i.e.,
10 it purchased multiple loans from BrooksAmerica and other originators in the same transaction.

11 53. RFC conducted due diligence on the loan documents, including the Notes, before
12 formally purchasing the loans. RFC reviewed 100% of the Option ARM loans it was considering
13 purchasing from BrooksAmerica and other originators.

14 54. If, after RFC's review of the loan files it determined that the Option ARM loans in a
15 particular "pool" met RFC's criteria, including its underwriting standards, as established in the Client
16 Guide, RFC would purchase the entire pool of loans. If particular loans in the pool did not comply with
17 RFC's criteria for purchase, those loans were rejected but RFC purchased the remaining, compliant
18 loans.

19 55. Due to the incomplete and misleading disclosures in the Loan Documents, RFC
20 employees who were responsible for reviewing the loan files for loans that RFC was considering
21 purchasing, had trouble understanding the mechanics of Option ARM loans and they knew that
22 borrowers who purchased Option ARM loans would have trouble understanding the terms of the loans.

23 56. RFC's employees had such difficulty understanding Option ARM loans that RFC offered
24 a class for its employees that explained how Option ARM mortgages worked, so that the employees
25 could properly verify the information in the loan documents and so that the loans complied with the
26 standards set forth in the Client Contract and Client Guide. Nevertheless, even though its employees
27 required this additional information, RFC never took any action to improve the misleading and
28 incomplete disclosures in the Loan Documents for the Option ARM loans it purchased.

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V.

CLASS ACTION ALLEGATIONS

57. Plaintiffs bring this action on behalf of themselves, on behalf of all others similarly situated, and on behalf of the General Public. The Class that Plaintiffs seek to represent is presently defined as follows:

All individuals who, from January 16, 2004 through the date that notice is mailed to the Class, have or had an Option ARM loan on their home located in the State of California, with the following characteristics:

- (i) the monthly payment amount in the Note is based upon an interest rate which ranges from 1% to 3%;
- (ii) the payment schedule in the TILDS, for the first year or more of the Note, is based upon a fully amortizing payment at the teaser interest rate;
- (iii) the interest rate adjusts after only one month to a rate which is the sum of the "index" and the "margin";
- (iv) after the first three to five years of the loan, the monthly payment amount increases to a fully amortizing payment based upon the remaining principal balance at that time; and
- (v) that was (1) originated by BrooksAmerica; or (2) sold to or owned by WMMSC, WAAC or RFC.

Excluded from the Class are Defendants' employees, officers, directors, agents, representatives, and their family members, as well as the Court and its officers, employees, and relatives.

Plaintiffs reserve the right to amend or otherwise alter the class definitions presented to the Court at the appropriate time, or to propose or eliminate sub-Classes in response to facts learned through discovery or legal arguments advanced by Defendants or otherwise.

58. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

1 59. **Numerosity**: - Code of Civ. Proc. § 382: Members of the Class are so numerous that
2 their individual joinder is impracticable. While the exact number of Class Members is unknown at this
3 time, Plaintiffs are informed and believe that the entire Class consists of thousands of citizens and
4 residents of California. Also, while Plaintiffs do not presently know the current addresses of all Class
5 Members, Plaintiffs are informed and believe that this information, and other information identifying the
6 Class Members, can be obtained from the Defendants' records. Class Members may be notified of the
7 pendency of this action by electronic mail, the Internet, other mail, or published notice.

8 60. **Commonality**: - Code of Civ. Proc. § 382: Common questions of law or fact are shared
9 by Class Members. This action is suitable for class treatment, because these common questions of fact
10 and law predominate over any individual issues. Such common questions include, but are not limited to,
11 the following questions including questions related to the subject Option ARM loans:

- 12 (a) Whether Defendants engaged in unlawful, unfair and/or fraudulent business acts
13 or practices likely to deceive Plaintiffs and Class Members before and during the
14 loan application process;
- 15 (b) Whether Defendants concealed, omitted and/or otherwise failed to disclose
16 information they were mandated to disclose under state consumer protection
17 statutes, and/or California common law;
- 18 (c) Whether Defendants failed to disclose to Plaintiffs and Class Members, before
19 they entered into the subject Option ARM loans, that negative amortization was
20 certain to occur;
- 21 (d) Whether Defendants had a duty to disclose the undisclosed material facts
22 regarding the subject Option ARM loans;
- 23 (e) Whether Defendants' failure to apply Plaintiffs' and Class Members' payments to
24 principal as promised in the form Notes constitutes a breach of contract;
- 25 (f) Whether Defendants' conduct in immediately raising the interest rate on the loans
26 so that no payments were made to the principal balance breached the loan
27 contract;
- 28 (g) Whether the terms and conditions of the Loan Documents are unconscionable;

- (h) Whether the Loan Documents are non-negotiable instruments;
- (i) Whether Plaintiffs and Class Members are entitled to damages;
- (j) Whether Plaintiffs and Class Members are entitled to punitive damages; and
- (k) Whether Defendants' affirmative defenses, if any, raise common issues of fact or law as to Plaintiffs and Class Members as a whole.

61. **Typicality:** Plaintiffs' claims are typical of the claims of absent Class Members. Plaintiffs and the other Class Members were subjected to the same kind of unlawful conduct and the claims of Plaintiffs and the other Class Members are based on the same legal theories.

62. **Adequacy:** Plaintiffs are adequate representatives of the Class because their interests do not conflict with those of the other members of the Class that Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation and Plaintiffs intend on prosecuting this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

63. **Ascertainable Class:** The proposed classes are ascertainable in that the members can be identified and located using information contained in Defendants' mortgage lending records.

64. **Superiority and Substantial Benefit:** A class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and the Class Members' claims. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small when compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class Members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system, due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

65. In the alternative, the Class should be certified because:

- (a) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class Members which

1 would establish incompatible standards of conduct for Defendants;

2 (b) The prosecution of separate actions by individual members of the Class would
3 create a risk of adjudications with respect to them, which would, as a practical matter, be dispositive of
4 the interests of the other Class Members not parties to the adjudications, or substantially impair or
5 impede their ability to protect their interests; and

6 (c) Defendants have acted or refused to act on grounds generally applicable to the
7 Class, and/or the General Public, thereby making appropriate final and injunctive relief with respect to
8 the Class as a whole.

9
10 **VI.**

11 **FIRST CAUSE OF ACTION**

12 **Fraudulent Omissions**

13 **(Against All Defendants)**

14 66. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

15 67. Under California common law, and based upon Defendants' partial representations,
16 BrooksAmerica, RFC and the WaMu defendants had a duty to disclose to Plaintiffs and Class Members
17 that: (i) the promised low rate [2.50% in the case of the plaintiffs the Peels and plaintiff Bebout, 2.00%
18 in the case of plaintiff Sanford, and 1.500% in the case of plaintiff McIlrath] was only available for
19 thirty days if at all; (ii) the payment amount for the first two to five years provided to Plaintiffs and
20 Class Members on the TILDS was insufficient to pay both principal and interest; (iii) negative
21 amortization was absolutely certain to occur pursuant to the contractual payment schedule provided by
22 Defendants; and that (iv) loss of equity and/or loss of Plaintiffs' and Class Members' residences was
23 certain to occur if Plaintiffs and Class Members made payments according to the contractual payment
24 schedule provided by Defendants. These facts constitute material information that Plaintiffs and Class
25 Members would have found material when deciding whether to purchase the loan product. Had the
26 Loan Documents disclosed this information, Plaintiffs and Class Members would not have entered into
27 the subject Option ARM Loans on these terms.

28 ///

1 68. At all relevant times, Defendants actively concealed and suppressed these material facts
2 from Plaintiffs and Class Members. At all relevant times, Defendants had superior, if not exclusive,
3 knowledge of the concealed facts. In those cases where Defendants did make some disclosures about
4 the "subjects" at issue, Defendants made only partial representations while suppressing materials facts,
5 as alleged herein. Defendants' concealment, omissions and partial representations occurred prior to the
6 consummation of the loan transactions with Plaintiffs and Class Members, in the loan documents
7 themselves. Plaintiffs are not presently aware of the identities of all the specific executives and
8 employees responsible for the fraudulent scheme at issue; however, Defendants know such facts, which
9 can be determined in discovery.

10 69. In each of the Loan Documents at issue, Defendants actively concealed and failed to
11 disclose to the borrower that each payment in years 1-3 is insufficient to pay all of the interest, let alone
12 any of the principal.

13 70. The Loan Documents further state that, "my Minimum Payment *could be less* or greater
14 than the amount of the interest portion of the monthly payment that would be sufficient to repay the
15 unpaid Principal I owe" (Emphasis added.) (See Exhibit 1 [Note], ¶ 3E). However, the Loan
16 Documents fail to disclose the material fact that the payment schedules provided by Defendants in the
17 TILDS could not possibly cover the amount of interest due under *any* conceivable index rate plus the
18 margin after the first 30 days.

19 71. The Notes list an interest rate and a payment amount based on the initial teaser interest
20 rate. However, the TILDS Defendants gave to Plaintiffs and Class Members before they entered into
21 the subject loans included a schedule of payments (including that initial payment amount) but disclosed
22 a different, much higher interest rate. By stating the low teaser rate and associated monthly payment in
23 the Note, and stating the much higher interest rate in the TILDS accompanied by a payment schedule
24 based on the low teaser rate, Defendants confused and obscured the actual interest costs that borrowers
25 were going to accrue on their loans.

26 72. Defendants purposefully and intentionally devised this Option ARM loan scheme of
27 flatly omitting material information and, in some cases, making partial representations while omitting
28 material facts, in order to deceive consumers into believing that these loans would provide a low

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1 payment and corresponding interest rate for the first two to five years of the Note and that, if they made
2 their payments according to the payment schedule provided by Defendants, this would be sufficient to
3 pay both principal and interest.

4 73. Defendants also actively concealed, suppressed and failed to disclose information
5 regarding the payment caps associated with the loans, and *concealed and failed to disclose that during*
6 *the entire time the payment caps were in effect, negative amortization was certain to occur pursuant*
7 *to the payment schedule provided prior to entering into the loans.* Defendants knew that this loan
8 product had a variable rate with payment caps and that the Loan Documents omitted the Material
9 Omissions, including that negative amortization was a certainty based on the sole payments schedule
10 proffered by Defendants before borrowers signed up for the loans. Defendants also knew that the loans
11 were guaranteed to result in negative amortization, because Defendants accrued the negative
12 amortization as income for accounting and/or tax purposes. Defendants also knew that negative
13 amortization was certain to occur, because, in computing the total finance charge payable over the full
14 life of the loan for purposes of compiling the TILDS payment schedule, Defendants included the interest
15 on "deferred interest," which would accrue because the scheduled payments were insufficient to pay all
16 interest due on the loan. The Loan Documents did not disclose the fact that negative amortization was a
17 certainty, or the amount of the total finance charge that resulted from this negative amortization.

18 74. As previously alleged, to the extent the Notes even inferentially referenced negative
19 amortization, they suggested, deceptively, that negative amortization was merely a possibility, rather
20 than an absolute certainty. For instance, the Notes stated, at ¶ 3(E), that the borrower's "Minimum
21 Payment *could be* less or *greater than* the amount of the interest portion" necessary to cover all of the
22 interest due on the Notes, which was at best a half-truth, and intended to conceal the whole truth,
23 because it did not state that adhering to the payment schedule provided by Defendants would absolutely
24 guarantee that negative amortization was going to occur on these loans.

25 75. The Loan Documents also were deceptive and misleading in that the payments for up to
26 the first five years of the loans bear no relationship to the APR listed in the TILDS.

27 76. At all times relevant during the liability period, the Loan Documents were misleading,
28 omitted and concealed material information, and were unlawful, in that the Notes and TILDS did not

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1 disclose that the liability that Plaintiffs and Class Members were incurring was substantially greater than
2 the amount of their scheduled payments.

3 77. The Loan Documents did not disclose that the initial interest rate would *sharply increase*
4 after one month. To the extent that the Loan Documents did in any way provide a disclosure stating that
5 the initial payment was not based on the index, they failed to do so in a manner that was clear and
6 conspicuous, and that did not obscure its importance, or that was designed to be reasonably understood
7 by the ordinary consumer. The Loan Documents misleadingly stated that the initial payments borrowers
8 would make were based on a "yearly rate" of 1-3% [2.50% in the case of the Peels and Mr. Bebout,
9 2.00% in the case of the Sanfords, and 1.500% in the case of Ms. McIlrath].

10 78. The Loan Documents also failed to disclose to Plaintiffs and Class Members before they
11 entered into the subject Option ARM loans all of the ways by which the interest rate applicable to the
12 subject loans could increase.

13 79. At all times relevant during the liability period, the Notes stated: "I will pay interest at a
14 yearly rate of [1.000% - 3.000%]." See Exhibits 1-4, ¶ 2(A). However, in the TILDS, the box entitled
15 "ANNUAL PERCENTAGE RATE" describes the APR as "[t]he cost of your credit as a yearly rate" and
16 then lists a much higher APR than the rate listed in the Notes. For instance, in the case of the Peels, the
17 TILDS lists an APR of "7.7232." See Exhibit 1, TILDS. For Mr. Bebout, the TILDS lists an APR of
18 "7.8963" (Exhibit 2, TILDS); for the Sanfords, the TILDS lists an APR of "8.5072" (Exhibit 3, TILDS);
19 and for Ms. McIlrath, the TILDS lists an APR of "8.6381" (Exhibit 4, TILDS).

20 80. Thus, the listed APR in the Notes would actually conflict with the APR stated in the
21 TILDS. For instance, in the case of the Peels, the "2.50%" APR stated in the Note contradicts the
22 "7.7232" APR stated in the TILDS; in the case of Mr. Bebout, the 2.50% APR stated in the Note
23 contradicts the "7.8963" APR stated in the TILDS; in the case of the Sanfords, the 2.00% APR stated in
24 the Note contradicts the "8.5072" APR stated in the TILDS; in the case of Ms. McIlrath, the 1.50% APR
25 stated in the Note contradicts the "8.6381" APR stated in the TILDS.

26 81. At all times relevant during the liability period, the Loan Documents failed to clearly and
27 conspicuously explain in the Note or TILDS that the low rate identified in the Note (the same rate upon
28 which the written payment schedules provided to Plaintiffs were based) was offered *only for the first*

1 *thirty (30) days of the loan. Any reasonable borrower would find such omitted information material.*

2 82. The Loan Documents also concealed and failed to disclose to Plaintiffs and Class
3 Members that the APR listed in the TILDS was not the APR used to determine the first approximately
4 five years of payments listed in the very same TILDS, and that the listed payment amounts for the first
5 approximately five years of the loan were based on the artificially low interest rate stated in the Note,
6 which Defendants knew would actually apply for no more than thirty days.

7 83. The disclosures are required because they are material, and indeed, provide the core basis
8 for Plaintiffs and Class Members to make an informed decision by comparing the cost of credit to other
9 proposals. It therefore was incumbent upon Defendants to clearly and accurately disclose to Plaintiffs
10 and the Class Members, before they entered into the subject Option ARM loans, the composite interest
11 rate, and the amount of payments based thereon, so that these borrowers could understand exactly what
12 they would be paying for the loan.

13 84. At all times relevant, Defendants had a duty to disclose to Plaintiffs and the Class
14 Members, before they entered into the subject Option ARM loans: (i) that the payment schedule for the
15 first two to five years was not based upon the APR listed on the TILDS; (ii) that negative amortization
16 will occur and that the "principal balance will increase"; (iii) that the initial interest rate on the Note was
17 discounted; and (iv) the applicable annual percentage rate ("APR").

18 85. As a direct and proximate result of Defendants' failures to disclose and omission of
19 material facts, as alleged herein, Plaintiffs and Class Members have suffered damages, which include,
20 but are not limited to, the loss of equity in their homes, which Plaintiffs and each Class Member had in
21 their homes prior to entering these loans.

22 86. The wrongful conduct of Defendants, as alleged herein, including Defendants' placing of
23 their corporate and/or individual profits over the rights of others, was willful, oppressive, immoral,
24 unethical, unscrupulous, substantially injurious, malicious and in conscious disregard for the well-being
25 of Plaintiffs and Class Members, and particularly vile, base, contemptible, and wretched. Defendants'
26 scheme, though couched as part of a legitimate bank's legitimate lending operations, was in fact like any
27 other financial fraud scheme intended to deprive unwitting consumers of their money by concealing
28 material, truthful facts about the financial transactions at issue. Defendants' acts and/or omissions were

1 performed by officers, directors, and/or managing agents of each corporate defendant and/or taken with
2 the advance knowledge of the officers, directors, and/or managing agents who authorized and/or ratified
3 said acts and/or omissions. Defendants thereby acted with malice and complete indifference to and/or
4 conscious disregard for the rights and safety of others, including Plaintiffs and the general public.
5 Accordingly, Plaintiffs and Class Members are entitled to an award of punitive damages against
6 Defendants in an amount sufficient to deter them from similar conduct in the future.

7 **A. Plaintiff BeBout's Fraudulent Omissions Claims Against RFC Are Timely**

8 85. Plaintiff Bebout's Option ARM loan closed on December 21, 2006 and was sold to RFC
9 on January 16, 2007. Plaintiff Bebout was a putative class member in the prior federal class action
10 involving RFC, which sought relief against a number of Doe defendants (including, as is now known,
11 RFC) as subsequent purchasers of BrooksAmerica-originated loans, *Peel, et al., v. Brooks America*
12 *Mortgage Corporation, et al.*, No. 8:08-cv-00049-JVS (MLGx) (C.D. Cal.). That case was filed on
13 January 16, 2008, and was dismissed on January 7, 2010 pursuant to a Stipulated Dismissal Without
14 Prejudice. California courts support the tolling of the claims of unnamed putative class members during
15 the pendency of another federal court action. Accordingly, plaintiff Bebout's claims were tolled during
16 the pendency of *Peel*.

17 86. Cal. Code Civ. P. § 474 provides that a plaintiff who names Doe defendants in a
18 complaint has three years from the filing of the complaint to identify and serve the Doe defendants. The
19 prior BrooksAmerica federal court action, in which plaintiff Bebout was a putative class member, had
20 ten remaining Doe defendants when it was dismissed and the present action had one hundred,
21 ninety-eight remaining Doe defendants when plaintiff Bebout was added to the action as a named
22 plaintiff and alleged claims against RFC, within the three-year period to identify and serve the Doe
23 defendants. Accordingly, plaintiff Bebout's fraud claims against RFC are timely.

24 87. WHEREFORE, Plaintiffs and Class Members are entitled to all legal and equitable
25 remedies provided by law, including but not limited to actual damages, exemplary damages, unjust
26 enrichment (legal restitution), prejudgment interest and costs.

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VII.

SECOND CAUSE OF ACTION

Violation of California's Unfair Competition Law,

Bus. & Prof. Code §§ 17200 *et seq.*

"Unlawful", "Unfair" and "Fraudulent" Business Acts or Practices

(Against All Defendants)

88. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

89. Plaintiffs bring this cause of action on behalf of themselves, on behalf of the Class Members, and in their capacity as private attorneys general against all Defendants for their unlawful, unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California Business & Professions Code section 17200 *et seq.* ("UCL") which prohibits all unlawful, unfair and/or fraudulent business acts and/or practices.

90. Plaintiffs assert these claims as they are representatives of an aggrieved group and as private attorneys general on behalf of the general public and other persons who have expended funds that the Defendants should be required to pay or reimburse under the restitutionary remedy provided by California Business & Professions Code §§ 17200, *et seq.*

91. Plaintiffs and Class Members were consumers who applied for mortgage loans through BrooksAmerica and other originators. During the loan application, loan closing and consummation process, in each case, the Loan Documents uniformly failed to disclose and omitted material information that was known only to themselves and that could not reasonably have been discovered by Plaintiffs and Class Members as set forth in the preceding counts.

92. By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition within the meaning of Business & Professions Code §§ 17200, *et seq.*

93. As a result of the Material Omissions and Defendants' other partially true statements and failures to disclose as alleged herein, Plaintiffs have suffered injury and lost money and property, including but not limited to the amount of negative amortization resulting from Defendants' scheme.

94. Unlawful: The unlawful acts and practices of Defendants alleged above constitute unlawful business acts and/or practices within the meaning of California Business & Professions Code

17 112

1 §§ 17200, *et seq.* Defendants' unlawful business acts and/or practices as alleged herein have violated
2 numerous laws including state statutory and/or common law - and said predicate acts are therefore *per*
3 *se* violations of §17200, *et seq.* These predicate unlawful business acts and/or practices include, but are
4 not limited to, the following: California Civil Code §§ 1572 (Actual Fraud - Omissions), 1573
5 (Constructive Fraud by Omission), and 1710 (Deceit), and other statutory and common law in effect.

