

1 IN THE CIRCUIT COURT OF THE 11th
2 JUDICIAL CIRCUIT IN AND FOR
3 MIAMI-DADE COUNTY, FLORIDA
4

5 GENERAL JURISDICTION DIVISION

6 PELAYO M. DURAN,

CASE NO.: 09-03703 CA (01)

7
8 Plaintiff,

9
10 v.

11
12 GREENPOINT MORTGAGE FUNDING,
13 INC., a Foreign Corporation, WELLS FARGO
14 & COMPANY a Foreign Corporation; WELLS FARGO
15 BANK N.A., a Foreign Corporation, WELLS
16 FARGO HOME MORTGAGE, INC., an inactive
17 Florida Corporation, CINDY SIERRA and
18 LEE A. ROSENTHAL, Personally;
19 WELLS FARGO BANK N.A., AS TRUST
20 ADMINISTRATOR FOR CREDIT
21 SUISSE FIRST BOSTON MORTGAGE
22 SECURITIES CORP.; ADJUSTABLE RATE
23 MORTGAGE TRUST 2005-5, ADJUSTABLE RATE
24 MORTGAGE-BACKED PASS-THROUGH
25 CERTIFICATES, SERIES 2005-5; TRUSTEE,
26 INVESTORS 1-1000 IN AND FOR THE TRUST,
27 MERSCORP, INC., a Foreign Corporation; MORTGAGE
28 ELECTRONIC REGISTRATION SYSTEMS,
29 INC., a subsidiary of MERSCORP., INC.,
30 a Delaware Corporation,

31
32 Defendants,

33 _____ /
34
35 **FOURTH AMENDED COMPLAINT**

36 Plaintiff, PELAYO M. DURAN (hereinafter referred to as “DURAN”), by and through
37 his undersigned counsel, sues GREENPOINT MORTGAGE FUNDING, INC. (hereinafter
38 referred to as “GREENPOINT”) WELLS FARGO & COMPANY , WELLS FARGO BANK
39 N.A. (hereinafter referred to as “WELLS FARGO BANK”), WELLS FARGO HOME
40 MORTGAGE, INC. (hereinafter referred to as “WELLS FARGO HOME MORTGAGE”),
41 CINDY SIERRA (hereinafter referred to as “SIERRA”), LEE A. ROSENTHAL (hereinafter
42 referred to as “ROSENTHAL”) WELLS FARGO & COMPANY; WELLS FARGO BANK N.A.

1 as Mortgage Broker, Master Servicer as Servicer and as TRUST ADMINISTRATOR FOR
2 CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP ADJUSTABLE RATE
3 MORTGAGE TRUST 2005-5 ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-
4 THROUGH CERTIFICATES, SERIES 2005-5 (hereinafter referred to as “TRUST”),
5 TRUSTEE; INVESTORS 1-1000 IN AND FOR THE TRUST (hereinafter referred to as “THE
6 INVESTORS”), MERSCORP, INC., a Foreign Corporation, MORTGAGE ELECTRONIC
7 REGISTRATION SYSTEMS, INC., a subsidiary of MERSCORP., INC., a Delaware
8 Corporation (hereinafter referred to jointly as “MERS”), and states:

9 **JURISDICTIONAL ALLEGATIONS**

10 1. This is an action for damages in excess of \$15,000.00, for unjust enrichment, for
11 declaratory relief, injunctive relief and to quiet title of the subject property.

12 2. DURAN, is over the age of 18, and is otherwise *sui juris*.

13 3. GREENPOINT is a foreign corporation, authorized and doing business in
14 Miami-Dade County, Florida. GREENPOINT is engaged in the origination of mortgage loan
15 through a network of independent mortgage loan brokers.

16 4. WELLS FARGO & COMPANY (herein collectively and interchangeably
17 referred to as “WELLS FARGO BANK NA” “WELLS FARGO HOME MORTGAGE”
18 “WELLS FARGO & COMPANY” is a foreign corporation, authorized and doing business in
19 Miami-Dade County, Florida and is related to RELS VALUATION, VALUATION
20 INFORMATION TECHNOLOGY, LLC., WELLS FARGO BANK and WELLS FARGO
21 HOME MORTGAGE, either by virtue of partial ownership by a common parent or economic
22 power.

23 5. WELLS FARGO BANK N.A. as Mortgage Broker, as Servicer, as Master
24 Servicer and as TRUST ADMINISTRATOR is a foreign corporation, authorized and doing
25 business in Miami-Dade County, Florida.

26 6. WELLS FARGO HOME MORTGAGE INC. is and was at all times relevant an
27 inactive foreign corporation doing business in Miami-Dade County, Florida. Based on
28 information and belief the corporation is wholly owned by WELLSFARGO & COMPANY.

29 7. SIERRA, is over the age of 18, a resident of Miami, Florida, and is otherwise *sui*
30 *juris*.

1 15. The property which is the subject matter of this litigation was and is DURAN's
2 primary residence, and shall hereinafter be referred to interchangeably as "the subject property"
3 or "the primary residence" is legally described as follow:

4 1229 Sorolla Avenue, Coral Gables, Florida 33134

5 Folio # 03-4107-016-0050

6 Legal Description: Lot 44 Block 1Coral Gables Section E Plat Book 8 Page13

7 16. DURAN gave an initial down payment of approximately \$100,000.00, and
8 obtained a first mortgage for approximately 80% of the purchase price.

9 17. Shortly after the purchase, it became apparent to DURAN that he would need
10 access to the money he had paid as down payment on the primary residence in order to address a
11 number of issues that had arisen and that were developing.

12 18. On or about January, 2005 DURAN viewed a published advertisement from
13 WELLS FARGO BANK N.A. or WELLS FARGO HOME MORTGAGE in *The Miami Herald*.
14 A copy of the advertisement is attached hereto as **Exhibit "A"**.

15 19. The advertisement offered an Adjustable Rate Mortgage (ARM), with ten (10)
16 years interest only payments, a fixed interest rate for 10 years, to be adjusted once per year after
17 the change date, with no origination fees, \$350.00 application fee, no down payment, 95% loan
18 to value, and a 5.1 APR¹.

19 20. After comparing the advertisement to other published rates and terms, DURAN
20 found it appealing because:

21 a. It offered very favorable terms as compared to those terms then advertised on the
22 market, based on DURAN's criteria; and

23 b. Since Duran had done business with WELLS FARGO in the past, He reasonably
24 believed that based on WELLS FARGO's name recognition, reputation in the
25 marketplace as a large financial federally regulated banking institution, they
26 would look out for his best interests.

27 21. DURAN contacted WELLS FARGO in response to the advertisement.

28 22. At the time, DURAN reasonably believed and was lead to believe that he was
29 inquiring about a loan originated directly with WELLS FARGO BANK, N.A..

¹ DURAN now realizes that this advertisement was facially fraudulent since it would be mathematically impossible for a loan with a rate of 5.75% to have an APR of 5.1%.

1 23. DURAN was directed to CINDY SIERRA (hereinafter referred to as
2 “SIERRA”). It is believed that SIERRA not only acted personally but also on behalf of WELLS
3 FARGO BANK NA., WELLS FARGO HOME LOANS INC., and on behalf of GREEPOINT
4 MORTGAGE FUNDING, as one of many approved and authorized mortgage brokers in a
5 network of independent mortgage loan brokers, and also independent Mortgage Broker to the
6 transaction at issue.

7 24. SIERRA recommended to DURAN that he obtain a residential mortgage
8 refinance of his primary residence, including an equity line of credit consistent with the
9 advertised terms and rates.

10 25. At some point early in the process, SIERRA told DURAN that the advertised
11 rates were not available, but that she would get him a “better deal”.

12 26. Over the period of approximately two (2) months following the initial contact
13 with SIERRA, and as DURAN continued to go through the application process, DURAN
14 continued to make periodic telephone inquiries to SIERRA as to rates and terms of the loans.

15 27. SIERRA then proceeded to quote DURAN rates for Adjustable Rate Mortgage
16 (ARM) with ten (10) years interest only payments with a fixed interest rate for either 3, 5, 7, or
17 10 years, to be adjusted once per year after the adjustment period, i.e. 3/1 ARM, 5/1 ARM, 7/1
18 ARM, and 10/1 ARM.

19 28. At some point early in the process, SIERRA asked DURAN about his credit
20 history and the value of the primary residence.

21 29. DURAN informed SIERRA that his credit history was good and that he believed
22 his primary residence to be worth about \$984,000.00 (which was the price that he had paid about
23 2 months earlier).

24 30. SIERRA informed DURAN that she would need to conduct a “pencil search”
25 which was a common (illegal) practice where a mortgage broker would shop for an appraiser that
26 would support the value that the lender wanted to arrive at or “hit”.

27 31. Upon information and belief, SIERRA or one of her co-workers contacted
28 Defendant, ROSENTHAL.

29 32. Upon information and belief, ROSENTHAL informed SIERRA that he could
30 value the primary residence at \$1.5 million.

1 33. SIERRA fraudulently and/or negligently misrepresented to DURAN in order to
2 induce him to continue with the transactions that based on the “pencil search” his primary
3 residence was valued at \$1.5 million. DURAN reasonably relied on that misrepresentation to his
4 detriment.

5 34. SIERRA fraudulently and/or negligently misrepresented to DURAN, in order to
6 induce him to continue with the transaction, that he would be able to obtain a new first mortgage
7 that would be payable in 30 years with a 10 year interest only fixed period.

8 35. SIERRA fraudulently and/or negligently misrepresented to DURAN, in order to
9 induce him to continue with the transaction, that he would be able to buy down his interest rate 1
10 to 2 percentage points at closing.

11 36. SIERRA recommended the 10 year interest only fixed first mortgage and buying
12 down interest rate 1 to 2 percentage points at closing because, according to her, this would result
13 in DURAN potentially obtaining a loan with an interest rate of about 3% to 3.5% fixed interest
14 rate.

15 37. Since the loan was to be repaid as interest only loan for 10 years, SIERRA
16 represented to DURAN that any payment of principal would have the effect of reducing his
17 monthly mortgage payment, thereby further reducing his mortgage.

18 38. SIERRA represented to DURAN that the adjustment would have little or no
19 affect in the final outcome of the loan because the promised new first mortgage: (a) was payable
20 in a 10 year interest only fixed period; and (b) his interest rate could be bought down 1 to 2
21 percentage points at closing, allowing him to repay his first loan in 10 to 15 years.

22 39. DURAN reasonably relied to his detriment on SIERRA’s representations, and
23 continued with the mortgage process.

24 40. In making the above representations to DURAN, SIERRA not only acted
25 personally and as independent Mortgage Broker to the transaction at issue, but also on behalf of
26 WELLS FARGO BANK & COMPANY, WELLS FARGO NA, WELLS FARGO HOME
27 LOANS INC., and GREENPOINT, as one of many approved and authorized mortgage brokers
28 in a network of independent mortgage loan brokers.

29 41. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
30 HOME MORTGAGE, and/or GREENPOINT, by and through their agent, SIERRA ordered

1 from RELS VALUATION an appraisal from ROSENTHAL, naming WELLS FARGO BANK,
2 N.A. as ROSENTHAL's client. See attached **Exhibit "B"**.

3 42. The alleged purpose of the appraisal that was provided to Plaintiff prior to
4 closing, and upon which Plaintiff reasonably relied, was to determine whether a loan secured by
5 the property should be made².

6 43. RELS is an integrated enterprise with WELLS FARGO & COMPANY, WELLS
7 FARGO BANK and WELLS FARGO HOME MORTGAGE, either by virtue of partial
8 ownership by a common parent or economic power as its largest client.

9 44. WELLS FARGO BANK, & COMPANY, GREENPOINT, and/or their agents
10 need their network of authorized brokers to be either knowingly or unknowingly complicit in a
11 scheme with Defendant RELS in order to pressure appraisers to inflate property values and
12 maximize profits from the loan.

13 45. ROSENTHAL negligently or fraudulently misrepresented the value of the
14 property to Plaintiff as more specifically discussed in Plaintiffs Answers to Defendant,
15 ROSENTHAL's First Set of Interrogatories, attached hereto and incorporated herein by
16 reference as **Exhibit "C"**.

17 46. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
18 HOME MORTGAGE, GREENPOINT and their agent SIERRA, knew that the ROSENTHAL
19 appraisal was inflated, intentionally withheld, and actively concealed that information from
20 Plaintiff. See Review Appraisal attached **Exhibit "D"**.

21 47. WELLS FARGO & COMPANY, WELLS FARGO BANK N.A., WELLS
22 FARGO HOME MORTGAGE knowingly used this negligently, recklessly or fraudulently
23 inflated appraisal to the Plaintiff's detriment so that they could maximize the amount of loans
24 given, and did so without true regard for Plaintiff and his ability to pay the loan closed. Plaintiff
25 believes and herein alleges that he is the victim of both appraisal fraud and predatory lending.

² It is important to note that the misrepresentations of ROSENTHAL as to the market value of the property were made in a fashion that was not immediately apparent to DURAN, and DURAN has only recently discovered the existence of these representations after retaining the services of an expert who has brought to the attention of DURAN, for the first time, some of the misrepresentations that had the effect of inflating the appraisal of DURAN's home to the detriment of DURAN.

1 48. Plaintiff is informed and believes that this fraudulently inflated appraisal that
2 was presented to him before closing, coupled with the fact that the review appraisal was withheld
3 from Plaintiff, was intended to induce Plaintiff into accepting large loans with unfavorable terms
4 attempting to assure the Plaintiff that his collateral was sound. This inflated appraisal did,
5 indeed, affect Plaintiff, as without such appraisal the Plaintiff would not have encumbered his
6 property in such a way, and the Defendants SIERRA, ROSENTHAL, GREENPOINT, WELLS
7 FARGO & COMPANY; WELLS FARGO BANK N.A.; WELLS FARGO HOME MORTGAGE
8 knew and could foresee that this conduct would cause harm to Plaintiff.

9 49. On or about February 10, 2005 WELLS FARGO BANK, N.A., by and through
10 its agent, SIERRA, submitted to DURAN a Good Faith Estimate inducing him to apply for a ten
11 (10) year interest only loan in the amount of \$900,000.00, to be adjusted once per year after ten
12 (10) years (10/1 ARM) with a rate of 5.75%³. A true and correct copy of the February 10, 2005
13 Good Faith Estimate is attached hereto as **Exhibit “E”**.

14 50. Relying on SIERRA’s representations, and on the February 10, 2005 Good Faith
15 Estimate submitted by SIERRA, on or about February 10, 2005 DURAN signed and submitted to
16 WELLS FARGO a Residential Loan Application.

17 51. The Residential Loan Application requested a ten (10) year interest only loan, to
18 be adjusted once per year (10/1 ARM) with a rate of 5.75%.

19 52. Based on SIERRA’s specific instruction to DURAN, his application did not
20 contain any specification whatsoever as to monthly income, and contained an estimated value of
21 the subject property of \$1.3million (although DURAN had been previously informed by
22 SIERRA that the value of his home was \$1.5 million according to the “pencil search”).

23 53. Unbeknownst to DURAN, inducing him to omit his monthly income from the
24 application enabled SIERRA to adjust the loan to value and debt to income ratio.

