

1 Mandip S. Purewal, Esq., SBN 202444  
2 National Consumer Law Group, A.P.C  
3 7901 Stoneridge Drive, Suite 504  
4 Pleasanton, California 94588  
5 (925) 397-4013

6 Attorney for Plaintiffs  
7 JOJI THOMAS and BINDU VARGHESE

8 **SUPERIOUR COURT OF CALIFORNIA**  
9 **COUNTY OF CONTRA COSTA**

10 JOJI THOMAS and BINDU VARGHESE,

11 Plaintiffs,

12 vs.

13 BANK OF AMERICA, N.A. AS SUCESSOR  
14 BY MERGER TO BAC HOME LOANS  
15 SERVICING, LP; QUALITY LOAN  
16 SERVICE CORPORATION, A CALIFORNIA  
17 CORPORATION; All person unknown,  
18 claiming any legal or equitable right, title,  
19 estate lien, or interest in the Property described  
20 in this complaint adverse to Plaintiffs' title, or  
21 any cloud on Plaintiffs' title thereto; and DOES  
22 1-50, inclusive,

23 Defendants.

Case No.

**PLAINTIFFS' FIRST AMENDED  
COMPLAINT FOR**

- (1) DECLARATORY RELIEF;
- (2) BREACH OF CONTRACT;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) NEGLIGENCE;
- (5) DAMAGES;
- (6) VIOLATION OF SECTION 1788.17 OF  
THE RFDCPA;
- (7) ACCOUNTING;
- (8) INJUNCTIVE RELIEF.

24 Plaintiffs ("Plaintiffs") hereby allege as follows:

25 **PARTIES**

1. Plaintiffs are individuals residing in San Ramon. California.

1           2.     Based upon information and belief, Defendant Bank of America, National  
2 Association (“BANA”) is a national lender banking association doing business in California.

3           3.     Defendant Quality Loan Service Corp. is a California corporation doing business  
4 in the State of California. Quality and DOES 1 through 10 are collectively referred to herein as  
5 “QUALITY.”

6           4.     Defendant(s) “All Persons Unknown, Claiming Any Legal Or Equitable Right,  
7 Title, Estate, Lien, Or Interest In The Property Described In The Complaint Adverse To  
8 Plaintiffs’ Title, Or Any Cloud On Plaintiffs’ Title Thereto” are sued herein pursuant to  
9 California Code of Civil Procedure Section 762.020(a).

10          5.     Plaintiffs are ignorant of the true names and capacities of the defendants sued  
11 herein as DOES 1 through 10 and, therefore, sues these defendants by such fictitious names.  
12 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.

13          6.     Defendants sued herein as DOES 1 through 10 are contractually, strictly,  
14 negligently, intentionally, vicariously liable and or otherwise legally responsible in some manner  
15 for each and every act, omission, obligation, event or happening set forth in this Complaint, and  
16 that each of said fictitiously named Defendants is indebted to Plaintiffs as hereinafter alleged.

17          7.     The use of the term “Defendants” in any of the allegations in this Complaint,  
18 unless specifically otherwise set forth, is intended to include and charge both jointly and  
19 severely, not only named Defendants, but all Defendants designated as well.

20          8.     Plaintiffs are informed and believe and thereon allege that, at all times mentioned  
21 herein, Defendants were agents, servants, employees, alter egos, superiors, successors in interest,  
22 joint venturers and/ or co-conspirators of each of their co-defendants and in doing the things  
23 herein after mentioned, or acting within the course and scope of their authority of such agents,  
24 servants, employees, alter egos, superiors, successors in interest, joint venturers and/ or co-  
25

1 conspirators with the permission and consent of their co-defendants and, consequently, each  
2 Defendant named herein, and those Defendants named herein as DOES 1 through 10, inclusive,  
3 are jointly and severally liable to Plaintiffs for the damages and harm sustained as a result of their  
4 wrongful conduct.

