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8 Attorney for Plaintiffs and the Class

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 EDDIE YAU, GLORIA YAU,  
12 ROBERT H. RHOADES, NICOLE  
13 RHOADES, STEVE BURKE, CHEN  
14 PI AS AN INDIVIDUAL AND AS  
15 TRUSTEE FOR THE PI TRUST  
16 DATED MAY 17, 2004, SALIM  
17 BENSRRHIR, KIMBERLY  
18 CHRISTENSEN, ALICE MBAABU,  
19 CARMEN ARBALLO, ANGELA  
20 BROWN, ANTHONY JOHNSON,  
21 OTIS BANKS, RICHARD  
22 APOSTOLOS, REGAN OWEN,  
23 JENNIFER OWEN, JOANNE  
24 ANDERSON, JEREMY JOHN DALE,  
25 DOUGLAS L. EDMAN, and  
26 DOUGLAS L. EDMAN and ERIC  
27 EDMAN as trustees of the HIGH  
28 DESERT ENTERPRISES TRUST,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

DEUTSCHE BANK NATIONAL  
TRUST COMPANY, DEUTSCHE

CASE NO. SACV11-0006-JVS (RNBx)

**Assigned for all purposes to the honorable:  
James V. Selna**

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. Breach/Unjust Enrichment
2. HAMP Breach/Unjust Enrichment
3. Breach of Contract – Third Party Ben.
4. Declaratory Relief/Default Cured
5. Declaratory Relief/Unsecured Creditor
6. Declaratory Relief/Fees and Costs
7. Fraud
8. Injunctive Relief
9. Accounting
10. Unlawful/Unfair Acts §17200
11. Fraud
12. Declaratory Relief/Injunction

**[Demand for Jury Trial]**

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***Request for IMMEDIATE RELIEF:***

***FIRST AMENDED CLASS ACTION COMPLAINT***

***Yau v. Deutsche Bank National Trust Company Americas***

1 BANK TRUST COMPANY  
2 AMERICAS and AURORA LOAN  
3 SERVICES, LLC, Inclusive,

4 Defendants.

***TEMPORARY RESTRAINING ORDER and  
INJUNCTION filed Concurrently herewith***

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1 Plaintiffs, by and through their attorney, bring this action on behalf of themselves  
2 and all others similarly situated against Deutsche Bank National Trust Company  
3 (“DBNT” or “Defendant”). Deutsche Bank Trust Company Americas (“DBTCA” or  
4 “Defendant”) and Aurora Loan Services, LLC. (“Aurora” or “Defendant”). Plaintiffs  
5 allege the following on information and belief, except as to those allegations which  
6  
7 pertain to the named Plaintiffs:  
8

9  
10 **1. Introduction**

11 1. Plaintiffs bring this action to challenge the defendants’ manipulation and use of  
12 the federal and state programs surrounding the mortgage crisis, such as HAMP and other  
13 foreclosure prevention services.  
14

15 2. The defendants defaulted the plaintiffs and those similarly situated then offered  
16 them federal and state home retention programs such as Home Affordability  
17 Modification Program agreements (HAMP).  
18

19 3. After the Plaintiffs made their post default payments as requested, the  
20 defendants never-the-less denied the permanent modification, did not cure the default or  
21 reinstate the plaintiffs’ loans on the grounds they couldn’t get the loan to work.  
22

23 4. The program guidelines state that if the Net Present Value (“NPV”) of the loan  
24 modification is greater than the NPV at foreclosure, then the lenders *must* modify the  
25 loan.  
26  
27  
28



1 commonly known as 1307 Summer Court, Vista, California 92084 (“subject property”).  
2 Douglas L. Edman was the borrower on the loan.  
3

4 11. Plaintiffs Robert Rhoades and Nicole Rhoades (the “Rhoades,” “plaintiff,” or  
5 “borrowers”) are a married couple residing in Chino, California. Plaintiff is now, and at  
6 all times mentioned herein relevant to this complaint was the owner of real property  
7 commonly known as 7746 Holland Park, Chino, California 92401 (“subject property”).  
8 Robert Rhoades was the borrower on the loan.  
9  
10

11 12. Plaintiff Steve Burke is an adult residing in Paradise, California. Plaintiff is  
12 now, and at all times mentioned herein relevant to this complaint was the owner of real  
13 property commonly known as 5871 Pine Circle, Paradise, California 95969 (“subject  
14 property”). Steve Burke was the borrower on the loan.  
15  
16

17 13. Plaintiff Chen Pi, acting on her own behalf and as trustee for the Pi Trust dated  
18 May 17, 2004 resides in La Puente California. Plaintiff is now, and at all times  
19 mentioned herein relevant to this complaint was the owner of real property commonly  
20 known as 17116 Samgerry Dr., La Puente, California (“subject property”). Chen Pi was  
21 the borrower on the loan.  
22  
23

24 14. Plaintiff Otis Banks is an individual residing in Inglewood, California. Plaintiff  
25 is now, and at all times mentioned herein relevant to this complaint was the owner of real  
26 property commonly known as 5408-5408 ½ 8<sup>TH</sup> Avenue, Los Angeles, California 90045  
27 (“subject property”). Otis Banks was the borrower on the loan.  
28

1           15. Plaintiff Salim Benshir and Kimberly Christensen are a married couple  
2 residing in Los Angeles, California. Plaintiff is now, and at all times mentioned herein  
3  
4 relevant to this complaint was the owner of real property commonly known as 842 N  
5 Dillon Street, Los Angeles, California 90026 (“subject property”). Salim Benshir and  
6  
7 Kimberly Christensen were the borrowers on the loan.

8           16. Plaintiff Alice Mbaabu is an individual residing in Fontana, California.  
9  
10 Plaintiff is now, and at all times mentioned herein relevant to this complaint was the  
11  
12 owner of real property commonly known as 13536 Whipple Street, Fontana, California  
13 92336 (“subject property”). Alice Mbaabu was the borrower on the loan.

14           17. Plaintiff Carmen Arballo is an individual residing in Chino, California.  
15  
16 Plaintiff is now, and at all times mentioned herein relevant to this complaint was the  
17  
18 owner of real property commonly known as 6952 Gloria Street, Chino, California 91710  
19 (“subject property”). Carmen Arballo was the borrower on the loan.

20           18. Plaintiff Angela Brown is an individual residing in Stockton, California.  
21  
22 Plaintiff is now, and at all times mentioned herein relevant to this complaint was the  
23  
24 owner of real property commonly known as 4516 Abruzzi Circle, Stockton, California  
25 95206 (“subject property”). Angela Brown was the borrower on the loan.

26           19. Plaintiff Anthony Johnson is an individual is an individual residing in Corona,  
27  
28 California. Plaintiff is now, and at all times mentioned herein relevant to this complaint

1 was the owner of real property commonly known as 382 Minaret Street, Corona, CA  
2 92881 (“subject property”). Anthony R. Johnson was the borrower on the loan.  
3

4 20. Plaintiff Richard Apostolos is an individual residing in Perris, California.  
5 Plaintiff is now, and at all times mentioned herein relevant to this complaint was the  
6 owner of real property commonly known as 21200 Mountain Ave., Perris, California  
7 92570 (“subject property”). Richard Apostolos was the borrower on the loan.  
8

9 21. Regan Owen and Jennifer Owen are a married couple residing in Chula Vista,  
10 California. Plaintiff is now, and at all times mentioned herein relevant to this complaint  
11 was the owner of real property commonly known as 2872 Ranch Gate Rd., Chula Vista,  
12 California (“subject property”). Regan Owen was the borrower on the loan.  
13  
14

15 22. Plaintiff Joanne Anderson is an individual residing in Laguna Niguel,  
16 California. Plaintiff is now, and at all times mentioned herein relevant to this complaint  
17 was the owner of real property commonly known as 24291 Park Pl Dr, Laguna Niguel,  
18 CA 92677 (“subject property”). Joanne Anderson was the borrower on the loan.  
19  
20

21 23. Jeremy John Dale is an individual residing in Paynes Creek, California.  
22 Plaintiff is now, and at all times mentioned herein relevant to this complaint was the  
23 owner of real property commonly known as 30510 HWY 36 East, Paynes Creek,  
24 California 96075 (“subject property”). Jeremy John Dale was the borrower on the loan.  
25  
26

27 24. Douglas L. Edman is an individual residing in Malibu, California. Plaintiff is  
28 now, and at all times mentioned herein relevant to this complaint was the owner of real

1 property commonly known as 612 Thrift Road, Malibu, California 90265 (“subject  
2 property”). Douglas L. Edman was the borrower on the loan.  
3

4 25. Douglas L. Edman and Eric Edman as trustees of the HIGH DESERT  
5 ENTERPRISES TRUST reside in Malibu, California. Plaintiff is now, and at all times  
6 mentioned herein relevant to this complaint was the owner of real property commonly  
7 known as 612 Thrift Road, Malibu, California 90265 (“subject property”). Douglas L.  
8 Edman was the borrower on the loan. Then after the loan was made, the property was  
9 transferred by Douglas L. Edman to Douglas L. Edman, Trustee of the High Desert  
10 Enterprises Trust.  
11  
12

13  
14 26. Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY (“DBNT”  
15 or “Custodian”) has its principal place of business at 1761 Saint Andrews Place, Santa  
16 Ana, CA 92705.  
17

18 27. Defendant DEUTSCHE BANK TRUST COMPANY AMERICAS  
19 (“DBTCA”) has its principal place of business at 1761 Saint Andrews Place, Santa Ana,  
20 CA 92705. When DBNT and DBTCA are mentioned together in this complaint they  
21 may be referred to as “Deutsche Bank.”  
22

23  
24 28. Defendant AURORA LOAN SERVICES, LLC (“Aurora” or “loan servicer”) is  
25 headquartered in Littleton, Colorado and regularly conducts business in the state of  
26 California.  
27  
28



1           29. Plaintiffs are informed and believe and allege thereon that their loans are in  
2 securitized trusts where the defendants are either the Servicer, Custodian, or Trustee of  
3 that trust.  
4

5           30. Plaintiff is informed and believes and alleges thereon that DBNTC and  
6 DBTCA act as board members and are referred to as the Company each with different  
7 duties in the trusts.  
8

9           31. DBNTC and DBTCA are both subsidiaries created by nonparty Deutsche Bank  
10 Company (“DBC”) which has its principal place of business in Germany. Plaintiff is  
11 informed and believes and alleges thereon DBNTC and DBTCA were either acting in  
12 concert, instructing, adopting, ratifying, assisting DBC’s conduct as alleged in this  
13 complaint through an agency or contractual relationship. As such, the actions or failure  
14 to act are the actions or failure to act of each other.  
15  
16  
17