25 54. Unbeknownst to DURAN, the omission of a monthly income on the application
26 enabled SIERRA to back into the required debt to income ratio by increasing DURAN’s income
27 without the risk of contradicting a previous statement of DURAN if the income was too low.

³ It is important to note that Sierra told DURAN that he would be able to buy down the rate at closing 1 to 2 percentage point and that he should not worry about the quoted rate since all rates could be bought down at closing, this was a common industry practice.

1 55. In the following weeks SIERRA told DURAN on several occasions that the rates
2 had gone up, and that the originally offered terms, i.e. 10/1 ARM, were not likely available.

3 56. During those conversations, SIERRA continued to insist, and attempted to
4 induce DURAN, to accept a riskier more profitable loan for her, a 3/1 ARM.

5 57. DURAN repeatedly refused the 3/1 ARM, and repeatedly insisted on the
6 originally offered terms of 10/1 ARM at 5.1%.

7 58. Thereafter, DURAN received a series of different and conflicting Truth in
8 Lending disclosures from WELLS FARGO BANK, N.A. and/or GREENPOINT, accompanied
9 by a series of different and conflicting Good Faith Estimates, that either fraudulently, recklessly
10 or negligently misrepresented the resulting closing terms included in the final loan as follows:

11 a. The second Truth in Lending disclosure and Good Faith Estimate was dated
12 February 18, 2005, quoting an annual percentage rate (APR) of 5.8212% with
13 good faith estimate cost of \$12,631.50. A copy of the February 18, 2005
14 disclosure and Good Faith Estimate is incorporated by reference as **Composite**
15 **Exhibit “F”**;

16 b. The third Truth in Lending disclosure and Good Faith Estimate was dated
17 February 22, 2005, quoting an annual percentage rate of APR 5.451% with a good
18 faith estimate cost of \$8,362.00. A copy of the February 22, 2005 disclosure and
19 Good Faith Estimate is incorporated by reference as **Composite Exhibit “G”**.

20 59. The February 18, 2005 Good Faith Estimate was provided by WELLS FARGO
21 BANK, N.A., by and through SIERRA, its authorized agent and/or representative.

22 60. The February 22, 2005 Good Faith Estimate was provided by GREENPOINT
23 logo, and was provided to DURAN by GREENPOINT, by and through SIERRA, its authorized
24 agent and/or representative.

25 61. The prospect of a first mortgage with GREENPOINT was presented to DURAN
26 by SIERRA acting as Broker/Agent for GREENPOINT.⁴

27 62. SIERRA represented to DURAN that she had the authority from GREENPOINT
28 to arrange or grant mortgage financing for the GREENPOINT loan.

⁴ It is important to point out that DURAN relied on the advice of SIERRA and GREENPOINT, both of whom may have acted as brokers of the transaction in question. GREENPOINT advised DURAN in writing that it was his mortgage broker in the transaction. WELLS FARGO charged an origination fee, which was a disguised brokers' fee since neither WELLS FARGO BANK or WELLS FARGO HOME MORTGAGE originated the loan. Hence both SIERRA and GREENPOINT owed a fiduciary duty of care to look out for his best interests.

1 63. SIERRA took and accepted DURAN's loan application on behalf of
2 GREENPOINT and/or WELLS FARGO BANK, N.A and/or WELLS FARGO &COMPANY .

3 64. DURAN entered into a Rate Lock Agreement with GREENPOINT and/or
4 WELLS FARGO BANK, N.A and/or WELLS FARGO &COMPANY on February 22, 2005 for
5 a fixed interest rate of 5.5% during a five (5) year period, to be adjusted **once per year** after the
6 change date, with a **lifetime cap of 5%** with **no pre payment** penalty. A copy of the Rate Lock
7 Agreement is incorporated by reference as **Exhibit "H"**.

8 65. The final terms of the loan at closing were different from the February 22, 2005
9 Rate Lock Agreement since the loan was a substantially riskier one than that which was
10 originally promised, since the adjustments were **twice per year, included a prepayment**
11 **penalty**, and most importantly, the loan contained a **Rate Cap of 10.5% not 5%** as represented
12 to DURAN in the rate lock agreement.

13 66. On March 10, 2005 DURAN and GREENPOINT closed on a \$920,000.00 first
14 mortgage.

15 67. The March 10, 2005 closing took place five (5) days prior to expiration of the
16 Rate Lock Agreement.

17 68. At the time of closing SIERRA, GREENPOINT and/or WELLS FARGO
18 BANK, N.A and/or WELLS FARGO & COMPANY gave DURAN a final Truth in Lending
19 disclosure, reflecting a financed amount of \$903,830.29 with an APR of 5.622%.

20 69. The March 10, 2005 Truth in Lending Disclosure fraudulently, recklessly or
21 negligently misrepresented to DURAN the terms of the loan.

22 70. At no time during the months of discussions between DURAN and SIERRA, did
23 SIERRA, GREENPOINT and/or WELLS FARGO BANK, N.A and/or WELLS FARGO &
24 COMPANY ever discuss the prospect of the terms that were ultimately originated in the
25 GREENPOINT Note, i.e., rate adjustments up to twice per year as opposed to the offered
26 adjustment of once per year, a pre-payment penalty, a rate cap of 10.5%, **or the fact that he**
27 **would be unable to buy down the rate 1-2 percentage points.**

28 71. At no time prior to closing did GREENPOINT, or anyone acting on behalf of
29 GREENPOINT and/or WELLS FARGO BANK, N.A and/or WELLS FARGO & COMPANY,
30 ever discuss the prospect of the terms that were ultimately originated in the GREENPOINT

1 Note, i.e., rate adjustments up to twice per year as opposed to the offered adjustment of once per
2 year, or pre-payment penalty or a rate cap of 10.5%.

3 72. DURAN paid a required fee that should have been credited at the time of closing,
4 but was not.

5 73. DURAN also received a Broker Compensation Disclosure from GREENPOINT
6 informing DURAN that GREENPOINT “will be acting as mortgage broker”. A copy of the
7 Broker Compensation Disclosure is attached hereto as **Exhibit “I”**.

8 74. WELLS FARGO charged an origination fee, which was a disguised brokers’ fee
9 since neither WELLS FARGO BANK or WELLS FARGO HOME MORTGAGE originated the
10 loan.

11 75. The final costs charged at closing were \$27,376.21. A copy of the final HUD-1
12 and Truth in Lending disclosure are incorporated by reference as **Composite Exhibit “J”**.

13 76. At the time of closing, DURAN was provided with a typed version of the
14 Residential Loan Application.

15 77. This typed version of the Residential Loan application contained income
16 information that had not been provided by DURAN in the original application or during the
17 closing process.

18 78. Upon reviewing the Note, mortgage and pre-payment penalty during the March
19 10, 2005 closing, DURAN learned for the first time that SIERRA, GREENPOINT and/or
20 WELLS FARGO BANK, N.A and/or WELLS FARGO & COMPANY had switched the terms
21 of the loan from the terms that were promised in the February 22, 2005 Good Faith Estimate
22 (annual percentage rate of APR 5.451% with a good faith estimate cost of \$8,362.00) to a fixed
23 interest rate during a five (5) year period, to be adjusted twice per year after the adjustment
24 period 5/6mo. ARM with \$27,376.21 in costs, 10.5% rate cap vs. 5%. A copy of which are
25 incorporated by reference as **Composite Exhibit “K”**

26 79. The GREENPOINT Mortgage/Note also contained a pre-payment penalty that
27 was never previously disclosed to DURAN.

28 80. DURAN contacted SIERRA and the GREENPOINT closer on the telephone
29 during the March 10, 2005 Closing, and told them that they had given him a loan that was
30 different from that which had been represented previously.

1 81. SIERRA insisted that DURAN close on the GREENPOINT transaction since he
2 supposedly had three (3) days to cancel the transaction.

3 82. SIERRA further assured DURAN that there had been some sort of mistake and
4 that she would speak to her supervisor in order to correct the mistake.

5 83. SIERRA assured DURAN that the corrections to the GREENPOINT mortgage
6 were made as per the Rate Lock Agreement and their previous discussions regarding the “buy
7 down” of the rate 1 to 2 percentage points.

8 84. On or about March 11, 1009 (the day after the GREENPOINT closing) DURAN
9 told SIERRA that he wanted to exercise his right to rescind the GREENPOINT mortgage.

10 85. SIERRA indicated that he could not rescind the GREENPOINT mortgage.

11 86. Upon information and belief, SIERRA’s employer (WELLS FARGO BANK,
12 N.A. and/or WELLS FARGO HOME MORTGAGE) and GREENPOINT had a written
13 agreement to do business with each other, whereby WELLS FARGO BANK, N.A. and/or
14 WELLS FARGO HOME MORTGAGE authorized GREENPOINT to broker or arrange
15 mortgage loans using WELLS FARGO BANK and/or WELLS FARGO HOME MORTGAGE
16 agents and/or employees.

17 87. Although SIERRA alleges that she worked for WELLS FARGO BANK and/or
18 WELLS FARGO HOME MORTGAGE, upon information and belief, she also routinely placed
19 customers who replied to WELLS FARGO advertisements with loans from other lenders such as
20 GREENPOINT.

21 88. Upon information and belief, SIERRA placed many customers with loans through
22 GREENPOINT, and closed several loans on behalf of GREENPOINT.

23 89. Upon information and belief, SIERRA used GREENPOINT’s policies, rate
24 sheets, product sheets, loan pricing software, closing documents and training materials when
25 placing customers with loans through GREENPOINT.

26 90. Upon information and belief, SIERRA filled out the computer-generated loan
27 applications, executed rate lock agreements and other documentation, and submitted final loan
28 documents for the GREENPOINT loan on behalf of GREENPOINT.

1 91. Upon information and belief, SIERRA received premiums or commissions or fees
2 and kick backs directly from GREENPOINT, or through WELLS FARGO BANK and/or
3 WELLS FARGO HOME MORTGAGE, for the closing of DURAN’s GREENPOINT loan.

4 92. Such premiums or commissions or fees and kick backs were intended to
5 encourage SIERRA to induce customers like DURAN into accepting unfavorable, high risk,
6 subprime loans from GREENPOINT and/or WELLS FARGO BANK, N.A and/or WELLS
7 FARGO & COMPANY.

8 93. DURAN’s loan with GREENPOINT was intended to be arranged in conjunction
9 with GREENPOINT’s credit-granting policies.

10 94. The HUD-1 settlement statement provided at closing and other documents from
11 the March 10, 2005 closing and other documentation show that GREENPOINT, WELLS
12 FARGO BANK and/or WELLS FARGO HOME MORTGAGE shared the same office space at
13 800 Fairway Drive, Suite 140, Deerfield Beach FL 33441-1830.

14 95. GREENPOINT, WELLS FARGO BANK and/or WELLS FARGO HOME
15 MORTGAGE’s sharing of office space raises additional questions with regard to other
16 improprieties and deceptive lending and business practices associated with the GREENPOINT
17 mortgage.

18 96. Throughout the time that SIERRA dealt with DURAN on the GREENPOINT
19 loan, SIERRA assured DURAN that the loans that she was securing was “the best deal for you”
20 or words to that effect.

21 97. SIERRA’s acts, as alleged in this lawsuit, were encouraged by WELLS FARGO
22 BANK, WELLS FARGO HOME MORTGAGE, and/or GREENPOINT’s compensation
23 policies, and designed to further enhance GREENPOINT and/or WELLS FARGO BANK, N.A
24 and/or WELLS FARGO & COMPANY’s profits.

25 98. DURAN relied to his detriment on assurances made by SIERRA, acting as agent
26 for GREENPOINT and/or WELLS FARGO BANK, N.A and/or WELLS FARGO &
27 COMPANY, that he was receiving the most favorable loan terms available to him.

28 99. SIERRA induced DURAN to go through the loan process and at the end, secure
29 a loan that did not resemble the advertised terms or the promised terms.

1 100. SIERRA induced DURAN to secure a loan that was designed to maximize hers,
2 GREENPOINT and/or WELLS FARGO BANK, N.A and/or WELLS FARGO & COMPANY's
3 profits.

4 101. SIERRA induced DURAN to secure a loan that generated kick backs and fees to
5 the detriment of DURAN.

6 102. At all times material hereto, SIERRA acted as an agent for GREENPOINT
7 and/or WELLS FARGO BANK, N.A and/or WELLS FARGO & COMPANY, WELLS FARGO
8 HOME MORTGAGE.

9 103. At all times material hereto, SIERRA and GREENPOINT and/or WELLS
10 FARGO BANK, N.A and/or WELLS FARGO & COMPANY, WELLS FARGO HOME
11 MORTGAGE acted as Broker/Agent on behalf of WELLS FARGO BANK, N.A. and/or
12 GREENPOINT.

13 104. The process of securitizing loans and selling them to the secondary market
14 changed the mortgage industry, eliminated the underwriting process, and has diminished the
15 brokers' and the lenders' incentive to ensure the appraisal or income backing the terms of the
16 loan are accurate, or that loans originated are in the best interest of the unknowing borrower.

17 105. Neither WELLS FARGO BANK, N.A., GREENPOINT, or ROSENTHAL had
18 any incentive to ensure that the appraisal was an accurate assessment of the property's true
19 market value.

20 106. WELLS FARGO BANK, N.A and/or WELLS FARGO & COMPANY, WELLS
21 FARGO HOME MORTGAGE, GREENPOINT, and ROSENTHAL's only interest was for the
22 deal to close.

23 107. Plaintiff is informed and believes that during the relevant period WELLS
24 FARGO BANK, N.A and/or WELLS FARGO & COMPANY, WELLS FARGO HOME
25 MORTGAGE sought to sell home loans by means of securitization transactions. During the
26 relevant period WELLS FARGO BANK, N.A and/or WELLS FARGO & COMPANY, WELLS
27 FARGO HOME MORTGAGE increased the number of loans sold rather than held and serviced,
28 the Defendant became less vigilant in guarding against the risk of default and delinquencies.
29 Loan fees and sales revenue became Defendants' primary profit mechanism making the sheer
30 quantity of loan issued more important than the quality of any loan. Defendant also abandoned

1 their underwriting and appraisal standard and other methods of risk assessment in order to
2 increase the loan origination quantities. Because WELLS FARGO BANK, N.A and/or WELLS
3 FARGO & COMPANY, WELLS FARGO HOME MORTGAGE and GREENPOINT's profits
4 are determined by the quantity of loans that they successfully close, and not the quality of those
5 loans, these lenders have an incentive to pressure appraisers and brokers to obtain appraisals to
6 reach inflated values that will allow the loan to close - without regard to whether the appraisal
7 accurately reflects the home's actual value. The end result was allowing Plaintiff to borrow more
8 than Plaintiff could ever afford to repay. These are the classic predatory loans which clearly
9 show a pattern of placing Defendants' own financial interest ahead of the duty owed to Plaintiff
10 and against Plaintiff's interest. This conduct on the part of Defendants constitutes a material
11 breach of the covenant of good faith and fair dealing.