6 95. Unfair. Defendants' omissions and misconduct as alleged in this action constitute
7 negligence and other tortious conduct and gave Defendants an unfair competitive advantage over their
8 competitors which did not engage in such practices. Said misconduct, as alleged herein, also violated
9 established law and/or public policies which seek to promote the informed use of credit through full and
10 complete disclosures. Failing to disclose the Material Omissions to Plaintiffs and Class Members,
11 before they entered into the subject Option ARM loans, as alleged herein, was and is directly contrary to
12 established legislative goals and policies promoting the informed use of credit and thus, Defendants'
13 acts and/or practices alleged herein were and are unfair within the meaning of Bus. & Prof. Code 17200,
14 *et seq.*

15 96. The harm to Plaintiffs, members of the general public and Class Members outweighs the
16 utility, if any, of Defendants' acts and/or practices as alleged herein. Thus, Defendants' deceptive and
17 sharp business acts and/or practices, as alleged herein, were unfair within the meaning of Bus. & Prof.
18 Code 17200, *et seq.*

19 97. As alleged herein, Defendants' business acts and practices offend established public
20 policies, including, public policies against making partial half truths and failing to disclose important
21 material facts to borrowers before they entered into the subject Option ARM loans. In addition, as
22 alleged herein, Defendants intended that Plaintiffs and Class Members would be misled and/or deceived
23 into believing that, if they made payments based on the payment schedule provided to them, in the Note
24 and TILDS, the principal balance would not increase with each payment when in fact it actually
25 increased with each payment. This practice is and was immoral, unethical, oppressive, unscrupulous or
26 substantially injurious to consumer and thus unfair within the meaning of Bus. & Prof. Code 17200, *et*
27 *seq.*

28 ///

1 98. At all times relevant, Defendants' misconduct and omissions alleged herein caused: 1)
2 substantial injury to Plaintiffs and the public, 2) had no countervailing benefit to consumers or to
3 competition that could possibly outweigh this substantial injury; and 3) caused injury that could not
4 have been avoided or even discovered by ordinary consumers, because it resulted from Defendants'
5 failure to disclose and/or omission of material information that only the Defendants knew or could have
6 known. Thus, Defendants' acts and/or practices as alleged herein were unfair within the meaning of
7 Bus. & Prof. Code 17200, *et seq.*

8 99. Fraudulent: Defendants' acts and practices, as alleged herein, were likely to, and did
9 deceive Plaintiffs and members of the public. The Material Omissions, acts, practices and
10 non-disclosures, as alleged herein, therefore constitute fraudulent business acts and/or practices within
11 the meaning of California Business & Professions Code §§ 17200, *et seq.*

12 100. The named Plaintiffs were actually deceived by The Material Omissions as alleged
13 herein. The named Plaintiffs, and similarly situated members of the public, suffered injury and lost
14 money as a direct result of the deceptive conduct as alleged herein.

15 101. As a direct and proximate result of the aforementioned omissions, acts and/or practices,
16 Defendants received monies and continue to hold the monies expended by Plaintiffs and Class Members
17 who purchased the Option ARM loans as alleged herein

18 102. The unlawful, unfair, deceptive and/or fraudulent business acts and practices of
19 Defendants, as fully described herein, present a continuing threat to members of the public to be mislead
20 and/or deceived by Defendants' as alleged herein. Plaintiffs and other members of the general public
21 have no other remedy of law that will prevent Defendants' misconduct as alleged herein from occurring
22 and/or reoccurring in the future.

23 103. As a direct and proximate result of Defendants' unlawful, unfair and/or fraudulent
24 conduct alleged herein, Plaintiffs and Class Members have lost hundreds of thousands if not millions of
25 dollars of equity in their homes. Plaintiffs and Class Members are direct victims of the Defendants'
26 unlawful, unfair and fraudulent conduct, and the named Plaintiffs have suffered injury in fact, and have
27 lost money or property as a result of Defendants' unfair competition.

28 ///

THIRD CAUSE OF ACTION

(Against All Defendants)

10 105. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

11 106. Plaintiffs and Class Members entered into a written home loan agreement – the contract
12 or Note – with defendants BrooksAmerica, RFC and/or one of the WaMu defendants, which describe
13 terms and respective obligations applicable to the parties herein. More specifically, the Peels and other
14 class members entered into a contract with BrooksAmerica and, as a matter of law by virtue of the
15 relationship discussed above between BrooksAmerica and the WaMu defendants, with the WaMu
16 defendants. The other named plaintiffs and other class members entered into contracts with
17 BrooksAmerica and, and, as a matter of law by virtue of the relationship discussed above between the
18 two entities, with RFC.

107. Defendants dictated the terms of the Notes and did not allow Plaintiffs or Class Members any opportunity to make changes to the Notes and, due to Defendants' superior bargaining position, the Notes were offered on a "take it or leave it" basis. As such, the Notes and the prepayment penalty riders to the Notes are contracts of adhesion.

108. Each Note and TILDS expressly and impliedly required Defendants to apply Plaintiffs' and Class Members' monthly payments to both principal and interest on a fully-amortized basis (i.e., so that negative amortization would not occur) as long as those payments were in the amount reflecting in the Note and the TILDS. The Notes and the TILDS identified the monthly payments Plaintiffs and the Class Members were required to make. Defendants were not permitted to impose or charge any different payment amount. As alleged herein, the Notes expressly state and/or imply that those

1 payments would be applied to pay both Principal and interest on the loan.

2 109. Paragraph 7(A) of the Note identifies Plaintiffs' monthly payments as payments of
3 "principal and interest". There, the Note states that if Plaintiffs failed to make their payments on time,
4 they would be required to pay a late charge equal to "6.000% of my overdue payment of principal and
5 interest." In the TILDS, Defendants confirmed that the payment of "principal and interest" are the
6 payments identified in the payment schedule. The TILDS states: "Late Charge: If payment is more than
7 15 days late, you will be charged 6.000% of the payment in default." The only payments that statement
8 could refer to are the specific payment amounts identified in the TILDS, each of which is to be made in
9 specified months of the loan term.

10 110. Paragraph 7(B) reaffirms that the monthly payments identified in the Note and TILDS are
11 the monthly payments of "principal and interest." There, the Note states: "If I do not pay the full
12 amount of each monthly payment on the date it is due, I will be in default." At the time the Note was
13 provided, the only monthly payments were those identified in the Note and the TILDS. This indicates
14 that those payments were the full amount of Plaintiffs' legal liability under the Notes each month.
15 Moreover defendants subsequent conduct confirmed that, by paying monthly payments in the amounts
16 identified in the payment schedule contained in the TILDS, Plaintiffs were paying "the full amount of
17 each monthly payment." At no time did defendant declare Plaintiffs in default based upon their payment
18 of the amounts identified in the payment schedule in the TILDS.

19 111. In Paragraph 3(D) of the each borrower's Note, the parties' agreement provided that "the
20 amount of my new monthly payment effective on a Payment Change Date, will not increase by more
21 than 7.5% of my prior monthly payment. This 7.5% limitation is called the 'Payment Cap.' This
22 Payment Cap **applies only to the Principal and Interest payment...**" Yet the only payment listed in
23 both the Note and TILDS, and the only payment the payment cap could apply to, is the payment made
24 by the Plaintiffs.

25 112. Paragraph 3(A) of the Note also provides that "Each monthly payment will be ... applied
26 to interest before principal." Thus, under the terms of the Note, for any portion of a monthly payment to
27 be applied to principal, the payment first had to be applied by defendants to extinguish all of the interest
28 that accumulated on the loan during that month. As a result, by referring to the Plaintiffs' payments as

1 "principal and interest," these loan documents necessarily promised that negative amortization would
2 not occur if Plaintiffs made the monthly payments asked of them.

3 113. The Option ARM loan terms described above were uniform for Plaintiffs and Class
4 Members in all material respects throughout the liability period.

5 114. Once Plaintiffs and Class Members entered into these loans, Defendants switched the
6 interest rate charged on the loans to a much higher rate than the one they promised to Plaintiffs and
7 Class Members as a "yearly rate." They also demanded payments in amounts that exceeded those
8 permitted by the Note and TILDS.

9 115. As a result of Defendants' breach of the agreement, Plaintiffs and Class Members have
10 suffered harm. Plaintiffs and Class Members have incurred and will continue to incur additional interest
11 charges on the principal loan balance and surplus interest added to Plaintiffs and Class Members'
12 principal loan balance. Furthermore, Defendants' breach has placed Plaintiffs and Class Members in
13 danger of losing their homes through foreclosure, as Defendants have caused Plaintiffs and Class
14 Members' principal loan balances to increase and limited these consumers' ability to make their future
15 house payments or obtain alternative home loan financing.

16 116. At all times relevant, there existed a gross inequality of bargaining power between the
17 parties to The Loan Documents. At all times relevant, Defendants unreasonably and unconscionably
18 exploited their superior bargaining position and foisted upon Plaintiffs and Class Members extremely
19 harsh, one-sided provisions in the contract, which Plaintiffs and Class Members were not made aware of
20 and could not reasonably have comprehended (e.g., Defendants' fraud and failures to disclose as
21 alleged herein), and which attempt to severely limit Defendants' obligations under the contracts at the
22 expense of Plaintiffs and Class Members, as alleged herein.

23 117. WHEREFORE, Plaintiffs and Class Members are entitled to declaratory relief,
24 compensatory damages proximately caused by Defendants' breach of contract as alleged
25 herein, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

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XI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and all Class Members pray for judgment against each defendant, jointly and severally, as follows:

- A. An order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;
- B. For actual damages according to proof;
- C. For compensatory damages as permitted by law;
- D. For consequential damages as permitted by law;
- E. For punitive damages as permitted by law;
- F. For unjust enrichment and/or legal restitution;
- G. For equitable relief, including restitution;
- H. For restitutionary disgorgement of all profits Defendants obtained as a result of their unfair competition;
- I. For interest as permitted by law;
- J. For Declaratory Relief;
- K. For Injunctive Relief;
- L. For reasonable attorneys' fees and costs; and
- M. For such other relief as is just and proper.

DATED: October 20, 2010

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24 Attorneys for Plaintiffs and all others Similarly
25 Situated.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiffs hereby demand a trial by jury to the full extent permitted by law.

28 DATED: October 20, 2010

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Attorneys for Plaintiffs and all others Similarly
Situatied.

EXHIBIT NO. 1

EXHIBIT 1

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Loan No: 160558
MIN Number: 100044300001605583

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

November 21, 2006
(Date)

Irvine
(City)
4821 Jade Court
Lancaster, CA 93536

California
(State)

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 326,400.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (115.00) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is **BrooksAmerica Mortgage Corporation, a California Corporation**. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 2.5000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1st day of January 2007 and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding Two and Eight Tenths percentage point(s) 2.8000 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.9500 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1st day of each month beginning on January 2007. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on December 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2 Ada, Suite 100, Irvine, CA 92618

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,288.67 unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1st day of January 2012, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date.

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The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3 (D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3 (A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to One Hundred Fifteen percent (115.00 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the first Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

- (i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

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(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **6.0000%** of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

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(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

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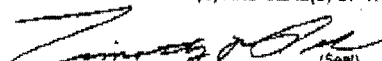
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the Intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



(Seal)
Timothy R. Peel - Borrower



(Seal)
Cheryl G. Peel - Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower



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TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS (VARIABLE RATE OPTION)									
NAME(S) AND ADDRESS(ES) OF BORROWER(S) (Print name, you or yours) Timothy R. Peel, Cheryl G. Peel 1621 Jade Court Lancaster, CA 93536					NAME(S) AND ADDRESS(ES) OF LENDER (OR SERVITOR) (Print name, you or yours) Brooke America Mortgage Corporation 2 Ads, Suite 100 Irvine, CA 92618				
PROPERTY ADDRESS 1621 Jade Court, Lancaster, CA 93536									
LOAN NUMBER 160558		TRANSACTION DATE 11/21/08			<input type="checkbox"/> Preliminary		<input checked="" type="checkbox"/> Final		
Words, numbers or abbreviations provided by a <input type="checkbox"/> are appropriate only if the <input type="checkbox"/> is not used.									
ANNUAL PERCENTAGE RATE The cost of your credit on a yearly basis. 7.7232%		FINANCE CHARGE The dollar amount you will pay for the loan. \$ 399,465.54		AMOUNT FINANCED The amount of credit provided to you or on your behalf. \$ 321,436.30		TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled. \$ 920,921.94			
YOUR PAYMENT SCHEDULE WILL BE	Rate	Amount of Payment	When Payment Due	Rate	Amount of Payment	When Payment Due	Rate	Amount of Payment	When Payment Due
	5.4	1,289.57	01/01/07	5.4	1,289.57	01/01/07	5.4	1,289.57	01/01/07
	30.8	2,781.98	07/01/11	30.8	2,781.98	07/01/11	30.8	2,781.98	07/01/11
VARIABLE RATE: <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable, variable rate disclosures have been provided at an earlier time.									
The annual percentage rate may increase during the term of this transaction if the average of the annual monthly yields of U.S. Treasury Securities, adjusted to a constant maturity of one year as made available by the Federal Reserve increases. Please refer to the Adjustable Rate Mortgage Documents for specific information concerning the variable rate provisions of this transaction. The monthly payment may increase during the term of this transaction if the average of the annual monthly yields of U.S. Treasury Securities, adjusted to a constant maturity of one year as made available by the Federal Reserve increases. The rate may not increase to more than 9.95 percent. Any increase may take the form of a payment increase.									
SECURITY: You may obtain property insurance from anyone acceptable to the lender. You are giving a security interest in the real property and any of the following items described:									
<input type="checkbox"/> Goods being purchased. <input type="checkbox"/> Funds on deposit with the lender.									
<input type="checkbox"/> Other (Specify): <input type="checkbox"/> Collateral securing other loans with us may also secure this loan.									
LATE CHARGE: If you are more than 15 days late in making any payment, in addition to your payment, you will pay a late charge of <input type="checkbox"/> the lesser of <input checked="" type="checkbox"/> the greater of <input type="checkbox"/> an amount equal to <input type="checkbox"/> \$ or <input checked="" type="checkbox"/> 4.00% of the payment in default.									
PREPAYMENT: If you pay off early, you <input checked="" type="checkbox"/> may <input type="checkbox"/> will not have to pay a penalty. <input type="checkbox"/> may <input checked="" type="checkbox"/> will not be entitled to a refund of part of the finance charge.									
ASSUMPTION: If this loan is to purchase and is secured by your principal dwelling, and if checked here, <input checked="" type="checkbox"/> someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on the original terms. If this loan is to purchase and is secured by your principal dwelling, and if checked here, <input type="checkbox"/> someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.									
See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and Creditor's policy regarding assumption of the obligation.									
<input type="checkbox"/> Please refer to the "Good Faith Estimate" for a breakdown of fees, charges and amount financed. <input checked="" type="checkbox"/> Please refer to the Itemization of Amount Financed Statement.									
SIGNATURES: By signing you acknowledge receipt of a completed copy of this disclosure. You understand that this is not a contract and does not reflect all of the terms and conditions of the mortgage transaction to which the disclosure reflected on this form relates.									
X Timothy R. Peel DATE					X Cheryl G. Peel DATE				
X DATE					X DATE				
X DATE					X DATE				

Form 1024L

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Loan #: 160558

ADDENDUM TO NOTE

This addendum is made November 21, 2006, and is
incorporated into and deemed to amend and supplement the Note of the same date.

Covering the property described in the security instrument and located at:

4521 Jade Court
Lancaster, GA 93536

Amended Provisions. In addition to the provisions and agreements made in the Note, I/we
further covenants and agrees as follows:

Penalty Upon Full or Partial Prepayment:

If, within the first 36 month(s) of the date of this Note I/we make full prepayment, or
partial prepayment in any 12 month period during the prepay term of more than 20% of the
original principal, the Note Holder may collect a penalty. That penalty will be equal to

6 months interest at the yearly rate of interest
at the time the prepayment is made, on the amount of the prepayment which is more than 20% of
the original principal, unless otherwise prohibited by applicable law or regulation. The penalty
will be collected upon full prepayment, unless otherwise provided by applicable law or
regulation.

In Witness Whereof, Trustor has executed this addendum.

Timothy R. Peel

Date

Cheryl G. Peel

Date

Date

Date

Date

Date

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL

10009L1

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EXHIBIT NO. 2

EXHIBIT 2

1) 130

SHADY
BROOK
REF

Loan No. 161270
MIN Number: 100044300001612704

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

December 21, 2006
[Date]

Irvine
[City]

California
[State]

10944 Shady Brook Drive
Grass Valley Area, CA 95949

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 536,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (115.00) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is **BrooksAmerica Mortgage Corporation, a California Corporation**. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 2.6000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1st day of February 2007 and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H, 15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding Three and 250/10000 percentage point(s) 3.0250 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.9600 % Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1st day of each month beginning on February 2007. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on January 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2 Ada, Suite 100, Irvine, CA 92618

or at a different place if required by the Note Holder

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 2,117.65 unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1st day of February 2012, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date.

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The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3 (D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3 (A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to **One Hundred Fifteen** percent (**115.00** %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the **first** Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options.

(i) Interest Only Payment: the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

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(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **6.0000%** of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

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(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

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Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



(Seal)
Russell Bebout - Borrower



(Seal)
Mary Ann Bebout - Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS (VARIABLE RATE OPTION)

NAME(S) (ADDRESS) OF BORROWER(S) ("Borrower, you or your") Russell Bebout, Mary Ann Bebout 10944 Shady Brook Drive Grass Valley Area, CA 95949	NAME(S) (ADDRESS) OF LENDER (CREDITOR) ("Lender, us or our") BrooksAmerica Mortgage Corporation 2 Ada, Suite 100 Irvine, CA 92618
---	--

PROPERTY ADDRESS 10944 Shady Brook Drive, Grass Valley Area, CA 95949	DATE OF DISCLOSURE 12/21/06	[] Preliminary [X] Final
--	--------------------------------	-----------------------------

Words, numbers or phrases preceded by a [] are applicable only if the [] is marked.	ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate 7.8983%	FINANCE CHARGE The dollar amount that credit will cost you \$ 1,014,818.72	AMOUNT FINANCED The amount of credit provided to you or on your behalf \$ 532,352.58	TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled \$ 1,547,169.30
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YOUR PAYMENT SCHEDULE WILL BE	NO. OF MONTHLY PAYMENTS	APPROXIMATE MONTHLY PAYMENT	DATE OF FIRST PAYMENT
	50	2,117.85	02/01/07
	50	2,117.85	02/01/07

VARIABLE RATE: [] Not Applicable [X] Applicable. Variable rate disclosures have been provided at an earlier time.

The annual percentage rate may increase during the term of this transaction if the average of the annual monthly yields of U.S. Treasury Securities, adjusted to a constant maturity of one year as made available by the Federal Reserve increases. Please refer to the Adjustable Rate Mortgage Documents for specific information concerning the variable rate provisions of this transaction. The monthly payment may increase during the term of this transaction if the average of the annual monthly yields of U.S. Treasury Securities, adjusted to a constant maturity of one year as made available by the Federal Reserve increases. The rate may not increase to more than 9.85 percent. Any increases may take the form of a payment increase.

SECURITY: Yes, I have given the lender a security interest in the property. You are receiving a security interest in the real property and any other personal property that is used in the business.

[] Goods being purchased	[] Funds on deposit with the lender
[] Other (Specify):	[] Collateral securing other loans with us may also secure this loan

LATE CHARGE: If you are more than 15 days late in making any payment, in addition to your payment, you will pay a late charge of [] the lesser of [X] the greater of [] an amount equal to [] \$ or [X] 8.00% of the payment in default.

PREPAYMENT: If you pay off early, you [X] may [] will not have to pay a penalty [] may [X] will not be entitled to a refund of part of the finance charge.

ASSUMPTION: If this loan is to purchase and is secured by your principal dwelling, and if checked here, [X] someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on the original terms. If this loan is to purchase and is secured by your principal dwelling, and if checked here, [] someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.

See your contract documents for any additional information about nonpayment/default, any required repayment, in full before the scheduled date, prepayment refunds and penalties and Creditors' policy regarding assumption of the obligation.

[] Please refer to the "Good Faith Estimate" for a breakdown of fees, charges and amount financed. [X] Please refer to the Itemization of Amount Financed Statement.

SIGNATURES: By signing you acknowledge receipt of a completed copy of this disclosure. You understand that this is not a contract and does not reflect all of the terms and conditions of the mortgage transaction to which the disclosures reflected on this form relate.