18           32. Nonparty FANNIE MAE/FREDDIE MAC (“Fannie Mae”) entered into an  
19 agreement with defendant Aurora of which the plaintiffs and the Class were intended  
20 beneficiaries.  
21

22           33. Plaintiff is informed and believes and alleges thereon that each defendant is  
23 responsible in some manner for the occurrences alleged in this complaint, and that  
24 plaintiff’s damages were proximately caused by the defendants and at all times  
25 mentioned in this complaint, were the agents, servants, representatives, and/or employees  
26 of their co-defendants, and in doing the things hereinafter alleged were acting in the  
27  
28

1 scope of their authority as agents, servants, representatives, family members and/or  
2 employees, and with the permission and consent of their co-defendants.  
3

4 34. Additionally, plaintiff is informed and believes and alleges thereon that each  
5 defendant assisted, aided and abetted, adopted, ratified, approved, or condoned the  
6 actions of every other defendant and that each corporate defendant, if any, was acting as  
7 the alter ego of the other in the acts alleged herein.  
8

### 9 **3. Statutory and Regulatory Scheme**

10  
11 35. On March 4, 2009 President Obama signed into law the Making Home  
12 Affordable Plan as part of the Emergency Economic Stabilization Act of 2008. It is in  
13 two parts: the Home Affordable Refinance program (“HARP”) and the Home Affordable  
14 Modification program (“HAMP”).  
15

16  
17 36. Under these programs, the U.S. Department of the Treasury directed the large  
18 national bank servicers to take corrective action by providing loan modifications that  
19 produced more sustainable loan payments.  
20

21 37. On March 4, 2009 the U.S. Department of the Treasury explained,

22 38. With the information now available, servicers can begin immediately to modify  
23 eligible mortgages under the Modification program so that at-risk borrowers can better  
24 afford their payments.  
25

26  
27 39. Aurora entered into a Servicer Participation Agreement for the HAMP program  
28 with Fannie Mae; the latter acted as Financial Agent of the United States. (**Exhibit 1**).

1           40. However, Aurora failed and refused to put Mr. Yau immediately into a  
2 modification program until they first defaulted and gave Notice of Sale of Mr. Yau's  
3 home. Plaintiff is informed and believes and alleges thereon that defendant Aurora first  
4 caused Notices of Default and Notice of Foreclosure Sale to be served on the Class prior  
5 to placing the Class into a temporary HAMP also.  
6  
7

8           41. By March 2010, the White House fortified the HAMP program because only  
9 **170,000** borrowers out of the **3 to 4 million borrowers** it was aimed at were placed in a  
10 more affordable home loan.  
11

12           42. Thereafter, the contract between Aurora and Fannie Mae was amended and  
13 restated on or about September 1, 2010. The Amended and restated contract is attached  
14 hereto and fully incorporated herein as **Exhibit 2**.  
15

16           43. The United States Treasury, Office of the Comptroller of Currency (hereinafter  
17 the "OCC") regulates the banking industry such as defendant Deutsche Bank. The OCC  
18 mandated that the largest banks institute HAMP programs.  
19  
20

21           44. The Office of Thrift Supervision (hereinafter the "OTS") regulates loan  
22 services such as defendant Aurora.  
23

24           45. According to the Aurora Loan Services – Issuer Profile dated June 24, 2008 by  
25 Analyst Kathleen Tillwitz, Aurora Loan Services was a wholly owned subsidiary of  
26 Lehman Brothers Bank, FSB, servicing 20,000 to 110,380 (or 21.4% of their loans) in  
27  
28

1 California. As of February 29, 2008 Aurora serviced 514,831 mortgage loans totaling  
2 \$113.2 billion dollars.  
3

4 46. On 11/19/10 the OCC supplied the following written testimony:

5 47. HAMP guidelines now preclude the servicer from initiating a foreclosure  
6 action until the borrower has been determined to be ineligible for a HAMP modification.  
7

8 48. Aurora actions in working with the borrowers on the loans at issue in this  
9 complaint violated and continue to violate these directives.  
10

11 49. Under the contract, the Servicer of the loan must perform a Net Present Value  
12 (NPV) Test to compare the value of the money that it would receive if the loan were  
13 modified with the value it could expect from foreclosure.  
14

15 50. If the servicer and owner of the loan can expect a greater return from modifying  
16 the loan, the loan is considered NPV positive and the servicer and owner *must* then  
17 modify the loan. (**Exhibit 4**)  
18

19 51. In plaintiff's case, plaintiff is informed and believes and alleges thereon that the  
20 defendants as the servicer and owner of the loan could have expected no more than one-  
21 third of what the plaintiff would have paid under the HAMP loan modification which  
22 would have been anywhere from \$934,560.00 to over \$1 million dollars.  
23  
24

25 52. As servicer of the loan, Aurora must modify the loan unless the contractual  
26 agreement it has with the actual holder of the loan prohibits modification. In that case,  
27  
28

1 the servicer is required to use reasonable efforts to obtain waivers or approval of a  
2 modification from the owner and/or investor  
3

4 53. Plaintiff is informed and believes and alleges thereon that Aurora failed to  
5 disclose to Fannie Mae that loans like the Yau's which appear to nicely fit under the  
6 program's protected class, were actually the loans that would never become permanently  
7 modified because these loans were backed by CDS and such. Signing up as a servicer of  
8 the HAMP program, was a carrot to lure distressed homeowners into default.  
9  
10

11 54. The defendants signed up for exemptions with the California Commissioner for  
12 the same reason, motive or to assist in effectuating this plan.  
13

14 55. Plaintiff is informed and believes and alleges thereon defendant failed to make  
15 these material disclosures to Fannie Mae and the California Commissioner, so the  
16 defendants could use the guise of being able to offer these "Programs" to maximize their  
17 own profit by luring homeowners into default, dragging out the process and obtaining  
18 more money from the defaulted homeowner than otherwise would likely occur if the  
19 homeowner did not have hope they may qualify for one of the foreclosure alternatives,  
20 such as HAMP.  
21  
22

23 56. In the Yau's case, who were initially only behind by \$5,000.00, if they had  
24 known and understood the truth to this scheme, they would have had an incentive to find  
25 a short term loan or other capital to cure the late payment prior to default instead of  
26 relying on their lender to place them in a foreclosure alternative program; they most  
27  
28

1 likely would have never entered into the mortgage in the first place; and surely would  
2 have never paid a dime to the defendants after they gave notice of default and  
3 foreclosure.  
4

5           57.The impact of Aurora’s practice of defaulting before processing a foreclosure  
6 alternative request by a homeowner, then dragging out the process while the homeowner  
7 is making monthly payments and denying blocks of HAMP modifications after obtaining  
8 a temporary modification is nothing more than a financial “Death Spiral” for the  
9 homeowner.  
10  
11

12           58.At all times herein mentioned, plaintiff and the Class believed that they were  
13 eligible for HAMP.  
14

15           59.Although the plaintiffs and the Class complied with the terms of the post  
16 default program agreements, Defendants refused to cure the default, offer such a  
17 permanent modification under the program or to take corrective action by providing loan  
18 modifications that produced more sustainable loan payments to plaintiff.  
19  
20

21           60.The market size for credit default swaps by 2008 in the United States was  
22 estimated to be ***\$3.86 Trillion dollars.***  
23  
24  
25  
26  
27  
28

1 **Critics assert that naked CDS should be banned, comparing them to**  
2 **buying fire insurance on your neighbor's house, which creates a huge**  
3 **incentive for arson.**<sup>1</sup> [emphasis added]  
4

5 61. In essence the defendants bet against the borrower from the beginning then  
6 used the Federal Government through the federal HAMP program to take even more  
7 money from the defaulting homeowner in this class knowing that they would never grant  
8 this class of homeowners a permanent loan modification or any other type of relief. The  
9 defendants never fully disclosed or adequately explained this to Fannie Mae/Freddie  
10 Mac. The entire program failed to assist the very class of homeowners it was  
11 intended to protect.  
12  
13  
14

15 62. On or about February 2, 2011 the Securities and Exchange Commission started  
16 accepting comment on creating an exchange called "Swap Execution Facilities" under  
17 the *Dodd- Frank Wall Street Reform and Consumer Protection Act* in order to create  
18 greater transparency with Credit Default Swaps which the SEC refers to as "Security  
19 Based Swaps."  
20  
21

22 63. The plaintiffs and the Class in this Complaint are the class of homeowners  
23 these federal and state programs, including the HAMP program were intended to protect.  
24

25 64. The plaintiffs and the Class were led to believe that they would have the  
26 opportunity to cure their default and be reinstated, but no matter how much they paid the  
27

28 <sup>1</sup> [http://en.wikipedia.org/wiki/Credit\\_default\\_swap](http://en.wikipedia.org/wiki/Credit_default_swap)

1 defendants each month or what they signed, it never happened and they were kept in  
2 constant foreclosure status the entire time while doling out money and their private  
3 financial information to the defendants.  
4

5 65.Plaintiff alleges defendants intended to, did and still continue to use these  
6 Programs to manipulate more money from the Plaintiffs and the Class.  
7

8 66.After obtaining the agreements with Fannie Mae and the California  
9 Commissioner, the defendants used the guise of offering these “Programs” to lure  
10 homeowners into default, drag out the process and confuse the homeowners on the type  
11 of alternative temporary program they were placing the homeowner in just to get them to  
12 shell out more money to the defendants after a Notice of Default and Notice of Sale was  
13 filed and served.  
14  
15

16 67.Plaintiff is informed and believes and alleges thereon that defendant Aurora  
17 knew or had reason to know that defendant Deutsche Bank bought credit default swaps  
18 or other types investment security/insurance that were either worth more than making the  
19 loan modifications permanent prior to default on these blocks of homes when entering to  
20 the contract with Fannie Mae or defendants failed to properly calculate the Net Present  
21 Value (“NPV”) on these loan modifications. But Aurora never disclosed these facts to  
22 Fannie Mae/Freddie Mac.  
23  
24  
25

26 68.Plaintiff is informed and believes and alleges thereon that these CD swaps and  
27 other financial arrangements and the NPV calculations as applied to these asset-backed  
28



1 loans were material facts and as such Defendants had a duty to disclose these material  
2 facts under the agreement with Fannie Mae/Freddie Mac or comply with the terms with  
3 regard to NPV calculations.  
4

5 69. Even if such material facts were disclosed to Fannie Mae/Freddie Mac, these  
6 material facts were never disclosed to the intended beneficiaries of the agreements  
7 between Fannie Mae/Freddie Mac and Aurora, the plaintiffs and the Class.  
8