12 108. With respect to DURAN's mortgage, and unbeknownst to DURAN, the
13 underwriting standards for his loan required little or no investigation into DURAN's credit
14 history and income profile, and was underwritten primarily on the basis of an inflated appraisal
15 such as the one performed by Defendant ROSENTHAL. (See Trust Agreement). All the while
16 Plaintiff reasonably believed and was reasonably lead to believe that Defendants were looking
17 out for Plaintiff's best interest, when in truth and in fact, they were engaging in predatory and
18 abusive lending practices and seeking Plaintiff's signature on a NOTE that would be sold for a
19 generous profit to investors who reasonably relied on Defendants' false promise that in
20 originating the loan they had complied with all applicable predatory and abusive lending laws
21 applicable to the origination of the loan. All parties reasonably relied on such representation by
22 Defendants.

23 109. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
24 HOME MORTGAGE, GREENPOINT posed as a conventional mortgage lender, thus leading
25 Plaintiff to reasonably believe that GREENPOINT had an interest in the success of the
26 transaction (repayment of the loan).

27 110. In fact, neither WELLS FARGO & COMPANY, WELLS FARGO BANK,
28 WELLS FARGO HOME MORTGAGE or GREENPOINT have any interest other than
29 obtaining Plaintiff's signature on a "loan" that could never be repaid, contrary to representations
30 and assurances from the conspiring participants in this fraudulent scheme.

1 111. In fact, no "lender" was involved in the closing in the sense of an entity
2 performing due diligence and evaluation pursuant to national standards for underwriting and
3 evaluating risk of loaning money in a residential loan closing.

4 112. Upon information and belief, GREENPOINT is an institution that was paid a fee
5 to pose as a residential mortgage lender, broker, correspondent lender, when in fact, the source of
6 loan funds and the actual lender (Investors in Certificates) and underwriter (Mortgage
7 Aggregator and Investment Banker) were other parties whose identities and receipt of fees and
8 profits were withheld from Plaintiff at Closing, and despite numerous requests, continue to be
9 withheld from Plaintiff by the WELLS FARGO & COMPANY, WELLS FARGO BANK,
10 WELLS FARGO HOME MORTGAGE, GREENPOINT, contrary to the requirements of
11 applicable Law.

12 113. Unbeknownst to Plaintiff, WELLS FARGO & COMPANY, WELLS FARGO
13 BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT entered into Assignment and
14 Assumption Agreements with one or more parties, and Pooling and Service Agreements with one
15 or more parties, including but not limited to the mortgage aggregator, prior to or
16 contemporaneously with the "Closing" of the subject "loan transaction."

17 114. Under the terms of these agreements with third parties, WELLS FARGO BANK,
18 WELLS FARGO HOME MORTGAGE, GREENPOINT received a sum of money (pre-
19 funding), usually on receiving an application for a loan equal to the gross amount of the loan
20 sought by Plaintiff plus a fee which was allocated to the subject loan transaction.

21 115. Contrary to the documents presented before and during the "closing" of the "loan
22 transaction", GREENPOINT was *neither* the source of funding *nor* the "Lender."

23 116. Immediately upon closing, the loan was allegedly assigned to the Trust (See
24 Trust Agreement).

25 117. Thus, at the time of recording of the mortgage the source of funding and the
26 "Lender" was a different entity than the nominal mortgagee, and was neither named nor
27 disclosed in any fashion.

28 118. The security for the "loan" thus secured an obligation that had been paid in full
29 by third party(ies) i.e. CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP
30 ADJUSTABLE RATE MORTGAGE TRUST 2005-5 ADJUSTABLE E.RATE MORTGAGE-

1 BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5 and INVESTORS 1- 1000 who
2 were acting as a financial institution or "Lender" without even having been chartered or
3 registered to do so.

4 119. Some form of documentation represented by GREENPOINT to the Mortgage
5 Aggregator was presented before or contemporaneously with the "closing" of the loan"
6 transaction.

7 120. Plaintiff has no knowledge as to what version of documentation WELLS
8 FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
9 GREENPOINT presented to the Mortgage Aggregator, or if the Mortgage Aggregator took one
10 or more varying descriptions of the alleged "loan documents" into more than one pool of assets
11 which was eventually sold for the purpose of securitizing the assets of the pool which included
12 the subject loan transaction either once or more than once. Plaintiff has requested such
13 information numerous times only to be met with complete silence and resistance from the
14 Defendants.

15 121. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
16 HOME MORTGAGE, GREENPOINT intentionally concealed the fact that the note from the
17 subject "loan transaction" was eventually allocated into a new corporation (Special Purpose
18 Vehicle) formed for the express purpose of holding the pooled assets under certain terms.

19 122. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
20 HOME MORTGAGE, GREENPOINT intentionally concealed the fact that the terms of the
21 allocation into the Special Purpose Vehicle included the allocation of payments from one note to
22 pay any deficiency in payment of another note in unrelated "loan transactions".

23 123. This practice is contrary to the terms of each such note, which requires payments
24 to be allocated to the principal, interest, escrow and fees associated with only that specific "loan
25 transaction."

26 124. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
27 GREENPOINT has intentionally failed and refused to provide DURAN with information as to
28 whether such misapplication of payments was caused by the difference between the higher
29 general terms of description of the note or the lower actual payment requirements from the
30 "borrower", despite repeated requests from DURAN for accounting.

1 125. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
2 HOME MORTGAGE, GREENPOINT recklessly and/or intentionally concealed the fact that
3 The Investment Banking firm arranged for a false inflated appraisal of the certificates and/or
4 issuer of the certificates that would be sold to investors, in much the same way as it had procured
5 the inflated appraisal of the property that "secured" the "loan transaction."

6 126. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
7 HOME MORTGAGE, GREENPOINT intentionally concealed the fact that insurance was
8 purchased from proceeds of this transaction, credit default swaps were purchased from proceeds
9 of this transaction, the investors investments were "oversold" to create a reserve pool from which
10 the SPV could pay deficiencies in payments, and the SPV created cross-collateralization
11 agreements and overcollateralization of the pool assets to assure payments to the investors, thus
12 creating co-obligors on the payment stream due from the Plaintiff on the subject "loan
13 transaction to INVESTORS1-1000

14 127. Interestingly enough, GREENPOINT claims and maintains to be the Holder of
15 DURAN's Note. (See Deposition of Person with most knowledge regarding the Holder of
16 Plaintiff's Note).

17 128. Although GREENPOINT is the Holder of Plaintiff's Note, Plaintiff is informed
18 and believes that his loan may also be one of these transactions that may or may not have been
19 placed into a trust called CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES
20 CORP ADJUSTABLE RATE MORTGAGE TRUST 2005-5 ADJUSTABLE E.RATE
21 MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5 for whom
22 WELLS FARGO BANK NA acted as Trust Administrator, Master Servicer. It is believed and
23 alleged that Plaintiff's Promissory Note and Mortgage may or may not have been placed into this
24 trust after the cutoff date for such trust, since no assignment has been recorded to confirm this
25 fact Plaintiff is unsure as to who he is legally indebted to, who he is obligated to pay and Plaintiff
26 reasonably believes that he may be potentially paying or has paid in the past to a party who is not
27 legally and rightfully entitled to receive funds from Plaintiff.

28 129. Plaintiff is informed and believes that the Pooling and Servicing Agreement of
29 requires that such note be endorsed within a period of time after it is placed into the Trust.
30 Therefore, the endorsement should be acknowledged and endorsed to the name WELLS FARGO

1 BANK N.A.. To date, all copies of the Note Provided to Plaintiff fails to reveal such
2 endorsement.

3 130. Plaintiff is informed and believes that Plaintiffs Note never made it into the
4 TRUST and as such said document cannot be enforced by neither GREENPOINT (receptor) or
5 its purported successors. Therefore, enforcement is VOID due to the falsity uttering placed by
6 such agent.

7 131. When Plaintiff was negligently and fraudulently induced into signing this Note
8 and Mortgage he was unknowingly converting property into purportedly an asset of a Mortgage
9 Backed Security. Plaintiff was never informed of the nature of the scheme and he was
10 deliberately induced into signing a Negotiable Instrument which was never intended as such, but
11 was instead intended as collateral for and Mortgage Backed Security. The Plaintiff was lead to
12 believe that this was a loan from Defendants GREENPOINT, and GREENPOINT never advised
13 him that he was involved in a Mortgage Backed Security. This failure to disclose these facts was
14 a Material Disclosure which was deliberately and intentionally undisclosed to Plaintiff. The
15 failure to disclose the identity of the true lender at closing was also a material disclosure the
16 nature of which would make the Mortgage and Note voidable. Plaintiff loan was part of a
17 sophisticated scheme designed to unjustly enrich the Defendants and the many others who
18 profited by taking a slice of profit and passing the risk forward with little or no worry of
19 regulatory oversight.

20 132. Plaintiff believes and on that basis alleges that he holds a superior interest in the
21 subject property free and clear of any lien or interest of any Defendant to this action in that the
22 lien evidenced by the mortgage and its subsequent improper assignment has no legal value since
23 it evidences a debt that is wholly unsecured and that accordingly the security interest is null and
24 void. Plaintiff believes that a bona fide dispute exist as to whether or not a mortgage is void and
25 whether Plaintiff's obligation to pay is wholly unsecured. As such Plaintiff believes that an
26 actual controversy exists between Plaintiff and Defendants with regard to the validity, nature and
27 extent of their interest in the subject property and it is necessary that this court determine the
28 actual rights and obligations of the parties and make a determination as to the validity nature and
29 extent of Defendants interest in the subject property.

1 133. Defendants have all actively concealed and refused to comply with Plaintiff's
2 numerous demands to determine who the rightful owner of Plaintiff's Note and Mortgage is, and
3 who Plaintiff has a legal obligation to pay. Therefore, Plaintiff is now forced to join in this
4 lawsuit all parties whom Plaintiff now reasonably believes may hold an interest in Plaintiff's
5 Mortgage and Note.

6 134. Plaintiff reasonably believes that the following parties may have been the
7 wrongful recipients of Plaintiff funds and have therefore been unjustly enriched and/or that
8 Plaintiff may possibly be legally responsible to the following parties: CREDIT SUISSE FIRST
9 BOSTON MORTGAGE SECURITIES CORP ADJUSTABLE RATE MORTGAGE TRUST
10 2005-5 ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,
11 SERIES 2005-5, INVESTORS 1-1000, WELLS FARGO BANK, & COMPANY, WELLS
12 FARGO BANK N.A, WELLS FARGO HOME LOAN, GREENPOINT; MERSCORP, INC. and
13 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

14 135. With respect to DURAN's mortgage, the underwriting standards required
15 minimal investigation into DURAN's credit history and income profile, and such mortgage loans
16 may be underwritten primarily on the basis of an appraisal such as the one performed by
17 ROSENTHAL.

18 136. Because GREENPOINT's and WELLS FARGO BANK's profits are determined
19 by the quantity of loans that they successfully close, and not the quality of those loans, the lender
20 has an incentive to pressure appraisers and brokers to reach values that will allow the loan to
21 close - without regard to whether the appraisal accurately reflects the home's actual value.

22 137. Likewise, the independent broker is not tied to a particular lender, but instead has
23 relationships with multiple lenders and seeks to comply with the lender's wishes and conditions
24 in order to service clients and maximize their own profits.

25 138. DURAN has sustained and will continue to sustain in the future damages as a
26 result of Defendants' representations, misrepresentations, concealments, and nondisclosures.

27 139. Nothing herein is intended to or should be construed as asserting or attempting to
28 assert claims of any kind, which arise out of or are in any way related to the "EquityLine with
29 FlexAbility Agreement" between Plaintiff and WELLS FARGO BANK, N.A. entered into on
30 April 25, 2005, or any agreements thereunder.

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COUNT I
NEGLIGENCE AGAINST WELLS FARGO & CO, WELLS FARGO BANK,
WELLS FARGO HOME MORTGAGE, GREENPOINT AND SIERRA

140. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-140 as if the same had been fully set forth herein.

141. At all times material hereto, SIERRA was an employee, agent and/or representative of WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE and GREENPOINT.

142. WELLS FARGO & COMPANY is related to RELS VALUATION, VALUATION INFORMATION TECHNOLOGY, LLC., WELLS FARGO BANK and WELLS FARGO HOME MORTGAGE, either by virtue of partial ownership by a common parent or economic power.

143. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and GREENPOINT knew or should have known that the loan as advertised in *The Miami Herald* (**Exhibit "A"**) was misleading and misrepresented to all consumers the rates, terms and conditions of the transaction since they never intended to actually honor the advertized rates.

144. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and GREENPOINT by and through their agent SIERRA owed a reasonable duty of care to Plaintiff in regard to its dealings. In fact, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT and their agent SIERRA at all times relevant either acted, assumed the role of, or represented to Plaintiff that they were Plaintiff's Mortgage Broker. Plaintiff reasonably relied on Defendants' representations or misrepresentations and assumed that SIERRA would look out for his best interest and provide Plaintiff with a suitable loan for him and his family and current financial position and exposure.

145. Defendants identified herein, acting posing and pretending to be lenders, owed statutory duties to Plaintiff. Despite the statutory duties owed to Plaintiff, Defendants identified herein violated those duties, and as a result thereof, took advantage of their relationship with the Plaintiff, and have been, and are being, unjustly enriched thereby.

1 146. WELLS FARGO BANK and/or WELLS FARGO HOME MORTGAGE's and
2 GREENPOINT's underwriting standards negligently required minimal investigation into
3 DURAN's credit history and income profile, and were negligently underwritten primarily on the
4 basis of an inflated appraisal such as the one performed by ROSENTHAL.

5 147. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
6 HOME MORTGAGE, and GREENPOINT by and through their agent SIERRA knew or should
7 have known that she was incapable of securing an Adjustable Rate Mortgage (ARM) on behalf
8 of DURAN with ten (10) years interest only payments with a fixed interest rate for either 3, 5, 7,
9 or 10 years, to be adjusted once per year after the adjustment period, i.e. 3/1 ARM, 5/1 ARM, 7/1
10 ARM, and 10/1 ARM.

11 148. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
12 HOME MORTGAGE, and GREENPOINT by and through their agent SIERRA negligently
13 misrepresented and quoted DURAN rates for Adjustable Rate Mortgage (ARM) with ten (10)
14 years interest only payments with a fixed interest rate for either 3, 5, 7, or 10 years, to be
15 adjusted once per year after the adjustment period, i.e. 3/1 ARM, 5/1 ARM, 7/1 ARM, and 10/1
16 ARM.

17 149. The Good Faith Estimate provided by WELLS FARGO & COMPANY, WELLS
18 FARGO BANK, WELLS FARGO HOME MORTGAGE, and GREENPOINT by and through
19 their agent SIERRA to DURAN on February 22, 2005 negligently misrepresented the resulting
20 closing terms that would ultimately be included in the final loan.

21 150. The March 10, 2005 Truth in Lending Disclosure provided by WELLS FARGO
22 & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
23 GREENPOINT, by and through their agent SIERRA, to DURAN negligently misrepresented to
24 DURAN the terms of the loan.

25 151. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
26 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently
27 failed to credit DURAN for a required fee that should have been credited at the time of closing.

28 152. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
29 HOME MORTGAGE, and GREENPOINT negligently paid SIERRA premiums, commissions,
30 or fees and kickbacks for the closing of DURAN's GREENPOINT loan.