X Russell Bebout	DATE	X Mary Ann Bebout	DATE
X	DATE	X	DATE
X	DATE	X	DATE

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TRUTH-IN-LENDING DISCLOSURE STATEMENT

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Applicants: Russell Bebout
 Mary Ann Bebout
 Property Address: 10944 Shady Brook Drive
 Grass Valley, CA 95949
 Application No: Bebout
 Prepared By: California Benefit Mortgage
 23131 Lake Centre Dr. # G
 LAKE FOREST, CA 92630
 949-707-2841
 Date Prepared: 10/31/2006

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after making all payments as scheduled
5.851 %	\$ 636,089.74	\$ 536,000.00	\$ 1,192,089.74

☐ REQUIRED DEPOSIT: The annual percentage rate does not take into account your required deposit
 PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payments	Monthly Beginning	Monthly Beginning	Monthly Beginning
1	2,117.85			
11	2,117.85			
12	2,276.69			
12	2,447.44			
12	2,631.00			
12	2,828.33			
299	3,481.57			
1	3,484.59			

☐ DEMAND FEATURE: This obligation has a demand feature.
☒ VARIABLE RATE FEATURE: This loan contains a variable rate feature. A variable rate disclosure has been provided earlier.

CREDIT LIFE/CREDIT DISABILITY: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life	I want credit life insurance.	Signature:
Credit Disability	I want credit disability insurance.	Signature:
Credit Life and Disability	I want credit life and disability insurance.	Signature:

INSURANCE: The following insurance is required to obtain credit:
☐ Credit life insurance ☐ Credit disability ☐ Property insurance ☐ Flood insurance
 You may obtain the insurance from anyone you want that is acceptable to creditor
☐ If you purchase ☐ property ☐ flood insurance from creditor you will pay \$ for a one year term
 SECURITY: You are giving a security interest in:
☐ The goods or property being purchased ☐ Real property you already own.

FILING FEES: \$
 LATE CHARGE: If a payment is more than days late, you will be charged % of the payment

PREPAYMENT: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property
☐ may ☐ may, subject to conditions ☐ may not assume the remainder of your loan on the original terms.
 See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties
☐ * means an estimate ☐ all dates and numerical disclosures except the last payment disclosures are estimates.

* NOTE: The Payments shown above include reserve deposits for Mortgage Insurance (if applicable), but exclude Property Taxes and Insurance

THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COMPLETED COPY OF THIS DISCLOSURE

Russell Bebout (Applicant) (Date)
 Mary Ann Bebout (Applicant) (Date)
 (Applicant) (Date)
 (Applicant) (Date)
 (Lender) (Date)

1138

DATE 12/21/2008

BORROWER Russell Bebout, Mary Ann Bebout

LOAN # 161270

PROPERTY ADDRESS 10944 Shady Brook Drive
Grass Valley Area, CA 95949

IMPORTANT LOAN INFORMATION
ADJUSTABLE RATE MORTGAGE LOAN PROGRAM DISCLOSURE - PAYMENT OPTION
(First Scheduled Payment Change: Year 5, First Scheduled Full Recast: Year 5) - Please Read Carefully

We offer a variety of Adjustable Rate Mortgage ("ARM") programs. This disclosure describes the features of the ARM program you are considering. Information about our other ARM programs is available upon request.

General Description of the ARM Program

- (After the initial introductory rate period (1 month), your interest rate can change monthly and will be based on an index plus a Margin.
- (Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an index. The "index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (h.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index."
- (The "Margin" is the amount added to the index to calculate your interest rate. The Margin remains constant for the life of the loan. The Margin is expressed in percentage points.
- (Ask us for the current index and Margin.
- (Your interest rate can change independently of changes to your minimum monthly payment. Your minimum monthly payment amount can change after an initial 5-year fixed period and every year after that (in some cases your minimum monthly payment can change more frequently), and it can increase or decrease substantially based on changes in the interest rate.
- (If you pay only the minimum monthly payment, your loan may have negative amortization. Make sure you read the section on "Important Information about Negative Amortization," below.
- (The current index value for this loan program is **4.8833** % in effect as of **12/21/2008**.

How Your Initial Interest Rate and Initial Payment Amount Will Be Determined

- (**Initial Interest Rate.** Your initial interest rate will be in effect for 1 month. Your initial interest rate has a discount feature and is not based on the index used to make later adjustments. The amount by which the initial interest rate is less than the rate that would be determined by adding the Margin to the index is called the "discount." Ask us for the amount of our current initial interest rate discount. Make sure you read the section on "How Your Interest Rate Can Change," below.
- (**Initial Payment Amount.** Your initial minimum monthly payment will be based on the initial interest rate, loan balance and loan term. The initial minimum monthly payment will be determined by calculating the amount required to repay the loan (principal and interest) in substantially equal monthly payments over the loan term at the initial interest rate. Even though your interest rate may change monthly after the initial discount period, your initial minimum monthly payment amount may be fixed for up to the first five years (and for every one year after that). Your initial minimum monthly payment amount may not stay fixed for the full first full five years (or every one year after that) if a change is required due to the limits on negative amortization. Make sure you read the section on "How Your Payment Can Change," below.

How Your Interest Rate Can Change

- (Your interest rate can change after the introductory period (1 month) and monthly thereafter. The day the rate change is effective is an "Interest Rate Change Date."
- (On each Interest Rate Change Date, the interest rate can change to equal the index plus the Margin, the sum of which is rounded to the nearest one-eighth of one percentage point (.125%). This rounded amount will be the new interest rate unless one of these limits applies:

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- o Your interest rate will never be greater than 2.65%.
- o Beginning with your first Interest Rate Change Date, your interest rate will never be lower than the Margin

How Your Payment Can Change

- (When Your Minimum Monthly Payment Can Change Your minimum monthly payment can change on your 61st payment due date and every 12 months thereafter (these dates are called "Scheduled Payment Change Dates"), or more frequently if necessary to prevent the unpaid principal balance of your loan from exceeding a negative amortization cap, described more fully below
- (Calculating Your Minimum Monthly Payment To calculate your minimum monthly payment for a Scheduled Payment Change Date, we will determine the amount of the monthly payment that would be sufficient to repay the projected principal balance in full on the maturity date in substantially equal payments at the interest rate in effect during the month preceding the Scheduled Payment Change Date. The result of this calculation is the amount of your new minimum monthly payment. However, your new minimum monthly payment will be limited to 7.5% more than the amount of your last minimum monthly payment due before the Scheduled Payment Change Date unless either of the following additional restrictions apply
 - o Required Full Payment. On the first Scheduled Payment Change Date and on every 5th Scheduled Payment Change Date thereafter (and on the final Scheduled Payment Change Date), the 7.5% limit to the increase in the payment change will not apply. On the first Scheduled Payment Change Date and on every 5th Scheduled Payment Change Date thereafter (and on the final Scheduled Payment Change Date), you will need to pay the amount sufficient to pay the unpaid balance in full by the maturity date in substantially equal payments at the interest rate in effect during the month preceding the Scheduled Payment Change Date.
 - o Limit on My Unpaid Principal. If you pay only the minimum monthly payment, the amount may not be sufficient to cover the interest due on your loan. For each month that your monthly payment is less than the interest due on your loan, we will subtract the amount of your monthly payment from the amount of interest due on your loan and will add the difference to your unpaid principal. This means that the balance of your loan could increase. This is known as "negative amortization." The unpaid principal balance of your loan can never exceed 115% (110% in New York) of the original amount borrowed. If your outstanding principal balance reaches that limit, we will immediately increase your minimum monthly payment to an amount sufficient to pay off the unpaid principal balance over the remaining life of the loan. We will make this change whether or not your minimum monthly payment is otherwise scheduled to change and without regard to the 7.5% limit to the increase in the payment amount. Your new minimum monthly payment amount will be in effect until the next regular Scheduled Payment Change Date, subject to the 115% negative amortization cap (110% in New York), which could require another payment change.
- (After the first Interest Rate Change Date, we may provide you with up to three (3) additional payment options that are greater than your minimum monthly payment, which are called "Payment Options." You may be given the following Payment Options:
 - o Interest Only Payment: the amount that would pay the interest portion of the monthly payment at the current interest rate. The principal balance will not be decreased by this Payment Option.
 - o Fully Amortized Payment: the amount necessary to pay the loan off (principal and interest) at the maturity date in substantially equal payments. This Payment Option is calculated on the assumption that the current interest rate will remain in effect until the loan is paid in full, however, the current interest rate may in fact change every month.
 - o 15 Year Amortized Payment: the amount necessary to pay the loan off (principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This Payment Option is calculated on the assumption that the current rate will remain in effect until the loan is paid in full, however, the current interest rate may in fact change every month.

Payment Options are only applicable if they are greater than the minimum monthly payment amount.

Notice of Interest Rate and Payment Change

- (We will notify you once each year during which interest rate adjustments, but not payment adjustments, have been made to your loan. This notice will contain information about your interest rate, index, payment amount and loan balance.

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(We will notify you of a payment change in writing at least 25 days, but no more than 120 days, before the due date of the payment at a new level. This notice will contain information about your interest rate, index, payment amount and loan balance.

Example of Maximum Interest Rate and Maximum Payment Which Could Be Required

Residents of all States except New York

On a \$10,000 thirty year loan originated at an initial interest rate of 2.00%* in effect in May, 2006, the maximum amount that the interest rate can rise under this program is to 9.95% (the lifetime interest rate cap). The minimum monthly payment can rise from a first-year payment of \$ 36.96 to a maximum of \$83.90 at the 52nd payment.

*The initial interest rate is equal to the Index of 4.143, plus a 3.375% margin, minus a 5.518% discount, rounded to the nearest 1/8%. The discount shown in this example is a discount we have used recently; your discount may be different.

To see what your payments would be, divide your mortgage amount by \$10,000; then multiply the minimum monthly payment by that amount. (For example, the minimum monthly payment for a mortgage amount of \$60,000 would be, $\$60,000 \div \$10,000 = 6$; $6 \times \$36.96 = \221.76 per month.)

On a \$10,000 forty year loan originated at an initial interest rate of 2.00%* in effect in May, 2006, the maximum amount that the interest rate can rise under this program is to 9.95% (the lifetime interest rate cap). The minimum monthly payment can rise from a first-year payment of \$ 30.28 to a maximum of \$78.61 at the 38th payment.

*The initial interest rate is equal to the Index of 4.143, plus a 3.775% margin, minus a 5.918% discount, rounded to the nearest 1/8%. The discount shown in this example is a discount we have used recently; your discount may be different.


To see what your payments would be, divide your mortgage amount by \$10,000; then multiply the minimum monthly payment by that amount. (For example, the minimum monthly payment for a mortgage amount of \$60,000 would be, $\$60,000 \div \$10,000 = 6$; $6 \times \$30.28 = \181.68 per month.)

Important Information about Negative Amortization


Negative amortization means the mortgage balance is increasing. This occurs whenever your monthly mortgage payments are not large enough to pay all of the interest due on your mortgage.

Because payment caps limit only the amount of payment increase, and not interest rate increases, your monthly payments sometimes may not cover all of the interest due on your loan. This means that the interest shortage in your payment is automatically added to your unpaid principal balance, and interest may be charged on that amount. However, the unpaid principal balance of your loan can never exceed 115% of the original amount borrowed. You may owe more later in the loan term than you did at the start.

If you have any questions, be sure to ask us about negative amortization to understand how it may apply to your loan.



Russell Bebout Date



Mary Ann Bebout Date

Date

Date

Date

Date

Loan #: 181270

ADDENDUM TO NOTE

This addendum is made December 21, 2006, and is incorporated into and deemed to amend and supplement the Note of the same date.

Covering the property described in the security instrument and located at:

10944 Shady Brook Drive
Grass Valley Area, CA 95949


Amended Provisions. In addition to the provisions and agreements made in the Note, I/we further covenants and agrees as follows:

Penalty Upon Full or Partial Prepayment:


If, within the first 36 month(s) of the date of this Note I/we make full prepayment, or partial prepayment in any 12 month period during the prepay term of more than 20% of the original principal, the Note Holder may collect a penalty. That penalty will be equal to

6 months interest at the yearly rate of interest at the time the prepayment is made, on the amount of the prepayment which is more than 20% of the original principal, unless otherwise prohibited by applicable law or regulation. The penalty will be collected upon full prepayment, unless otherwise provided by applicable law or regulation.

In Witness Whereof, Trustor has executed this addendum.



Russell Babout Date



Mary Ann Sebout Date

Date

Date

Date

Date

10009L1

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EXHIBIT NO. 3

EXHIBIT 3

1) 143

Loan No: 162927
MIN Number: 100044300001629278

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

February 13, 2007
[Date]

Irvine
[City]

California
[State]

29111 Paperflower Lane
Menifee Area, CA 92584

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ **356,000.00** (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (**115.00**) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is **BrooksAmerica Mortgage Corporation, a California Corporation**. I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay Interest at a yearly rate of **2.0000** %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the **1st** day of **April 2007** and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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PayOption MTA ARM Note

FE-5312 (0412)



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If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding **Three and Four Tenths** percentage point(s) **3.4000 %** ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than **9.9500 %**. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the **1st** day of each month beginning on

April 2007. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **March 01, 2047**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **2 Ada, Suite 100, Irvine, CA 92618**

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ **1,078.06** unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the **1st** day of **April 2008**, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date.

The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3 (D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3 (A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to **One Hundred Fifteen** percent (**115.00** %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the **fifth** Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

(i) Interest Only Payment: the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

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(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of ~~Fifteen~~ calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **6.0000%** of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

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(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

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Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

_____(Seal)
Michael R. Sanford - Borrower

_____(Seal)
Marilyn Sanford - Borrower

_____(Seal)
- Borrower

_____(Seal)
- Borrower

_____(Seal)
- Borrower

_____(Seal)
- Borrower

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TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS (VARIABLE RATE OPTION)

NAME(S) ADDRESS(ES) OF BORROWER(S) ("Borrower, you or your") Michael R. Sanford, Marilyn Sanford 29111 Paperflower Lane Menifee Area, CA 92584		NAME(S) ADDRESS(ES) OF LENDER (CREDITOR) ("Lender, us or our") BrooksAmerica Mortgage Corporation 2 Ada, Suite 100 Irvine, CA 92618	
PROPERTY ADDRESS 29111 Paperflower Lane, Menifee Area, CA 92584			
LOAN NUMBER 162927	TRANSACTION DATE 02/13/07	<input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Final	

Words, numbers or phrases preceded by a [] are applicable only if the [] is marked.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate. 8.6072%	The dollar amount the credit will cost you. \$ 1,020,730.01	The amount of credit provided to you or on your behalf. \$ 348,576.52	The amount you will have paid after you have made all payments as scheduled. \$ 1,369,308.53

YOUR PAYMENT SCHEDULE WILL BE:	# of Payments	Amount of Payments	When Payments Are Due	# of Payments	Amount of Payments	When Payments Are Due	# of Payments	Amount of Payments	When Payments Are Due
	12	1,078.06	04/01/07	12	1,158.91	04/01/08	12	1,245.83	04/01/09
	1	1,339.27	04/01/10	443	2,993.62	05/01/10			

VARIABLE RATE: ☐ Not Applicable ☒ Applicable, variable rate disclosures have been provided at an earlier time.

TYPE MISMATCH

SECURITY: You may obtain property insurance from anyone acceptable to the lender. You are giving a security interest in the real property and any of the following items checked.

- | | |
|---|---|
| <input type="checkbox"/> Goods being purchased. | <input type="checkbox"/> Funds on deposit with the lender. |
| <input type="checkbox"/> Other (Specify) | <input type="checkbox"/> Collateral securing other loans with us may also secure this loan. |

LATE CHARGE:

If you are more than 15 days late in making any payment, in addition to your payment, you will pay a late charge of:

[] the lesser of ☒ the greater of [] an amount equal to [] \$ or ☒ 6.000% of the payment in default.

PREPAYMENT:

If you pay off early, you ☒ may ☐ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION:

If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☒ someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on the original terms.
If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☐ someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and Creditor's policy regarding assumption of the obligation.

"e" means an estimate.

☐ Please refer to the "Good Faith Estimate" for a breakdown of fees, charges and amount financed. ☒ Please refer to the Itemization of Amount Financed Statement.

SIGNATURES:

By signing you acknowledge receipt of a completed copy of this disclosure. You understand that this is not a contract and does not reflect all of the terms and conditions of the mortgage transaction to which the disclosure reflected on this form relates.

X _____ DATE	X _____ DATE
X _____ DATE	X _____ DATE
X _____ DATE	X _____ DATE



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ADJUSTABLE RATE MORTGAGE LOAN PROGRAM DISCLOSURE MONTHLY TREASURY AVERAGE INDEX - PAYMENT CAPS ALL STATES EXCEPT NEW YORK

Date: 02/13/2007

Borrower(s): Michael R. Sanford, Marilyn Sanford

Loan Number: 162927

Property Address: 29111 Paperflower Lane
Manifee Area, CA 92584

This disclosure describes the features of an Adjustable Rate Mortgage (ARM) program you are considering. Information about our other ARM programs will be provided upon request.

HOW YOUR INTEREST RATE AND PAYMENT ARE DETERMINED		
<ul style="list-style-type: none"> Your interest rate will be based on an index rate plus a margin. Please ask us for our current interest rate and margin. The "index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. Your initial interest rate is not based on the index used to make later adjustments. Please ask us for the amounts of our current interest rate discounts. For the first year of your loan, your payment will be based on the initial interest rate, loan amount and loan term. After the first year, your payment will be calculated as described below. The current index value for this loan program is 4.9833 % in effect as of 02/13/2007 		
	MTA ARM (Initial rate change at 1 month)	MTA ARM (Initial rate change at 3 months)
Your interest rate can change:	On your first payment date and monthly thereafter	On your 3rd payment date and monthly thereafter
Each time your interest rate changes, the new interest rate will equal the sum of the index plus the margin, subject to the following limits:	<ul style="list-style-type: none"> Your interest rate will be rounded to the nearest 1/8%. Your interest rate will never exceed the maximum set forth in your loan documents. The maximum rate in effect as of the first business day of January 2005 is 9.95%. Please ask us for our current maximum rate. 	
How Your Payment Can Change		
Your payment can change:	<ul style="list-style-type: none"> Every year and can increase or decrease substantially based on changes in the interest rate. At every 5th scheduled payment adjustment, you will need to pay the Full Payment until the next payment adjustment date. 	
	You will be notified in writing at least 25, but no more than 120 days, before the due date of a payment at a new level. This notice will contain information about the index, your interest rates, payment amount and loan balance.	

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Your payment will be calculated as follows:	Beginning with the 13th payment and every 12 months thereafter, we will calculate the amount of the monthly payment that would sufficient to repay the unpaid principal balance in full by the maturity date in substantially equal payments at the interest rate in effect during the month preceding the payment change date. This payment is called the "Full Payment." Except as otherwise provided, your "Limited Payment" will be the payment amount for the month preceding the payment change date increased by no more than 7.5% ("Payment Cap"). Your new "Minimum Payment" will be the lesser of the Limited Payment and the Full Payment. You also have the option to pay the Full Payment for your monthly payment. If you pay less than the Full Payment, then the payment may not be enough to cover the interest due, and any difference will be added to your principal balance. This means the balance of your loan could increase. This is known as "negative amortization." During the loan term, we may provide you with other monthly payment options that are greater than the Minimum Payment ("Payment Options"). Please ask us about these Payment Options.	
The unpaid principal of your loan:	Can never exceed 115% (110% in New York) of the original amount borrowed. This means that your monthly payment may change more frequently than annually and the payment change will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to pay off the unpaid principal balance over the remaining life of the loan at the current interest rate.	
	The examples below illustrate interest rate and payment changes based on a \$10,000, 30-year loan. These examples use an initial interest rate in effect on the first business day of January 2006, and assume the maximum periodic increases in rates and payments.	
	Examples of loans with a discounted interest rate (below sum of index and margin) (Loans with a premium interest rate above the sum of index and margin are not available)	
Initial Interest Rate	1.00%	1.75%
Maximum Interest Rate	9.95%	9.95%
First Year Payment	\$32.16	\$35.72
Maximum payment	\$101.46 in the 3rd year	\$102.14 in the 3rd year
	The examples below illustrate interest rate and payment changes based on a \$10,000, 40-year loan. These examples use an initial interest rate in effect on the first business day of January 2005, and assume the maximum periodic increases in rates and payments.	
NOTE: To see what your payment would be, divide your mortgage amount by \$10,000, then multiply the monthly payment by that amount. (For example, the monthly payment for a \$60,000 30 Year MTA ARM Index -Payment Cap loan with a discounted interest rate would be: $\$60,000 / \$10,000 = 6$; $6 \times \$32.16 = \192.96 per month)		
	Examples of loans with a discounted interest rate (below sum of index and margin) (Loans with a premium interest rate above the sum of index and margin are not available)	
Initial Interest Rate	1.00%	1.75%
Maximum Interest Rate	9.95%	9.95%
First Year Payment	\$25.29	\$28.98
Maximum payment	\$97.42 in the 3rd year	\$97.66 in the 3rd year
NOTE: To see what your payment would be, divide your mortgage amount by \$10,000, then multiply the monthly payment by that amount. (For example, the monthly payment for a \$60,000 40 Year MTA ARM Index -Payment Cap loan with a discounted interest rate would be: $\$60,000 / \$10,000 = 6$; $6 \times \$25.29 = \151.74 per month)		

Michael R. Sanford _____ Date

Marilyn Sanford _____ Date

_____ Date

_____ Date

_____ Date

_____ Date

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Loan #: 162927

ADDENDUM TO NOTE

This addendum is made **February 13, 2007**, and is incorporated into and deemed to amend and supplement the Note of the same date.