9 70. If it is later interpreted that the facts were disclosed to Fannie Mae/Freddie Mac  
10 but the defendants were forbidden from using the gains they could expect to receive from  
11 the CDS by defaulting the homeowners, then the plaintiffs allege that the defendants  
12 breached that covenant to the injury of the plaintiffs.  
13  
14

15 71. As intended beneficiaries of the agreements between Fannie Mae/Freddie Mac  
16 and Aurora, the Plaintiffs and the Class were injured due to the failure to disclose these  
17 material facts and/or comply with the terms of the agreement.  
18

19 72. The impact of defendants' practice and/or scheme as more fully described  
20 below was nothing more than a financial "Death Spiral" to the borrower resulting in  
21 making extortion like payments after giving a complete disclosure of their remaining  
22 financial assets, and allowing their credit to be decimated or face foreclosure sale.  
23  
24

25 73. And even if these borrowers had the ability to reinstate their loans, under this  
26 scheme the proceeds the defendants received on default would not be applied to the loan  
27 but become a windfall to the defendants, still leaving the homeowner's credit and  
28

1 financial health badly battered, making the entire scheme outrageous, despicable and  
2 deserving of punitive or exemplary damages.  
3

#### 4 **4. General Factual Allegations**

5 74. The plaintiffs each received a written agreement such as a temporary HAMP  
6 agreement after default appearing to give the plaintiffs an opportunity to save their home  
7 if they made the requested payments.  
8

9 75. Plaintiffs and those similarly situated made all payments, however the  
10 defendants did not cure the default, reinstate the loan or permanently modify the loan.  
11

12 76. Plaintiff is informed and believes and alleges thereon that at all times  
13 mentioned in this complaint, the defendants knew California was not a deficiency  
14 judgment state and understood their actions of collecting payment after default without  
15 cure or reinstatement was unlawful.  
16  
17

18 77. Yet, the defendants collected money from the plaintiffs before satisfying the  
19 debt with the security.  
20

21 78. Mr. Burke has paid the defendants approximately \$20,279.00 since the Notice  
22 of Default dated 9/16/08 originally for \$6,312.74.  
23

24 79. Plaintiff, Mr. Apostolos has paid \$27,928.00 after his Notice of Default dated  
25 6/7/10 in the amount of \$33,014.53 and turned over approximately \$7,000.00 payments  
26 to his attorney to be held in trust for payments on his home.  
27  
28

1 80.Plaintiff Ms. Brown has paid the defendants approximately \$24,728.00 after  
2 her Notice of Default dated 2/14/09 in the amount of \$5,899.60 and also placed  
3 additional payments in trust with her attorney and/or deposited with the court.  
4

5 81.Plaintiff Mr. Salem Benshir and Kimberly Christensen has paid the defendants  
6 approximately \$51,991.25 after their Notice of Default dated 11/16/08 in the amount of  
7 \$10,495.23.  
8

9 82.Plaintiff Regan Owens and Jennifer Owens paid the defendants approximately  
10 \$38,059.00 after their Notice of Default dated 3/10/09 in the amount of \$27,371.99.  
11

12 83.Plaintiff Ms. Chen Pi has paid the defendants approximately \$24,728.00 after  
13 her Notice of Default dated 2/14/09 in the amount of \$5,899.60 and also placed  
14 additional payments in trust with her attorney and/or deposited with the court.  
15

16 84.Plaintiff Ms. Alice Mbaabu has paid the defendants approximately \$24,728.00  
17 after her Notice of Default dated 2/14/09 in the amount of \$5,899.60 and also placed  
18 additional payments in trust with her attorney and/or deposited with the court.  
19

20 85.Plaintiff Ms. Carmen Arballo has paid the defendants approximately  
21 \$24,728.00 after her Notice of Default dated 2/14/09 in the amount of \$5,899.60 and also  
22 placed additional payments in trust with her attorney and/or deposited with the court.  
23

24 86.Plaintiff Mr. Anthony Johnson has paid the defendants approximately  
25 \$24,728.00 after her Notice of Default dated 2/14/09 in the amount of \$5,899.60 and also  
26 placed additional payments in trust with her attorney and/or deposited with the court.  
27  
28

1 87.Plaintiff Mr. Otis Banks has paid the defendants approximately \$24,728.00  
2 after her Notice of Default dated 2/14/09 in the amount of \$5,899.60 and also placed  
3 additional payments in trust with her attorney and/or deposited with the court.  
4

5 88.In fact, each of the named plaintiffs and those similarly situated have entered  
6 into agreements with the defendants after default and tendered payments as requested.  
7

8 89.In 2009, 632,573 California properties had some type of foreclosure filed on its  
9 property record.<sup>2</sup>  
10

11 90.According to a California Consumer Banking article dated December 13, 2010,  
12 the outlook for 2011 is worse.  
13

14 91.The number of foreclosures is expected to increase in 2011 as more mortgage  
15 defaults work their way through the pipeline. Rick Sharga, a senior vice president for  
16 RealtyTrac, said there were approximately 1.2 million bank repossessions in 2010,  
17 900,000 in 2009, and “We expect we will top both of those numbers in 2011,” he said.<sup>3</sup>  
18

19 92.Quality Loan Service Corporation, agent of defendant Aurora Loan Services,  
20 LLC recorded over **4,943** foreclosure type filings in **Orange County, California** in 2010  
21 alone.  
22  
23  
24  
25

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26 <sup>2</sup> (www.realtytrac.com/contentmanagement/pressrelease.aspx ?Channelid=9&itemid=8333).  
27

28 <sup>3</sup> <http://californiaconsumerbanking.com/2010/12/13/2011-foreclosures-expected-to-increase.html>

1 93. Recently, the Attorney General of Arizona was quoted by Business Week as  
2 stating

3  
4 What I'm most angry about is the simultaneous modifications and  
5 foreclosures... We need to look for a stipulated judgment in all 50 states,  
6 that if someone is in modification, they can't be foreclosed.

7  
8 ([www.businessweek.com/news/2010-10-28/arizona-seeks-changes-to-](http://www.businessweek.com/news/2010-10-28/arizona-seeks-changes-to-banks-home-loan-modification-process.html)  
9 [banks-home-loan-modification-process.html](http://www.businessweek.com/news/2010-10-28/arizona-seeks-changes-to-banks-home-loan-modification-process.html)).  
10

11 94. The plaintiffs and the Class were led to believe that they would have an  
12 opportunity to cure their default, receive a modification and have their loan reinstated,  
13 but no matter how much they paid the defendants each month or what they signed, it  
14 never happened. Attached hereto and fully incorporated herein as **Exhibit 3** is a true and  
15 correct copy of the Yaus' Temporary HAMP Agreement.  
16  
17

18 95. Some plaintiffs signed temporary modification agreements, others were  
19 actually placed in limited modification Special Forbearance agreements, and some were  
20 placed in both after notice of default.  
21

22 96. Defendant Aurora contracted with Fannie Mae to provide foreclosure  
23 prevention services intending to benefit homeowners with affordable loan modifications.  
24 In return Aurora would be compensated over **\$2.873 Billion dollars** in taxpayer funds as  
25 incentive to do so. Attached hereto and fully incorporated herein as **Exhibit 1** is a true  
26 and correct copy of the original Agreement between Aurora and Fannie Mae.  
27  
28

1           97. Plaintiff is informed and believes and alleges thereon that Aurora Loan  
2 Services made and/or is making more money on defaults and/or foreclosures than on the  
3 loan modifications and knew it would do so when entering into the contract with Fannie  
4 Mae.  
5

6           98. Plaintiff is informed and believes and alleges thereon that defendant Aurora  
7 knew or had reason to know that defendant Deutsche Bank bought credit default swaps  
8 or other types investment security/insurance that were either worth more than making the  
9 loan modifications permanent prior to default on these blocks of homes when entering to  
10 the contract with Fannie Mae or they failed to report the way they were calculating NPV  
11 under the agreement. But Aurora never disclosed these facts to Fannie Mae.  
12  
13

14           99. Plaintiff is informed and believes and alleges thereon that these CDS and other  
15 financial arrangements were material facts and as such Defendants had a duty to disclose  
16 these material facts under the agreement or the NPV calculations violated the terms of  
17 the agreement with Fannie Mae/Freddie Mac. Attached hereto and fully incorporated  
18 herein as **Exhibit 4** is a true and correct copy of the March 4, 2009 Home Affordable  
19 Modification Program Guidelines including the NPV calculations.  
20  
21

22           100. But defendants never disclosed or adequately explained these material facts.  
23

24           101. Assistant Treasury Secretary Herbert M. Allison admitted that modifying  
25 mortgages has been more difficult than administration officials had anticipated.”  
26  
27  
28

1 “Certainly we’ve seen a lot of frustration with this program since its  
2 inception,” he told lawmakers. “We did not fully envision the  
3 challenges we would encounter.” ([http://rismedia.com/2010-03-  
4 28/white-house-to-adjust-troubled-mortgage-modification-program/](http://rismedia.com/2010-03-28/white-house-to-adjust-troubled-mortgage-modification-program/))

5 102. Section 5 of the Servicer agreement between Aurora and Fannie Mae  
6 contains the representations, warranties and covenants which state in part:

7 (b) Servicer is in compliance with, and covenants that all  
8 Services will be performed in compliance with all applicable  
9 Federal, state and local law, regulations, regulatory guidance,  
10 statutes, ordinances, codes and requirements, including, but not  
11 limited to, the Truth in Lending Act, 15 USC 1601 et seq., the  
12 home Ownership and Equity Protection Act, 15 USC 1639, the  
13 Federal Trade Commission Act, 15 USC 41 et seq., the Equal  
14 Credit Opportunity Act, 15 USC 701 et seq., the Fair Credit  
15 Reporting Act, 15 USC 1681 et seq., the fair Housing Act and  
16 other Federal and state laws designed to prevent unfair,  
17 discriminatory or predatory lending practices and all applicable  
18 laws governing tenant rights...Servicer is not aware of any  
19 other legal or financial impediments to performing its  
20 obligations under the Program in which Servicer participates or  
21 the Agreement and shall promptly notify Fannie Mae of any  
22 financial and/or operational impediments which may impair its  
23 ability to perform its obligations under such Programs or the  
24 Agreement...

25 (c) Servicer covenants that:...all data ...that is relied upon by  
26 Fannie Mae or Freddie Mac in calculating the Purchase Price or  
27 in performing any compliance review will be true, complete and  
28 accurate in all material respects, and consistent with all relevant  
business records, as and when provided.