1 153. DURAN sustained damages as a result of the negligence of WELLS FARGO &
2 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
3 GREENPOINT by and through their agent SIERRA

4 154. Contrary to the representations made to Plaintiff, WELLS FARGO &
5 COMPANY, WELLS FARGO BANK WELLS FARGO HOME MORTGAGE, and
6 GREENPOINT, by and through their agent, SIERRA, knew or should have known that she was
7 unable to secure a first mortgage on behalf of DURAN that would be payable in a 10 year
8 interest only fixed period, where the interest rate could be bought down at closing 1 to 2
9 percentage points.

10 155. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
11 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently
12 represented to DURAN that he would be able to obtain a new first mortgage that would be
13 payable in a 10 year interest only fixed period, and that he would be able to buy down his interest
14 rate 1 to 2 percentage points at closing with a 5% rate cap.

15 156. Contrary to the representations made to Plaintiff, WELLS FARGO &
16 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
17 GREENPOINT, by and through their agent, SIERRA, knew or should have known that she was
18 incapable of securing a first mortgage on behalf of DURAN that could be repaid in 10 to 15
19 years.

20 157. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
21 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently
22 represented to DURAN that she was offering him a loan that would enable him to repay his first
23 loan in 10 to 15 years.

24 158. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
25 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, submitted
26 numerous conflicting Good Faith Estimates to DURAN which negligently misrepresented the
27 resulting closing terms that would ultimately be included in the final loan, including the value of
28 the loan, the fees charged, and the value of the property, and also negligently failed to disclose
29 and intentionally withheld from Plaintiff, a review appraisal of the appraisal performed by
30 ROSENTHAL that indicated that the appraisal performed by ROSENTHAL was inflated and

1 contained substantial inaccuracies (See review appraisal Attached here to and incorporated
2 herein by reference as **Exhibit “D”**).

3 159. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
4 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, knew or
5 should have known that the February 22, 2004 Rate Lock Agreement that DURAN entered into
6 with GREENPOINT was a substantially riskier loan than that which SIERRA originally
7 promised, since the adjustments were twice per year, included a prepayment penalty, and most
8 importantly, the loan contained a Rate Cap of 10.5% not 5% as represented to DURAN in the
9 rate lock agreement.

10 160. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
11 HOME MORTGAGE, and GREENPOINT, by and through their agent SIERRA knew or should
12 have known that the loan ultimately originated in the GREENPOINT Note, i.e., rate adjustments
13 twice per year as opposed to the offered adjustment of once per year, or pre-payment penalty or a
14 rate cap of 10.5% was substantially more risky and unsuitable loan to Plaintiff.

15 161. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
16 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA,
17 misrepresented, concealed, and negligently failed to disclose to DURAN the prospect of the
18 terms that were ultimately originated in the GREENPOINT Note, i.e., rate adjustments up to
19 twice per year as opposed to the offered adjustment of once per year, or pre-payment penalty or a
20 rate cap of 10.5%.

21 162. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
22 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently
23 insisted that DURAN close on the GREENPOINT transaction despite the fact that he voiced
24 concerns with respect to the terms offered therein.

25 163. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
26 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently
27 assured DURAN that she would make the necessary corrections to the terms of the loan in order
28 to assure that DURAN would obtain the terms that he had been previously promised.

29 164. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
30 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently

1 failed to make the necessary corrections in order to assure that DURAN would obtain the terms
2 that he was promised.

3 165. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
4 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, negligently
5 indicated to DURAN that he could not rescind the GREENPOINT loan.

6 166. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
7 HOME MORTGAGE, and GREENPOINT, by and through their agent, SIERRA, failed to obtain
8 the best deal for DURAN, as promised.

9 183. As a result of WELLS FARGO & COMPANY's, WELLS FARGO BANK's,
10 WELLS FARGO HOME MORTGAGE's, and GREENPOINT's conduct, DURAN sustained
11 and will continue to sustain damages in the future.

12 184. DURAN's damages occurred as the proximate result of WELLS FARGO &
13 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
14 GREENPOINT, by and through their agent, SIERRA's, unlawful conduct.

15 185. DURAN retained an attorney to pursue his claims against WELLS FARGO &
16 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
17 GREENPOINT, by and through their agent, SIERRA, and accordingly, is obligated to pay
18 reasonable fees and costs associated therewith.

19 167. DURAN sustained damages as a result of the negligence of WELLS FARGO &
20 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
21 GREENPOINT, by and through their agent, SIERRA.

22 **WHEREFORE**, DURAN demands judgment against Defendants, WELLS FARGO &
23 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
24 GREENPOINT, and SIERRA for a judicial finding, decree and order:

- 25 a) awarding Plaintiff compensatory damages, together with costs of suit and such
26 other and further relief as the court may deem proper;
- 27 b) for restitution to Plaintiff for all funds unfairly, unlawfully, and deceptively
28 obtained and retained by all Defendants identified herein and/or their agents.

- 1 c) to account for and to order that the Defendant disgorge any and all revenues
2 acquired and retained by all Defendants identified herein and/or its agent as result
3 of the unfair, fraudulent, deceptive, unlawful business practices alleged herein;
- 4 d) to take all steps and actions reasonably and sufficiently necessary to rescind the
5 Note and Mortgage,
- 6 e) that determines that the Defendants named herein, and each of them, are without
7 standing to pursue or take any benefit from any putative obligation of Plaintiff
8 arising by reason of that certain Promissory Note dated March 10, 2005 along
9 with all the lien and clouds it purports to create;
- 10 f) that Defendants herein, are without standing to enforce or take any benefit from
11 that certain Mortgage dated March 10, 2005, and recorded in the Office of the
12 County Recorder of Miami-Dade County in OR Book 23238 at Page 4920-
13 4937.
- 14 g) to void extinguish and release all Mortgage Liens or to extinguish and release any
15 other legal documents pertaining to the property securing the Mortgage Loan;
- 16 h) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
17 as that property, and funds existed prior to the wrongful acts and conduct of all
18 Defendants identified herein and/or its agent;
- 19 i) Plaintiffs also seek such additional equitable relief and a remedy as may be
20 reasonably necessary to provide a complete remedy against Defendants yet
21 identified herein and/or its agent's wrongful actions and conduct, including
22 without limitation, injunctive relief, restitution, and restoration of their
23 unencumbered title interest in the real property;

24 **COUNT II**
25 **NEGLIGENCE AGAINST ROSENTHAL**
26

27 168. DURAN repeats and realleges all of the allegations contained in Paragraphs 1-
28 140 as if the same had been fully set forth herein.

29 169. DURAN also attaches hereto and incorporates by reference herein as **Composite**
30 **Exhibit "C"** his answers to ROSENTHAL's First Set of Interrogatories and Plaintiff's Expert
31 Report issued by Fred Sclang, as if fully alleged and incorporated by reference herein
32 **Composite Exhibit "L"**).

33 170. At the time of the appraisal, ROSENTHAL's license required him to be
34 operating under the presumptions of Section 475.628 of the Florida Statute which provides :

35 "Each appraiser registered, licensed, or certified under this part shall comply with
36 the Uniform Standards of Professional Appraisal Practice (USPAP). Statements
37 on appraisal standards which may be issued for the purpose of clarification,

1 interpretation, explanation or elaboration through the Appraisal Foundation shall
2 also be binding on any appraiser registered, licensed or certified under this part”.

3
4 171. Standards Rule 2-5 of the USPAP provides that “[a]n appraiser who signs a real
5 property appraisal report prepared by another in any capacity accepts full responsibility for the
6 appraisal and the contents of the appraisal report. Section 475.624(14) by violating the standards
7 set forth in the USPAP Standards Rules 1-1(a),(b), and (c). USPAP Rule 1-1 provides:

8 "In developing a real property appraisal, an appraiser must:

9
10 (a) be aware of, understand, and correctly employ those recognized methods and
11 techniques that are necessary to produce a credible appraisal.

12
13 (b) not commit a substantial error of omission or commission that significantly
14 affects an appraisal.

15
16 (c) not render appraisal services in a careless or negligent manner, such as by
17 making a series of errors that, although individually might not significantly affect
18 the results of an appraisal, in the aggregate affect the credibility of those results.”
19

20 172. In her order to ROSENTHAL, SIERRA misrepresented the value of the home to
21 be \$1.2 million.

22 173. ROSENTHAL issued a property appraisal misrepresenting to DURAN that
23 market value of the subject property was \$1,200,000.00. This Appraisal Report was present to
24 DURAN by ROSENTHAL and SIERRA. Subsequently, WELLS FARGO & COMPANY’S,
25 RELS VALUATION’S, VALUATION INFORMATION TECHNOLOGY, LLC.’s, WELLS
26 FARGO BANK’S, WELLS FARGO HOME MORTGAGE’S, GREENPOINT’S, and SIERRA
27 ordered a review appraisal of the provided by ROSENTHAL. This review appraisal was
28 performed Miguel Suarez, copy of which is attached hereto as **Exhibit “D”**.

29 174. The amount at which ROSENTHAL valued the primary residence was
30 coincidentally the exact same amount that SIERRA informally requested in her order i.e \$1.2
31 million.

32 175. At all times material hereto ROSENTHAL was employed hired or received
33 business from RELS VALUATION, VALUATION INFORMATION TECHNOLOGY, LLC.,
34 as such he worried that he may be “black-listed” or professionally ostracized for not “playing

1 ball” i.e hitting the predetermined value that was requested in the appraisal order form provided
2 and created by RELS VALUATION, VALUATION INFORMATION TECHNOLOGY, LLC.,

3 176. ROSENTHAL negligently misrepresented the value of the property, and in doing
4 so, provided false information for the guidance of DURAN in his business transactions.

5 177. ROSENTHAL violated USPAP Rule 1-1 by:

6 a. Comparing DURAN’s property (which is comprised of approximately 8,000 sq.
7 feet of land) to two (2) other properties, each of which is comprised of more than
8 20,000 square feet of land located on triple lots;

9 b. Comparing the primary residence to newer and larger properties in the area with
10 better improvements.

11 178. ROSENTHAL did not have any justifiable adjustments to compensate for the
12 improper comparisons.

13 179. To compensate for this lack of comparability, ROSENTHAL adjusted the price
14 of the subject comparative by \$52,000 to \$58,000, notwithstanding the fact that the property size
15 is more than double that of DURAN’s (more specifically, a 375% difference).

16 180. Moreover, ROSENTHAL never accounted for the fact that those
17 aforementioned comparables are triple lots that can potentially be subdivided by their respective
18 owners, as was DURAN’s home.

19 181. ROSENTHAL estimated the land value of DURAN’s residence at \$910,000 or
20 75% of the overall value of the site, despite the fact that the property lies in an area that is
21 between 50% to 70% land value.

22 182. ROSENTHAL made other unjustified adjustments, including but not limited to
23 the following:

24 a. Pools for \$15,000;

25 b. Garages for \$2,000; and

26 c. Square footage adjustment that was 22% more than what would be in a
27 reasonable comparison.

28 183. The combined effect of this conduct was to inflate the value of the property
29 without regard to the true value of the property.

1 184. ROSENTHAL, individually and/or through his authorized agent with actual or
2 apparent authority, negligently misrepresented and/or failed to disclose to DURAN statements
3 of material fact, during and after the closing of the mortgage loan in question.

4 185. ROSENTHAL negligently engaged in a pattern of conduct that had the effect
5 misrepresenting the true terms of the DURAN's loan.

6 186. In the course of ROSENTHAL's business, profession or employment,
7 ROSENTHAL supplied false information for the guidance of DURAN, and is subject to liability
8 for pecuniary loss caused to DURAN.

9 187. ROSENTHAL knew or should have known that the appraisal report contained
10 false misrepresentations of material fact.

11 188. ROSENTHAL intended to induce WELLS FARGO & COMPANY, WELLS
12 FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT, and/or other financial
13 institutions to approve DURAN's loan based on this inflated appraisal.

14 189. ROSENTHAL intended to induce DURAN to procure a loan through WELLS
15 FARGO, N.A., GREENPOINT, and/or some other financial institution.

16 190. ROSENTHAL knew that that WELLS FARGO & COMPANY, WELLS
17 FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT and/or SIERRA
18 intended to supply the appraisal report to DURAN. In fact, in his report provided to DURAN
19 ROSENTHAL specifically consents and acknowledged that his appraisal will be presented to
20 DURAN as the borrower. See **Exhibit "B" Statement of Appraiser Certifications Condition**
21 **Number 10.**

22 191. Prior to closing, DURAN was, in fact, supplied with a copy of the appraisal
23 report containing false representations of material fact.

24 192. DURAN justifiably relied to his detriment upon information provided to him by
25 ROSENTHAL.

26 193. Defendant ROSENTHAL failed to exercise reasonable care or competence in
27 obtaining or communicating that information to DURAN.

28 194. A reasonable and prudent professional such as ROSENTHAL could knowingly
29 expect that the parties to this matter would rely on his appraisal to determine whether a loan
30 secured by the property should be made.

1 195. ROSENTHAL is vicariously liable for the actions of Mamoud Sir in light of the
2 fact that:

- 3 a. A the time of the appraisal, ROSENTHAL was supervising Mamoud Sir;
- 4 b. Neither Mamoud Sir or ROSENTHAL employed the recognized methods and
5 techniques as established in the USPAP;
- 6 c. ROSENTHAL vicariously committed substantial errors of omission or
7 commission that significantly affected the appraisal;
- 8 d. Mamoud and/or ROSENTHAL committed careless errors that affected the
9 credibility of the appraisal report;
- 10 e. ROSENTHAL signed an appraisal report with an inflated value of more than
11 \$200,000 without having independently conducted his own inspection of records
12 of other comparable properties, and without having independently reviewed the
13 sales history of the other properties, the history of the comparable sales included
14 in the appraisal, or the values of vacant land of other comparative properties;

15 196. As a result of ROSENTHAL's actions, DURAN sustained and will continue to
16 sustain damages in the future.

17 197. DURAN's damages occurred as the proximate result of ROSENTHAL's,
18 negligent conduct.

19 **WHEREFORE**, DURAN requests judgment against ROSENTHAL for compensatory
20 damages, together with costs of suit and such other and further relief as the court may deem
21 proper against Defendant ROSENTHAL and for a judicial finding, decree and order:

- 22 a) awarding Plaintiff compensatory damages, together with costs of suit and such
23 other and further relief as the court may deem proper;
- 24 b) for restitution to Plaintiffs for all funds unfairly, unlawfully, and deceptively
25 obtained and retained by all Defendants identified herein and/or its agents.
- 26 c) to account for and to order that the Defendant disgorge any and all revenues
27 acquired and retained by all Defendants identified herein and/or its agent as result
28 of the unfair, fraudulent, deceptive, unlawful business practices alleged herein;
- 29 d) to take all steps and actions reasonably and sufficiently necessary to determine
30 that the appraisal provided to DURAN was negligently prepared to arrive at or hit
31 a predetermined value of \$1,200,000.00,

1 e) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
2 as that property, and funds existed prior to the wrongful acts and conduct of all
3 Defendants identified herein and/or its agent;

4 f) Plaintiffs also seek such additional equitable relief an remedy as may be
5 reasonably necessary to provide a complete remedy against Defendants yet
6 identified herein and/or its agent's wrongful actions and conduct, including
7 without limitation, injunctive relief, restitution, and restoration of their
8 unencumbered title interest in the real property;

9 **COUNT III**

10 **FRAUD AGAINST WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS**
11 **FARGO HOME MORTGAGE, GREENPOINT, AND SIERRA**

12
13 198. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-
14 140 as if the same had been fully set forth herein.