5 9. Defendants, and each of them, aided and abetted, encouraged, and rendered  
6 substantial assistance to the other Defendants in breaching their obligations to Plaintiffs, as  
7 alleged herein. In taking action, as alleged herein, to aid and abet and substantially assist the  
8 commissions of these wrongful acts and other wrongdoings complained of, each of the  
9 Defendants acted with an awareness of its primary wrongdoing and realized that its conduct  
10 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and  
11 wrongdoing.

12 10. Defendants, and each of them, knowingly and willfully conspired, engaged in a  
13 common enterprise, and engaged in a common course of conduct to accomplish the wrongs  
14 complained of herein. The purpose and effect of the conspiracy, common enterprise, and  
15 common course of conduct complained of was, inter alia, to financially benefit Defendants at the  
16 expense of Plaintiffs by engaging in fraudulent activities. Defendants accomplished their  
17 conspiracy, common enterprise, and common course of conduct by misrepresenting and  
18 concealing material information regarding the servicing of loans, and by taking steps and making  
19 statements in furtherance of their wrongdoing as specified herein. Each Defendant was a direct,  
20 necessary and substantial participant in the conspiracy, common enterprise and common course  
21 of conduct complained of herein, and was aware of its overall contribution to and furtherance  
22 thereof. Defendants' wrongful acts include, inter alia, all of the acts that each of them are  
23 alleged to have committed in furtherance of the wrongful conduct of complained of herein.

24 11. Any applicable statutes of limitations have been tolled by the Defendants'  
25 continuing, knowing, and active concealment of the facts alleged herein. Despite exercising

1 reasonable diligence, Plaintiffs could not have discovered, did not discover, and was prevented  
2 from discovering, the wrongdoing complained of herein.

3 12. In the alternative, Defendants should be estopped from relying on any statutes of  
4 limitations. Defendants have been under a continuing duty to disclose the true character, nature,  
5 and quality of their financial services and debt collection practices. Defendants owed Plaintiffs  
6 an affirmative duty of full and fair disclosure, but knowingly failed to honor and discharge such  
7 duty.

### 8 **INTRODUCTION**

9 13. This action arises out of the worst economic crisis since the Great Depression.  
10 The implosion of the real estate market is at the center of the crisis. It has created a frenzy  
11 among banks such as BANA, the largest corporation in terms of assets in the world, to foreclose  
12 on as many properties as possible. It has recently come to light that, in their quest to foreclose  
13 on properties as quickly as possible, BANA and other lenders have been acting outside of the  
14 law in its foreclosure practice.

15 14. Ever since, the national press has been reporting stories of numerous illegalities in  
16 the policies, practices and procedures of BANA and other lenders, and their employees and  
17 agents employed and retained to process foreclosures. The evidence is overwhelming that  
18 BANA and other lenders have been acting outside of the law since this crisis began. This action  
19 is a prime example of BANA and its agents' wrongful and illegal conduct in their greed for  
20 property and fees at any cost without any regard to the rights of homeowners and borrowers.

### 21 **STATEMENT OF FACTS**

22 15. Plaintiffs obtained a mortgage loan on their property at 822 Tolley Court in San  
23 Ramon, California on July 2, 2009, obtaining a first deed of trust from BANA ("FDOT"). A true  
24 and correct copy of the FDOT which listed Bank of America, N.A. as the lender and "PRLAP,  
25 Inc." as the trustee, is attached hereto as "Exhibit A."

1           16.     Due to cutbacks in 2009 the borrower’s husband became unemployed, but  
2 Plaintiffs continued to try to make the monthly mortgage payments. As a result, in 2010,  
3 Plaintiffs fell behind in their mortgage payments became delinquent. Plaintiffs requested a loan  
4 modification from BANA.

5           17.     On or about November 11, 2010, Plaintiffs received a letter from BANA dated  
6 November 9, 2010 advising them that their loan modification had been approved, and enclosing  
7 a Loan Modification Agreement for execution and notarization. According to the letter,  
8 \$22,726.70 would be added to the principal balance, which included interest of \$13,230.66 and  
9 an escrow amount of \$9,496.04.