Covering the property described in the security instrument and located at:

**29111 Paperflower Lane
Menifee Area, CA 92584**

Amended Provisions. In addition to the provisions and agreements made in the Note, I/we further covenants and agrees as follows:

Penalty Upon Full or Partial Prepayment:

If, within the first **36** month(s) of the date of this Note I/we make full prepayment, or partial prepayment in any 12 month period during the prepay term of more than 20% of the original principal, the Note Holder may collect a penalty. That penalty will be equal to

6 months interest at the yearly rate of interest at the time the prepayment is made, on the amount of the prepayment which is more than 20% of the original principal, unless otherwise prohibited by applicable law or regulation. The penalty will be collected upon full prepayment, unless otherwise provided by applicable law or regulation.

In Witness Whereof, Trustor has executed this addendum.

Michael R. Sanford Date

Marilyn Sanford Date

Date

Date

Date

Date

10009L1



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EXHIBIT NO. 4

EXHIBIT 4

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Loan No: 162796
MIN Number: 100044300001627967

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

February 01, 2007
[Date]

Irvine
[City]
35223 El Diamante Drive
Wildomar Area, CA 92595

California
[State]

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ **412,000.00** (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (**115.00**) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is **BrooksAmerica Mortgage Corporation, a California Corporation**. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **1.5000 %**. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the **1st** day of **April 2007** and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

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If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding **Three and 5500/10000** percentage point(s) **3.5500 %** ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than **9.9500 %**. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the **1st** day of each month beginning on

April 2007

I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **March 01, 2047**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

2 Ada, Suite 100, Irvine, CA 92618

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ **1,141.95** unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the **1st** day of **April 2008**, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date.

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The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3 (D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3 (A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to **One Hundred Fifteen** percent (**115.00** %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the **fifth** Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

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(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **6.0000%** of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

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(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

11/15/09

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
Desiree Lynn McIlrath - Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

M) 160

TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS (VARIABLE RATE OPTION)

NAME (ADDRESS) OF BORROWER(S): Desiree Lynn McIlraith
35223 El Diamante Drive
Wildomar Area, CA 92595

NAME (ADDRESS) OF CREDITOR(S) (Lender or servicer): BrooksAmerica Mortgage Corporation
2 Ada, Suite 100
Irvine, CA 92618

PROPERTY ADDRESS 35223 El Diamante Drive, Wildomar Area, CA 92595

LOAN NUMBER 182798 TRANSACTION DATE 02/01/07 ☐ Preliminary ☒ Final

Words, numbers or phrases preceded by ☐ are applicable only if the ☐ is marked.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of cash provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
8.6301%	\$ 1,198,277.15	\$ 402,984.24	\$ 1,801,271.39

YOUR PAYMENT SCHEDULE WILL BE:	P. of Pymts	Amount of Pymts	When Pymts Are Due	P. of Pymts	Amount of Pymts	When Pymts Are Due	P. of Pymts	Amount of Pymts	When Pymts Are Due
	12	1,141.95	04/01/07						
	12	1,227.60	04/01/08						
	9	1,319.87	04/01/09						
	447	3,492.06	01/01/10						

VARIABLE RATE: ☐ Not Applicable ☒ Applicable, variable rate disclosures have been provided at an earlier time.

TYPE MISMATCH

SECURITY: You may obtain property insurance from anyone acceptable to the lender. You are giving a security interest in the real property and any of the following items checked:

- ☐ Goods being purchased. ☐ Funds on deposit with the lender.
☐ Other (Specify) ☐ Collateral securing other loans with us may also secure this loan.

LATE CHARGE:

If you are more than 15 days late in making any payment, in addition to your payment, you will pay a late charge of:
☐ the lesser of ☒ the greater of ☐ an amount equal to ☐ \$ or ☒ 6.000% of the payment in default.

PREPAYMENT:

If you pay off early, you ☒ may ☐ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION:

If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☒ someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on the original terms.
 If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☐ someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and Creditor's policy regarding assumption of the obligation. "e" means an estimate.

☐ Please refer to the "Good Faith Estimate" for a breakdown of fees, charges and amount financed. ☒ Please refer to the Itemization of Amount Financed Statement.

SIGNATURES:

By signing you acknowledge receipt of a completed copy of this disclosure. You understand that this is not a contract and does not reflect all of the terms and conditions of the mortgage transaction to which the disclosure reflected on this form relates.

X Desiree Lynn McIlraith 2-2-07 DATE
 X _____ DATE
 X _____ DATE
 X _____ DATE

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ADJUSTABLE RATE MORTGAGE LOAN PROGRAM DISCLOSURE MONTHLY TREASURY AVERAGE INDEX - PAYMENT CAPS ALL STATES EXCEPT NEW YORK

Date: 01/19/2007

Borrower(s): Desiree L McIlrath

Loan Number: 162796

Property Address: 35223 El Diamante
Wildomar, CA 92595

This disclosure describes the features of an Adjustable Rate Mortgage (ARM) program you are considering. Information about our other ARM programs will be provided upon request.

HOW YOUR INTEREST RATE AND PAYMENT ARE DETERMINED		
<ul style="list-style-type: none"> Your interest rate will be based on an index rate plus a margin. Please ask us for our current interest rate and margin. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. Your initial interest rate is not based on the index used to make later adjustments. Please ask us for the amounts of our current interest rate discounts. For the first year of your loan, your payment will be based on the initial interest rate, loan amount and loan term. After the first year, your payment will be calculated as described below. The current index value for this loan program is 4.9333 % in effect as of 01/19/2007 		
	MTA ARM (Initial rate change at 1 month)	MTA ARM (Initial rate change at 3 months)
Your interest rate can change:	On your first payment date and monthly thereafter	On your 3 rd payment date and monthly thereafter
Each time your interest rate changes, the new interest rate will equal the sum of the index plus the margin, subject to the following limits:	<ul style="list-style-type: none"> Your interest rate will be rounded to the nearest 1/8%. Your interest rate will never exceed the maximum set forth in your loan documents. The maximum rate in effect as of the first business day of January 2005 is 9.95%. Please ask us for our current maximum rate. 	
How Your Payment Can Change		
Your payment can change:	<ul style="list-style-type: none"> Every year and can increase or decrease substantially based on changes in the interest rate. At every 5th scheduled payment adjustment, you will need to pay the Full Payment until the next payment adjustment date. 	
	You will be notified in writing at least 25, but no more than 120 days, before the due date of a payment at a new level. This notice will contain information about the index, your interest rates, payment amount and loan balance.	

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Your payment will be calculated as follows:	Beginning with the 13th payment and every 12 months thereafter, we will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal balance in full by the maturity date in substantially equal payments at the interest rate in effect during the month preceding the payment change date. This payment is called the "Full Payment." Except as otherwise provided, your "Limited Payment" will be the payment amount for the month preceding the payment change date increased by no more than 7.5% ("Payment Cap"). Your new "Minimum Payment" will be the lesser of the Limited Payment and the Full Payment. You also have the option to pay the Full Payment for your monthly payment. If you pay less than the Full Payment, then the payment may not be enough to cover the interest due, and any difference will be added to your principal balance. This means the balance of your loan could increase. This is known as "negative amortization." During the loan term, we may provide you with other monthly payment options that are greater than the Minimum Payment ("Payment Options"). Please ask us about these Payment Options.	
The unpaid principal of your loan:	Can never exceed 115% (110% in New York) of the original amount borrowed. This means that your monthly payment may change more frequently than annually and the payment change will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to pay off the unpaid principal balance over the remaining life of the loan at the current interest rate.	
The examples below illustrate interest rate and payment changes based on a \$10,000, 30-year loan. These examples use an initial interest rate in effect on the first business day of January 2005, and assume the maximum periodic increases in rates and payments.		
Examples of loans with a discounted interest rate (below sum of index and margin) (Loans with a premium interest rate above the sum of index and margin are not available)		
Initial Interest Rate	1.00%	1.75%
Maximum Interest Rate	9.95%	9.95%
First Year Payment	\$32.16	\$35.72
Maximum payment	\$101.46 in the 3rd year	\$102.14 in the 3rd year
The examples below illustrate interest rate and payment changes based on a \$10,000, 40-year loan. These examples use an initial interest rate in effect on the first business day of January 2005, and assume the maximum periodic increases in rates and payments.		
NOTE: To see what your payment would be, divide your mortgage amount by \$10,000, then multiply the monthly payment by that amount. (For example, the monthly payment for a \$60,000 30 Year MTA ARM Index -Payment Cap loan with a discounted interest rate would be: $\$60,000 / \$10,000 = 6$; $6 \times \$32.16 = \192.96 per month)		
Examples of loans with a discounted interest rate (below sum of index and margin) (Loans with a premium interest rate above the sum of index and margin are not available)		
Initial Interest Rate	1.00%	1.75%
Maximum Interest Rate	9.95%	9.95%
First Year Payment	\$25.29	\$28.98
Maximum payment	\$87.42 in the 3rd year	\$97.66 in the 3rd year
NOTE: To see what your payment would be, divide your mortgage amount by \$10,000, then multiply the monthly payment by that amount. (For example, the monthly payment for a \$60,000 40 Year MTA ARM Index -Payment Cap loan with a discounted interest rate would be: $\$60,000 / \$10,000 = 6$; $6 \times \$25.29 = \151.74 per month)		

Desiree L. McIlrath
Desiree L. McIlrath

1/22/07
Date

Date

Date

Date

Date

Date

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Loan #: 162796

ADDENDUM TO NOTE

This addendum is made **February 01, 2007**, and is incorporated into and deemed to amend and supplement the Note of the same date.

Covering the property described in the security instrument and located at:

**36223 El Diamante Drive
Wildomar Area, CA 92595**


Amended Provisions. In addition to the provisions and agreements made in the Note, I/we further covenants and agrees as follows:

Penalty Upon Full or Partial Prepayment:

If, within the first **36** month(s) of the date of this Note I/we make full prepayment, or partial prepayment in any 12 month period during the prepay term of more than 20% of the original principal, the Note Holder may collect a penalty. That penalty will be equal to

6 months interest at the yearly rate of interest at the time the prepayment is made, on the amount of the prepayment which is more than 20% of the original principal, unless otherwise prohibited by applicable law or regulation. The penalty will be collected upon full prepayment, unless otherwise provided by applicable law or regulation.

In Witness Whereof, Trustor has executed this addendum.

 Desiree Lynn McClirath	_____	_____
Date		Date
_____	_____	_____
Date		Date
_____	_____	_____
Date		Date

10009L1

17 164

PROOF OF SERVICE

Peel vs. BrooksAmerica Mortgage Corporation
OC Superior Court CASE NO. 30-2010-00348134

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP.

On the date set forth below I served the document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** on all the interested parties in this action, by placing: ☐ the original ☒ true copies thereof enclosed in sealed envelopes, addressed to the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP, as follows:

Mark Johnson
12232 East Kings Canyon Road
Sanger, CA 93557
mdjlaw@verizon.net

Attorney for Defendant
BrooksAmerica Mortgage Corporation

☒ **BY MAIL:** I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service. On the date set forth below, at the firm of Spiro Moss LLP at the above address, I placed the envelope(s) containing said document(s), sealed, for collection and mailing on that date with the United States Postal Service following ordinary business practices. Under the above-mentioned practice of Spiro Moss LLP, the above document(s) would be deposited with the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

☐ **BY MAIL:** On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

☐ **BY EXPRESS MAIL** On the date set forth below I deposited such envelope(s) in an Express Mail mailbox, maintained by the U.S. Postal Service for receipt of Express Mail in Los Angeles County, California. The envelope(s) was/were deposited with Express Mail with postage thereon fully prepaid.

☐ **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

☐ **(BY PERSONAL SERVICE):** I personally caused said document(s) on the date set forth below, inside the envelope(s) clearly labeled to identify the attorney(s) to be served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

11) 145

1 ☐ **BY FACSIMILE** On the date set forth below, I transmitted the above document(s) from
2 facsimile machine number (310) 235-2456, in compliance with transmission as provided
3 in California Rule of Court 2008. The fax number(s) that I used are shown above or on
4 the attached Service List, along with the names of recipients and the interested parties.
The Facsimile Machine I used complied with California Rule of Court 2003(3). The
transmission was reported as complete and without error by the machine, which properly
issued the transmission report.

5 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California
6 that the above is true and correct.

7 ☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this
8 court at whose direction the service was made.

9 Executed at Los Angeles County, California, on October 20, 2010

10 
11 Diana Lee

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrookAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
 On Behalf of: Cheryl Peel; CCMS ID: 71806364, Marilyn Sanford; CCMS ID: 72269024, Timothy Peel; CCMS ID: 71806363, Desiree McIlrath; CCMS ID: 72269025, Russ Bebout; CCMS ID: 72269022, Michael Sanford; CCMS ID: 72269023

Transaction Number: 214545
 Court Received Date: 10/20/2010
 Court Received Time: 04:44:07 PM
 Filed Date: 10/20/2010
 Filed Time: 04:44 PM
 Fee Amount Assessed: \$0.00
 Case Number: 30-2010-00348134-CU-FR-CXC
 Case Title: Peel vs. BrooksAmerica Mortgage Corporation
 Location: Civil Complex Center
 Case Type: Fraud
 Case Category: Civil - Unlimited
 Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Amended Complaint (First)	Accepted
Summons Issued and Filed (First Amended Complaint)	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

147

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: 8009388815

11/14/8

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): I Mark Moore (SBN 180473); Ira Spiro (SBN 67641) SPIRO MOSS LLP 11377 W. Olympic Blvd., 5th Floor Los Angeles, CA 90064		FOR COURT USE ONLY
TELEPHONE NO.: (310) 235-2468 E-MAIL ADDRESS (Optional): mark@spiroimoss.com ATTORNEY FOR (Name): Plaintiffs	FAX NO. (Optional): (310) 235-2456	ELECTRONICALLY FILED Superior Court of California, County of Orange 11/09/2010 at 04:09:00 PM Clerk of the Superior Court By Maarit H Nordman, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd. MAILING ADDRESS: 751 West Santa Ana Blvd. CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Civil Complex Center		
PLAINTIFF/PETITIONER: Timothy R. Peel and Cheryl G. Peel, et al. DEFENDANT/RESPONDENT: BrooksAmerica Mortgage Corporation, et al.		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL		CASE NUMBER: 30-2010-00348134

TO (Insert name of party being served): Mark Johnson on behalf of Defendant BrooksAmerica Mortgage Corporation

<p align="center">NOTICE</p> <p>The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.</p> <p>If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.</p>
--

Date of mailing: November 8, 2010

Diana Lee
(TYPE OR PRINT NAME)


(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☐ A copy of the summons and of the complaint.
- ☒ Other (specify):
Summons for First Amended Complaint; First Amended Complaint

(To be completed by recipient):

Date this form is signed: November 9, 2010

Mark Johnson for BrooksAmerica Mortgage Corp.
(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)


(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

11/16/10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
 On Behalf of: Cheryl Peel; CCMS ID: 71806364, Marilyn Sanford; CCMS ID: 72269024, Timothy Peel; CCMS ID: 71806363, Desiree McIlrath; CCMS ID: 72269025, Russ Bebout; CCMS ID: 72269022, Michael Sanford; CCMS ID: 72269023

Transaction Number: 216930
 Court Received Date: 11/09/2010
 Court Received Time: 04:09:10 PM
 Filed Date: 11/09/2010
 Filed Time: 04:09 PM
 Fee Amount Assessed: \$0.00
 Case Number: 30-2010-00348134-CU-FR-CXC
 Case Title: Peel vs. BrooksAmerica Mortgage Corporation
 Location: Civil Complex Center
 Case Type: Fraud
 Case Category: Civil - Unlimited
 Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Acknowledgement and Receipt	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: OneLegal
 Email: support@onelegal.com

11/10

Contact Person: Customer Support
Phone: 8009388815

11/12/2010

NOTICE OF CONFIRMATION OF FILING

P) 171

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange

11/09/2010 at 04:12:12 PM
Clerk of the Superior Court
By Adam Thau, Deputy Clerk

SPIRO MOSS LLP

J. Mark Moore (SBN 180473)

mark@spiomoss.com

Ira Spiro (SBN 67641)

ira@spiomoss.com

11377 W. Olympic Boulevard, Fifth Floor

Los Angeles, CA 90064-1683

Phone: (310) 235-2468

Fax: (310) 235-2456

BLOOD HURST & O'REARDON LLP

Timothy G. Blood (SBN 149343)

tblood@bholaw.com

Thomas Joseph O'Reardon II (SBN 247952)

TOReardon@bholaw.com

600 B Street, Suite No. 1550

San Diego, CA 92101

Phone: (619) 338-1100

Fax: (619) 338-1101

ARBOGAST & BERNIS LLP

David M. Arbogast (SBN 167571)

darbogast@law111.com

Jeffrey K. Bernis (SBN 131351)

jberns@law111.com

6303 Owensmouth Ave., 10th Floor

Woodland Hills, CA 91367-2263

Phone: (818) 961-2000

Fax: (818) 936-0232

[Additional Counsel identified on signature page]
Attorneys for Plaintiffs and all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

TIMOTHY R. PEEL AND CHERYL G. PEEL,
RUSS BEBOUT, MICHAEL SANFORD AND
MARILYN SANFORD and DESIREE
MCILRATH on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

BROOKSAMERICA MORTGAGE
CORPORATION, a California Corporation;
WASHINGTON MUTUAL MORTGAGE
SECURITIES CORP., formerly sued as DOE 1;
WAMU ASSET ACCEPTANCE CORP.,
formerly sued as DOE 2; RESIDENTIAL
FUNDING COMPANY, LLC, formerly sued as
DOE 3; and DOES 4 through 200 inclusive,

Defendants.

CASE NO. 30-2010-00348134

[Assigned to the Hon. Thierry Patrick Colaw,
Dept. CX104]

**STIPULATION REGARDING NOVEMBER
18, 2010 CASE MANAGEMENT
CONFERENCE AND DEFENDANT
BROOKSAMERICA CORPORATION'S
TIME TO RESPOND TO FIRST AMENDED
COMPLAINT; [PROPOSED] ORDER**

CMC Date: Nov. 18, 2010
Time: 1:30 p.m.
Dept: CX104

Case Filed: Feb. 5, 2010
Trial Date: None Set

Stipulation

17 172

1 1. WHEREAS, on July 27, 2010, this Court set a further Case Management Conference for
2 November 18, 2010, at 1:30 p.m. in Department CX-104;

3 2. WHEREAS, on October 20, 2010, Plaintiffs TIMOTHY R. PEEL AND CHERYL G.
4 PEEL, RUSS BEBOUT, MICHAEL SANFORD AND MARILYN SANFORD and DESIREE
5 MCILRATH ("Plaintiffs") filed a First Amended Complaint, substituting the named defendants
6 identified in paragraph 4 below for Does 1 through 3;

7 3. WHEREAS, counsel for original named defendant BrooksAmerica Corporation, which
8 had not responded to the original complaint when the First Amended Complaint was filed, has accepted
9 service of the First Amended Complaint on behalf of BrooksAmerica Corporation, and Plaintiffs and
10 BrooksAmerica Corporation have agreed that BrooksAmerica Corporation will respond to the First
11 Amended Complaint by no later than December 3, 2010;

12 4. WHEREAS, newly named defendants WASHINGTON MUTUAL MORTGAGE
13 SECURITIES CORP., formerly sued as DOE 1, WAMU ASSET ACCEPTANCE CORP., formerly
14 sued as DOE 2, and RESIDENTIAL FUNDING COMPANY, LLC, formerly sued as DOE 3, have not
15 yet been served or appeared in this action;

16 5. WHEREAS, Plaintiffs' counsel J. Mark Moore and David Arbogast, who have been lead
17 counsel in this case since it was filed, have a calendar conflict on November 18, 2010 due to a class
18 certification-related hearing in a certified class action involving similar claims which is pending in the
19 United States District Court for the Northern District of California;

20 6. NOW, THEREFORE, Plaintiffs and defendant BrooksAmerica Corporation hereby
21 stipulate and request an order continuing the Case Management Conference in this matter from
22 November 18, 2010 until December 9, 2010, at 1:30 p.m.