15 199. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
16 HOME MORTGAGE or GREENPOINT advertised an Adjustable Rate Mortgage (ARM), with
17 ten (10) years interest only payments, a fixed interest rate for 10 years, to be adjusted once per
18 year after the change date, with no origination fees, \$350.00 application fee, no down payment,
19 95% loan to value, and a 5.1 APR.

20 200. At the time the advertisement was published, WELLS FARGO & COMPANY,
21 WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT had no
22 intention of honoring the terms contained therein.

23 201. WELLS FARGO & COMPANY is related to RELS VALUATION,
24 VALUATION INFORMATION TECHNOLOGY, LLC., WELLS FARGO BANK and WELLS
25 FARGO HOME MORTGAGE, either by virtue of partial ownership by a common parent or
26 economic power.

27 202. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
28 HOME MORTGAGE, and GREENPOINT customarily employed this “bait and switch” tactic
29 for the sole purpose of inducing individuals such as DURAN to rely on the terms contained in
30 the advertisement and other documents.

31 203. DURAN did, in fact, reasonably rely to his detriment on the information
32 contained in the advertisement, written and oral representations of material facts or omissions

1 made by Defendants and other documents intentionally supplied to him by either WELLS
2 FARGO & COMPANY, RELS VALUATION, VALUATION INFORMATION
3 TECHNOLOGY, LLC., WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
4 GREENPOINT, or SIERRA.

5 204. At all times material hereto, SIERRA was an employee, agent and/or
6 representative of WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
7 HOME MORTGAGE and/or GREENPOINT. Tgherefore all acts of SIERRA, (agent) at all
8 times relevant and material hereto constitutes the acts of (the principal) WELLS FARGO &
9 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE and/or
10 GREENPOINT .

11 205. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
12 HOME MORTGAGE, GREENPOINT, and/or SIERRA fraudulently, recklessly or intentionally
13 induced DURAN to believe that the value of his property was higher than it actually was. In fact
14 a review appraisal that evidenced the inflated value of the appraisal was intentionally withheld
15 from DURAN by WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
16 HOME MORTGAGE, GREENPOINT and/SIERRA

17 206. WELLS FARGO & COMPANY through and as a result of or by virtue of
18 partial ownership by a common parent or economic power it relationship with RELS
19 VALUATION, VALUATION INFORMATION TECHNOLOGY, LLC., WELLS FARGO
20 BANK and WELLS FARGO HOME MORTGAGE, were able to unduly influence SIERRA,
21 used improper methods for coercing ROSENTHAL to appraise the residence for an amount
22 higher than the actual value of the property.

23 207. Neither WELLS FARGO & COMPANY, RELS VALUATION,
24 VALUATION INFORMATION TECHNOLOGY, LLC., WELLS FARGO BANK, WELLS
25 FARGO HOME MORTGAGE, GREENPOINT, or SIERRA had any incentive to ensure that
26 the appraisal was an accurate assessment of the property's true market value.

27 208. WELLS FARGO & COMPANY's, RELS VALUATION's, VALUATION
28 INFORMATION TECHNOLOGY, LLC.'s, WELLS FARGO BANK's, WELLS FARGO
29 HOME MORTGAGE's, GREENPOINT's, and SIERRA's only interest was for the deal to
30 close.

1 209. Plaintiff is informed and believes that during the relevant period WELLS
2 FARGO & COMPANY sought to sell home loans by means of securitization transactions.
3 During the relevant period WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS
4 FARGO HOME MORTGAGE, and GREENPOINT increased the number of loans sold rather
5 than held and serviced, the Defendants became less vigilant in guarding against the risk of
6 default and delinquencies. Loan fees and sales revenue became defendants primary profit
7 mechanism making the sheer quantity of loan issued more important than the quality of any loan.
8 Defendant also abandoned their underwriting and appraisal standard and other methods of risk
9 assessment in order to increase the loan origination quantities. Because WELLS FARGO &
10 COMPANY's, WELLS FARGO BANK's, WELLS FARGO HOME MORTGAGE's and
11 GREENPOINT's profits are determined by the quantity of loans that they successfully close, and
12 not the quality of those loans, these lenders have an incentive to pressure appraisers and brokers
13 to obtain appraisals to reach inflated values that will allow the loan to close - without regard to
14 whether the appraisal accurately reflects the home's actual value. The end result was allowing
15 Plaintiff to borrow more than Plaintiff could ever afford to repay. These are the classic predatory
16 loans which clearly show a pattern of placing Defendants' own financial interests ahead of the
17 duty owed to Plaintiff and against Plaintiff's interest.

18 210. As a direct and proximate result of the breach of duties, these Defendants have
19 been unjustly enriched, and the Plaintiff has been damaged in an amount to be determined at
20 trial. These Defendants, in committing wrongful acts described herein, acted with malice, fraud,
21 and oppression toward Plaintiff, in a conscious and reckless disregard to Plaintiff's rights.

22 211. After Plaintiff attempted to obtain financing through what he believed to be
23 WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME
24 MORTGAGE, SIERRA decided to "switch roles" from "lender" to "broker", and ultimately
25 underwrote the loan specifying and representing GREENPOINT as the lender in order to pay
26 themselves a loan origination/ broker commission or fee of \$10,350.00 and a "processing/admin
27 fee" of \$230 that was not properly disclosed to DURAN.

28 212. This arrangement enabled GREENPOINT to pose and act as a lender, when the
29 loan was, in truth and in fact, being funded by a Mortgage Backed Security Trust.

1 213. In her individual capacity, as well as her capacity as agent and representative of
2 WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME
3 MORTGAGE, GREENPOINT, SIERRA made the following false and misleading
4 representations and/or omissions to DURAN:

- 5 a. represented to DURAN that she had the authority from GREENPOINT to
6 arrange or grant mortgage financing for the GREENPOINT loan in the terms
7 agreed upon by Plaintiff.
8
- 9 b. intentionally and actively concealed the fact that the annual percentage rate to
10 be charged for the loan would be higher than the one previously promised by
11 GREENPOINT in the discussions with SIERRA the Rate Lock Agreement.
12
- 13 c. The Good Faith Estimate also intentionally misrepresented the resulting
14 closing terms that would ultimately be included in the final loan.
15
- 16 d. The loans deviation from The Rate Lock Agreement intentionally and
17 unjustifiably placed Plaintiff in a substantially riskier loan than that which was
18 originally promised to DURAN.
19
- 20 e. The Rate Lock Agreement intentionally misrepresented the resulting closing
21 terms that would ultimately be included in the final loan documents.
22
- 23 f. The March 10, 2005 Truth in Lending Disclosure provided by GREENPOINT
24 to DURAN at closing intentionally misrepresented to DURAN the terms of
25 the loan.
26
- 27 g. Intentionally or recklessly misrepresented or failed to disclose to DURAN
28 either the broker commission or fee in the amount of \$10,350.00 or the
29 “processing/admin fee” of \$230.
30
- 31 h. Intentionally or recklessly misrepresenting and offering DURAN an
32 Adjustable Rate Mortgage (ARM) with ten (10) years interest only payments
33 with a fixed interest rate for either 3, 5, 7, or 10 years, to be adjusted once per
34 year after the adjustment period, i.e. 3/1 ARM, 5/1 ARM, 7/1 ARM, and 10/1
35 ARM;
36
- 37 i. Intentionally or recklessly misrepresenting and offering a first mortgage to
38 DURAN that would be payable in a 10 year interest only fixed period, where
39 the interest rate could be bought down at closing;
40
- 41 j. Intentionally or recklessly misrepresenting and offering to DURAN that she
42 was offering him a loan that would enable him to repay his first loan in 10 to
43 15 years;

- 1
2 k. Intentionally or recklessly misrepresenting and offering numerous conflicting
3 Good Faith Estimates to DURAN which fraudulently misrepresented the
4 resulting closing terms that would ultimately be included in the final loan;
5
6 l. Intentionally or recklessly misrepresenting and offering or fraudulently
7 offering DURAN a Rate Lock Agreement that was a substantially riskier loan
8 than that which SIERRA originally promised to him;
9
10 m. Intentionally failing to notify DURAN that the terms that would ultimately be
11 originated in the GREENPOINT Note were different from the terms which he
12 was promised, and represented in the Rate Lock Agreement;
13
14 n. Intentionally failing to credit DURAN for a required fee that should have been
15 credited at the time of closing;
16 o. Intentionally assuring DURAN that she would make the necessary corrections
17 in order to assure that DURAN would obtain the terms that he was promised,
18 when in fact, she knew that no such corrections would be made;
19
20 p. Representing to DURAN that he could not rescind the GREENPOINT loan;

21 214. In her individual capacity, as well as her capacity as agent and representative of
22 WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME
23 MORTGAGE, GREENPOINT, SIERRA manipulated DURAN's Uniform Residential Loan
24 Application URLA Form 1003 in the following respects :

- 25 a. SIERRA specifically instructed DURAN **not** to fill out any income
26 information in the Uniform Residential Loan Application URLA Form
27 1003 dated 2/10/05, and to put a market value on the property of
28 \$1,500,000.00;
29
30 b. During a subsequent telephone conversation SIERRA requested DURAN to
31 change the value on the property from \$1,500,000.00 to \$1,300,000.00;
32
33 c. DURAN was not presented the typed version of the URLA Form 1003,
34 and did not execute the same, until the time of closing, that in her
35 individual capacity, as well as her capacity as agent and representative of
36 WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS
37 FARGO HOME MORTGAGE, GREENPOINT, SIERRA had done the
38 following:
39
40 i. Misrepresented the market value on the primary residence on the
41 Uniform Residential Loan Application URLA Form 1003 as
42 \$1,100,000.00;

- 1
2 ii. Deleted SIERRA's name from pg. 5 of the URLA Form 1003;
3
4 iii. Fabricated DURAN's Gross Average monthly income to be
5 \$17,928 per month in order to meet the underwriting criteria of the
6 loan product.
7

8 215. DURAN reasonably relied to his detriment upon the false and misleading
9 representations and/or omissions that were made by WELLS FARGO & COMPANY, WELLS
10 FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT and/or SIERRA.

11 216. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
12 HOME MORTGAGE, GREENPOINT posed as a conventional mortgage lender, thus leading
13 Plaintiff to reasonably believe that GREENPOINT had an interest in the success of the
14 transaction (repayment of the loan).

15 217. In fact, GREENPOINT did not have a financial stake (i.e., liability) in the
16 transaction.

17 218. In fact, neither WELLS FARGO & COMPANY, WELLS FARGO BANK,
18 WELLS FARGO HOME MORTGAGE or GREENPOINT have any interest other than
19 obtaining Plaintiff's signature on a "loan" that could never be repaid, contrary to representations
20 and assurances from the conspiring participants in this fraudulent scheme.

21 219. In fact, no "lender" was involved in the closing in the sense of an entity
22 performing due diligence and evaluation pursuant to national standards for underwriting and
23 evaluating risk of loaning money in a residential loan closing.

24 220. Upon information and belief, GREENPOINT is an institution that was paid a fee
25 to pose as a residential mortgage lender, broker, correspondent lender, when in fact, the source
26 of loan funds and the actual lender (Investors in Certificates) and underwriter (Mortgage
27 Aggregator and Investment Banker) were other parties whose identities and receipt of fees and
28 profits were withheld from Plaintiff at Closing, and despite numerous requests, continue to be
29 withheld from Plaintiff by the WELLS FARGO & COMPANY, WELLS FARGO BANK,
30 WELLS FARGO HOME MORTGAGE, GREENPOINT, contrary to the requirements of
31 applicable Law.

32 221. Unbeknownst to Plaintiff, WELLS FARGO & COMPANY, WELLS FARGO
33 BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT entered into Assignment and

1 Assumption Agreements with one or more parties, and Pooling and Service Agreements with one
2 or more parties, including but not limited to the mortgage aggregator, prior to or
3 contemporaneously with the "Closing" of the subject "loan transaction."

4 222. Under the terms of these agreements with third parties, WELLS FARGO BANK,
5 WELLS FARGO HOME MORTGAGE, GREENPOINT received a sum of money (pre-
6 funding), usually on receiving an application for a loan equal to the gross amount of the loan
7 sought by Plaintiff plus a fee which was allocated to the subject loan transaction.

8 223. Contrary to the documents presented before and during the "closing" of the "loan
9 transaction", GREENPOINT was neither the source of funding nor the "Lender."

10 224. Immediately upon closing, the loan was allegedly assigned to a Trust.

11 225. Thus, at the time of recording of the mortgage the source of funding and the
12 "Lender" was a different entity than the nominal mortgagee, and was neither named nor
13 disclosed in any fashion.

14 226. The security for the "loan" thus secured an obligation that had been paid in full
15 by third party(ies) i.e. CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP
16 ADJUSTABLE RATE MORTGAGE TRUST 2005-5 ADJUSTABLE E.RATE MORTGAGE-
17 BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5 and INVESTORS 1- 1000 who
18 were acting as a financial institution or "Lender" without even having been chartered or
19 registered to do so.

20 227. Some form of documentation represented by GREENPOINT to the Mortgage
21 Aggregator was presented before or contemporaneously with the "closing" of the loan"
22 transaction.

23 228. Plaintiff has no knowledge as to what version of documentation WELLS
24 FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
25 and/or GREENPOINT presented to the Mortgage Aggregator, or if the Mortgage Aggregator
26 took one or more varying descriptions of the alleged "loan documents" into more than one pool
27 of assets which was eventually sold for the purpose of securitizing the assets of the pool which
28 included the subject loan transaction either once or more than once. Plaintiff has requested such
29 information numerous times only to be met with complete silence and resistance from the
30 Defendants.

1 229. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
2 HOME MORTGAGE, GREENPOINT intentionally concealed the fact that the note from the
3 subject "loan transaction" was eventually allocated into a new corporation (Special Purpose
4 Vehicle) formed for the express purpose of holding the pooled assets under certain terms.

5 230. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
6 HOME MORTGAGE, GREENPOINT intentionally concealed the fact that the terms of the
7 allocation into the Special Purpose Vehicle included the allocation of payments from one note to
8 pay any deficiency in payment of another note in unrelated "loan transactions".

9 231. This practice is contrary to the terms of each such note, which requires payments
10 to be allocated to the principal, interest, escrow and fees associated with only that specific "loan
11 transaction."

12 232. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
13 GREENPOINT has intentional failed and refused to provide DURAN with information as to
14 whether such misapplication of payments was caused by the difference between the higher
15 general terms of description of the note or the lower actual payment requirements from the
16 "borrower", despite repeated requests from DURAN for accounting.

17 233. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
18 HOME MORTGAGE, and GREENPOINT recklessly and/or intentionally concealed the fact that
19 The Investment Banking firm arranged for a false inflated appraisal of the certificates and/or
20 issuer of the certificates that would be sold to investors, in much the same way as it had procured
21 the inflated appraisal of the property that "secured" the "loan transaction."