(d) Servicer covenants that it will(i) perform the Services  
required under the Program Documentation and the Agreement  
in accordance with the practices, high professional standards of  
care, and degree of attention used in a well-managed  
operation...

1 (f) Servicer acknowledges that the provision of false or  
2 misleading information to Fannie Mae or Freddie mac in  
3 connection with any of the Programs or pursuant to the  
4 Agreement may constitute a violation of: (a) Federal criminal  
5 law involving fraud, conflict of interest, bribery, or gratuity  
6 violations found in Title 18 of the United States Code; or (b) the  
7 civil False Claims Act (31 USC § 3729-3733). Servicer  
8 covenants to disclose to Fannie Mae and Freddie Mac any  
9 credible evidence, in connection with the Servicers, that a  
management official, employee, or contractor of Servicer has  
committed, or may have committed, a violation of the  
referenced statutes.

10 (g) Servicer covenants to disclose to Fannie Mae and Freddie  
11 Mac any other facts or information that the Treasury, Fannie  
12 Mae or Freddie Mac should reasonably expect to know about  
13 Servicer and its contractors to help protect the reputational  
14 interests of the Treasury, Fannie Mae and Freddie Mac in  
15 managing and monitoring the Programs in which Servicer  
16 participates.” (Exhibit 1 page A-2 to A-4 ; Exhibit 2 page B-3  
17 to B-4)

18 103. Plaintiff alleges that defendants breached these covenants.

19 104. Defendants used the offering of the federal HAMP Program as an incentive  
20 to get the homeowners to default on their loans which would trigger payment on the CDS  
21 without any care about placing the homeowners at risk of a foreclosure sale and then  
22 have the homeowners like the plaintiffs in this case continue to make monthly payments  
23 on them while in default facing a foreclosure sale all to the defendants’ financial benefit.

24 **8. Factual Allegations of the Yaus Representing the HAMP Subclass**

25 105. On July 7, 2007 plaintiff Eddie Yau borrowed \$608,000.00 from  
26 Homecomings Financial, LLC on a 30 year negative adjustable rate note to purchase his  
27  
28



1 home where he lives with his wife. His payments were supposed to be fixed at \$2,402.34  
2 per month for the first five years of the loan.  
3

4 106. Mr. Yau, a retired military veteran and mechanic, has no mortgage or home  
5 lending financial experience beyond basic financial matters.  
6

7 107. Plaintiff, as trustor, executed and delivered a deed of trust, conveying the  
8 real property described herein to secure payment of the principal sum and interest as  
9 provided in the note and as part of the same transaction to Homecomings Financial, LLC  
10 which was then later assigned, sold or transferred by the lender to either DBNT or  
11 DBTCA as beneficiary and serviced by defendant Aurora.  
12  
13

14 108. Mr. Yau missed his July 2008 payment and telephoned defendant Aurora  
15 Loan Services and explained he was experiencing financial difficulties due to a decrease  
16 in his income and inquired as to alternatives to foreclosure.  
17

18 109. On or about September 24, 2008 defendant Aurora Loan Services sent a  
19 letter explaining the following programs it offered and that by entering into the programs  
20 the borrower “will avoid the loss of your home through foreclosure or further impairment  
21 on your credit.”  
22

23  
24 “Repayment Plan: If you recently experienced a temporary reduction  
25 in income or an increase in living expenses, a repayment plan will  
26 allow you to repay the past due amount over a specified period of  
27 time.

28 Forbearance Plan: You may be able to suspend or reduce your  
mortgage payments for a short period of time. Thereafter, we would

1 review your current financial situation and determine what home  
2 retention option would best assist you in bringing your loan current.

3 Loan Modification: A loan modification may offer you the ability to  
4 change on or more of the terms of your mortgage. This may assist  
5 you with providing an affordable payment and avoiding foreclosure.  
6 Again, we would need to review your financial situation and ability to  
7 pay. If your loan is current and you anticipate that you may have  
8 difficulty in making the increased monthly payment, we may be able  
to assist you with a loan modification that will provide you with an  
affordable payment based on your current financial information.

9 110. Then on December 02, 2008 defendant Aurora Loan Services wrote Mr.

10 Yau which stated:  
11

12 “Based upon the information that you provided during your telephone  
13 conversation with Aurora, your loan may qualify for a loan  
14 modification....You must provide documentation to support your  
15 inability to reinstate the mortgage loan in one lump sum...under some  
16 circumstances, *you may be expected to pay a loan modification fee.*”  
*[Emphasis added]*

17 111. Then on December 19, 2008 Aurora Loan Services sent Mr. Yau a letter  
18 noting Mr. Yau’s was in default in the amount of \$4,828.68 and that

19  
20 “If you do not bring your loan current within thirty (30) days of the  
21 date of this letter, Aurora Loan Services may demand the entire  
22 balance outstanding under the terms of your Mortgage/Deed of Trust.”

23 112. Aurora then followed up with the same letter of September 24, 2008 again  
24 on December 24, 2008 and January 20, 2009.

25 113. Instead of sending Mr. Yau a loan modification plan, defendant Aurora  
26 Loan Services sent him a Repayment Agreement expecting him to pay an additional  
27 \$802.78 per month (\$3,207.12 per month for 6 months) which equaled a 33% increase in  
28

1 his monthly mortgage payment. This payment plan did not create a “more sustainable  
2 payment plan.”  
3

4 114. In 2009 the Yau’s financial situation became worse as their investments  
5 were depleted from what was later characterized as a “Ponzi scheme.”  
6

7 115. From that time up to June 2009, plaintiff would telephone defendant Aurora  
8 seeking a modification and Aurora would take down information representing the  
9 defendants would start the process, but the process was never started.  
10

11 116. Mrs. Yau spoke to a person at Aurora Loan Services named Steve who  
12 promised that someone from Aurora Loan Services would call them back no later than  
13 June 1<sup>st</sup> about the Making Home Affordable Loan Program.  
14

15 117. On June 16, 2009 defendant caused to be served and recorded a purported  
16 Notice of Default and Election to Sell under Deed of Trust (NOD) alleging (a) that a  
17 breach of the obligation secured by the deed of trust had occurred, consisting of Mr.  
18 Yau’s failure to pay \$12,655.67 as of 6/15/09, and (b) that the defendant, as beneficiary,  
19 elected to sell, or to cause to be sold, the property to satisfy that obligation.<sup>4</sup>  
20  
21  
22

---

23  
24 <sup>4</sup> However, that Notice of Default was outside the chain of title because Lawyers Title Company, as  
25 the original trustee and Mortgage Electronic Registration Systems, Inc. as the nominee did not  
26 assign this right until June 24, 2009. Attached hereto and fully incorporated herein as **Exhibit 8** is a  
27 true and correct copy of the Assignment to Quality Loan Service which was not notarized until  
28 6/24/09.

1           118. A few months later defendant Aurora Loan Services faxed a “customized  
2 Home Affordable Modification Trial Period Plan (“Trial Period Plan”)” under HAMP  
3  
4 wherein Mr. Yau was supposed to make payments of \$1,943.70 on 10/01/09, 11/01/09,  
5 and 12/01/09.  
6

7           119. The temporary HAMP agreement which is incorporated herein stated in part

8  
9           “If I comply with the requirements in Section 2 and my  
10 representations in Section 1 continue to be true in all material  
11 respects, the Lender will send me a Modification Agreement for my  
12 signature which will modify my Loan Documents as necessary to  
reflect this new payment amount and waive any unpaid late charges  
accrued to date.”

13           120. Aurora promised:

14  
15           “If you qualify under the federal government’s Home Affordable  
16 Modification program and comply with the terms of the Trial Period  
17 Plan, we will modify your mortgage loan and you can avoid  
foreclosure.”

18           121. These terms are boilerplate in all such agreements received by the co-  
19  
20 plaintiffs and the class.

21           122. Mr. Yau believed he was eligible for HAMP and made the payments as laid  
22 out in the agreement under Section 2, provided the necessary documents and his  
23 representations in Section 1 continued to be true in all material respects, yet defendant  
24 Aurora Loan Services failed and refused to send the Modification Agreement for him to  
25 sign, or to cure the default and reinstate the loan.  
26  
27  
28

1           123. On or about March 6, 2010 defendant Aurora Loan Services sent a letter to  
2 Mr. Yau explaining,  
3

4           “Unfortunately, we are unable to offer you a Home Affordable  
5 Modification for the following reasons: Excessive Forbearance. We  
6 are unable to offer you a Home Affordable Modification because we  
7 are unable to create an affordable payment equal to 31% of your  
8 reported monthly gross income without changing the terms loan  
beyond the requirements of the program.”

9           124. Defendant’s representation in that letter was false. According to Aurora  
10 Loan Service’s Customer Account Activity Statement the principal balance on the loan  
11 was at \$643,178.83 when he entered the temporary payment plan.  
12

13           125. The contract required Aurora to place the Yaus into a permanent  
14 modification if the NPV was greater under modification than a foreclosure sale. Plaintiffs  
15 allege the defendants breached by failing to place them in the permanent modification.  
16

17           126. Plaintiff is informed and believes and alleges thereon that Plaintiff’s home  
18 at foreclosure would not have resulted in a sale in excess of the NPV of the modification.  
19

20           127. Plaintiff through counsel, demanded defendant’s calculations used to deny  
21 plaintiff’s modification and NPV. To date, defendant failed to provide plaintiff with a  
22 HAMP-compliant modification or any documentation showing its calculations to justify  
23 why a permanent modification was not offered to Plaintiff.  
24  
25

26           128. Mr. Yau’s loan accelerated from \$643,178.83 to \$649,482.15 during the  
27 interim.  
28

1           129. Along with the notice that Mr. Yau did not qualify for the loan modification,  
2 defendant Aurora stated that Mr. Yau may qualify for other foreclosure alternatives such  
3  
4 as

5           “Repayment Plan: allows you to repay the past due amount over a  
6 specified period of time.

7           Forbearance Plan: allows you to suspend or reduce your mortgage  
8 payments for a short period of time until a long term solution is  
9 available.

10          Loan Modification: allows us to modify one or more of your original  
11 mortgage terms which will provide you with an affordable payment  
12 based on your current financial information.

13          Pre-foreclosure Sale (short sale): allows you to sell your property,  
14 pay off your mortgage for an amount less than total pay off to avoid  
15 foreclosure and minimize damage to your credit rating.

16          Deed in lieu of foreclosure: allows you to voluntarily deed your  
17 property to Aurora Loan Services to payoff your mortgage. Taking  
18 this action may not save your home, but it may help your ability to  
19 qualify for another mortgage in the future.”