23 DATED: November 9, 2010

SPIRO MOSS LLP

By 

J. Mark Moore
1377 W. Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683
Tel.: (310) 235-2468
Fax: (310) 235-2456

BLOOD HURST & O'REARDON LLP
Timothy G. Blood

1
Stipulation
m 11/9

1 Thomas Joseph O'Reardon II
2 600 B Street, Suite No. 1550
3 San Diego, CA 92101
4 Phone: (619) 338-1100
5 Fax: (619) 338-1101

6 **ARBOGAST & BERNIS LLP**
7 David M. Arbogast
8 Jeffrey K. Bernis
9 6303 Owensmouth Ave., 10th Floor
10 Woodland Hills, CA 91367-2263
11 Phone: (818) 961-2000
12 Fax: (818) 936-0232

13 **BROWNE WOODS GEORGE LLP**
14 Michael A. Bowse (SBN 189659)
15 Mbowse@bwgfirm.com
16 2121 Avenue of the Stars, Suite 2400
17 Los Angeles, CA 90067
18 Tel.: (310) 274-7100
19 Fax: (310) 275-5697

20 **BROWNE WOODS GEORGE LLP**
21 Lee A. Weiss (Pro Hac Vice Application
22 Pending)
23 lweiss@bwgfirm.com
24 1 Liberty Plaza, Suite 2329
25 New York, New York 10006
26 Tel.: (212) 354-4683
27 Fax: (212) 354-4904

28 Attorneys for Plaintiffs and all others
Similarly Situated.

DATED: November 8, 2010

By: 

Mark D. Johnson, Esq.
mdjlaw@verizon.net
12232 E. Kings Canyon Rd.
Sanger, CA 93657-9401
Tel.: (559) 875-2800
Fax: (559) 875-2803

Attorney for Defendant BrooksAmerica
Mortgage Corporation

PJ 174

ORDER

Good cause appearing, the Case Management Conference set for November 18, 2010 at 1:30 p.m. is hereby continued to December 9, 2010 at 1:30 p.m. Plaintiffs are ordered to give notice.

Hon. Thierry P. Colaw
Orange County Superior Court Judge

175

PROOF OF SERVICE

Peel vs. BrooksAmerica Mortgage Corporation
OC Superior Court CASE NO. 30-2010-00348134

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP.

On the date set forth below I served the document(s) described as **STIPULATION REGARDING NOVEMBER 18, 2010 CASE MANAGEMENT CONFERENCE AND DEFENDANT BROOKAMERICA CORPORATION'S TIME TO RESPOND TO FIRST AMENDED COMPLAINT; [PROPOSED] ORDER** on all the interested parties in this action, by placing: [] the original [X] true copies thereof enclosed in sealed envelopes, addressed to the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP, as follows:

Mark Johnson
12232 East Kings Canyon Road
Sanger, CA 93557
mdjlaw@verizon.net

Attorney for Defendant
BrooksAmerica Mortgage Corporation

Timothy G. Blood
Thomas Joseph O'Reardon II
Blood Hurst & O'Reardon LLP
600 B Street, Suite 1550
San Diego, CA 92101

Attorneys for Plaintiffs

David M. Arbogast
Jeffrey K. Berns
Arbogast & Berns LLP
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367

Attorneys for Plaintiffs

[X] **BY MAIL:** I am readily familiar with this firms's practice of collection and processing correspondence for mailing with the United States Postal Service. On the date set forth below, at the firm of Spiro Moss LLP at the above address, I placed the envelope(s) containing said document(s), sealed, for collection and mailing on that date with the United States Postal Service following ordinary business practices. Under the above-mentioned practice of Spiro Moss LLP, the above document(s) would be deposited with the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

[] **BY MAIL:** On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

[] **BY EXPRESS MAIL** On the date set forth below I deposited such envelope(s) in an Express Mail mailbox, maintained by the U.S. Postal Service for receipt of Express Mail in Los Angeles County, California. The envelope(s) was/were deposited with Express Mail with postage thereon fully prepaid.

[] **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly

maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

☐ **(BY PERSONAL SERVICE):** I personally caused said document(s) on the date set forth below, inside the envelope(s) clearly labeled to identify the attorney(s) to be served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

☐ **BY FACSIMILE** On the date set forth below, I transmitted the above document(s) from facsimile machine number (310) 235-2456, in compliance with transmission as provided in California Rule of Court 2008. The fax number(s) that I used are shown above or on the attached Service List, along with the names of recipients and the interested parties. The Facsimile Machine I used complied with California Rule of Court 2003(3). The transmission was reported as complete and without error by the machine, which properly issued the transmission report.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles County, California, on November 9, 2010


Diana Lee

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
On Behalf of: Timothy Peel; CCMS ID: 71806363
Transaction Number: 216931
Court Received Date: 11/09/2010
Court Received Time: 04:12:12 PM
Filed Date: 11/09/2010
Filed Time: 04:12 PM
Fee Amount Assessed: \$965.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Stipulation and Order	Accepted

Court Generated Documents

Payment Receipt

Comments

Submitter's Comments:

Clerk's Comments: First paper fee taken for defendant BrooksAmerica Mortgage Corporation per conversation with plaintiff's attorney Mark Moore.

Electronic Filing Service Provider Information

Service Provider OneLegal
Email: support@onelegal.com

Contact Person: Customer Support
Phone: 8009388815

11/10/2010

NOTICE OF CONFIRMATION OF FILING

b 179



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

751 W. Santa Ana Blvd
Santa Ana, CA 92701

PAYMENT RECEIPT

E-Filing Transaction #: 216931

Receipt #: 10593571

Clerk ID: athau

Transaction No: 10769679

Transaction Date: 11/10/2010

Transaction Time: 03:17:53 PM

Case Number	Fee Type	Qty	Fee Amount	Balance Due	Amount Paid	Remaining Balance
30-2010-00348134-CU-FR-CXC	167 - Answer or other 1st paper	1	\$395.00	\$395.00	\$395.00	\$0.00
30-2010-00348134-CU-FR-CXC	35 - Complex Case Fee - Response	1	\$550.00	\$550.00	\$550.00	\$0.00
30-2010-00348134-CU-FR-CXC	37 - Stipulation and order	1	\$20.00	\$20.00	\$20.00	\$0.00
Sales Tax:					\$0.00	
Total:					\$965.00	Total Rem. Bal: \$0.00
E-Filing:					\$965.00	
Total Amount Tendered:					\$965.00	
Change Due:					\$0.00	
Balance:					\$0.00	

\$25 will be charged for each returned check. www.occourts.org

ORIGINAL

1) 150

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange

11/09/2010 at 04:12:12 PM
Clerk of the Superior Court
By Adam Thau, Deputy Clerk

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX LITIGATION CENTER

NOV 15 2010

ALAN CARLSON, Clerk of the Court

ppuf
BY P RIEF

SPIRO MOSS LLP
J. Mark Moore (SBN 180473)

mark@spiomoss.com

Ira Spiro (SBN 67641)

ira@spiomoss.com

11377 W. Olympic Boulevard, Fifth Floor

Los Angeles, CA 90064-1683

Phone: (310) 235-2468

Fax: (310) 235-2456

BLOOD HURST & O'REARDON LLP

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Thomas Joseph O'Reardon II (SBN 247952)

TOReardon@bholaw.com

600 B Street, Suite No. 1550

San Diego, CA 92101

Phone: (619) 338-1100

Fax: (619) 338-1101

ARBOGAST & BERNIS LLP

David M. Arbogast (SBN 167571)

darbogast@law111.com

Jeffrey K. Bernis (SBN 131351)

jberns@law111.com

6303 Owensmouth Ave., 10th Floor

Woodland Hills, CA 91367-2263

Phone: (818) 961-2000

Fax: (818) 936-0232

[Additional Counsel identified on signature page]

Attorneys for Plaintiffs and all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

TIMOTHY R. PEEL AND CHERYL G. PEEL,)
RUSS BEBOUT, MICHAEL SANFORD AND)
MARILYN SANFORD and DESIREE)
MCILRATH on behalf of themselves and others)
similarly situated,)

Plaintiffs,

v.

BROOKSAMERICA MORTGAGE)
CORPORATION, a California Corporation;)
WASHINGTON MUTUAL MORTGAGE)
SECURITIES CORP., formerly sued as DOE 1;)
WAMU ASSET ACCEPTANCE CORP.,)
formerly sued as DOE 2; RESIDENTIAL)
FUNDING COMPANY, LLC, formerly sued as)
DOE 3; and DOES 4 through 200 inclusive,)

Defendants.

CASE NO. 30-2010-00348134

[Assigned to the Hon. Thierry Patrick Colaw,
Dept. CX104]

**STIPULATION REGARDING NOVEMBER
18, 2010 CASE MANAGEMENT
CONFERENCE AND DEFENDANT
BROOKSAMERICA CORPORATION'S
TIME TO RESPOND TO FIRST AMENDED
COMPLAINT; [PROPOSED] ORDER**

CMC Date: Nov. 18, 2010
Time: 1:30 p.m.
Dept: CX104

Case Filed: Feb. 5, 2010
Trial Date: None Set

Stipulation

17 181

1 1. WHEREAS, on July 27, 2010, this Court set a further Case Management Conference for
2 November 18, 2010, at 1:30 p.m. in Department CX-104;

3 2. WHEREAS, on October 20, 2010, Plaintiffs TIMOTHY R. PEEL AND CHERYL G.
4 PEEL, RUSS BEBOUT, MICHAEL SANFORD AND MARILYN SANFORD and DESIREE
5 MCILRATH ("Plaintiffs") filed a First Amended Complaint, substituting the named defendants
6 identified in paragraph 4 below for Does 1 through 3;

7 3. WHEREAS, counsel for original named defendant BrooksAmerica Corporation, which
8 had not responded to the original complaint when the First Amended Complaint was filed, has accepted
9 service of the First Amended Complaint on behalf of BrooksAmerica Corporation, and Plaintiffs and
10 BrooksAmerica Corporation have agreed that BrooksAmerica Corporation will respond to the First
11 Amended Complaint by no later than December 3, 2010;

12 4. WHEREAS, newly named defendants WASHINGTON MUTUAL MORTGAGE
13 SECURITIES CORP., formerly sued as DOE 1, WAMU ASSET ACCEPTANCE CORP., formerly
14 sued as DOE 2, and RESIDENTIAL FUNDING COMPANY, LLC, formerly sued as DOE 3, have not
15 yet been served or appeared in this action;

16 5. WHEREAS, Plaintiffs' counsel J. Mark Moore and David Arbogast, who have been lead
17 counsel in this case since it was filed, have a calendar conflict on November 18, 2010 due to a class
18 certification-related hearing in a certified class action involving similar claims which is pending in the
19 United States District Court for the Northern District of California;

20 6. NOW, THEREFORE, Plaintiffs and defendant BrooksAmerica Corporation hereby
21 stipulate and request an order continuing the Case Management Conference in this matter from
22 November 18, 2010 until December 9, 2010, at 1:30 p.m.

23 DATED: November 9, 2010

SPIRO MOSS LLP

24 By 

25 J. Mark Moore
26 1377 W. Olympic Boulevard, Fifth Floor
27 Los Angeles, CA 90064-1683
28 Tel.: (310) 235-2468
Fax: (310) 235-2456

BLOOD HURST & O'REARDON LLP
Timothy G. Blood

Stipulation
11/15/2010

1 Thomas Joseph O'Reardon II
2 600 B Street, Suite No. 1550
3 San Diego, CA 92101
4 Phone: (619) 338-1100
5 Fax: (619) 338-1101

6 **ARBOGAST & BERNIS LLP**
7 David M. Arbogast
8 Jeffrey K. Bernis
9 6303 Owensmouth Ave., 10th Floor
10 Woodland Hills, CA 91367-2263
11 Phone: (818) 961-2000
12 Fax: (818) 936-0232

13 **BROWNE WOODS GEORGE LLP**
14 Michael A. Bowse (SBN 189659)
15 Mbowse@bwgfirm.com
16 2121 Avenue of the Stars, Suite 2400
17 Los Angeles, CA 90067
18 Tel.: (310) 274-7100
19 Fax: (310) 275-5697

20 **BROWNE WOODS GEORGE LLP**
21 Lee A. Weiss (Pro Hac Vice Application
22 Pending)
23 lweiss@bwgfirm.com
24 1 Liberty Plaza, Suite 2329
25 New York, New York 10006
26 Tel.: (212) 354-4683
27 Fax: (212) 354-4904

28 Attorneys for Plaintiffs and all others
Similarly Situated.

DATED: November 8, 2010

By: 

Mark D. Johnson, Esq.
mdjlaw@verizon.net
12232 E. Kings Canyon Rd.
Sanger, CA 93657-9401
Tel.: (559) 875-2800
Fax: (559) 875-2803

Attorney for Defendant BrooksAmerica
Mortgage Corporation

2
Stipulation

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ORDER

Good cause appearing, the Case Management Conference set for November 18, 2010 at 1:30 p.m. is hereby continued to December 9, 2010 at 1:30 p.m. Plaintiffs are ordered to give notice.

11/15/10 *TH*

Thierry P. Colaw
Hon. Thierry P. Colaw
Orange County Superior Court Judge

B 184

PROOF OF SERVICE

Peel vs. BrooksAmerica Mortgage Corporation
OC Superior Court CASE NO. 30-2010-00348134

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP.

On the date set forth below I served the document(s) described as **STIPULATION REGARDING NOVEMBER 18, 2010 CASE MANAGEMENT CONFERENCE AND DEFENDANT BROOKAMERICA CORPORATION'S TIME TO RESPOND TO FIRST AMENDED COMPLAINT; [PROPOSED] ORDER** on all the interested parties in this action, by placing: ☐ the original ☒ true copies thereof enclosed in sealed envelopes, addressed to the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP, as follows:

Mark Johnson
12232 East Kings Canyon Road
Sanger, CA 93557
mdjlaw@verizon.net

Attorney for Defendant
BrooksAmerica Mortgage Corporation

Timothy G. Blood
Thomas Joseph O'Reardon II
Blood Hurst & O'Reardon LLP
600 B Street, Suite 1550
San Diego, CA 92101

Attorneys for Plaintiffs

David M. Arbogast
Jeffrey K. Berns
Arbogast & Berns LLP
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367

Attorneys for Plaintiffs

☒ **BY MAIL:** I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service. On the date set forth below, at the firm of Spiro Moss LLP at the above address, I placed the envelope(s) containing said document(s), sealed, for collection and mailing on that date with the United States Postal Service following ordinary business practices. Under the above-mentioned practice of Spiro Moss LLP, the above document(s) would be deposited with the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

☐ **BY MAIL:** On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

☐ **BY EXPRESS MAIL:** On the date set forth below I deposited such envelope(s) in an Express Mail mailbox, maintained by the U.S. Postal Service for receipt of Express Mail in Los Angeles County, California. The envelope(s) was/were deposited with Express Mail with postage thereon fully prepaid.

☐ **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY:** On the date set forth below I deposited such envelope(s) in a box or other facility regularly

maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

☐ (BY PERSONAL SERVICE): I personally caused said document(s) on the date set forth below, inside the envelope(s) clearly labeled to identify the attorney(s) to be served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

☐ BY FACSIMILE On the date set forth below, I transmitted the above document(s) from facsimile machine number (310) 235-2456, in compliance with transmission as provided in California Rule of Court 2008. The fax number(s) that I used are shown above or on the attached Service List, along with the names of recipients and the interested parties. The Facsimile Machine I used complied with California Rule of Court 2003(3). The transmission was reported as complete and without error by the machine, which properly issued the transmission report.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles County, California, on November 9, 2010


Diana Lee

PLD-C-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS) TELEPHONE: 559-250-1547 Mark D. Johnson SBN# 90544 Attorney at Law 12232 E. Kings Canyon Sanger, CA 93657 ATTORNEY FOR (NAME):		FOR COURT USE ONLY: ELECTRONICALLY FILED Superior Court of California, County of Orange 12/03/2010 at 03:28:00 PM Clerk of the Superior Court By Enrique Veloz, Deputy Clerk
Insert name of court, judicial district or branch court, if any, and post office and street address: Superior Court of California, County of Orange 751 West Santa Ana Blvd. Santa Ana, CA 92701 Civil Complex Center		
PLAINTIFF: Timothy R. Peel and Cheryl G. Peel, et al.		
DEFENDANT: BrooksAmerica Mortgage Corporation, et al.		
ANSWER—Contract <input checked="" type="checkbox"/> TO COMPLAINT OF (name): Timothy R. Peel and Cheryl G. Peel, et al. <input type="checkbox"/> TO CROSS-COMPLAINT (name):		CASE NUMBER: 30-2010-00348134

1. This pleading, including attachments and exhibits, consists of the following number of pages: 3
2. DEFENDANT (name): BrooksAmerica Mortgage Corporation
answers the complaint or cross-complaint as follows:
3. Check ONLY ONE of the next two boxes:
 - a. ☐ Defendant generally denies each statement of the complaint or cross-complaint. (Do not check this box if the verified complaint or cross-complaint demands more than \$1,000.)
 - b. ☐ Defendant admits that all of the statements of the complaint or cross-complaint are true EXCEPT:
 - (1) Defendant claims the following statements are false (use paragraph numbers or explain):
1,6-97

- ☐ Continued on Attachment 3.b.(1).
- (2) Defendant has no information or belief that the following statements are true, so defendant denies them (use paragraph numbers or explain):

2

☐ Continued on Attachment 3.b.(2).

If this form is used to answer a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

B 157

PLD-C-010

SHORT TITLE: Timothy R. Peel, et al. v. BrooksAmerica, et al.	CASE NUMBER: 30-2010-00348134
--	----------------------------------

ANSWER—Contract

4. ☒ **AFFIRMATIVE DEFENSES** Defendant alleges the following additional reasons that plaintiff is not entitled to recover anything:
1. Plaintiffs' complaint fails to state a cause of action.
 2. Plaintiffs' complaint is barred by the applicable statute of limitations.
 3. Plaintiffs are not entitled to damages from this answering Defendant.
 4. This Defendant's conduct at all time complied with all applicable state and federal laws.

☐ Continued on Attachment 4.

5. ☐ Other

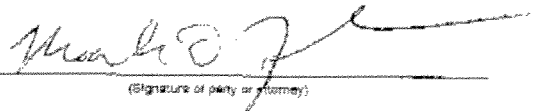
6. DEFENDANT PRAYS

- a. that plaintiff take nothing.
- b. ☒ for costs of suit.
- c. ☒ other (specify):

Plaintiffs take nothing as a result of this action.
This Defendant requests reasonable attorney fees.

Mark D. Johnson

(Type or print name)



(Signature of party or attorney)

B 188

PROOF OF SERVICE

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action. My business address is 12232 E. Kings Canyon, Sanger, California 93657; (559) 250-1547. On this date, I served the following document(s): **Answer---Contract** on the interested parties in this action as follows:

J. Mark Moore
Spiro Moss LLP
11377 W. Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064

Timothy G. Blood
Blood Hurst & O'Reardon LLP
600 B. Street, Suite No. 1550
San Diego, CA 92101

Jeffrey K. Berns
Arbogast & Berns LLP
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367

Michael A. Bowse
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

- ☐ [] **[BY FAX]**
- ☒ [X] **[BY MAIL]** I caused envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Sanger, California, addressed as shown above.
- ☐ [] **[BY OVERNIGHT DELIVERY]** I caused envelope(s) with postage thereon fully prepaid to be shipped by , addressed as shown above.
- ☐ [] **[BY PERSONAL SERVICE]** I caused the above entitled document(s) to be delivered by hand to the above address(es):
- ☐ [] **[BY SUBSTITUTED SERVICE]** I caused the above entitled document(s) to be delivered by hand to the above address(es) to a person at said address(es) over the age of 18 and informed them of the general nature of the documents:
- ☐ [] **[BY PERSONAL SERVICE BY FAX]** I caused the above entitled document(s) to be personally served on the above shown parties by facsimile transmission on the date shown below by confirming the fax phone number with the law office shown above then (a) transmitting it via the fax machine within this office, and (b) receiving a receipt from the machine within this office confirming all documents sent were in fact properly received.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed in Sanger, California, on December 3, 2010.