22 234. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
23 HOME MORTGAGE, and GREENPOINT intentionally concealed the fact that insurance was
24 purchased from proceeds of this transaction, credit default swaps were purchased from proceeds
25 of this transaction, the investors investments were "oversold" to create a reserve pool from which
26 the SPV could pay deficiencies in payments, and the SPV created cross-collateralization
27 agreements and overcollateralization of the pool assets to assure payments to the investors, thus
28 creating co-obligors on the payment stream due from the Plaintiff on the subject "loan
29 transaction to INVESTORS1-1000

1 235. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
2 HOME MORTGAGE, GREENPOINT had actual knowledge of the false representations and/or
3 concealments, and aided and abetted, encouraged and rendered substantial assistance in making
4 the false representations and/or concealments complained of herein.

5 236. In taking action to aid and abet and substantially assist in making the false
6 representations and/or concealments complained of herein, WELLS FARGO & COMPANY,
7 WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT acted with an
8 awareness of its primary wrongdoing and realized that its conduct would substantially assist
9 and/or further the making of false representations and/or concealments.

10 237. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
11 HOME MORTGAGE, GREENPOINT and SIERRA intended for DURAN to rely on the false
12 representations, concealments, and nondisclosures.

13 238. DURAN justifiably relied on the representations, concealments, and
14 nondisclosures to his detriment.

15 239. Absent the misrepresentations, concealments, and nondisclosures, DURAN
16 would not have entered into the loan agreement.

17 240. DURAN sustained damages as a result of his reasonable reliance upon the false
18 and misleading representations and/or omissions that were made by WELLS FARGO &
19 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT
20 and/or SIERRA.

21 **WHEREFORE**, DURAN requests judgment against Defendants, WELLS FARGO &
22 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT
23 and SIERRA for a judicial finding, decree and order:

- 24 a) awarding Plaintiff compensatory damages, together with costs of suit and such
25 other and further relief as the court may deem proper;
- 26 b) for restitution to Plaintiffs for all funds unfairly, unlawfully, fraudulently, and
27 deceptively obtained and retained by all Defendants identified herein and/or its
28 agents.
- 29 c) to account for and to order that the Defendant disgorge any and all revenues
30 acquired and retained by all Defendants identified herein and/or its agent as result
31 o f the unfair, fraudulent, deceptive, unlawful business practices alleged herein;

- 1 d) to take all steps and actions reasonably and sufficiently necessary to rescind the
2 Note and Mortgage,
- 3 e) that determines that the Defendants named herein, and each of them, are without
4 standing to pursue or take any benefit from any putative obligation of Plaintiff
5 arising by reason of that certain Promissory Note dated March 10, 2005 along
6 with all the lien and clouds it purports to create;
- 7 j) that Defendants herein, are without standing to enforce or take any benefit from
8 that certain Mortgage dated March 10, 2005, and recorded in the Office of the
9 County Recorder of Miami-Dade County in OR Book 23238 at Page 4920-
10 4937;
- 11
- 12 f) to void extinguish and release all Mortgage Liens or to extinguish and release any
13 other legal documents pertaining to the property securing the Mortgage Loan;
- 14 g) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
15 as that property, and funds existed prior to the wrongful acts and conduct of all
16 Defendants identified herein and/or its agent;
- 17 h) Plaintiffs also seek such additional equitable relief and a remedy as may be
18 reasonably necessary to provide a complete remedy against Defendants yet
19 identified herein and/or its agent's wrongful actions and conduct, including
20 without limitation, injunctive relief, restitution, and restoration of their
21 unencumbered title interest in the real property;
- 22 i) To determine that these Defendants, in committing the wrongful acts described
23 herein, acted intentionally, with malice, fraud, and oppression toward Plaintiffs,
24 in a conscious or reckless disregard of Plaintiff's rights under the law with the
25 substantial certainty that an injury would occur Plaintiff demands an award of
26 punitive damages in an exemplary amount commensurate to the injury that they
27 have caused to not only Plaintiff, but to hundreds of thousands of unknowing and
28 unwitting home owners that fell victim and prey to the tactics employed by this
29 organized scheme;
- 30 a) An award of Punitive damages

31 **COUNT IV**

32 **FRAUD AGAINST ROSENTHAL**

33 241. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-
34 140 as if the same had been fully set forth herein.

35 242. In her order to ROSENTHAL, SIERRA misrepresented the value of the home to
36 be \$1.2 million.

1 243. ROSENTHAL intentionally misrepresented the value of the primary residence so
2 as to match the exact amount that SIERRA informally requested in her order.

3 244. A copy of ROSENTHAL's appraisal the review appraisal and the review report
4 are attached hereto and incorporated herein by reference as **Exhibit "B, D & L"**.

5 245. DURAN also attaches hereto and incorporates by reference herein as **Composite**
6 **Exhibit "C"** his answers to ROSENTHAL's First Set of Interrogatories and Plaintiff's Expert
7 Report issued by Fred Sclang, as if fully alleged and incorporated by reference herein).

8 246. ROSENTHAL intentionally misrepresented the value of the property in the
9 following manner:

- 10 a. Comparing DURAN's property (which is comprised of approximately
11 8,000 sq. feet of land) to two (2) other properties, each of which is
12 comprised of more than 20,000 square feet of land located on triple lots;
- 13 b. Comparing the primary residence to newer and larger properties in the area
14 with better improvements.

15 247. ROSENTHAL did not have any justifiable adjustments to compensate for the
16 improper comparisons.

17 248. To compensate for this lack of comparability, ROSENTHAL intentionally
18 adjusted the price of the subject comparative by \$52,000 to \$58,000, notwithstanding the fact
19 that the property size is more than double that of DURAN's (more specifically, a 375%
20 difference).

21 249. Moreover, ROSENTHAL intentionally failed to account for the fact that those
22 aforementioned comparables were triple lots that can potentially be subdivided by their
23 respective owners, as was DURAN's house.

24 250. ROSENTHAL intentionally misrepresented the value of the land at \$910,000 or
25 75% of the overall value of the site, despite the fact that the property lies in an area that is
26 between 50% to 70% land value.

27 251. ROSENTHAL intentionally made other unjustified adjustments, including but
28 not limited to the following:

- 29 a. Pools for \$15,000;
- 30 b. Garages for \$2,000; and

1 c. Square footage adjustment that was 22% more than what would be in a
2 reasonable comparison.

3 252. ROSENTHAL, individually and/or through his authorized agent with actual or
4 apparent authority, intentionally misrepresented and/or failed to disclose to DURAN statements
5 of material fact, during and after the closing of the mortgage loan in question.

6 253. ROSENTHAL intentionally engaged in a pattern of conduct that had the effect
7 misrepresenting the true terms of the DURAN's loan.

8 254. In the course of ROSENTHAL's business, profession or employment,
9 ROSENTHAL intentionally supplied false information for the guidance of DURAN, and is
10 subject to liability for pecuniary loss caused to DURAN.

11 255. ROSENTHAL intended for DURAN to rely upon the misrepresentations made
12 by ROSENTHAL regarding the value of DURAN's property.

13 256. Each of the misrepresentations made by ROSENTHAL constitutes a
14 misrepresentation of material fact.

15 257. ROSENTHAL knew that the appraisal report contained false misrepresentations
16 of material fact.

17 258. ROSENTHAL intended to induce WELLS FARGO, N.A., GREENPOINT,
18 and/or other financial institutions to approve DURAN's loan.

19 259. ROSENTHAL intended to induce DURAN to procure a loan through WELLS
20 FARGO, N.A., GREENPOINT, and/or some other financial institution.

21 260. ROSENTHAL knew that WELLS FARGO and/or SIERRA intended to supply to
22 DURAN a copy of the appraisal report containing false and misleading information.

23 261. DURAN did, in fact, receive a copy of the appraisal report containing false and
24 misleading information.

25 262. DURAN justifiably relied to his detriment upon information provided to him by
26 ROSENTHAL.

27 263. ROSENTHAL is vicariously liable for the intentional misrepresentations of
28 material fact made by Mamoud Sir in light of the fact that:

29 a. At the time of the appraisal, ROSENTHAL was supervising Mamoud Sir;

30 b. Both Mamoud Sir and ROSENTHAL intentionally failed to employ the
31 recognized methods and techniques as established in the USPAP;

- 1 c. ROSENTHAL vicariously made numerous fraudulent misrepresentations
2 that significantly affected the appraisal;
- 3 d. ROSENTHAL signed an appraisal report with an intentionally inflated
4 value of more than \$200,000.

5 264. As a result of ROSENTHAL's intentional misrepresentations of material fact,
6 DURAN sustained and will continue to sustain damages in the future.

7 265. DURAN's damages occurred as the proximate result of ROSENTHAL's,
8 intentional misrepresentations.

9 **WHEREFORE**, DURAN requests judgment against ROSENTHAL for compensatory
10 damages, together with costs of suit and such other and further relief as the court may deem
11 proper and for a judicial finding, decree and order:

- 12 a) awarding Plaintiff compensatory damages, together with costs of suit and such
13 other and further relief as the court may deem proper;
- 14 b) for restitution to Plaintiffs for all funds unfairly, unlawfully, fraudulently, and
15 deceptively obtained and retained by all Defendants sued herein and/or its agents.
- 16 c) to account for and to order that the Defendant disgorge any and all revenues
17 acquired and retained by all Defendants sued herein and/or its agent as result of
18 the unfair, fraudulent, deceptive, unlawful business practices alleged herein;
- 19 d) to take all steps and actions reasonably and sufficiently necessary to determine
20 that the appraisal provided to DURAN was recklessly, fraudulently intentionally
21 prepared to arrive at or hit a predetermined value of \$1,200,000.00,
- 22 e) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
23 as that property, and funds existed prior to the wrongful acts and conduct of all
24 Defendants identified herein and/or its agent;
- 25 f) Plaintiffs also seek such additional equitable relief an remedy as may be
26 reasonably necessary to provide a complete remedy against Defendants yet
27 identified herein and/or its agent's wrongful actions and conduct, including
28 without limitation, injunctive relief, restitution, and restoration of their
29 unencumbered title interest in the real property;
- 30 g) To determine that these Defendants, in committing the wrongful acts described
31 herein, acted intentionally, with malice, fraud, and oppression toward Plaintiffs,
32 in a conscious or reckless disregard of Plaintiff's rights under the law with the
33 substantial certainty that an injury would occur Plaintiff demands an award of
34 punitive damages in and exemplary amount commensurate to the injury that they
35 have caused to not only Plaintiff, but to other unknowing and unwitting home

1 owners that fell victim and prey to the tactics employed by this organized
2 scheme;

3 h) An award of Punitive damages

4 **COUNT V**

5 **VIOLATION OF FLA. STAT. CHAPTER 494 AGAINST WELLS FARGO &**
6 **COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,**
7 **GREENPOINT AND SIERRA**

8
9 266. DURAN reavers and realleges all of the allegations contained in Paragraphs 1-
10 140 as if the same had been fully set forth herein.

11 267. This is a claim for violation of Chapter 494, Fla. Stat.

12 268. At all times material hereto, SIERRA was an employee, agent and/or
13 representative of WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
14 HOME MORTGAGE and/or GREENPOINT. Therefore, all acts of SIERRA, (agent) at all
15 relevant and material times hereto, constitutes the acts of (the principal) WELLS FARGO &
16 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE and/or
17 GREENPOINT .

18 269. GREENPOINT provided DURAN with a Broker Compensation Disclosure
19 informing him that GREPOINT “will be acting as mortgage broker”. (**Exhibit “I”**).

20 270. At all times material hereto WELLS FARGO & COMPANY, WELLS FARGO
21 BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT by and through their agent
22 SIERRA was in the “mortgage brokerage business”, as defined by Fla. Stat. § 494.001.

23 271. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
24 HOME MORTGAGE and SIERRA charged an origination fee, which was a disguised brokers’
25 fee since neither WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
26 HOME MORTGAGE, originated the loan.

27 272. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
28 HOME MORTGAGE, GREENPOINT by and through their agent SIERRA solicited or offered
29 to solicit a mortgage loan on behalf of DURAN, and accepted or offered to accept an application
30 for a mortgage loan from DURAN, for compensation or gain, or in the expectation of
31 compensation or gain, as contemplated by Fla. Stat. § 494.001.

1 273. WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO
2 HOME MORTGAGE, GREENPOINT by and through their agent SIERRA violated Fla. Stat.
3 §494.0025 and other applicable law by:

- 4 a. Acting as mortgage lender, correspondent mortgage lender and mortgage
5 broker without an active license;
- 6 c. Either directly or indirectly engaging in a practice or transaction or course
7 of business relating to a mortgage transaction negotiation promotion
8 advertisement or hypothecation of a mortgage transaction knowing or
9 willingly employ any device scheme or artifice to defraud;
- 10 d. Engaging in transaction, practice, or course of business which operated as
11 a fraud upon DURAN in connection with purchase or sale of any loan;
- 12 e. Obtaining property by fraud, willful misrepresentation of a future act or
13 false promise;
- 14 f. Knowingly and willfully falsifying, concealing or covering up by a trick,
15 scheme, or device a material fact, making false or fraudulent statements or
16 representations or making use of a false writing or document knowing the
17 same to contain false or fraudulent statements or entries;
- 18 g. Using the name of a financial institution or its affiliates or subsidiaries
19 when marketing or soliciting existing or prospective customers without
20 consent in a manner that would lead a reasonable person to believe that the
21 material or solicitation originated from, was endorsed by or is related to or
22 the responsibility of the financial institution or its affiliate; and
- 23 h. Engaging in the following course of illegal conduct and making or causing
24 to be made the specific fraudulent misrepresentation as specifically
25 alleged herein:
 - 26 i. Failing to disclose the existence of an early payment penalty prior
27 to the closing;
 - 28 ii. Making false representations, concealments, and nondisclosures to
29 DURAN knowing the falsity of their representations,
30 concealments, and nondisclosures, and did so with the intent to
31 defraud DURAN and to induce him to secure mortgage loans that
32 were not in DURAN's best interest.
 - 33 iii. Failing to disclose the significant financial aspects of the loan
34 transactions, including failure to disclose the amount of fees, costs
35 and interest that DURAN would have to pay for the loans.

1 274. These acts that constitutes the above violations are all more specifically alleged
2 herein above in Counts I and Count III that are alleged herein as if the same had been fully set
3 forth herein.

4 275. As a result of WELLS FARGO & COMPANY's, WELLS FARGO BANK's,
5 WELLS FARGO HOME MORTGAGE's, GREENPOINT's and SIERRA's actions, DURAN
6 sustained and will continue to sustain damages in the future.

7 276. DURAN's damages occurred as the proximate result of GREENPOINT 's
8 unlawful conduct.