20          130. The Yaus telephoned Aurora and were assured that the defendants would  
21 work with the Yaus and that they could cure their default by having the lender  
22 temporarily forebear the terms of the agreement so that the Yaus could catch up.

23          131. Consequently, Mr. Yau continued making monthly payments on his home  
24 and entered into a Special Forbearance Plan with defendant Aurora when they sent him  
25 the application to sign.  
26  
27  
28

1           132. On or about April 7, 2010 Defendant Aurora sent Plaintiffs a letter stating it  
2 had enclosed a “Special Forbearance Agreement which has been prepared on your  
3 behalf.” On page 2 of the agreement it stated “WHEREAS, customer has requested and  
4 Lender has agreed to allow Customer to repay the Arrearage pursuant to a loan work-out  
5 arrangement on the terms set forth herein.”  
6  
7

8           133. However, there was no real consideration and the agreement was illusory  
9 because the Lender had been given the right to proceed with a foreclosure sale during the  
10 term of the agreement at its discretion and the terms never gave the Yaus an opportunity  
11 to repay the arrearage.  
12  
13

14           134. The Plan was not the same as advertised in its prior letters to Mr. Yau or as  
15 represented on the telephone. The forbearance Plan did not allow Mr. Yau to suspend or  
16 reduce his mortgage payments for a short period of time until a long term solution was  
17 available.  
18

19           135. Mr. Yau made the required \$4,804.72 initial payment and monthly  
20 payments of \$2,875.00 but he was only getting further in debt.  
21

22           136. The true facts were that his payments were increased to \$2,875.00 per  
23 month and no other terms of his loan were modified or suspended during the forbearance  
24 period. He was still in default and the foreclosure sales were still pending.  
25

26           137. Furthermore, the terms of the Agreement violated California law.  
27  
28

1 138. Mr. Yau continued to make the \$2,875.00 monthly payments until this action  
2 was filed.

3  
4 139. Instead of putting Mr. Yau into a temporary modification, they delayed  
5 processing, requesting the same documents they already had over and over again.

6  
7 140. As a result of defendants' unlawful practices, unfair acts and failure to place  
8 Mr. Yau into a permanent HAMP loan modification on December 1, 2009, his loan as of  
9 October 10, 2010 approached the HAMP cap.

11	Total Unpaid principal	\$664,711.59
12	Interest from 12/1/09 to 10/10/10	47,916.49
13	Escrow/Impound Overdraft	12,983.09
14	Corporate advance	3,652.84
15	Unpaid Late Charges	120.12
16	Recording Fee	37.00
17	Suspense Balance	-2,345.75
18	Total:	\$727,075.38

19  
20  
21  
22 141. On November 5, 2010 defendant Aurora sent notice that it intended on  
23 increasing Mr. Yau's monthly loan payment to \$5,466.57 on 3/01/11.

24  
25 142. Defendant then notified Mr. Yau it intended to sell his home on 12/13/10.

26  
27 143. From September 2008 when Mr. Yau was behind by approximately  
28 \$5,000.00 through present plaintiff has paid defendants approximately \$54,293.08. This



1 is very close to the amount he would have paid the defendants if he had never defaulted  
2 on the loan in the first place ( $\$2402.34 \times 24 \text{ months} = \$57,656.16$ ).

3  
4 144. Plaintiff further alleges the defendants were deceptive and unlawful in their  
5 handling of the loans and business practices. Examples in the Yaus' case, include but are  
6 not limited to the fact that defendant has not rescinded the Notice of Default or Notice of  
7 foreclosure sale although the Notice was filed before Quality Loan Services received  
8 assignment and as such is outside the chain of title. Failing to send the plaintiffs a loan  
9 modification application until after they filed a Notice of Default. Additionally, flood  
10 hazard insurance was not required on the Yaus loan but the defendants charged Mr. Yau  
11 \$1592.00 for flood hazard insurance after the loan went into default in addition to other  
12 fees and charges for allegedly driving by the home and such. Also, Defendant obtained  
13 an exemption to allow defendant Aurora to offer modifications and other programs in  
14 excess of 38% of the borrower's income from the California Commissioner but  
15 defendant never notified plaintiff of that fact as required under California law and never  
16 took the foreclosure off of the home when it was notified of this failure to notify.  
17 Defendants failed and refused to request partition even after being notified only Mr. Yau  
18 was on the Note and Mrs. Yau at most was a trustee and was given no consideration for  
19 her name to be placed on their filed recordings as a "co-borrower" for non-judicial  
20 foreclosure purposes.  
21  
22  
23  
24  
25  
26  
27

28 **5. Factual Allegations of Mr. Edman representing the Forebearance Class**

1           145. Mr. Edman obtained a loan to build a home on his land in Malibu,  
2 California.

3  
4           146. On or about 12/07/06, for valuable consideration, plaintiff, as borrower  
5 made, executed and delivered to his original lender a written promissory note in the  
6 amount of \$850,000.00, a true and correct copy of which is attached as **Exhibit 10** and  
7 incorporated by reference herein.  
8

9           147. According to the terms of the Note, Mr. Edman was required to pay  
10 \$3,141.77 per month for the first five (5) years.  
11

12           148. Plaintiff, as trustor, executed and delivered a deed of trust, conveying the  
13 real property described herein to secure payment of the principal sum and interest as  
14 provided in the note and as part of the same transaction which was then transferred to  
15 defendant, as beneficiary.  
16  
17

18           149. Said deed of trust was recorded against the subject property in the Official  
19 Records in Los Angeles County, California, a true and correct copy of which is attached  
20 as **Exhibit B** and incorporated by reference herein.  
21

22           150. On or about 1/14/09, defendant caused to be recorded a notice of default  
23 and election to sell in the Official Records in Los Angeles, County, California alleging  
24 (a) that a breach of the obligation secured by the deed of trust had occurred, consisting  
25 of plaintiff's alleged failure to pay \$14,267.35 as of 1/13/09, and (b) that the defendant,  
26 as beneficiary, elected to sell, or to cause to be sold, the trust property to satisfy that  
27  
28

1 obligation, a true and correct copy of which is attached as **Exhibit 11** and incorporated  
2 by reference herein.  
3

4 151. A week later on or about 1/23/09, defendants delivered a document to Mr.  
5 Edman which represented a “Special Forbearance Agreement [] has been prepared on  
6 your behalf.”  
7

8 “WHEREAS, customer has requested and Lender has agreed to allow Customer to  
9 repay the Arrearage pursuant to a loan work-out arrangement on the terms set forth  
10 herein...NOW, THEREFORE...Lender shall forbear from exercising any or all of its  
11 rights and remedies..” [pg 2]  
12

13 “The amount of each Plan payment specified above includes both (1) the regularly  
14 scheduled monthly payment, plus (2) the portion of the Arrearage specified above...  
15 in the event Customer cures the Arrearage by making all Plan payments on or before  
16 the Expiration Date, and is current with the payments then due, and no default then  
17 exists under the Loan Documents and Agreement, Lender shall consider the Note  
18 and Security Instrument to be current and in effect according to their original terms  
19 and conditions.” Attached hereto and fully incorporated herein as **Exhibit 12** is a  
20 true and correct copy of the Special Forbearance Agreement entered into post-  
21 default.  
22  
23  
24  
25

26 152. Consequently, Mr. Edman made the monthly payments on his home and  
27 entered into a Special Forbearance Plan with defendant Aurora.  
28

1 153. The terms of the Agreement violated California law.

2 154. The agreement demanded repayment of \$30,505.91 over the next 4 months.  
3  
4 However, it was only approximately \$14,267.35 to cure and \$10,866.81 to reinstate  
5 (approximately \$25,1234.16 total to cure and reinstate the loan.  
6

7 155. As such, plaintiff hired legal counsel when the balloon became due. Acting  
8 in good faith, from that time through present plaintiff has paid defendants approximately  
9 \$60,851.51 total and entered into several other forbearance agreements offered by  
10 defendant.  
11

12 156. However, plaintiff has remained in default and defendant served a Notice  
13 of Sale on plaintiff originally set for 1/31/11 and which is currently set for March 16,  
14 2011. [Attached as **Exhibit 13**]  
15

16 157. Each of the other named plaintiffs and those similarly situated can  
17 generally describe the same facts, events or occurrences as either Mr. Yau or Mr.  
18 Edman.  
19  
20

## 21 **6.Class Action Allegations**

22 158. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil  
23 Procedure, on behalf of the themselves and on the following Classes and Subclass  
24 consisting of:  
25

26 All California homeowners who tendered money to Defendants on their mortgage  
27 pursuant to a written agreement presented by Aurora or another servicer acting in  
28

1 concert therewith after default, but whose default was not cured and loan was not  
2 reinstated by defendants after plaintiff tendered the requested payments.  
3

4 **HAMP Subclass:**

5 California homeowners who were denied permanent HAMP loan  
6 agreements after entering in a temporary HAMP agreement with  
7 defendant Aurora whose loans are held by DBNT as Custodian, and  
8 making their payments as requested under the temporary HAMP  
9 agreement.

10 **Forbearance Subclass:**

11 California homeowners who were denied permanent HAMP loan  
12 agreements after entering in a temporary limited modification Special  
13 Forbearance agreement with defendant Aurora whose loans are held  
14 by DBNT as Custodian, and making their payments as requested  
15 under the temporary HAMP agreement.

16 159. Excluded from the Class are governmental entities, defendants, and their  
17 affiliates, subsidiaries, current or former employees, officers, directors, agents,  
18 representatives, their family members, the members of this Court and its staff.