Ezra K. Jones

17 189

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22026 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Mark Johnson
On Behalf of: BrooksAmerica Mortgage Corporation; CCMS ID: 71806365
Transaction Number: 219567
Court Received Date: 12/03/2010
Court Received Time: 03:26:14 PM
Filed Date: 12/03/2010
Filed Time: 03:26 PM
Fee Amount Assessed: \$0.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Answer to Amended Complaint	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: 8009388815

1190

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Civil Complex Center TELEPHONE NUMBER: (657) 622-5300	
SHORT TITLE: PEEL VS. BROOKSAMERICA MORTGAGE CORPORATION	
NOTICE OF CASE REASSIGNMENT	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

Your case has been re-assigned for all purposes to the judicial officer indicated below. The hearing dates of all matters currently set are to remain and will be heard before the judicial officer indicated below. A copy of this information must be provided to any new parties that you bring into this action.

The court determines that for purposes of exercising C.C.P. 170.6 rights, there are two sides in this matter unless, prior to the expiration of time in which to exercise said rights, the contrary is first brought to the attention of the Court, by Ex Parte Motion. Counsel have 15 days from the date of the enclosed certificate of mailing in which to exercise any rights under C.C.P. 170.6

Assigned To: Judge Kim Dunning

Dept # CX104

Start Date: 01/03/2011

Location: Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SCHEDULING INFORMATION

Judicial Scheduling Calendar Information Individual courtroom information and the items listed below may be found at: www.occourts.org . Case Information, Court Local Rules, filing fees, forms, Civil Department Calendar Scheduling Chart, Department phone numbers, Complex Civil E-filing, and Road Map to Civil Filings and Hearings.
Ex Parte Matters Rules for Ex Parte Applications can be found in the California Rules of Court, rules 3.1200 through 3.1207 at: www.courtinfo.ca.gov . Trials that are in progress have priority; therefore, you may be required to wait for your ex parte hearing.
Noticed Motions Hearing dates and times can be found on the Civil Department Calendar Scheduling Chart. All fees and papers must be filed in the Clerk's Office of the Court Location address listed above.
Other Information * The following local Orange County Superior Court rules are listed for your convenience: - Rule 307 - Telephonic Appearance Litigants - Call CourtCall, LLC at (310) 914-7884 or (888) 88-COURT. - Rule 380 - Fax Filing, Rule 450 - Trial Pre-Conference (Unlimited Civil) * All Complex Litigation cases are subject to mandatory Electronic Filing, unless excused by the Court.

Date: 12/07/2010

Erka Penulas

Clerk of the Court, by: _____ Deputy

17191

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Civil Complex Center 751 W. Santa Ana Blvd Santa Ana, CA 92702	
SHORT TITLE: PEEL VS. BROOKSAMERICA MORTGAGE CORPORATION	
CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

I certify that I am not a party to this cause. I certify that a true copy of the above NOTICE OF CASE REASSIGNMENT has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practices and addressed as indicated below. The certification occurred at Santa Ana, California on 12/07/2010. The mailing occurred at Sacramento, California on 12/08/2010.

Erika Penuelas

Clerk of the Court, by: _____, Deputy

BROWNE WOODS GEORGE LLP
2121 AVENUE OF THE STARS # 2400
LOS ANGELES, CA 90067

SPIRO MOSS LLP
11377 W OLYMPIC BLVD., 5TH FLOOR
LOS ANGELES, CA 90064

ARBOGAST & BERNS LLP
6303 OWENSMOUTH AVE., 10TH FLOOR
WOODLAND HILLS, CA 91367

BLOOD HURST & O'REARDON LLP
600 B STREET # 1550
SAN DIEGO, CA 92101

17/92

SPIRO MOSS LLP

SPIRO MOSS LLP

J. Mark Moore (SBN 180473)
mark@spiromoss.com
Ira Spiro (SBN 67641)
ira@spiromoss.com
11377 W. Olympic Blvd., 5th Floor
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BLOOD HURST & O'REARDON LLP

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Los Angeles, CA 90067
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Facsimile: (310) 275-5697

ELECTRONICALLY FILED

Superior Court of California,
County of Orange
12/09/2010 at 04:55:00 PM
Clerk of the Superior Court
By Jaime Cordero, Deputy Clerk

ARBOGAST & BERNES LLP

David M. Arbogast (SBN 167571)
darbogast@law111.com
Jeffrey K. Bernes (SBN 131351)
jbernes@law111.com
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New York, NY 10006
Telephone: (212) 354-4683
Facsimile: (212) 354-4904

Attorneys for Plaintiffs and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

TIMOTHY R. PEEL AND CHERYL G. PEEL,
RUSS BEBOUT, MICHAEL SANFORD AND
MARILYN SANFORD and DESIREE
MCILRATH on behalf of themselves and
others similarly situated,

Plaintiffs,

vs.

BROOKSAMERICA MORTGAGE
CORPORATION, a California Corporation;
WASHINGTON MUTUAL MORTGAGE
SECURITIES CORP., formerly sued as DOE
1; WAMU ASSET ACCEPTANCE CORP.,
formerly sued as DOE 2; RESIDENTIAL
FUNDING COMPANY, LLC, formerly sued
as DOE 3; and DOES 4 through 200 inclusive,

Defendants.

Case No.: 30-2010-00348134-CU-FR-CXC

[Assigned to the Hon. Thierry Patrick Colaw,
Dept. CX-104]

**NOTICE OF FURTHER STATUS
CONFERENCE**

Date: April 21, 2011
Time: 1:30 p.m.
Dept.: CX-104

Action Filed: February 5, 2010
Trial Date: Not Set

193

1 PLEASE TAKE NOTICE that a Status Conference came on regularly for hearing
2 today, December 9, 2010 at 1:30 p.m. in Dept. CX-104, the Honorable Thierry Patrick Colaw
3 presiding. At the Status Conference, the Court has set a Further Status Conference for April
4 21, 2011 at 1:30 p.m. in Dept. CX-104 of Orange County Superior Court – Civil Complex
5 Center, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701.

6
7 Dated: December 9, 2010

SPIRO MOSS LLP

8
9 By: 

J. Mark Moore

10 Attorneys for Plaintiffs and all others similarly
11 situated
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SPIRO MOSS LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, California 90064.

On the date indicated below, I served the document described as: **NOTICE OF FURTHER STATUS CONFERENCE** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Timothy G. Blood, Esq.
Thomas J. O'Reardon II, Esq.
Blood Hurst & O'Reardon LLP
600 B Street, Suite 1550
San Diego, CA 92101

Attorneys for Plaintiffs

Michael A. Bowse, Esq.
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

Attorneys for Plaintiffs

Mark D. Johnson, Esq.
12232 E. Kings Canyon Rd.
Sanger, CA 93657

*Attorney for Defendant BrooksAmerica
Mortgage Corporation*

David M. Arbogast, Esq.
Jeffrey K. Berns, Esq.
Arbogast & Berns LLP
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367

Attorneys for Plaintiffs

Lee A. Weiss, Esq.
Browne Woods George LLP
1 Liberty Plaza, Suite 2329
New York, NY 10006

Attorneys for Plaintiffs

[✓] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

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

Executed this **December 9, 2010** at Los Angeles, California.

Diana Lee
Type or Print Name


Signature

1795

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
On Behalf of: Cheryl Peel; CCMS ID: 71806364, Marilyn Sanford; CCMS ID: 72269024, Timothy Peel; CCMS ID: 71806363, Desiree McIlrath; CCMS ID: 72269025, Russ Bebout; CCMS ID: 72269022, Michael Sanford; CCMS ID: 72269023
Transaction Number: 220275
Court Received Date: 12/09/2010
Court Received Time: 04:55:59 PM
Filed Date: 12/09/2010
Filed Time: 04:55 PM
Fee Amount Assessed: \$0.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

Documents Electronically Filed/Received

Notice of Hearing

Status

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider OneLegal
Email: support@onelegal.com

Contact Person: Customer Support
Phone: 8009388815

12/10/2010

NOTICE OF CONFIRMATION OF FILING

ib 197

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 12/09/2010 TIME: 01:30:00 PM DEPT: CX104

JUDICIAL OFFICER PRESIDING: Thierry Patrick Colaw

CLERK: P. Rief

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Servando Garcia, Jr

CASE NO: 30-2010-00348134-CU-FR-CXC CASE INIT.DATE: 02/05/2010

CASE TITLE: **Peel vs. BrooksAmerica Mortgage Corporation**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 71107565

EVENT TYPE: Status Conference

APPEARANCES

J. Mark Moore, Esq., from Spiro Moss LLP, present for Plaintiff(s) telephonically.

Status Conference held in court without a court reporter present. Court and counsel held an informal discussion regarding this matter. One defendant has answered. Plaintiff is in the process of serving the Amended Complaint on defendants.

Court set this matter for a further Status Conference. The Status Conference is scheduled for 04/21/2011 at 01:30 PM in Department CX104.

Court orders plaintiff to give notice.

DATE: 12/09/2010

DEPT: CX104

MINUTE ORDER

D 198

Page 1
Calendar No.

SPIRO MOSS LLP

SPIRO MOSS LLP

J. Mark Moore (SBN 180473)
mark@spiromoss.com
Ira Spiro (SBN 67641)
ira@spiromoss.com
11377 W. Olympic Blvd., 5th Floor
Los Angeles, California 90064-1683
Telephone: (310) 235-2468
Facsimile: (310) 235-2456

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

12/14/2010 at 11:15:00 AM
Clerk of the Superior Court
By Rachelle Vavra, Deputy Clerk

BLOOD HURST & O'REARDON LLP

Timothy G. Blood (SBN 149343)
Tblood@bholaw.com
Thomas Joseph O'Reardon II (SBN 247952)
TOReardon@bholaw.com
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Telephone: (818) 961-2000
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BROWNE WOODS GEORGE LLP

Michael A. Bowse (SBN 189659)
Mbowse@bwgfirm.com
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067
Telephone: (310) 274-7100
Facsimile: (310) 275-5697

BROWNE WOODS GEORGE LLP

Lee A. Weiss (Pro Hac Vice App. Pending)
lweiss@bwgfirm.com
1 Liberty Plaza, Suite 2329
New York, NY 10006
Telephone: (212) 354-4683
Facsimile: (212) 354-4904

Attorneys for Plaintiffs and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

TIMOTHY R. PEEL AND CHERYL G. PEEL,
RUSS BEBOUT, MICHAEL SANFORD AND
MARILYN SANFORD and DESIREE
MCILRATH on behalf of themselves and
others similarly situated,

Case No.: 30-2010-00348134-CU-FR-CXC

[Assigned to the Hon. Thierry Patrick Colaw,
(Transferred to the Hon. Kim Dunning
effective 01/03/2011) Dept. CX-104]

Plaintiffs,

vs.

**PLAINTIFFS' PEREMPTORY
CHALLENGE UNDER SECTION 170.6
OF THE CODE OF CIVIL PROCEDURE;
DECLARATION OF J. MARK MOORE**

BROOKSAMERICA MORTGAGE
CORPORATION, a California Corporation;
WASHINGTON MUTUAL MORTGAGE
SECURITIES CORP., formerly sued as DOE
1; WAMU ASSET ACCEPTANCE CORP.,
formerly sued as DOE 2; RESIDENTIAL
FUNDING COMPANY, LLC, formerly sued
as DOE 3; and DOES 4 through 200 inclusive,

Defendants.

Action Filed: February 5, 2010
Trial Date: Not Set

17 199

Pursuant to Section 170.6 of the Code of Civil Procedure, Plaintiffs Timothy R. Peel, Cheryl G. Peel, Russ Bebout, Michael Sanford, Marilyn Sanford and Desiree McIlrath ("Plaintiffs") hereby move for an order re-assigning this case to a judge other than Kim Dunning. As set forth in the declaration attached hereto, Plaintiffs' motion is made on the grounds that Judge Dunning is prejudiced against Plaintiffs or their attorneys or prejudiced against the interests of Plaintiffs or their attorneys so that Plaintiffs' attorneys believe Plaintiffs cannot have a fair and impartial trial or hearing before Judge Dunning.

Dated: December 14, 2010

SPIRO MOSS LLP

By: 

J. Mark Moore

Attorneys for Plaintiffs and all others similarly situated

SPIRO MOSS LLP

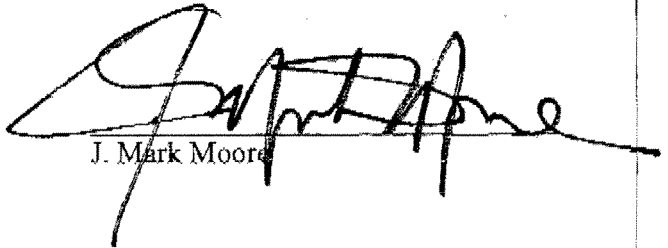
DECLARATION OF J. MARK MOORE

I, J. Mark Moore, declare:

1. I am one of the attorneys of record for Plaintiffs Timothy R. Peel, Cheryl G. Peel, Russ Bebout, Michael Sanford, Marilyn Sanford and Desiree McIlrath ("Plaintiffs"). I have personal knowledge of the matters stated below and if called and sworn as a witness could competently testify under oath thereto.

2. The Honorable Kim Dunning, the judge before whom this action is pending (starting January 3, 2011), and to whom it has been re-assigned (starting January 3, 2011), is prejudiced against Plaintiffs or their attorneys or prejudiced against the interests of Plaintiff or their attorneys so that the undersigned believes that Plaintiff cannot have a fair and impartial trial or hearing before Judge Dunning.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Los Angeles, California on December 14, 2010.


J. Mark Moore

SPIRO MOSS LLP

17 201

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, California 90064.

On the date indicated below, I served the document described as: **PLAINTIFFS' PEREMPTORY CHALLENGE UNDER SECTION 170.6 OF THE CODE OF CIVIL PROCEDURE; DECLARATION OF J. MARK MOORE** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

Timothy G. Blood, Esq.
Thomas J. O'Reardon II, Esq.
Blood Hurst & O'Reardon LLP
600 B Street, Suite 1550
San Diego, CA 92101

David M. Arbogast, Esq.
Jeffrey K. Berns, Esq.
Arbogast & Berns LLP
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367

Attorneys for Plaintiffs

Attorneys for Plaintiffs

Michael A. Bowse, Esq.
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

Lee A. Weiss, Esq.
Browne Woods George LLP
1 Liberty Plaza, Suite 2329
New York, NY 10006

Attorneys for Plaintiffs

Attorneys for Plaintiffs

Mark D. Johnson, Esq.
12232 E. Kings Canyon Rd.
Sanger, CA 93657

*Attorney for Defendant BrooksAmerica
Mortgage Corporation*

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

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

Executed this **December 14, 2010** at Los Angeles, California.

Diana Lee
Type or Print Name


Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
On Behalf of: Cheryl Peel; CCMS ID: 71806364, Marilyn Sanford; CCMS ID: 72269024, Timothy Peel; CCMS ID: 71806363, Desiree McIlrath; CCMS ID: 72269025, Russ Bebout; CCMS ID: 72269022, Michael Sanford; CCMS ID: 72269023
Transaction Number: 220651
Court Received Date: 12/14/2010
Court Received Time: 11:15:40 AM
Filed Date: 12/14/2010
Filed Time: 11:15 AM
Fee Amount Assessed: \$0.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Peremptory Challenge Pursuant to 170.6 CCP	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider OneLegal
Email: support@onelegal.com

12/14/2010

NOTICE OF CONFIRMATION OF FILING

10 209

Contact Person: Customer Support
Phone: 8009388815

12/14/2010

NOTICE OF CONFIRMATION OF FILING

M 204

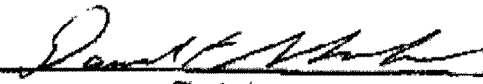
Attorney or Party without Attorney: J. Mark Moore, Esq., Bar #180473 Spiro Moss LLP 11377 W. Olympic Blvd. 5th Floor Los Angeles, CA 90064 Telephone No: 310-235-2468 FAX No: 310-235-2456		For Court Use Only ELECTRONICALLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CIVIL COMPLEX CENTER Dec 17 2010 ALAN CARLSON, Clerk of the Court by J. CORDERO	
Attorney for: Plaintiff Insert name of Court, and Judicial District and Branch Court: Orange County Superior Court Plaintiff: Timothy R. Peel, et al. Defendant: Brooksamercia Mortgage Corporation, et al.		Ref. No. or File No.: Case Number: 30201000348134CUFRCXC	
AFFIDAVIT OF SERVICE Summons/Complaint		Hearing Date:	Time:
		Dept/Div:	

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the Summons On First Amended Complaint; First Amended Complaint; Initial Summons; Initial Class Action Complaint; Civil Case Cover Sheet; Adr Information Package; Civil Complex Guidelines; Civil Complex Motion Guidelines; Notice And Acknowledgment Of Receipt Re Initial Summons And Complaint For Brooksamercia Mortgage Corporation; Notice Of Order Re Minute Order Of 3/16/2010; Plaintiff's Case Management Statement; Notice Of Case Management Conference; Notice And Acknowledgment Of Receipt Re First Amended Summons And First Amended Complaint For Brooksamercia Mortgage Corporation; Stipulation Regarding 11/18/2010 Case Management Conference & Defendant Brooksamercia Corporation's Time To Respond To Fac; [Proposed] Order; Notice Of Further Status Conference; Notice Of Case Reassignment; Plaintiff's Peremptory Challenge Under Section 170.6 Of The Ccp; Declaration Of J. Mark Moore
- Party served: Washington Mutual Mortgage Securities Corp. formerly sued as Doe 1
 - Person served: Scott LaScala, Person Authorized to Accept Service.
- Address where the party was served: The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801
- I served the party:
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Thu., Dec. 16, 2010 (2) at: 2:30PM
- The "Notice to the Person Served" (on the Summons) was completed as follows:
on behalf of: Washington Mutual Mortgage Securities Corp. formerly sued as Doe 1
Under CCP 416.10 (corporation)
- Person Who Served Papers:
 - Danny Sheehan
 - Class Action Research & Litigation
P O Box 740
Penryn, CA 95663
(916) 663-2562, FAX (916) 663-4955

Fee for Service:

I Declare under penalty of perjury under the laws of the State of DELAWARE that the foregoing is true and correct.

12/16/10
(Date)


(Signature)

8. STATE OF DELAWARE, COUNTY OF NEW CASTLE
 Subscribed and sworn to (or affirmed) before me on this 16 day of December 2010 by Danny Sheehan
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

DENNIS SCHOFIELD
 NOTARY PUBLIC
 STATE OF DELAWARE
 My commission exp. 30 Nov. 24, 2011

AFFIDAVIT OF SERVICE
 Summons/Complaint


(Notary Signature)

Jmno.117607

17 205

Attorney or Party without Attorney: J. Mark Moore, Esq., Bar #180473 Spiro Moss LLP 11377 W. Olympic Blvd. 5th Floor Los Angeles, CA 90064 Telephone No: 310-235-2468 FAX No: 310-235-2456		For Court Use Only ELECTRONICALLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CIVIL COMPLEX CENTER Dec 17 2010 ALAN CARLSON, Clerk of the Court by J. CORDERO	
Attorney for: Plaintiff Insert name of Court, and Judicial District and Branch Court: Orange County Superior Court Plaintiff: Timothy R. Peel, et al. Defendant: Brooksamerica Mortgage Corporation, et al.		Ref. No. or File No.: Case Number: 30201000348134CUFRCXC	
AFFIDAVIT OF SERVICE Summons/Complaint		Hearing Date:	Time:
		Dept/Div:	Case Number:

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the Summons On First Amended Complaint; First Amended Complaint; Initial Summons; Initial Class Action Complaint; Civil Case Cover Sheet; Adr Information Package; Civil Complex Guidelines; Civil Complex Motion Guidelines; Notice And Acknowledgment Of Receipt Re Initial Summons And Complaint For Brooksamerica Mortgage Corporation; Notice Of Order Re Minute Order Of 3/16/2010; Plaintiff's Case Management Statement; Notice Of Case Management Conference; Notice And Acknowledgment Of Receipt Re First Amended Summons And First Amended Complaint For Brooksamerica Mortgage Corporation; Stipulation Regarding 11/18/2010 Case Management Conference & Defendant Brooksamerica Corporation's Time To Respond To Fac; [Proposed] Order; Notice Of Further Status Conference; Notice Of Case Reassignment; Plaintiff's Peremptory Challenge Under Section 170.6 Of The Ccp; Declaration Of J. Mark Moore
- a. Party served: Wamu Asset Acceptance Corp. formerly sued as Doe 2
 b. Person served: Scott LaScala, Person Authorized to Accept Service.
- Address where the party was served: The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801
- I served the party:
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Thu., Dec. 16, 2010 (2) at: 2:30PM
- The "Notice to the Person Served" (on the Summons) was completed as follows:
on behalf of: Wamu Asset Acceptance Corp. formerly sued as Doe 2
Under CCP 416.10 (corporation)
- Person Who Served Papers:
 - Danny Sheehan
 - Class Action Research & Litigation
P O Box 740
Penryn, CA 95663
(916) 663-2562, FAX (916) 663-4955

Fee for Service:

I Declare under penalty of perjury under the laws of the State of DELAWARE that the foregoing is true and correct.