9 **WHEREFORE**, DURAN requests judgment against Defendant, WELLS FARGO &
10 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT
11 and SIERRA for a judicial finding, decree and order:

- 12 a) awarding Plaintiff compensatory damages, together with costs of suit and
13 such other and further relief as the court may deem proper;
- 14 b) for restitution to Plaintiffs for all funds unfairly, unlawfully, fraudulently,
15 and deceptively obtained and retained by all Defendants identified herein
16 and/or its agents.
- 17 c) to account for and to order that the Defendant disgorge any and all
18 revenues acquired and retained by all Defendants identified herein and/or
19 its agent as result o f the unfair, fraudulent, deceptive, unlawful business
20 practices alleged herein;
- 21 d) to take all steps and actions reasonably and sufficiently necessary to
22 rescind the Note and Mortgage,
- 23 e) that determines that the Defendants named herein, and each of them, are
24 without standing to pursue or take any benefit from any putative
25 obligation of Plaintiff arising by reason of that certain Promissory Noted
26 dated March 10, 2005 along with all the lien and clouds it purports to
27 create;
- 28 k) that Defendants herein, are without standing to enforce or take any
29 benefit from that certain Mortgage dated March 10, 2005, and recorded
30 in the Office of the County Recorder of Miami-Dade County in OR
31 Book 23238 at Page 4920-4937;
- 32
33 f) to void extinguish and release all Mortgage Liens or to extinguish and
34 release any other legal documents pertaining to the property securing the
35 Mortgage Loan;

- 1 g) awarding Plaintiff restitution of their property (tangible and intangible)
2 and funds, as that property, and funds existed prior to the wrongful acts
3 and conduct of all Defendants identified herein and/or its agent;
- 4 h) Plaintiffs also seek such additional equitable relief an remedy as may be
5 reasonably necessary to provide a complete remedy against Defendants
6 yet identified herein and/or its agent's wrongful actions and conduct,
7 including without limitation, injunctive relief, restitution, and restoration
8 of their unencumbered title interest in the real property;
- 9 i) To determine that these Defendants, in committing the wrongful acts
10 described herein, acted intentionally, with malice, fraud, and oppression
11 toward Plaintiffs, in a conscious or reckless disregard of Plaintiff's rights
12 under the law with the substantial certainty that an injury would occur
13 Plaintiff demands an award of punitive damages in and exemplary amount
14 commensurate to the injury that they have caused to not only Plaintiff, but
15 to hundreds of thousands of unknowing and unwitting home owners that
16 fell victim and prey to the tactics employed by this organized scheme;
- 17 b) An award of Punitive damages

18 **COUNT VI**

19 **BREACH OF FIDUCIARY DUTY AGAINST WELLS FARGO BANK, WELLS FARGO**
20 **HOME MORTGAGE, GREENPOINT, AND SIERRA**

21
22 277. DURAN reavers and reaffirms all of the allegations set forth in Paragraphs 1-140
23 as if the same had been fully set forth herein.

24 278. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
25 GREENPOINT, acting through SIERRA, owed a fiduciary duty to DURAN by virtue of the fact
26 that she obtained confidential information from him and developed a relationship of trust for the
27 purpose of inducing him to secure mortgage loan financing using her services and the services of
28 her principal. In fact, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
29 GREENPOINT and their agent SIERRA at all times relevant either acted, assumed the role of or
30 represented to Plaintiff that they were Plaintiff's Mortgage Broker. Plaintiff reasonably relied on
31 Defendants' representations and assumed that SIERRA would look out for his best interest an
32 provide Plaintiff with a suitable loan.

33 279. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
34 GREENPOINT, acting through SIERRA knew that DURAN placed his trust and confidence in
35 her and relied on her to assure that he would receive loan terms that were most favorable to him.

1 280. DURAN was a customer with whom WELLS FARGO BANK and WELLS
2 FARGO HOME MORTGAGE had an established relationship of trust and confidence and these
3 were transactions from which WELLS FARGO BANK, WELLS FARGO HOME
4 MORTGAGE, and GREENPOINT and SIERRA was likely to benefit, and in fact did benefit at
5 DURAN's expense.

6 281. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
7 GREENPOINT and SIERRA were under the apparent and actual obligation to disclose facts
8 material to the transaction not otherwise available to DURAN.

9 282. Throughout these transactions WELLS FARGO BANK, WELLS FARGO
10 HOME MORTGAGE, and GREENPOINT, through SIERRA, told DURAN that he was getting
11 the "best rate available" and that "she was looking out for his best interest" and that she would
12 insure that he would be getting "the best deal possible".

13 283. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
14 GREENPOINT, acting through SIERRA breached that fiduciary duty by making false
15 representations, concealments, and nondisclosures to DURAN knowing the falsity of the
16 representations, concealments, and nondisclosures, and did so with the intent to defraud DURAN
17 and to induce him to secure mortgage loans that were not in DURAN's best interest.

18 284. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
19 GREENPOINT, acting through SIERRA, failed to disclose the significant financial aspects of
20 the loan transactions, including failure to disclose the amount of fees, costs and interest that
21 DURAN would have to pay for the loans.

22 285. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
23 GREENPOINT, acting through SIERRA misrepresented and/or failed to disclose to DURAN
24 statements of material facts that were false and misleading prior to, during and after the closing
25 of the mortgage loan in question.

26 286. In addition, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
27 and GREENPOINT, acting through SIERRA misrepresented and/or failed to disclose to
28 DURAN that :

- 29 a. the mortgage loan being processed was not in DURAN's best interest;
30

- 1 b. the terms of the mortgage loan being processed were less favorable than
2 the loan which Defendants previously advised DURAN that DURAN
3 qualified for;
4
- 5 c. The adjustable rate mortgage loan was an inter-temporal transaction
6 (transaction where terms, risks, or provisions at the commencement of the
7 transaction differ at a later time) on which DURAN had only qualified at
8 the initial "teaser" fixed rate but had not and could not qualify for the loan
9 once the interest rate terms changed every six months after year 5;
10 d. As a result of the change in interest rate and terms and that after closing
11 and after year 5 when the interest would become fully adjustable every 6
12 months that DURAN would eventually not be able to meet his financial
13 obligations on the loan given;
14
- 15 e. DURAN would likely be placed in a position of default, foreclosure, and
16 deficiency judgment upon not being able to meet their increased loan
17 obligations once the fixed rate interest period expired and the adjustable
18 rate applied;
19
- 20 f. Insurance was purchased from proceeds of this transaction, credit default
21 swaps were purchased from proceeds of this transaction, the investors
22 investments were "oversold" to create a reserve pool from which the SPV
23 could pay deficiencies in payments, and the SPV created cross-
24 collateralization agreements and overcollateralization of the pool assets to
25 assure payments to the investors, thus creating co-obligors on the payment
26 stream due from the Plaintiff on the subject "loan transaction."
27
- 28 g. WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, and
29 GREENPOINT, acting through SIERRA had no intention of retaining
30 ownership interest in the mortgage loan and in fact may have already
31 presold the loan, prior to closing, to a third party mortgage aggregator;
32
- 33 h. that the mortgage loan was actually intended to create and maximize its
34 own profits by originating a loan that would be repeatedly sold and
35 assigned to multiple third parties, including one or more mortgage
36 aggregators and investment bankers, for the ultimate purpose of bundling
37 the DURAN's' mortgage with hundreds or perhaps thousands of others as
38 part of a companion, support, or other tranche in connection with the
39 creation of a Real Estate Mortgage Investment Conduit ("REMIC")
40 security known as a Collateralized Mortgage Obligation ("CMO"), also
41 known as a "mortgage-backed security" to be sold by a securities firm
42 (and which in fact ended up as collateral for Asset-Backed Securities
43 Certificates, probably created the same year as the closing);
44

- 1 i. that the mortgage instrument and Promissory Note may be sold,
2 transferred, or assigned separately to separate third parties so that the later
3 "holder" of the Promissory Note may not be in privity with or have the
4 legal right to foreclose in the event of default or to defend this action;
5
6 j. that in connection with the multiple down the line resale and assignment
7 of the mortgage and Promissory Note that assignees or purchasers of the
8 Note may make "paydowns" against the Note which may effect the true
9 amount owed by the DURAN on the Note; and
10
11 k. that there was a prepayment penalty.
12
13 l. That WELLS FARGO could not originate the First Loan because they
14 "wanted to limit their financial exposure" when in truth and in fact neither
15 Defendant GREENPOINT nor WELLS FARGO had any financial
16 exposure under this loan.
17

18 287. As a result of GREENPOINT's actions, DURAN sustained and will continue to
19 sustain damages in the future.

20 288. DURAN's damages occurred as the proximate result of defendant's unlawful
21 conduct.

22 **WHEREFORE**, DURAN requests judgment against Defendant, WELLS FARGO &
23 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT
24 and SIERRA for a judicial finding, decree and order:

- 25 c) awarding Plaintiff compensatory damages, together with costs of suit and such
26 other and further relief as the court may deem proper;
27
28 d) for restitution to Plaintiffs for all funds unfairly, unlawfully, fraudulently, and
29 deceptively obtained and retained by all Defendants identified herein and/or its
agents.
30
31 e) to account for and to order that the Defendant disgorge any and all revenues
32 acquired and retained by all Defendants identified herein and/or its agent as result
of the unfair, fraudulent, deceptive, unlawful business practices alleged herein;
33
34 f) to take all steps and actions reasonably and sufficiently necessary to rescind the
Note and Mortgage,
35
36 g) that determines that the Defendants named herein, and each of them, are without
37 standing to pursue or take any benefit from any putative obligation of Plaintiff
38 arising by reason of that certain Promissory Note dated March 10, 2005 along
with all the lien and clouds it purports to create;

- 1 l) that Defendants herein, are without standing to enforce or take any benefit from
2 that certain Mortgage dated March 10, 2005, and recorded in the Office of the
3 County Recorder of Miami-Dade County in OR Book 23238 at Page 4920-
4 4937;
- 5
- 6 h) to void extinguish and release all Mortgage Liens or to extinguish and release any
7 other legal documents pertaining to the property securing the Mortgage Loan;
- 8 i) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
9 as that property, and funds existed prior to the wrongful acts and conduct of all
10 Defendants identified herein and/or its agent;
- 11 j) Plaintiffs also seek such additional equitable relief an remedy as may be
12 reasonably necessary to provide a complete remedy against Defendants yet
13 identified herein and/or its agent's wrongful actions and conduct, including
14 without limitation, injunctive relief, restitution, and restoration of their
15 unencumbered title interest in the real property;
- 16 k) To determine that these Defendants, in committing the wrongful acts described
17 herein, acted intentionally, with malice, fraud, and oppression toward Plaintiffs,
18 in a conscious or reckless disregard of Plaintiff's rights under the law with the
19 substantial certainty that an injury would occur Plaintiff demands an award of
20 punitive damages in and exemplary amount commensurate to the injury that they
21 have caused to not only Plaintiff, but to hundreds of thousands of unknowing and
22 unwitting home owners that fell victim and prey to the tactics employed by this
23 organized scheme;
- 24 l) An award of Punitive damages

25 **COUNT VII**

26 **QUIET TITLE AND DECLARATORY ACTION AGAINST GREENPOINT,**
27 **WELLSFARGO BANK N.A., AS SERVICER, MASTER SERVICER AND TRUST**
28 **ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE**
29 **SECURITIES CORP. ADJUSTABLE RATE**
30 **MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-**
31 **THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE,**
32 **INVESTORS 1-1000 IN AND FOR THE TRUST, AND MERS**
33

34 289. DURAN reavers and reaffirms all of the allegations set forth in Paragraphs 1-140
35 as if the same had been fully set forth herein.

36 290. Plaintiff and his wife purchased the property in question in 2004, and have
37 remained the titled owners uninterruptedly since that time. A copy of the Warranty Deed
38 through which Plaintiff acquired title is attached hereto as **Exhibit "M"**.

1 291. On or about March 10 , 2005 Plaintiff obtained a first mortgage on the subject
2 property with that named GREENPOINT as lender and therefore may have an interest claim or
3 stake in the instant action.

4 292. MERS, or MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. a
5 subsidiary of MERSCORP, INC., a Delaware Corporation, was named as nominee to the lender
6 and therefore may have an interest claim or stake in the instant action.

7 293. WELLS FARGO BANK N.A. AS SERVICER, MASTER SERVICER AND AS
8 TRUST ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE
9 SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE
10 E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5 and
11 TRUSTEE are named herein as they may have an interest claim or stake in the instant action.

12 294. INVESTORS 1-1000 are named herein since Plaintiff reasonably believes that a
13 viable cause of action exists against such individuals or entities to the extent that they may be the
14 rightful holder or recipient or unlawful recipient of all or part of Plaintiff's monthly mortgage
15 payments and are named herein as they may have an interest claim or stake in the instant action.

16 295. Neither GREENPOINT, MERS, WELLS FARGO BANK N.A AS SERVICER,
17 MASTER SERVICER AND AS TRUST ADMINISTRATOR FOR CREDIT SUISSE FIRST
18 BOSTON MORTGAGE SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST
19 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH
20 CERTIFICATES, SERIES 2005-5, TRUSTEE or INVESTOR 1-1000 have a valid, legal,
21 superior claim or right to claim title other than Duran.

22 296. Neither GREENPOINT, MERS or WELLS FARGO BANK AS SERVICER
23 had any intention of retaining any ownership interest or right in the mortgage loan and in fact
24 they may have already presold the loan, prior to closing, to a third party mortgage aggregator the
25 identity of which is intentionally withheld from Plaintiff. Moreover, GREENPOINT, MERS,
26 WELLS FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS TRUST
27 ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES
28 CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE
29 MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5 intentionally
30 concealed the fact that the mortgage loan was actually intended to create and maximize its own

1 profits by originating a loan that would be repeatedly sold and assigned to multiple third parties,
2 including one or more mortgage aggregators and investment bankers, for the ultimate purpose of
3 bundling the DURAN's' mortgage with hundreds or perhaps thousands of others as part of a
4 companion, support, or other tranche in connection with the creation of a Real Estate Mortgage
5 Investment Conduit ("REMIC") security known as a Collateralized Mortgage Obligation
6 ("CMO"), also known as a "mortgage-backed security" to be sold by a securities firm (and which
7 in fact ended up as collateral for Asset-Backed Securities Certificates, probably created the same
8 year as the closing and sold to INVESTORS 1-1000);

9 298. Defendants herein also intentionally concealed the fact that the mortgage
10 instrument and Promissory Note may be sold, transferred, or assigned separately to separate third
11 parties so that the later "holder" of the Promissory Note may not be in privity with or have the
12 legal right to foreclose in the event of default or to defend this action.

13 299. In addition, based upon information and belief, WELLS FARGO & COMPANY,
14 WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT and this
15 TRUST has received TARP funds. The receipt of TARP funds means that part of DURAN's
16 obligation was paid by a third party.

17 300. Whether such misapplication of payments was caused by the difference between
18 the higher general terms of description of the note or the lower actual payment requirements
19 from the "borrower" is not known, despite requests for accounting and the refusal of WELLS
20 FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
21 GREENPOINT to provide any such information.

22 301. These INVESTORS 1-1000 may be the true holders of DURAN's Note, if, in
23 fact, the TRUST accepted DURAN's Note prior to the closing date, they are possibly the holders
24 of DURAN's obligation and he therefore demands strict proof.

25 302. Plaintiff is informed and believes that his loan is one of these transactions that
26 may or may not have been placed into a trust called CREDIT SUISSE FIRST BOSTON
27 MORTGAGE SECURITIES CORP ADJUSTABLE RATE MORTGAGE TRUST 2005-5
28 ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,
29 SERIES 2005-5 for whom WELLS FARGO BANK NA acted as Trust Administrator, Master
30 Servicer. It is believed and alleged that Plaintiff's Promissory Note and Mortgage may or may

1 not have been placed into this trust after the cutoff date for such trust, since no assignment has
2 been recorded to confirm this fact Plaintiff is unsure as to who he is legally indebted to, who he
3 is obligated to pay and Plaintiff reasonably believes that he may be potentially paying or has paid
4 in the past to a party who is not legally and rightfully entitled to receive funds from Plaintiff.