19 160. Defendants subjected plaintiffs and each of their respective Classes to the  
20 same unfair, unlawful and deceptive practices and harmed them in the same manner.  
21 Now plaintiffs and each of their respective Classes seek to enforce the same rights and  
22 remedies under the same substantive law.  
23

24 161. Plaintiffs do not know the exact size or identities of the members of the  
25 proposed class, since such information is in the exclusive control of the Defendants.  
26 Plaintiffs believe that the Class encompasses over 41 individuals California homeowners  
27  
28

1 which could reach into the thousands whose identities can be readily ascertained from  
2 Defendant's books and records. Defendants filed over 4,000 foreclosure documents with  
3 the Orange County Recorder's office in 2010 alone. Therefore, the proposed Class are so  
4 numerous that joinder of all members is impracticable.  
5

6  
7 162. Based on the market value of these homes in foreclosure and the size of the  
8 payments made by the Class members under the temporary HAMP agreements and  
9 thereafter, plaintiffs believe the amount in controversy could range anywhere from  
10 \$1,250,000 for the first 25 members to over \$2 billion dollars for the entire anticipated  
11 class.  
12

13  
14 163. All members of the Class have been subject to and affected by the same  
15 conduct. The claims are based on wrongfully forcing the Class into default before  
16 implementing a written foreclosure alternative program then wrongfully failing to cure  
17 the default, reinstate the loan or permanently modifying the loan under HAMP and other  
18 government programs after the Class made the payments as requested.  
19  
20

21 164. There are questions of law and fact that are common to the Class, and  
22 predominate over any questions affecting only individual members of the Class. These  
23 questions include, but are not limited to the following:  
24

- 25 a. The validity of the contracts at issue in this case (*See, Black Gold Marine,*  
26 *Inc. v Jackson Marine Co.* (5<sup>th</sup> Cir 1985) 759 F2d 466, 471);  
27  
28

- 1           b. The nature, scope and operation of defendants’ obligations to the borrowers  
2           under the Servicer Participation Agreements entered into between Aurora  
3           and Fannie Mae (*See, Topps Chewing Gum, Inc. v Flee Corp.* (2<sup>nd</sup> Cir  
4           1986) 799 F.2d 851, 856);  
5  
6  
7           c. Whether the defendants must now be reclassified as unsecured creditors.  
8  
9           d. Whether the plaintiffs have cured their defaults and are entitled to  
10           reconveyance upon payments of subsequent sums due and owing, if any.  
11           e. Whether plaintiffs are entitled to reconveyance of their deeds.  
12           f. The defendants’ obligations to the borrowers when the borrower holds a  
13           CDS or some similar type of security/insurance against default on the  
14           borrower’s loan;  
15  
16           g. Whether the existence of a CDS or similar type of security/insurance to a  
17           borrower should be disclosed at the time the borrower signs the promissory  
18           note and mortgage or as soon as the lender obtains a CDS contract that  
19           could cover the loan.  
20  
21           h. Whether the failure to disclose the existence of a CDS or similar type of  
22           security/insurance to a borrower before default is a breach of good faith and  
23           fair dealing;  
24  
25  
26  
27  
28

- 1 i. The Class’ right to terminate and rescind the contracts at issue in this action  
2 (*See, Leisure Time Productions, B.V. v Columbia Pictures Indus. Inc.* (2<sup>nd</sup>  
3 Cir. 1994) 17 F3d 38, 39-40).
- 4
- 5 j. The nature, scope and operation of defendants’ obligations to the borrowers  
6 under the temporary HAMP agreements;  
7
- 8 k. Whether the temporary HAMP agreements created any legally binding  
9 obligation on the defendants;  
10
- 11 l. Whether the agreements entered into by the borrowers after they were  
12 denied a permanent HAMP agreement were void ab initio for failure or  
13 partial failure of consideration;  
14
- 15 m. Whether the agreements entered into by the borrowers after they were  
16 denied a permanent HAMP agreement were illusory;  
17
- 18 n. Whether the promissory note and mortgage agreements entered into by the  
19 borrowers after the owner purchased a CDS or similar security/insurance  
20 were void ab initio for failure to disclose this adverse interest or partial  
21 failure of consideration;  
22
- 23 o. Whether defendants actions failed to take corrective action by providing  
24 loan modifications that produced more sustainable loan payments;  
25
- 26 p. Whether the plaintiffs and the Class (“borrowers”) payments after the  
27 Notice of Default were the result of fraud of duress;  
28



- 1 q. Whether Aurora violated California law by using false, deceptive, and  
2 misleading statements and omission in connection their collection of  
3 Plaintiffs' and the Class's mortgage debt;  
4  
5 r. Whether defendants actions or failure to act constituted a breach of their  
6 obligation of good faith and fair dealing;  
7  
8 s. Whether contracts implied in fact were created when Aurora required the  
9 borrowers to continue to make payments after the temporary HAMP  
10 agreement expired;  
11  
12 t. Whether Aurora was required to rescind or otherwise nullify the pending  
13 foreclosure proceedings for all borrowers who were still being considered  
14 for a HAMP modification after the OCC stated "HAMP guidelines now  
15 preclude a servicer from initiating a foreclosure action until the borrower  
16 has been deemed ineligible for a HAMP modification."  
17  
18 u. Whether the disclosure of the credit default swaps or other types of  
19 investment security/insurance were "material" under federal law;  
20  
21 v. Whether the plaintiff and the Class members are intended beneficiaries of  
22 the agreement between defendant Aurora and Fannie Mae/Freddie Mac;  
23  
24 w. Whether defendant Aurora breached its agreement with Fannie Mae/Freddie  
25 Mac;  
26  
27  
28

- 1 x. Whether defendant Aurora failed to disclose a material fact to Fannie  
2 Mae/Freddie Mac as required under its contract with them to the detriment  
3 of its intended beneficiaries;  
4  
5 y. Whether defendants conduct as described in this Complaint constituted  
6 fraud or duress;  
7  
8 z. Whether defendants were unjustly enriched;  
9  
10 aa. Whether defendants acts and practices described herein constitute unfair or  
11 deceptive business practices under California Unfair Competition Law  
12 (“UCL”)  
13  
14 bb. Whether injunctive relief is appropriate  
15  
16 cc. Whether specific performance is appropriate  
17  
18 dd. Whether punitive or exemplary damages are appropriate

19 165. The claims of the individual named Plaintiffs are typical of the claims of the  
20 Class and do not conflict with the interests of any other members of the Class in that both  
21 the Plaintiffs and the other members of the Class’ loans were all securitized in vehicles  
22 that had default and other types of swaps placed on them, they were subjected to the  
23 same conduct, the same terms, and tendered payments to the defendants after being  
24 served with a Notice of Default pursuant to a post default foreclosure alternative  
25 program.  
26  
27  
28



1           171. Plaintiff incorporates the allegations in paragraphs 1 through 170 in this  
2 cause of action as though fully set forth herein.

3  
4           172. Plaintiffs bring this claim on their own behalf and on behalf of each  
5 member of the Class and Subclass described above.

6  
7           173. Defendant represented to plaintiff that by entering into the Special  
8 Forbearance Agreement, the temporary HAMP agreement, or other written post-default  
9 agreement, plaintiff would be able to save his home in that defendant would not sell  
10 plaintiff's home, and plaintiff would be able to either cure their default or receive a  
11 permanent loan modification.  
12

13  
14           174. In reliance on defendants' representations, plaintiff paid the defendants  
15 after Notice of Default was served and recorded.

16  
17           175. All of the terms in the forbearance agreements, temporary HAMP  
18 agreements or other post-default agreements were drafted by the defendant, and not  
19 negotiable.  
20

21           176. Plaintiff had no bargaining power in negotiating the terms of these  
22 agreements or the amounts of payments requested.

23  
24           177. Defendants took the money then elected to sell the property through  
25 foreclosure.

26  
27           178. Plaintiff alleges said conduct constituted a breach of good faith and fair  
28 dealing, was unconscionable, unjust and/or coercive.

1 179. As a result of defendant's conduct, plaintiff was damaged financially.

2 180. Plaintiff seeks damages according to proof and reserves the right to seek  
3  
4 equitable remedies of unjust enrichment and disgorgement of profit made on the  
5 Plaintiff under guise of performance of this agreement.  
6

7 **SECOND CAUSE OF ACTION**

8 **Unjust Enrichment/Breach of Temporary HAMP Agreement**

9 **(Plaintiffs, Eddie Yau, Gloria Yau, Rob Rhoades, Nicole Rhoades, Steve Burke,**  
10 **Otis Banks, Richard Apostolos, Joanne Anderson and the HAMP Class against**  
11 **all Defendants)**  
12

13  
14 181. Plaintiff incorporates in this cause of action all of the allegations in  
15 paragraphs 1 through 180 as though set forth in full herein.  
16

17 182. Plaintiffs bring this claim on their own behalf and on behalf of each  
18 member of the Class and the Subclass described above.  
19

20 183. Defendant Aurora and the Plaintiffs and Class entered into a Temporary  
21 HAMP agreement as alleged above, a true and correct copy of the Mr. Yau's agreement  
22 is attached hereto and fully incorporated herein as **Exhibit 3**.  
23

24 184. Defendant Aurora agreed to permanently modify plaintiff and each  
25 members of the Class's loan if plaintiffs and the Class complied with the terms of the  
26 temporary modification.  
27  
28

1 185. Plaintiff and the Class complied with the terms of the temporary  
2 modification, except for those terms and conditions that were excused or waived.  
3

4 186. Defendant unjustifiably and inexcusably breached the contract by failing to  
5 perform its obligations thereunder as described above.  
6

7 187. As a result of defendant's breach, plaintiff's loan was not permanently  
8 modified causing injury to the plaintiff and Class.  
9

10 188. As a result of Defendants' unjust enrichment, Plaintiffs and the Class have  
11 sustained damages in an amount to be determined at trial (which include legal and other  
12 fees in excess of the principal and interest due on their loans) and seek full  
13 disgorgement and restitution of Defendants' enrichments, benefits, and ill-gotten gains  
14 acquired as a result of the wrongful conduct alleged above. Alternatively, Plaintiffs and  
15 the Class seek specific performance or if specific performance cannot be granted,  
16 reformation of the contract from temporary to permanent under the same monthly  
17 payment terms for a term of 30 years or if reformation of the contract cannot be granted,  
18 damages according to proof and reserve the right to seek equitable remedies to rescind  
19 the payments made to defendants under guise of performance of this contract and  
20 disgorgement of profits made on the Plaintiffs and the Class loans above reasonable  
21 rental value of their homes from the time the loans originated.  
22  
23  
24  
25

26  
27 **THIRD CAUSE OF ACTION**

28 **Breach of Written Contracts – Third Party Beneficiary**

1 (All Plaintiffs and Classes against all Defendants)

2 189. Plaintiffs repeat and re-allege every allegation in paragraphs 1 through 188  
3 as though set forth in full herein.  
4

5 190. Plaintiffs bring this claim on their own behalf and on behalf of each  
6 member of the Class and Subclass described above.  
7

8 191. Plaintiffs and the Class members are third party beneficiaries to the  
9 contract attached hereto and fully incorporated herein as **Exhibit 1** and to the Amended  
10 and Restated contract attached hereto and fully incorporated herein as **Exhibit 2**.  
11

12 192. Plaintiff and the Class are intended beneficiaries under the contracts.  
13

14 193. Defendants Aurora and DBTCA and DBNTC, jointly and severally,  
15 unjustifiably and inexcusably breached the Contract by failing to perform their  
16 obligations thereunder as described above.  
17

18 194. Defendants' breach of the contract resulted in harm to plaintiff.