12/16/10
(Date)



(Signature)

STATE OF DELAWARE, COUNTY OF NEW CASTLE

Subscribed and sworn to (or affirmed) before me on this 16 day of December 2010 by Danny Sheehan
proved to me on the basis of satisfactory evidence to be the person who appeared before me.

DENNIS SCHOFIELD
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires Nov. 24, 2011

AFFIDAVIT OF SERVICE
Summons/Complaint


(Notary Signature)

JAN06.117606

11) 206

Attorney or Party without Attorney: J. Mark Moore, Esq., Bar #180473 Spiro Moss LLP 11377 W. Olympic Blvd. 5th Floor Los Angeles, CA 90064 Telephone No: 310-235-2468 FAX No: 310-235-2456		For Court Use Only ELECTRONICALLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CIVIL COMPLEX CENTER Dec 17 2010 ALAN CARLSON, Clerk of the Court by J. CORDERO	
Attorney for: Plaintiff		Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: Orange County Superior Court			
Plaintiff: Timothy R. Peel, et al.		Defendant: Brooksamerica Mortgage Corporation, et al.	
PROOF OF SERVICE Summons/Complaint		Hearing Date:	Time:
		Dept/Div:	Case Number: 30201000348134CUFRCXC

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the Summons On First Amended Complaint; First Amended Complaint; Initial Summons; Initial Class Action Complaint; Civil Case Cover Sheet; Adr Information Package; Civil Complex Guidelines; Civil Complex Motion Guidelines; Notice And Acknowledgment Of Receipt Re Initial Summons And Complaint For Brooksamerica Mortgage Corporation; Notice Of Order Re Minute Order Of 3/16/2010; Plaintiff's Case Management Statement; Notice Of Case Management Conference; Notice And Acknowledgment Of Receipt Re First Amended Summons And First Amended Complaint For Brooksamerica Mortgage Corporation; Stipulation Regarding 11/18/2010 Case Management Conference & Defendant Brooksamerica Corporation's Time To Respond To Fac; [Proposed] Order; Notice Of Further Status Conference; Notice Of Case Reassignment; Plaintiff's Peremptory Challenge Under Section 170.6 Of The Ccp; Declaration Of J. Mark Moore
- Party served: Residential Funding Company, LLC formerly sued as Doe 3
 - Person served: Becky De George, Person Authorized to Accept Service.
- Address where the party was served: CSC Lawyers
2730 Gateway Oaks Dr. # 100
Sacramento, CA 95833
- I served the party:
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Dec. 15, 2010 (2) at: 3:26PM
- The "Notice to the Person Served" (on the Summons) was completed as follows:
on behalf of: Residential Funding Company, LLC formerly sued as Doe 3
Other: Limited Liability Company
- Person Who Served Papers:
 - Garry Dick
 - Class Action Research & Litigation
P O Box 740
Penryn, CA 95663
 - (916) 663-2562, FAX (916) 663-4955
 - The Fee for Service was: Recoverable Cost Per CCP 1033.5(a)(4)(B)
 - I am: (3) registered California process server
 - Independent Contractor
 - Registration No.: 08-013
 - County: Placer
 - Expiration Date: Wed, Aug. 01, 2012

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: Wed, Dec. 15, 2010

Garry Dick
 (Garry Dick)

11 207

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Wamu Asset Acceptance Corp.
 On Behalf of: Cheryl Peel; CCMS ID: 71806364, Marilyn Sanford; CCMS ID: 72269024, Timothy Peel; CCMS ID: 71806363, Desiree McIlrath; CCMS ID: 72269025, Russ Bebout; CCMS ID: 72269022, Michael Sanford; CCMS ID: 72269023

Transaction Number: 221060
 Court Received Date: 12/17/2010
 Court Received Time: 11:17:48 AM
 Filed Date: 12/17/2010
 Filed Time: 11:17 AM
 Fee Amount Assessed: \$0.00
 Case Number: 30-2010-00348134-CU-FR-CXC
 Case Title: Peel vs. BrooksAmerica Mortgage Corporation
 Location: Civil Complex Center
 Case Type: Fraud
 Case Category: Civil - Unlimited
 Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Proof of Service of 30-day Summons & Complaint - Personal	Accepted
Proof of Service of 30-day Summons & Complaint - Personal	Accepted
Proof of Service of 30-day Summons & Complaint - Personal	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

12/20/2010

NOTICE OF CONFIRMATION OF FILING

h 208

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: 8009388815

12/20/2010

NOTICE OF CONFIRMATION OF FILING

11 209

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 12/23/2010 TIME: 01:32:00 PM DEPT: C31
JUDICIAL OFFICER PRESIDING: Frederick P. Horn
CLERK: Margarita Marquez
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT:

CASE NO: ~~30-2010-00348134-CU-FR-CXC~~ CASE INIT.DATE: 02/05/2010
CASE TITLE: ~~Peel vs. Brooks~~ America Mortgage Corporation
CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 71135040
EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

A Peremptory Challenge under C.C.P. 170.6 as to the Honorable Kim G. Dunning having been filed on 12/14/10, by Plaintiff, and this matter having been transferred to C31 for reassignment, the Court now rules as follows:

This case is reassigned to the Honorable Ronald L. Bauer for all purposes, in Department CX103, effective 01/03/11.

Counsel to contact clerk in Department CX103 within 15 days of receipt of this order to reschedule any pending hearings.

The Court determines that for purposes of exercising C.C.P. 170.6 rights, there are two sides to this matter unless the contrary is brought to the attention of the Court, by Ex-Parte motion. Counsel have 15 days from the date of the enclosed certificate of mailing in which to exercise any rights under C.C.P. 170.6.

Clerk to give notice to Plaintiff and Plaintiff to give notice to all other parties.

10 310

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 01/04/2011 TIME: 01:27:00 PM DEPT: CX103

JUDICIAL OFFICER PRESIDING: Ronald L. Bauer
CLERK: Angela M Knox
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT:

CASE NO: 30-2010-00348134-CU-FR-CXC CASE INIT.DATE: 02/05/2010
CASE TITLE: **Peel vs. BrooksAmerica Mortgage Corporation**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 71140204

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

This matter having been reassigned to Department CX103 on 12/23/10 the court now makes the following orders.

The Status Conference set for 4/21/11 at 1:30 p.m. in Department CX104 is vacated.

The Status Conference is scheduled for 04/18/2011 at 09:00 AM in Department CX103.

Plaintiff shall, at least 5 days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the Case Management Statement form used for non-complex cases (Judicial Council Form CM-110).

The Court determines that for purposes of exercising C.C.P. 170.6 rights, there are two sides to this matter unless the contrary is brought to the attention of the Court, by Ex-Parte motion. Counsel have 15 days from the date of the enclosed certificate of mailing in which to exercise any rights under C.C.P. 170.6.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

Spiro Moss LLP
11377 W. Olympic Blvd, 5th Floor
Los Angeles, CA 90064-1683

DATE: 01/04/2011
DEPT: CX103

MINUTE ORDER

Page 1
Calendar No.

M 211

CASE TITLE: Peel vs. BrooksAmerica Mortgage
Corporation

CASE NO: 30-2010-00348134-CU-FR-CXC

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 1/4/11, at Santa Ana, California. ALAN CARLSON/EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: Angela Knox, Deputy

DATE: 01/04/2011
DEPT: CX103

MINUTE ORDER

Page 2
Calendar No.

17 212

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

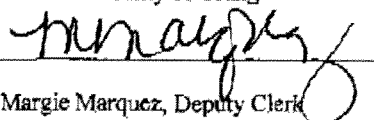
PEEL Plaintiff(s) Vs. BROOKSAMERICA Defendant(s)	CASE NUMBER: 30-2010-00348134
	CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 12/23/10

I, ALAN CARLSON, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 12/23/10, I served the Minute Order, dated 12/23/10, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

SPIRO MOSS LLP
11377 W OLYMPIC BLVD 5TH FLOOR
LOS ANGELES CA 90064-1683

ALAN CARLSON,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 12/23/10

By: 
Margie Marquez, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

17 213

SPIRO MOSS LLP

1 **SPIRO MOSS LLP**
2 J. Mark Moore (SBN 180473)
3 mark@spiomoss.com
4 Ira Spiro (SBN 67641)
5 ira@spiomoss.com
6 11377 W. Olympic Blvd., 5th Floor
7 Los Angeles, California 90064-1683
8 Telephone: (310) 235-2468
9 Facsimile: (310) 235-2456

6 **BLOOD HURST & O'REARDON LLP**
7 Timothy G. Blood (SBN 149343)
8 Tblood@bholaw.com
9 Thomas Joseph O'Reardon II (SBN 247952)
10 TOReardon@bholaw.com
11 600 B Street, Suite 1550
12 San Diego, CA 92101
13 Telephone: (619) 338-1100
14 Facsimile: (619) 338-1101

11 **BROWNE WOODS GEORGE LLP**
12 Michael A. Bowse (SBN 189659)
13 Mbowse@bwgfirm.com
14 2121 Avenue of the Stars, Suite 2400
15 Los Angeles, CA 90067
16 Telephone: (310) 274-7100
17 Facsimile: (310) 275-5697

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
01/06/2011 at 01:42:00 PM
Clerk of the Superior Court
By Maarit H Nordman, Deputy Clerk

ARBOGAST & BERNES LLP
David M. Arbogast (SBN 167571)
darbogast@law111.com
Jeffrey K. Bernes (SBN 131351)
jbernes@law111.com
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367-2263
Telephone: (818) 961-2000
Facsimile: (818) 936-0232

BROWNE WOODS GEORGE LLP
Lee A. Weiss (Pro Hac Vice App. Pending)
lweiss@bwgfirm.com
1 Liberty Plaza, Suite 2329
New York, NY 10006
Telephone: (212) 354-4683
Facsimile: (212) 354-4904

15 Attorneys for Plaintiffs and all others similarly situated

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF ORANGE**

18 **TIMOTHY R. PEEL AND CHERYL G. PEEL,**
19 **RUSS BEBOUT, MICHAEL SANFORD AND**
20 **MARILYN SANFORD and DESIREE**
21 **MCILRATH on behalf of themselves and**
22 **others similarly situated,**

21 **Plaintiffs,**

22 **vs.**

23 **BROOKSAMERICA MORTGAGE**
24 **CORPORATION, a California Corporation;**
25 **WASHINGTON MUTUAL MORTGAGE**
26 **SECURITIES CORP., formerly sued as DOE**
27 **1; WAMU ASSET ACCEPTANCE CORP.,**
28 **formerly sued as DOE 2; RESIDENTIAL**
FUNDING COMPANY, LLC, formerly sued
as DOE 3; and DOES 4 through 200 inclusive,

Defendants.

Case No.: 30-2010-00348134-CU-FR-CXC

[Assigned to the Hon. Ronald L. Bauer,
Dept. CX103]

NOTICE OF STATUS CONFERENCE

Date: April 18, 2011
Time: 9:00 a.m.
Dept.: CX103

Action Filed: February 5, 2010
Trial Date: Not Set

17 214

1 PLEASE TAKE NOTICE THAT on January 4, 2011, the Court entered a Minute
2 Order vacating the Status Conference set for April 21, 2011 in Dept. CX104. A Status
3 Conference is scheduled for April 18, 2011 at 9:00 a.m. in Dept. CX103. A true and correct
4 copy of the Minute Order is attached hereto as Exhibit A.

5
6 Dated: January 6, 2011

SPIRO MOSS LLP

7
8 By: 

9 J. Mark Moore

10 Attorneys for Plaintiffs and all others similarly
11 situated
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SPIRO MOSS LLP

EXHIBIT A

B 216

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 01/04/2011 TIME: 01:27:00 PM DEPT: CX103
JUDICIAL OFFICER PRESIDING: Ronald L. Bauer
CLERK: Angela M Knox
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT:

CASE NO: 30-2010-00348134-CU-FR-CXC CASE INIT.DATE: 02/05/2010
CASE TITLE: **Peel vs. BrooksAmerica Mortgage Corporation**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 71140204
EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

This matter having been reassigned to Department CX103 on 12/23/10 the court now makes the following orders.

The Status Conference set for 4/21/11 at 1:30 p.m. in Department CX104 is vacated.

The Status Conference is scheduled for 04/18/2011 at 09:00 AM in Department CX103.

Plaintiff shall, at least 5 days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the Case Management Statement form used for non-complex cases (Judicial Council Form CM-110).

The Court determines that for purposes of exercising C.C.P. 170.6 rights, there are two sides to this matter unless the contrary is brought to the attention of the Court, by Ex-Parte motion. Counsel have 15 days from the date of the enclosed certificate of mailing in which to exercise any rights under C.C.P. 170.6.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

Spiro Moss LLP
11377 W. Olympic Blvd, 5th Floor
Los Angeles, CA 90064-1683

DATE: 01/04/2011
DEPT: CX103

MINUTE ORDER

Page 1
Calendar No.

B 217

CASE TITLE: Peel vs. BrooksAmerica Mortgage
Corporation

CASE NO: 30-2010-00348134-CU-FR-CXC

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 1/4/11, at Santa Ana, California. ALAN CARLSON/EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: Angela Knox, Deputy

DATE: 01/04/2011
DEPT: CX103

MINUTE ORDER

Page 2
Calendar No.

17 218

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, California 90064.

On the date indicated below, I served the document described as: **NOTICE OF STATUS CONFERENCE** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Timothy G. Blood, Esq.
Thomas J. O'Reardon II, Esq.
Blood Hurst & O'Reardon LLP
600 B Street, Suite 1550
San Diego, CA 92101

Attorneys for Plaintiffs

Michael A. Bowse, Esq.
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

Attorneys for Plaintiffs

Mark D. Johnson, Esq.
12232 E. Kings Canyon Rd.
Sanger, CA 93657
Tel.: (559) 875-2800
Fax: (559) 875-2803

Attorney for Defendant BrooksAmerica Mortgage Corporation

Wamu Asset Acceptance Corp.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Agent for Service of Process for Defendant Wamu Asset Acceptance Corp.

David M. Arbogast, Esq.
Jeffrey K. Berns, Esq.
Arbogast & Berns LLP
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367

Attorneys for Plaintiffs

Lee A. Weiss, Esq.
Browne Woods George LLP
1 Liberty Plaza, Suite 2329
New York, NY 10006

Attorneys for Plaintiffs

Residential Funding Company, LLC
c/o CSC – Lawyers Incorporating Service
2730 Gateway Oaks Dr., #100
Sacramento, CA 95833

Agent for Service of Process for Defendant Residential Funding Company, LLC

Washington Mutual Mortgage Securities Corp.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Agent for Service of Process for Defendant Washington Mutual Mortgage Securities Corp.

[✓] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

11) 219

- 1 [] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
2 California, by e-mail delivery on the parties listed herein at their most recent known
3 e-mail address or e-mail of record in this action.
4 [] **BY FAX:** I hereby certify that this document was served from Los Angeles,
5 California, by facsimile delivery on the parties listed herein at their most recent fax
6 number of record in this action.
7 [] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
8 collection and processing correspondence for overnight delivery. Under that practice,
9 overnight packages are enclosed in a sealed envelope with a packing slip attached
10 thereto fully prepaid. The packages are picked up by the carrier at our offices or
11 delivered by our office to a designated collection site.

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

14 Executed this **January 6, 2011** at Los Angeles, California.

15 Diana Lee
16 Type or Print Name

17 

18 Signature

SPIRO MOSS LLP

SPIRO MOSS LLP

J. Mark Moore (SBN 180473)
mark@spiromoss.com
Ira Spiro (SBN 67641)
ira@spiromoss.com
11377 W. Olympic Blvd., 5th Floor
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BLOOD HURST & O'REARDON LLP

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BROWNE WOODS GEORGE LLP

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Mbowse@bwgfirm.com
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Los Angeles, CA 90067
Telephone: (310) 274-7100
Facsimile: (310) 275-5697

Attorneys for Plaintiffs and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

TIMOTHY R. PEEL AND CHERYL G. PEEL,
RUSS BEBOUT, MICHAEL SANFORD AND
MARILYN SANFORD and DESIREE
MCILRATH on behalf of themselves and
others similarly situated,

Plaintiffs,

vs.

BROOKSAMERICA MORTGAGE
CORPORATION, a California Corporation;
WASHINGTON MUTUAL MORTGAGE
SECURITIES CORP., formerly sued as DOE
1; WAMU ASSET ACCEPTANCE CORP.,
formerly sued as DOE 2; RESIDENTIAL
FUNDING COMPANY, LLC, formerly sued
as DOE 3; and DOES 4 through 200 inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

01/06/2011 at 01:42:00 PM

Clerk of the Superior Court
By Maart H Nordman, Deputy Clerk

ARBOGAST & BERNES LLP

David M. Arbogast (SBN 167571)
darbogast@law111.com
Jeffrey K. Bernes (SBN 131351)
jbernes@law111.com
6303 Owensmouth Ave., 10th Floor
Woodland Hills, CA 91367-2263
Telephone: (818) 961-2000
Facsimile: (818) 936-0232

BROWNE WOODS GEORGE LLP

Lee A. Weiss (Pro Hac Vice App. Pending)
lweiss@bwgfirm.com
1 Liberty Plaza, Suite 2329
New York, NY 10006
Telephone: (212) 354-4683
Facsimile: (212) 354-4904

Case No.: 30-2010-00348134-CU-FR-CXC

[Assigned to the Hon. Ronald L. Bauer,
Dept. CX103]

NOTICE OF CASE REASSIGNMENT

Action Filed: February 5, 2010
Trial Date: Not Set

17 221

PLEASE TAKE NOTICE THAT pursuant to Plaintiff's Peremptory Challenge under C.C.P. 170.6 as to the Honorable Kim G. Dunning, the Court issued a Minute Order on December 23, 2010 reassigning the case to the Honorable Ronald L. Bauer in Department CX103. A true and correct copy of the Minute Order is attached hereto as Exhibit A.

Dated: January 6, 2011

SPIRO MOSS LLP

By: 

J. Mark Moore

Attorneys for Plaintiffs and all others similarly situated

SPIRO MOSS LLP

EXHIBIT A

B 223

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 12/23/2010

TIME: 01:32:00 PM

DEPT: C31

JUDICIAL OFFICER PRESIDING: Frederick P. Horn

CLERK: Margarita Marquez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2010-00348134-CU-FR-CXC CASE INIT.DATE: 02/05/2010

CASE TITLE: Peel vs. BrooksAmerica Mortgage Corporation

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 71135040

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

A Peremptory Challenge under C.C.P. 170.6 as to the Honorable Kim G. Dunning having been filed on 12/14/10, by Plaintiff, and this matter having been transferred to C31 for reassignment, the Court now rules as follows:

This case is reassigned to the Honorable Ronald L. Bauer for all purposes, in Department CX103, effective 01/03/11.

Counsel to contact clerk in Department CX103 within 15 days of receipt of this order to reschedule any pending hearings.

The Court determines that for purposes of exercising C.C.P. 170.6 rights, there are two sides to this matter unless the contrary is brought to the attention of the Court, by Ex-Parte motion. Counsel have 15 days from the date of the enclosed certificate of mailing in which to exercise any rights under C.C.P. 170.6.

Clerk to give notice to Plaintiff and Plaintiff to give notice to all other parties.

DATE: 12/23/2010

MINUTE ORDER

Page 1

DEPT: C31

Calendar No.