5 303. Plaintiff is informed and believes that the Pooling and Servicing Agreement
6 requires that such note be endorsed within a period of time after it is placed into the Trust.
7 Therefore, the endorsement should be acknowledged and endorsed to the name WELLS
8 FARGO.

9 304. To date all copies of the Note provided to Plaintiff fail to reveal such endorsement.
10 Plaintiff is informed and believes that Plaintiff's Note never made it into the TRUST and as such
11 said document cannot be enforced by neither the initial receptor or its purported successor.
12 Therefore, enforcement is VOID due to the falsity uttering placed by such agent.

13 305. When Plaintiff was negligently and fraudulently induced into signing this NOTE
14 and Mortgage he was unknowingly converting property into purportedly an asset of a Mortgage
15 Backed Security. Plaintiff was never informed of the nature of the scheme and he was
16 deliberately induced into signing a Negotiable Instrument which was never intended as such, but
17 was instead intended as collateral for and Mortgage Backed Security.

18 306. The Plaintiff was lead to believe that this was a loan from Defendants
19 GREENPOINT, and GREENPOINT never advised him that he was involved in a Mortgage
20 Backed Security. This failure to disclose these facts was a Material Disclosure which was
21 deliberately and intentionally undisclosed to Plaintiff. The failure to disclose the identity of the
22 true lender at closing was also a material disclosure the nature of which would make the
23 Mortgage and Note voidable. Plaintiff loan was part of a sophisticated scheme designed to
24 unjustly enrich the Defendants and the many others who profited by taking a slice of profit and
25 passing the risk forward with little or no worry of regulatory oversight.

26 307. Plaintiff believes and on that basis alleges that he holds a superior interest in the
27 subject property, free and clear of any lien or interest of any Defendant to this action in that the
28 lien evidenced by the mortgage and its subsequent improper assignment has no legal value since
29 it evidences a debt that is wholly unsecured and that accordingly the security interest is null and
30 void.

1 308. Plaintiff believes that a bona fide dispute exists as to whether or not a mortgage is
2 void and whether Plaintiff's obligation to pay is wholly unsecured. As such Plaintiff believes that
3 an actual controversy exists between Plaintiff and Defendants with regard to the validity, nature
4 and extent of their interest in the subject property and it is necessary that this court determine the
5 actual rights and obligations of the parties and make a determination as to the validity nature and
6 extent of Defendants interest in the subject property. Defendants have all actively concealed and
7 refused to comply with Plaintiffs numerous demands to determine who the rightful owner of
8 Plaintiffs Note and Mortgage is and who Plaintiff has a legal obligation to pay. Therefore,
9 Plaintiff is now forced to join in this lawsuit all parties whom Plaintiff now reasonably believes
10 may hold and interest in Plaintiffs Mortgage and Note.

11 309. Plaintiff reasonably believes that the following parties may have been the
12 wrongful recipients of Plaintiff's funds and have therefore been unjustly enriched and/or that
13 Plaintiff may possibly be legally responsible to the following parties: CREDIT SUISSE FIRST
14 BOSTON MORTGAGE SECURITIES CORP ADJUSTABLE RATE MORTGAGE TRUST
15 2005-5 ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,
16 SERIES 2005-5, INVESTORS 1-1000, WELLS FARGO BANK, & COMPANY, WELLS
17 FARGO BANK N.A, WELLS FARGO HOME LOAN, GREENPOINT; MERSCORP, INC. and
18 MERS.

19 310. Upon information and belief, Plaintiff's Note has since been sold and/or otherwise
20 transferred on more than one occasion, or pooled and sold to more than one investor. Despite
21 diligent effort, Plaintiff has been unable to determine the exact identify of the owner of his Note
22 and holder of his mortgage. Plaintiff has no other way of knowing who he is indebted to unless
23 these rights are determine

24 311. As a result a cloud of title exists on the subject property.

25 **WHEREFORE** DURAN requests judgment against Defendant, GREENPOINT, MERS,
26 WELLS FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS TRUST
27 ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES
28 CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE
29 MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and
30 INVESTORS 1-1000for a judicial finding, decree and order:

- 1 a) to take all steps and actions reasonably and sufficiently necessary to rescind the
2 Note and Mortgage,
- 3 b) that determines that the Defendants named herein, and each of them, are without
4 standing to pursue or take any benefit from any putative obligation of Plaintiff
5 arising by reason of that certain Promissory Note dated March 10, 2005 along
6 with all the lien and clouds it purports to create;
- 7 m) that Defendants herein, are without standing to enforce or take any benefit from
8 that certain Mortgage dated March 10, 2005, and recorded in the Office of the
9 County Recorder of Miami-Dade County in OR Book 23238 at Page 4920-
10 4937;
- 11
- 12 c) to void extinguish and release all Mortgage Liens or to extinguish and release any
13 other legal documents pertaining to the property securing the Mortgage Loan;
- 14 d) Plaintiffs also seek such additional equitable relief an remedy as may be
15 reasonably necessary to provide a complete remedy against Defendants yet
16 identified herein and/or its agent's wrongful actions and conduct, including
17 without limitation, injunctive relief, restitution, and restoration of their
18 unencumbered title interest in the real property;

19 **COUNT VIII**

20
21 **ACCOUNTING AGAINST WELLS FARGO & COMPANY, WELLS FARGO BANK,**
22 **WELLS FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS, WELLS**
23 **FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS TRUST**
24 **ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE**
25 **SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5,**
26 **ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,**
27 **SERIES 2005-5, TRUSTEE and INVESTORS 1-1000.**
28

29 312. DURAN reavers and reaffirms all of the allegations set forth in Paragraphs 1-140
30 as if the same had been fully set forth herein.

31 313. This is an action for an accounting of all tangible goods, property, inventory,
32 profits received, money received, funds received or other compensation or other form of
33 payment or benefit received by as a direct an proximate result of the origination of DURAN's
34 Loan on about March 10, 2005 by Defendants, WELLS FARGO & COMPANY, WELLS
35 FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS,
36 WELLS FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS TRUST
37 ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES

1 CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE
2 MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and
3 INVESTORS 1-1000.

4 314. Defendants, WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS
5 FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS, WELLS FARGO BANK
6 N.A AS SERVICER, MASTER SERVICER AND AS TRUST ADMINISTRATOR FOR
7 CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. ADJUSTABLE RATE
8 MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-
9 THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and INVESTORS 1-1000 have
10 failed to account to DURAN for all the tangible goods, property, inventory, profits received,
11 money received, funds received or other compensation or other form of payment or benefit
12 received by as a direct an proximate result of the origination of DURAN's Loan on about
13 March 10, 2005 despite due demand by DURAN.

14 315. Although the exact amount of the debt cannot be determined by
15 DURAN,DURAN may be indebted to the Defendants WELLS FARGO & COMPANY, WELLS
16 FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS,
17 WELLS FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS TRUST
18 ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES
19 CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE
20 MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and
21 INVESTORS 1-1000.

22 316. Furthermore, since the origination of this loan in March 2005 and until the present
23 time and continuing hereon after, DURAN will have made well over \$300,000.00 in payment
24 principal, interest, late charges, late fee, other fees, charges, commission yield spread, and other
25 charges.

26 317. Defendants WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS
27 FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS, WELLS FARGO BANK
28 N.A AS SERVICER, MASTER SERVICER AND AS TRUST ADMINISTRATOR FOR
29 CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. ADJUSTABLE RATE
30 MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-

1 THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and INVESTORS 1-1000 have all
2 some part or all of DURAN's Loan payments since March 10, 2005.

3 318. DURAN has no adequate remedy at law.

4 319. DURAN demands from the Defendants WELLS FARGO & COMPANY,
5 WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT, SIERRA,
6 MERS, WELLS FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS
7 TRUST ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE
8 SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE
9 E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5,
10 TRUSTEE and INVESTORS 1-1000 to account for all the tangible goods, property, inventory,
11 profits received, money received, funds received or other compensation or other form of
12 payment or benefit received by as a direct an proximate result of the origination of DURAN's
13 Loan on about March 10, 2005. Defendants have failed and refused, and continue to fail and
14 refuse, to render such an accounting.

15 **WHEREFORE** DURAN requests judgment against Defendant, WELLS FARGO &
16 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
17 GREENPOINT, SIERRA, MERS, WELLS FARGO BANK N.A AS SERVICER, MASTER
18 SERVICER AND AS TRUST ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON
19 MORTGAGE SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5,
20 ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,
21 SERIES 2005-5, TRUSTEE and INVESTORS 1-100 for a judicial finding, decree and order:

- 22 a) to account for and to order that the Defendant disgorge any and all revenues
23 acquired and retained by all Defendants identified herein and/or its agent as result
24 o f the unfair, fraudulent, deceptive, unlawful business practices alleged herein;
- 25 b) to take all steps and actions reasonably and sufficiently necessary to rescind the
26 Note and Mortgage,
- 27 c) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
28 as that property, and funds existed prior to the wrongful acts and conduct of all
29 Defendants identified herein and/or its agent;
- 30 d) Plaintiffs also seek such additional equitable relief an remedy as may be
31 reasonably necessary to provide a complete remedy against Defendants yet
32 identified herein and/or its agent's wrongful actions and conduct, including

1 without limitation, injunctive relief, restitution, and restoration of their
2 unencumbered title interest in the real property;

3 **COUNT IX**

4 **RESTITUTION ACTION AGAINST GREENPOINT, WELLS FARGO & COMPANY,**
5 **WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, WELLSFARGO BANK**
6 **N.A., AS SERVICER, MASTER SERVICER AND TRUST ADMINISTRATOR FOR**
7 **CREDIT SUISSE FIRST BOSTON MORTGAGE**
8 **SECURITIES CORP. ADJUSTABLE RATE**
9 **MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-**
10 **THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE,**
11 **INVESTORS 1-1000 IN AND FOR THE TRUST, AND MERS**
12

13 320. DURAN reavers and reaffirms all of the allegations set forth in Paragraphs 1-140
14 as if the same had been fully set forth herein.

15 321. This is an action for unjust enrichment and restitution to DURAN of all tangible
16 goods, property, inventory, profits received, money received, funds received or other
17 compensation or other form of payment or benefit received by or as a direct an proximate result
18 of the origination of DURAN's Loan on about March 10, 2005 by Defendant, Defendants
19 WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS FARGO HOME
20 MORTGAGE, GREENPOINT, SIERRA, MERS, WELLS FARGO BANK N.A AS
21 SERVICER, MASTER SERVICER AND AS TRUST ADMINISTRATOR FOR CREDIT
22 SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. ADJUSTABLE RATE
23 MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-
24 THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and INVESTORS 1-1000.

25 322. Defendants WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS
26 FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS, WELLS FARGO BANK
27 N.A AS SERVICER, MASTER SERVICER AND AS TRUST ADMINISTRATOR FOR
28 CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. ADJUSTABLE RATE
29 MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-
30 THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and INVESTORS 1-1000 have been
31 unjustly enriched to the detriment of DURAN for all the tangible goods, property, inventory,
32 profits received, money received, funds received or other compensation or other form of
33 payment or benefit received by as a direct an proximate result of the origination of DURAN's
34 Loan on about March 10, 2005.

1 323. Furthermore, since the origination of this loan in March 2005 and until the present
2 time and continuing hereon after, DURAN will have made well over \$300,000.00 in payment
3 principal, interest, late charges, late fee, other fees, charges, commission yield spread, and other
4 charges.

5 324. Defendants WELLS FARGO & COMPANY, WELLS FARGO BANK, WELLS
6 FARGO HOME MORTGAGE, GREENPOINT, SIERRA, MERS, WELLS FARGO BANK
7 N.A AS SERVICER, MASTER SERVICER AND AS TRUST ADMINISTRATOR FOR
8 CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. ADJUSTABLE RATE
9 MORTGAGE TRUST 2005-5, ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-
10 THROUGH CERTIFICATES, SERIES 2005-5, TRUSTEE and INVESTORS 1-1000 have all
11 received some part or all of DURAN's Loan payments since March 10, 2005 and have therefore
12 been unjustly enriched to the detriment of DURAN.

13 325. DURAN has no adequate remedy at law.

14 326. DURAN demands from the Defendants WELLS FARGO & COMPANY,
15 WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE, GREENPOINT, SIERRA,
16 MERS, WELLS FARGO BANK N.A AS SERVICER, MASTER SERVICER AND AS
17 TRUST ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON MORTGAGE
18 SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5, ADJUSTABLE
19 E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-5,
20 TRUSTEE and INVESTORS 1-1000 to account and return to DURAN all the tangible goods,
21 property, inventory, profits received, money received, funds received or other compensation or
22 other form of payment or benefit received by as a direct an proximate result of the origination
23 of DURAN's Loan on about March 10, 2005. Defendants have failed and refused, and continue
24 to fail and refuse, to render such an accounting.

25 **WHEREFORE** DURAN requests judgment against Defendant, WELLS FARGO &
26 COMPANY, WELLS FARGO BANK, WELLS FARGO HOME MORTGAGE,
27 GREENPOINT, SIERRA, MERS, WELLS FARGO BANK N.A AS SERVICER, MASTER
28 SERVICER AND AS TRUST ADMINISTRATOR FOR CREDIT SUISSE FIRST BOSTON
29 MORTGAGE SECURITIES CORP. ADJUSTABLE RATE MORTGAGE TRUST 2005-5,

1 ADJUSTABLE E.RATE MORTGAGE-BACKED PASS-THROUGH CERTIFICATES,
2 SERIES 2005-5, TRUSTEE and INVESTORS 1-100 for a judicial finding, decree and order:

- 3 e) to account for and to order that the Defendant disgorge any and all revenues
4 acquired and retained by all Defendants identified herein and/or its agent as result
5 of the unfair, fraudulent, deceptive, unlawful business practices alleged herein;
- 6 f) to take all steps and actions reasonably and sufficiently necessary to rescind the
7 Note and Mortgage,
- 8 g) awarding Plaintiff restitution of their property (tangible and intangible) and funds,
9 as that property, and funds existed prior to the wrongful acts and conduct of all
10 Defendants identified herein and/or its agent;
- 11 h) Plaintiffs also seek such additional equitable relief an remedy as may be
12 reasonably necessary to provide a complete remedy against Defendants yet
13 identified herein and/or its agent's wrongful actions and conduct, including
14 without limitation, injunctive relief, restitution, and restoration of their
15 unencumbered title interest in the real property;

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands trial by jury on all issues so triable.

18 **PUNITIVE DAMAGES**

19 Plaintiff specifically reserves the right to request Punitive Damages against all Defendants, if the
20 circumstances so warrant. Plaintiff also requests that an award of no less than \$100,000,000.00
21 be entered as an award of punitive damages to be utilized to create such mandatory program for
22 foreclosure mitigation and loan modification that adequately corrects, compensates and assists
23 home owners within this Court's jurisdiction to save their homes from these unscrupulous,
24 deceptive fraudulent and intentional practices of WELLS FARGO & COMPANY, WELLS
25 FARGO BANK, WELLS FARGO HOME MORTGAGE and GREENPOINT.

26 Respectfully submitted on this _____ day of May 2010.

27
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