19 195. Pursuant to California Civil Code §1559 and/or federal law, plaintiff may  
20 enforce the contract's provisions.  
21

22 196. Plaintiffs and the Class seek specific performance or if specific  
23 performance cannot be granted, reformation of the contract from temporary to  
24 permanent under the same monthly payment terms for a term of 30 years or if  
25 reformation of the contract cannot be granted, damages according to proof and reserve  
26 the right to seek equitable remedies to rescind the payments made to defendants under  
27  
28

1 guise of performance of this contract and disgorgement of profits made on the Plaintiffs  
2 and the Class loans above reasonable rental value of their homes from the time the loans  
3 originated.  
4

5 **FOURTH CAUSE OF ACTION**

6 **Declaratory Relief – Cure and Reinstatement by Mutual Consent**

7 **(All plaintiffs and classes against all defendants)**

8  
9 197. Plaintiff incorporates in this cause of action all of the allegations in  
10 paragraphs 1 through 196 as though fully set forth herein.  
11

12 198. Plaintiffs bring this claim on their own behalf and on behalf of each  
13 member of the Class and Subclass described above.  
14

15 199. An actual controversy exists between plaintiff and defendant concerning  
16 their respective rights and duties pertaining to the subject property and described  
17 transactions because plaintiff alleges there was a cure and reinstatement by mutual  
18 consent.  
19

20 200. As a result, plaintiff desires a judicial determination and declaration that  
21 the default was cured, plaintiff is entitled to reconveyance upon payment of subsequent  
22 sums and the defendant has no ability to foreclose on plaintiff's home.  
23

24 201. Such a declaration is appropriate at this time so that plaintiff may  
25 determine his or her rights and duties before the subject property is sold at a foreclosure  
26 sale.  
27  
28



1 **FIFTH CAUSE OF ACTION**

2 **Declaratory Relief – One Action Rule**

3 **(All plaintiffs and classes against all defendants)**

4  
5 202. Plaintiff incorporated in this cause of action all of the allegations in  
6 paragraphs 1 through 201 and the allegations in the Second cause of action as though  
7 fully set forth herein.  
8

9  
10 203. Plaintiffs bring this claim on their own behalf and on behalf of each  
11 member of the Class and Subclass described above.

12  
13 204. An actual controversy exists between plaintiff and defendant concerning  
14 their respective rights and duties pertaining to the subject property and described  
15 transactions because plaintiff alleges the defendant violated the One Action Rule so  
16 defendant is reduced to the status of unsecured creditor, entitling plaintiff to injunctive  
17 relief, attorney fees and costs of suit.  
18

19  
20 205. As a result, plaintiff desires a judicial determination and declaration the  
21 defendants are reduced to the status of unsecured creditor(s), the defendants have no  
22 ability to foreclose on plaintiff's home as unsecured creditors, and plaintiff is entitled to  
23 reasonable attorney's fees and costs of suit.  
24

25  
26 206. Such a declaration is appropriate at this time so that plaintiff may  
27 determine his or her rights and duties before the subject property is sold at a foreclosure  
28 sale.

1 **SIXTH CAUSE OF ACTION**

2 **Declaratory Relief**

3 **Improper Application and/or Calculation of Payments, Fees and Costs**

4 **(All plaintiffs and classes against all defendants)**

5  
6  
7 207. Plaintiff incorporates in this cause of action all of the allegations in  
8 paragraphs 1 through 206 as though fully set forth herein.

9  
10 208. Plaintiffs bring this claim on their own behalf and on behalf of each  
11 member of the Class and Subclass described above.

12  
13 209. An actual controversy exists between plaintiff and defendant concerning  
14 their respective rights and duties pertaining to the subject property and described  
15 transactions because plaintiff alleges a breach of the obligation for which the deed of  
16 trust is security has not occurred or is excused because the beneficiary improperly  
17 applied and/or calculated plaintiff's payments, costs, fees, insurance, taxes and other  
18 charges prior to, during, and/or after default.

19  
20  
21 210. As a result, plaintiff desires a judicial determination and declaration of  
22 plaintiff's and defendant's respective rights and duties; specifically that plaintiff did not  
23 breach his or her obligations and as such the Notice of default and election to sell was  
24 null and void.  
25  
26  
27  
28



1 “WHEREAS, Customer has requested and Lender has agreed to allow Customer to  
2 repay the Arrearage pursuant to a loan work-out arrangement on the terms set forth  
3 herein.” Aurora led Plaintiff to believe that their arrearage in payments that led to  
4 default would be repaid if they made the payments under the special forbearance  
5 agreement.  
6  
7

8 218. Plaintiff reasonably relied on defendant’s representations which led  
9 Plaintiff to believe that the default on his home would be cured and his loan would  
10 eventually be reinstated under the agreement.  
11

12 219. At the time that Aurora made these representations, Aurora know or should  
13 have known that they were not true.  
14

15 220. Plaintiff is informed and believes and alleges thereon that Aurora would  
16 ensure that the requested payments were never enough to repay the arrearage due to the  
17 way the payments were applied.  
18

19 221. Plaintiff is informed and believes and further alleges thereon that the notice  
20 of default was on file before the special forbearance was offered so that Aurora could  
21 execute the Trustee’s sale and foreclose after obtaining the payments knowing that the  
22 arrearage would not be repaid.  
23

24 222. Aurora made these representations with the purpose of persuading Plaintiff  
25 to enter into the Special Forbearance agreements and to continue to make payments of  
26 thousands of dollars.  
27  
28

1 223. Plaintiff reasonably relied on these representations.

2 224. Plaintiff would not have entered into the special forbearance agreement and  
3  
4 paid thousands of dollars to defendants Aurora and Deutsch Bank after default had he  
5 known that he would not have had a genuine opportunity to save his home.

6  
7 225. As a proximate result of defendant's conduct plaintiff has been financially  
8 injured in an amount to be proven at trial and his credit has been damaged.

9  
10 **EIGHTH CAUSE OF ACTION**

11 **Injunctive Relief**

12 **(All Plaintiffs and Classes against all Defendants)**

13  
14 226. Plaintiff incorporates in this cause of action all of the allegations in  
15 paragraphs 1 through 225 as though fully set forth herein.

16  
17 227. Plaintiffs bring this claim on their own behalf and on behalf of each  
18 member of the Class and Subclass described above.

19  
20 228. Defendants beneficiary and trustee intend to sell and unless restrained will  
21 sell or cause to be sold, the subject property, all to plaintiff's great and irreparable injury  
22 in that defendant has given notice that the trustee sale of the property will take place on  
23 March 11, 2011 or anytime thereafter, and if the sales take place as scheduled, plaintiff  
24 will forfeit it.

25  
26 229. The scheduled sales should be enjoined by virtue of the facts alleged that  
27 said sale is wrongful.  
28



1           236. California’s Unfair Competition Law (UCL) defines unfair competition to  
2 include any “unlawful, unfair, or fraudulent” business act or practice. Cal Bus & Prof  
3 Code 17200 et seq.  
4

5           237. By its terms, the statute is broad in scope. “It governs „anti-competitive  
6 business practices? as well as injuries to consumers, and has as a major purpose “the  
7 preservation of fair business competition.” [Citations.]” (*Cel-Tech Communications,*  
8 *Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) “By defining  
9 unfair competition to include any „*unlawful* . . . business act or practice? [citation], the  
10 UCL permits violations of other laws to be treated as unfair competition that is  
11 independently actionable. [Citation.]” (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.)  
12 In addition, under the UCL, “„a practice may be deemed unfair even if not specifically  
13 proscribed by some other law.? [Citation.]” (*Korea Supply Co. v. Lockheed Martin*  
14 *Corp.* (2003) 29 Cal.4th 1134, 1143.) The remedies available under the UCL are  
15 “cumulative . . . to the remedies or penalties available under all other laws of this state.”  
16 (Bus. & Prof. Code, § 17205.) *Arce v Kaiser Foundations Health Plan, Inc.* (2010)  
17  
18  
19  
20  
21

22           238. Defendants have violated Cal Bus & Prof Code §17200 et seq with the  
23 conduct as alleged above.  
24

25           239. Such acts include but are not limited to:

- 26           a. Defendants have a pattern and practice of refusing to provide permanent  
27           loan modifications to those borrowers who loans were placed in temporary  
28

1 HAMP plans but were covered by CDS or other securities/insurance, and  
2 this refusal to provide permanent loan modifications constitutes an  
3 unlawful, unfair or fraudulent business act or practice in violation of UCL,  
4 and/or  
5

6  
7 b. Defendant Aurora engaged in “fraudulent” business practices under the  
8 UCL because its temporary HAMP Agreements and post temporary HAMP  
9 Agreements were intended and likely to mislead the public into believing  
10 that if they made the additional payments that Aurora required they would  
11 have an opportunity to cure their loan defaults with a permanent HAMP  
12 modification or similar type of agreement prior to foreclosure. A true  
13 opportunity to cure their defaults was “material” to Plaintiffs and the Class  
14 within the meaning of *In re Tobacco II Cases*, (2009) 46 Cal 4<sup>th</sup> 298, 325,  
15 and/or  
16

17  
18 c. Aurora engaged in “unlawful” business practices under the UCL based on  
19 its violations of the Security First Rule, Cal Code Civ Pro 726 which states  
20 in pertinent part:  
21  
22

23  
24 (a) There can be but one form of action for the recovery of any debt or  
25 the enforcement of any right secured by mortgage upon real property  
26 or an estate for years therein, which action shall be in accordance with  
27 the provisions of this chapter. n the action the court may, by its  
28 judgment, direct the sale of the encumbered real property or estate for  
years therein (or so much of the real property or estate for years as  
may be necessary), and the application of the proceeds of the sale to



1 the payment of the costs of court, the expenses of levy and sale, and  
2 the amount due plaintiff, including, where the mortgage provides for  
3 the payment of attorney's fees, the sum for attorney's fees as the court  
4 shall find reasonable, not exceeding the amount named in the  
mortgage.

5 (b) The decree for the foreclosure of a mortgage or deed of trust  
6 secured by real property or estate for years therein shall declare the  
7 amount of the indebtedness or right so secured and, unless judgment  
8 for any deficiency there may be between the sale price and the amount  
9 due with costs is waived by the judgment creditor or a deficiency  
10 judgment is prohibited by Section 580b, shall determine the personal  
11 liability of any defendant for the payment of the debt secured by the  
12 mortgage or deed of trust and shall name the defendants against whom  
a deficiency judgment may be ordered following the proceedings  
prescribed in this section....