M 224

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

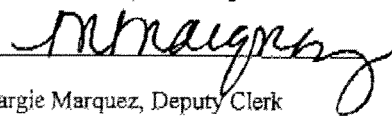
<p>PEEL</p> <p>Plaintiff(s)</p> <p>Vs.</p> <p>BROOKSAMERICA</p> <p>Defendant(s)</p>	<p>CASE NUMBER: 30-2010-00348134</p>
	<p>CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 12/23/10</p>

I, ALAN CARLSON, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 12/23/10, I served the Minute Order, dated 12/23/10, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

SPIRO MOSS LLP
11377 W OLYMPIC BLVD 5TH FLOOR
LOS ANGELES CA 90064-1683

ALAN CARLSON,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 12/23/10

By: 
Margie Marquez, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

B 225

SPIRO MOSS LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 11377 W. Olympic Blvd., 5th Floor, Los Angeles, California 90064.

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7 thereto fully prepaid. The packages are picked up by the carrier at our offices or
delivered by our office to a designated collection site.

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

10 Executed this **January 6, 2011** at Los Angeles, California.

11 Diana Lee
12 Type or Print Name



Signature

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SPIRO MOSS LLP

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Timothy Peel
On Behalf of: Cheryl Peel; CCMS ID: 71806364, Marilyn Sanford; CCMS ID: 72269024, Desiree McIlrath; CCMS ID: 72269025, Timothy Peel; CCMS ID: 71806363, Russ Bebout; CCMS ID: 72269022, Michael Sanford; CCMS ID: 72269023
Transaction Number: 222941
Court Received Date: 01/06/2011
Court Received Time: 01:42:30 PM
Filed Date: 01/06/2011
Filed Time: 01:42 PM
Fee Amount Assessed: \$0.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: Civil - Unlimited
Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Notice of Reassignment (to CX103)	Accepted

Notice of Hearing	Accepted
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Comments

Submitter's Comments:

Clerk's Comments:

M 228

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: 8009388815

B 229

1 REGINA J. McCLENDON (State Bar No.: 184669)
PIRET LOONE (State Bar No. 271347)
2 SEVERSON & WERSON
A Professional Corporation
3 One Embarcadero Center, Suite 2600
San Francisco, CA 94111
4 Telephone: (415) 398-3344
Facsimile: (415) 956-0439

5 Attorneys for Defendant
6 RESIDENTIAL FUNDING COMPANY, LLC

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange

01/07/2011 at 03:18:30 PM
Clerk of the Superior Court
By Margaret M Demaria, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE – CIVIL COMPLEX CENTER

10 TIMOTHY R. PEEL AND CHERYL G.
11 PEEL, RUSS BEBOUT, MICHAEL
SANFORD AND MARILYN SANFORD and
12 DESIREE MCILRATH on behalf of
themselves and others similarly situated,

13 Plaintiffs,

14 vs.

15 BROOKSAMERICA MORTGAGE
16 CORPORATION, a California Corporation;
WASHINGTON MUTUAL MORTGAGE
17 SECURITIES CORP., formerly sued as DOE
1; WAMU ASSET ACCEPTANCE CORP.,
18 formerly sued as DOE 2; RESIDENTIAL
FUNDING COMPANY, LLC, formerly sued
19 as DOE 3; and DOES 4 through 200, inclusive,

20 Defendants.

Case No.: 30-2010-00348134

Assigned for all purposes to:
Hon. Ronald Bauer, Dept. CX-103

**STIPULATION AND ORDER
EXTENDING TIME TO RESPOND TO
COMPLAINT**

Complaint Filed: February 5, 2010

STIPULATION TO EXTEND TIME

17 230

1 Plaintiffs TIMOTHY R. PEEL AND CHERYL G. PEEL, RUSS BEBOUT, MICHAEL
2 SANFORD AND MARILYN SANFORD and DESIREE MCILRATH ("Plaintiffs"), and
3 defendant Residential Funding Company, LLC ("Defendant") hereby stipulate that Defendant
4 may have an extension of time of 30 days, up to and including February 14, 2011, to answer or
5 otherwise respond to Plaintiffs' complaint.

6
7 DATED: January 7, 2011

SPIRO MOSS LLP

8
9 By: 

J. Mark Moore

10 Attorneys for Plaintiffs

11
12 DATED: January 7, 2011

SEVERSON & WERSON
A Professional Corporation

13
14 By: 

Piret Loone

15
16 Attorneys for Defendant
17 Residential Funding Company, LLC

18
19 **PROPOSED ORDER**

20 Based upon the stipulation of the parties, the Court orders that Defendant Residential
21 Funding Company, LLC may have an extension of time of 30 days, up to and including February
22 14, 2011, to answer or otherwise respond to Plaintiffs' complaint

23
24 IT IS SO ORDERED.

25
26 Dated: _____

Hon. Robert Bauer

17 231

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I
3 am employed in the City of San Francisco, California; my business address is Severson &
Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

4 On the date below I served a copy of the following document(s):

5 **STIPULATION AND ORDER EXTENDING TIME TO RESPOND TO COMPLAINT**

6 on all interested parties in said case addressed as follows:

7 J. Mark Moore *Tel: 310-235-2468*
8 SPIRO MOSS LLP *Fax: 310-235-2456*
11377 W. Olympic Blvd., 5th Floor
Los Angeles, CA 90064-1683 *Attorneys for Plaintiffs*

9 Timothy G. Blood *Tel: 619-338-1100*
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13 Arbogast & Berns LLP *Fax: 818-936-0232*
6303 Owensmouth Ave., 10th Fl.
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Los Angeles, CA 90067

19 Mark D. Johnson *Tel: 559-875-2800*
20 12232 E. Kings Canyon Rd. *Fax: 559-875-2803*
Sanger, CA 93657-9401

21 *Attorneys for Defendant BrooksAmerica*

22 ☒ (BY MAIL) By placing the envelope for collection and mailing following our ordinary
23 business practices. I am readily familiar with the firm's practice of collecting and processing
correspondence for mailing. On the same day that correspondence is placed for collection and
24 mailing, it is deposited in the ordinary course of business with the United States Postal Service in
San Francisco, California in sealed envelopes with postage fully prepaid.

25 ☐ (BY HAND) By placing the documents in an envelope or package addressed to the persons
26 listed above and providing them to a professional messenger service for delivery.

27 ☐ (BY FEDERAL EXPRESS) By depositing copies of the above documents in a box or other
facility regularly maintained by Federal Express with delivery fees paid or provided for.

28 ☐ (BY FAX) By use of facsimile machine telephone number (415) 956-0439, I faxed a true
copy to the addressee(s) listed above at the facsimile number(s) noted after the party's address.

STIPULATION TO EXTEND TIME

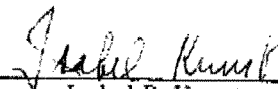
10 232

1 The transmission was reported as complete and without error. The attached transmission report,
2 which sets forth the date and time for the transmission, was properly issued by the transmitting
facsimile machine.

3 ☐ **(BY ELECTRONIC TRANSMISSION)** By sending a file of the above document(s) via
4 electronic transmission (e-mail) at _____ a.m./p.m. using e-mail address (____@severson.com)
5 to the e-mail address designated for each party identified above. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

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

8 This declaration is executed in San Francisco, California, on January 7, 2011.

9
10 
11 Isabel P. Kunst
12
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 10 2011

ALAN CARLSON, Clerk of the Court

J. Frank
BY J. FRANK

DENIED

1 REGINA J. McCLENDON (State Bar No.: 184669)
PIRET LOONE (State Bar No. 271347)
2 SEVERSON & WERSON
A Professional Corporation
3 One Embarcadero Center, Suite 2600
San Francisco, CA 94111
4 Telephone: (415) 398-3344
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5 Attorneys for Defendant
6 RESIDENTIAL FUNDING COMPANY, LLC

ELECTRONICALLY RECEIVED
Superior Court of California,
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01/07/2011 at 03:18:30 PM
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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Case No.: 30-2010-00348134

Assigned for all purposes to:
Hon. Ronald Bauer, Dept. CX-103

**STIPULATION AND ORDER
EXTENDING TIME TO RESPOND TO
COMPLAINT**

Complaint Filed: February 5, 2010

21
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STIPULATION TO EXTEND TIME

17834

1 Plaintiffs TIMOTHY R. PEEL AND CHERYL G. PEEL, RUSS BEBOUT, MICHAEL
2 SANFORD AND MARILYN SANFORD and DESIREE MCILRATH ("Plaintiffs"), and
3 defendant Residential Funding Company, LLC ("Defendant") hereby stipulate that Defendant
4 may have an extension of time of 30 days, up to and including February 14, 2011, to answer or
5 otherwise respond to Plaintiffs' complaint.

6
7 DATED: January 7, 2011

SPIRO MOSS LLP

8 By: [Signature]
9 J. Mark Moore

10 Attorneys for Plaintiffs

11
12 DATED: January 7, 2011

SEVERSON & WERSON
A Professional Corporation

13 By: [Signature]
14 Piret Loone

15 Attorneys for Defendant
16 Residential Funding Company, LLC

17
18
19 **PROPOSED ORDER**

20 Based upon the stipulation of the parties, the Court orders that Defendant Residential
21 Funding Company, LLC may have an extension of time of 30 days, up to and including February
22 14, 2011, to answer or otherwise respond to Plaintiffs' complaint

23 IT IS SO ORDERED.

24
25 Dated: **JAN 10 2011**

26

27 Hon. Robert Bauer

28 THE PARTY ELECTRONICALLY FILING THIS DOCUMENT
IS TO SERVE CONFORMED COPIES ON ALL OTHER PARTIES

17 235

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I
3 am employed in the City of San Francisco, California; my business address is Severson &
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3 ☐ (BY ELECTRONIC TRANSMISSION) By sending a file of the above document(s) via
4 electronic transmission (e-mail) at _____ a.m./p.m. using e-mail address (____@severson.com)
5 to the e-mail address designated for each party identified above. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

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

8 This declaration is executed in San Francisco, California, on January 7, 2011.

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11 Isabel P. Kunst
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 22028 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Peel vs. BrooksAmerica Mortgage Corporation	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2010-00348134-CU-FR-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Residential Funding Company, LLC
On Behalf of: Residential Funding Company LLC; CCMS ID: 72412457
Transaction Number: 223212
Court Received Date: 01/07/2011
Court Received Time: 03:18:30 PM
Filed Date: 01/07/2011
Filed Time: 03:18 PM
Fee Amount Assessed: \$965.00
Case Number: 30-2010-00348134-CU-FR-CXC
Case Title: Peel vs. BrooksAmerica Mortgage Corporation
Location: Civil Complex Center
Case Type: Fraud
Case Category: CIVIL - Unlimited
Jurisdictional Amount: > 25000

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Stipulation and Order (Proposed)	Accepted

Court Generated Documents
Payment Receipt

Comments
Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support

17 238

Phone: 8009388815

01/10/2011

NOTICE OF CONFIRMATION OF FILING

1) 239



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

751 W. Santa Ana Blvd
Santa Ana, CA 92701

PAYMENT RECEIPT

E-Filing Transaction #: 223212

Receipt #: 10833588

Clark ID: mdemaria

Transaction No: 10809676

Transaction Date: 01/10/2011

Transaction Time: 11:50:50 AM

Case Number	Fee Type	Qty	Fee Amount	Balance Due	Amount Paid	Remaining Balance
30-2010-00348134-CU-FR-CXC	167 - Answer or other 1st paper	1	\$395.00	\$395.00	\$395.00	\$0.00
30-2010-00348134-CU-FR-CXC	35 - Complex Case Fee - Response	1	\$550.00	\$550.00	\$550.00	\$0.00
30-2010-00348134-CU-FR-CXC	37 - Stipulation and order	1	\$20.00	\$20.00	\$20.00	\$0.00
Sales Tax:					\$0.00	
Total:					\$965.00	Total Rem. Bal: \$0.00
E-Filing:					\$965.00	
Total Amount Tendered:					\$965.00	
Change Due:					\$0.00	
Balance:					\$0.00	

\$25 will be charged for each returned check. www.occourts.org

ORIGINAL

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) TIMOTHY R. PEEL and CHERYL G. PEEL, et al.		DEFENDANTS BROOKS AMERICA MORTGAGE CORPORATION, et al.																			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) J. Mark Moore, Esq. / Ira Spiro, Esq. Spiro Moss LLP 11377 W. Olympic Blvd., 5th Fl., Los Angeles, CA 90064-1683 Tel 310-235-2468; Fax 310-235-2456 Email: mark@spiomoss.com; ira@spiomoss.com		Attorneys (If Known) SHEPPARD, MULLIN, RICHTER & HAMPTON LLP Shannon Z. Petersen, Esq. 650 Town Center Drive, 4th Floor, Costa Mesa, CA 92626-1993 Telephone: (619) 338-6500; Facsimile: (619)-234-3815 Attorneys for Defendants Washington Mutual Mortgage Securities Corp. and WaMu Asset Acceptance Corp																			
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%"><tr><td>Citizen of This State</td><td>PTF <input checked="" type="checkbox"/> 1</td><td>DEF <input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td>PTF <input type="checkbox"/> 4</td><td>DEF <input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input checked="" type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input checked="" type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></table>		Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.) <input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																					
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$ over 5,000,000.00																					
VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Class Action Fairness Act, 28 U.S.C. Sections 1332(d), 1441(b)																					
VII. NATURE OF SUIT (Place an X in one box only.)																					
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) 405(g) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609																

FOR OFFICE USE ONLY: Case Number: _____

SACV11-00079

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): See Attachment A

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
BrooksAmerica Mortgage Corporation - Orange County	Washington Mutual Mortgage Securities Corp. - Delaware and Washington; WaMu Asset Acceptance Corp. - Delaware and Washington; Residential Funding Company LLC - Delaware and Minnesota

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Shannon Z. Petersen FOR Date January 14, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**Attachment A to Civil Cover Sheet
Notice of Pendency**

Attached are a list of pending cases with the information required under LR 83-1.4:

**1. *Amparan, et al. v. Plaza Home Mortg., Inc., et al.,*
N.D. Cal. Case No. 07-cv-04498-JF (RSx)**

a. Parties and Attorneys

Plaintiffs Eneida Amparan, Rafael Cisneros, and Guadalupe Cisneros

David M. Arbogast
Jeffrey K Berns
Arbogast & Berns LLP
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367-2263
818-961-2000

Jonathan Shub
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215-564-2300

Christopher A. Seeger
Seeger Weiss LLP
One William Street
New York, NY 10004
212-584-0700

Ira Spiro
James Mark Moore
Spiro Moss Barness LLP
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Los Angeles, CA 90064-1683
310-235-2468

Jennie Lee Anderson
Andrus Anderson LLP
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San Francisco, CA 94104
415-986-1400

Lee A. Weiss
Rebecca Tingey
Browne Woods George LLP
1 Liberty Plaza, Suite 2329
New York, NY 10006
212-354-4901

Michael A Bowse
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067
310-274-7100

Defendant Plaza Home Mortgage, Inc.

John Dominic Alessio
Procopio Cory Hargreaves & Savitch, LLP
525 B Street, Suite 2200
San Diego, CA 92101-4469
619-238-1900

Defendants Washington Mutual Mortgage Securities Corporation and WaMu
Asset Acceptance Corporation

Robert S. Beall
Shannon Z. Petersen
Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993
714-513-5100

LeAnn Pedersen Pope
Stephen Ryan Meinertzhagen
Burke Warren MacKay & Serritella, P.C.
330 North Wabash, 22nd Floor
Chicago, IL 60611
312-840-7000

Defendants Countrywide Home Loans, Inc. and Countrywide Bank, FSB

Brooks Russell Brown
Goodwin Procter LLP
601 S. Figueroa Street, 41st Floor
Los Angeles, CA 90017
213-426-2500

Robert Bader
Goodwin Procter LLP
Three Embarcadero Center, 24th Floor
San Francisco, CA 94111
415-733-6055

Cross Defendant Mariposa Mortgage, Inc. (unrepresented)

2365 Quimby Road
San Jose, CA 95122

b. Statement Regarding Relatedness

Amparan is similar to this action because, in *Amparan*, the plaintiffs are Option ARM loan borrowers who assert fraudulent omissions and California UCL claims on behalf of a putative class of Option ARM loan borrowers in California whose loans were originated by Plaza Home Mortgage and assigned to or held by WMMSC, WAAC, or the Countrywide entities from August 30, 2003 to the present. The claims and the putative class in *Amparan* overlap with the claims and the putative in this action, where Plaintiffs assert fraudulent omissions, California UCL, and breach of contract claims against Defendants -- including WMMSC and WAAC -- on behalf of a putative class of Option ARM borrowers in California whose loans were assigned or held by WMMSC, WAAC, and RFC from January 16, 2004 to the present.

2. **Avila, et al. v. Stearns Lending, Inc., et al.,
C.D. Cal. Case No. CV 08-0419 AG (CTx)**

a. Parties and Attorneys

Plaintiffs Sarah Avila, Tim Avila, and Darlene Bagsby

David M. Arbogast
Jeffrey K Berns
Arbogast & Berns LLP
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367-2263
818-961-2000

Eric Marc George
Marcy Railsback
Michael A Bowse
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067
310-274-7100

Defendant Stearns Lending, Inc.

Christopher H Doyle
Michael John Hassen
Jeffer Mangels Butler & Mitchell LLP
Two Embarcadero Center 5th Floor
San Francisco, CA 94111-3813
415-398-8080

Defendant OneWest Bank, FSB

J. Kevin Snyder
Dykema Gossett
333 S Grand Avenue, Suite 2100
Los Angeles, CA 90071
213-457-1800

Defendant JPMorgan Chase Bank, N.A.

S. Christopher Yoo
AlvaradoSmith APC
1 MacArthur Place, Suite 200
Santa Ana, CA 92707
714-852-6800

LeAnn Pedersen Pope
Victoria R. Collado
Andrew D. LeMar
Burke Warren MacKay & Serritella, P.C.
330 North Wabash, 22nd Floor
Chicago, IL 60611
312-840-7000

Defendants Countrywide Home Loans, Inc. and Countrywide Bank, FSB
(unrepresented)

Defendant Residential Funding Company, LLC

Regina Jill McClendon
Severson & Werson
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
415-398-3344

b. Statement Regarding Relatedness

Avila is similar to this action because, in *Avila*, the plaintiffs are Option ARM loan borrowers who assert, among other claims, fraudulent omissions, California UCL, and breach of contract claims on behalf of a putative class of Option ARM loan borrowers in the United States whose loans were originated by Stearns Lending, Inc. from January 23, 2004 to March 1, 2009, and a subclass including Stearns Lending's Option ARM borrowers whose loans were assigned to or serviced by RFC during the class period. The claims and the putative class in *Avila* overlap with the claims and the putative in this action, where Plaintiffs assert fraudulent omissions, California UCL, and breach of contract claims against Defendants -- including RFC -- on behalf of a putative class of Option ARM borrowers in California whose loans were assigned or held by WMMSC, WAAC, or RFC from January 16, 2004 to the present.

3. ***Baker, et al. v. Aegis Wholesale Corp., et al.,***
N.D. Cal. Case No. CV 09-05280-PJH

a. Parties and Attorneys

Plaintiffs Virgil Baker, Charles Lowery, Elizabete Lowery, Ellanore Largent, and David Largent

David M. Arbogast
Jeffrey K Berns
Arbogast & Berns LLP
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367-2263
818-961-2000

Jonathan Shub
Seeger Weiss LLP
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215-564-2300

James Mark Moore
Spiro Moss Barness LLP
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Los Angeles, CA 90064-1683
310-235-2468

Lee A. Weiss
Rebecca Tingey
Browne Woods George LLP
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212-354-4901

Eric Marc George
Marcy Railsback
Michael A Bowse
Browne Woods George LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067
310-274-7100

Defendant Aegis Wholesale Corporation (unrepresented)

Defendant Residential Funding Company, LLC

Regina Jill McClendon
Severson & Werson
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
415-398-3344

Defendants Countrywide Home Loans, Inc. and Countrywide Bank, FSB

Brooks Russell Brown
Goodwin Procter LLP
601 S. Figueroa Street, 41st Floor
Los Angeles, CA 90017
213-426-2500

Robert Bader
Goodwin Procter LLP
Three Embarcadero Center, 24th Floor
San Francisco, CA 94111
415-733-6055

b. Statement Regarding Relatedness

Baker is similar to this action because, in *Baker*, the plaintiffs are Option ARM loan borrowers who assert fraudulent omissions and California UCL claims on behalf of a putative class of Option ARM loan borrowers in California whose loans were originated by Aegis Wholesale Corporation and assigned to or held by RFC or Countrywide from August 19, 2004 to the present. The claims and the putative class in *Baker* overlap with the claims and the putative in this action, where Plaintiffs assert fraudulent omissions, California UCL, and breach of contract claims against Defendants -- including RFC -- on behalf of a putative class of Option ARM borrowers in California whose loans were assigned or held by WMMSC, WAAC, or RFC from January 16, 2004 to the present.