13 d. Aurora engaged in “unfair” business practices under the UCL because it  
14 violated the laws and underlying legislative policies concerning: (1)  
15 foreclosure prevention; (2) the unavailability of deficiency judgments after  
16 a lender exercised its election to sell under non-judicial foreclosure; and (3)  
17 the rights of contracting parties to enjoy the benefits of their agreements  
18 after having paid valuable consideration for such benefits.  
19  
20

21 240. As a proximate result of defendant Aurora’s conduct, plaintiff was injured  
22 financially and/or to his property rights. Aurora’s conduct as set forth herein resulted in  
23 loss of money or property to Plaintiff.  
24

25 241. Plaintiff seeks damages, disgorgement of profits on the CD Swaps,  
26 injunctive relief in the form of correction of his/her, their damaged credit, cure of  
27  
28

1 default and reconveyance of the deed, and any other equitable relief that the court deems  
2 appropriate.  
3

4 **ELEVENTH CAUSE OF ACTION**

5 **(Fraud/Concealment of Material Fact)**

6 **(All Plaintiffs and Classes against All Defendants)**  
7

8 242. Plaintiff incorporates by reference the allegations in paragraphs 1 through  
9 241 as though fully set out herein.  
10

11 243. Plaintiffs bring this claim on their own behalf and on behalf of each  
12 member of the Class and Subclass described above.  
13

14 244. As more fully described above defendants concealed the following material  
15 facts that they had a duty disclose:  
16

17 e. Defendants Deutsche Bank and Aurora concealed the material fact that  
18 Deutsche Bank National Trust Company Americas as trustee was the  
19 owner of the note and mortgage loan until after the plaintiffs and Class  
20 were thrown into default on their loans.  
21

22 f. Defendant Deutsche Bank concealed the material fact that the plaintiffs and  
23 Class's loans were covered with CDS or other similar security/insurance  
24 after the defendant defaulted the plaintiffs and Class's loans.  
25

26 g. Defendant Aurora concealed a material fact that the way the contract was  
27 written between Fannie Mae and Aurora, there was a substantial amount of  
28

1 loans aimed at receiving a more sustainable and affordable mortgage under  
2 HAMP that would not pass the NPV test because the lenders such as  
3 defendant Deutsche Bank had purchased credit default swaps or other types  
4 of investment security/insurance against these mortgages.  
5

6  
7 245. In plain language, the very types of mortgages the federal HAMP program  
8 was designed to protect were the very types of mortgages that were not being protected  
9 by the terms of the agreement between Aurora and Fannie Mae. The lenders like  
10 defendant Deutsche Bank knew it. The servicers such like defendant Aurora knew or  
11 should have known it and the plaintiffs and the Class in this action didn't have a clue.  
12  
13

14 246. Aurora was under a duty by the terms of the contract with Fannie Mae to  
15 disclose this material fact to Fannie Mae when it entered into this Agreement or when it  
16 learned of this material fact from defendant Deutsche Bank. The defendants were under  
17 a duty to disclose the owner of the loan.  
18

19 247. The suppression of this fact was likely to mislead and did mislead Fannie  
20 Mae, the plaintiffs and the Class.  
21

22 248. The representations and failure to disclose information and suppression of  
23 the information herein alleged to have been made by defendant were made with the  
24 intent to induce plaintiffs and the Class to act in the manner herein alleged in reliance  
25 thereon.  
26  
27  
28

1           249. In reliance upon the representation that defendants were qualified to offer  
2 the HAMP program to plaintiffs and the Class and without knowing that their loans  
3 were asset-backed pass-through securities held by Deutsche Bank who bought credit  
4 default swaps or other types of investment security/insurance or what that really meant,  
5 the plaintiffs and the members of the Class continued to make payments on their  
6 mortgage after they were in default and entered into the temporary HAMP agreements  
7 as described above believing if they continued to make their payments they would be  
8 accepted into a permanent HAMP modification.  
9

10  
11  
12           250. Plaintiffs and the members of the Class, at the time these failures to  
13 disclose and suppressions of facts occurred, and at the time plaintiff took the actions  
14 herein alleged, was ignorant of the existence of the facts which defendant suppressed  
15 and failed to disclose. If plaintiff had been aware of the existence of the facts not  
16 disclosed by defendant, plaintiff would not have paid these additional amounts to the  
17 defendants after default; may not have even signed the note or mortgage loan; and most  
18 likely would not have relied on defendant Aurora's representations which lulled them  
19 into default without looking beyond the servicer for an alternate solution.  
20  
21

22  
23           251. As a proximate result of Defendants' fraudulent conduct as herein alleged,  
24 plaintiffs and the Class were induced to disclose all of their private financial information  
25 and pay Aurora additional monies without any real consideration by reason of which  
26 plaintiffs and the Class have been damaged in the sum of their payments so made.  
27  
28

1           252. Plaintiffs and the Class seek specific performance or if specific  
2 performance cannot be granted, reformation or if reformation cannot be granted, offset,  
3  
4 equitable remedies to rescind the payments made to defendants under guise of  
5 performance of this contract and disgorgement of profits made on the Plaintiffs and the  
6  
7 Class loans above reasonable rental value of their homes from the time the loans  
8 originated.

9           253. The aforementioned conduct of defendant(s) was an intentional  
10  
11 misrepresentation, deceit, or concealment of a material fact known to the defendant(s)  
12  
13 with the intention on the part of the defendant(s) of thereby depriving plaintiff of  
14  
15 property or legal rights or otherwise causing injury, and was despicable conduct that  
16  
17 subjected plaintiff to a cruel and unjust hardship in conscious disregard of plaintiff's  
18 rights, so as to justify an award of exemplary and punitive damages.

19           254. Plaintiffs and the Class seek specific performance of the temporary HAMP  
20  
21 agreement by converting it to a permanent modification on the same terms and if  
22  
23 specific performance cannot be granted; rescission of all of the agreements as a result of  
24  
25 these failures of consideration. Plaintiffs have no other adequate remedy at law and will  
26  
27 suffer irreparable harm if the agreements are not rescinded and if the fees paid (which  
28 included legal and other fees not required to be paid under their notes) are not returned.

**TWELFTH CAUSE OF ACTION**

**Declaratory Relief/Injunction**

1 (As between plaintiff Gloria Yau and all those similarly situated and all  
2 defendants)  
3

4 255. Plaintiff incorporates in this cause of action all of the allegations in  
5 paragraphs 1 through 254 as though set forth in full herein.  
6

7 256. Plaintiff Gloria Yau and all those similarly situated always held title in the  
8 home described in the complaint and in the Notice of Default and Foreclosure Sale  
9 attached hereto as exhibits.  
10

11 257. Plaintiff Gloria Yau was not a signer on the Note and was not a co-  
12 borrower on the loan, in fact.  
13

14 258. Defendants contend that they have the right to non-judicially foreclose on  
15 plaintiff Gloria Yau's home, and conduct a trustee's sale relative to that property and  
16 evict her.  
17

18 259. Plaintiff contends that Defendants do not have a right to foreclose on her  
19 portion of the home.  
20

21 260. An actual controversy presently exists between Plaintiff Gloria Yau and  
22 Defendants as to the existence of the ability or right to foreclose on her home and evict  
23 her. A judicial decision is necessary and appropriate at this time so that Plaintiff Gloria  
24 Yau and Defendants may ascertain their respective rights relative to Plaintiffs and the  
25 Class's homes and the appropriate injunction issued.  
26  
27

28 **8. PRAYER FOR RELIEF**

1           **WHEREFORE, Plaintiffs pray for judgment** against defendants, Aurora Loan  
2 Services, LLC, DBNTC, DBTCA and each of them, jointly and severally, as  
3 follows:  
4

5           **A.** A judicial determination and decree that:

- 6                   1. the plaintiffs have cured their default and plaintiff is entitled to  
7 reconveyance upon payment of subsequent sums;
- 8                   2. the defendants, and each of them, have no legal right or authority to  
9 foreclose on plaintiff's home,
- 10                   3. that the defendant is reduced to the status of an unsecured creditor,
- 11                   4. that defendant improperly applied and/or calculated plaintiff's payments  
12 requiring a full accounting;
- 13
- 14
- 15

16           **B.** An accounting;

17           **C.** A permanent or final injunction to force defendants to request immediate  
18 removal of default or foreclosure status and all other derogatory/negative  
19 information from the Plaintiff's credit reports and to refrain such derogatory  
20 reporting in the future;

21           **D.** A permanent or final injunction, to effect full and fair relief consistent with the  
22 law, including but not limited to forcing defendants to reconvey the deed of the  
23 trust to the plaintiffs and Class and refrain from holding the debt out as  
24 "secured" to any other creditors. Such injunctive relief could include, case  
25  
26  
27  
28

1 dismissals, rescissions of sales, reconveyance of deeds, cures of defaults,  
2 reinstatement of loans at the principal and rate consistent with the rest of the  
3 relief afforded by way of this Complaint.  
4

5 **E.** Restitution to the Plaintiffs and the Class in amounts to be proven at trial;

6 **F.** Statutory damages and civil penalties;

7 **G.** Disgorgement of profits;

8 **H.** Costs of this action, including the fees and costs of experts;

9 **I.** Attorneys' fees;

10 **J.** Prejudgment interest at the statutory rate;

11 **K.** Post-judgment interest;

12 **L.** Exemplary and Punitive Damages; and

13 **M.** Grant plaintiffs and the class such other and further relief as this Court finds  
14 necessary and proper.  
15  
16  
17  
18

19 **9. DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury trial.  
21

22 Dated: March 11, 2011

LAW OFFICES OF LENORE ALBERT

23  
24  
25 By: /s/ Lenore L. Albert\_\_\_\_\_

26 LENORE ALBERT, ESQ.

27 Attorney for the Plaintiffs and the Class  
28



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE:

I declare that I am over the age of 18 years, and not a party to the within action; that I am employed in Orange County, California; my business address is 7755 Center Avenue Suite #1100, Huntington Beach, CA 92647.

On March 11, 2011, I served a copy of the following document(s) described as:

**FIRST AMENDED CLASS ACTION COMPLAINT**

On the interested parties in this action as follows:

See attached Mail List

**BY OVERNIGHT MAIL** – I caused such document(s) to be placed in pre-addressed envelope(s) with postage thereon fully prepaid and sealed, to be deposited as Express/Priority Mail for next day delivery at Westminster, California, to the aforementioned addressee(s).

**BY CM/ECF** – I caused such document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth pursuant to FRCP 5(d)(1).

**BY FAX** – I caused such document(s) to be transmitted facsimile from the offices located in Westminster, California this business day to the aforementioned recipients.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: March 11, 2011

/s/ Lenore Albert

Lenore Albert

Mailing List

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