10          18.     On November 11, 2010, Plaintiffs entered into a Loan Modification Agreement  
11 (“LMA”) with BANA under a 4% fixed rate amortized over 40 years. The terms of the LMA  
12 required monthly payments of principal and interest totaling \$1,796.40. The monthly payments  
13 were based on a principal balance of \$429,823.84. A true and correct copy of the Loan  
14 Modification Agreement, dated November 12, 2010, is attached hereto as “Exhibit B” and  
15 incorporated herein by reference.

16          19.     On November 11, 2010, the LMA and Plaintiffs’ personal check, Check No. 311  
17 in the amount of \$3,044.54 was forwarded to BANA.

18          20.     In good faith in adhering to the LMA, Plaintiffs executed an automatic  
19 withdrawal allowing BANA to withdraw monthly payments from their Bank of America  
20 personal checking account.

21          21.     On November 16, 2010, Plaintiffs called BANA and spoke with a Ms. Chusherrey  
22 Parker regarding the LMA and his concerns that the interest calculation of \$13,230.66 appeared  
23 to be high, and the fact that the bank had paid only \$7,165.83 into escrow, yet had added  
24 \$9,496.04 to the principal. Plaintiffs’ concerns were that the bank calculations and accounting  
25 was incorrect. Ms. Parker advised Plaintiffs that the accounting would be looked into and she

1 would call him back. That conversation was followed-up by a letter to BANA from Plaintiffs on  
2 November 17, 2010. A true and correct copy of the letter, dated November 17, 2010, is attached  
3 hereto as “Exhibit C” and incorporated herein by reference.

4 22. On March 5, 2012, QUALITY recorded a Notice of Default (“NOD”) on behalf  
5 of BANA in the Contra Costa County Clerk Recorder’s Office as Instrument No. 2012-0050160.  
6 A true and correct copy of the NOD, recorded March 5, 2012, is attached hereto as “Exhibit D”  
7 and incorporated herein by reference.

8 Plaintiffs allege that the amount alleged to be due under the NOD is incorrect and  
9 defective as it does not give a proper accounting for the amount of principal and interest  
10 paid under the LMA.

11 23. On June 16, 2012, Plaintiffs sent a letter to Mr. Paul Cano, Customer Relations  
12 Manager for BANA and requested either a Forbearance Agreement, or a repayment plan to pay  
13 the arrearages on the mortgage over a three year period along with the regular mortgage  
14 payments. A true and correct copy of the Plaintiffs’ letter, dated June 16, 2012, is attached hereto  
15 as “Exhibit E” and incorporated herein by reference.

16 24. Plaintiffs telephoned Mr. Paul Cano to follow-up on repayment and were told  
17 they needed 6 months payment. Mr. Cano said Plaintiffs did not qualify and he would send a  
18 Reinstatement Calculation.

19 25. On or about July 8, 2012, Plaintiffs received a Reinstatement Calculation from  
20 BANA. The calculations were totally incorrect in that the Reinstatement Calculation listed  
21 incorrect monthly payments due. It listed four (4) months of payments due at \$3,197.70 per  
22 month, when the true payments were \$1,796.40 per the LMA. These erroneous calculations  
23 raised concerns about the true accounting being done by BANA and Plaintiffs’ account being  
24 properly credited, as well as Plaintiffs’ being overcharged. The calculations indicated  
25 \$31,643.60 to reinstate the mortgage loan, and that the Reinstatement Calculation was only good

1 through July 20, 2012. A true and correct copy of Bank of America Home Loans Reinstatement  
2 Calculation, Dated July 6, 2012, is attached hereto as “Exhibit F” and incorporated herein by  
3 reference.

4 26. After receiving the Reinstatement Calculation on July 8, 2012, Plaintiffs called  
5 Paul Cano of BAN regarding waiver of the attorney’s fees and trustee’s fees reflected in the July  
6 6, 2012 Reinstatement Calculation. Mr. Cano advised him to contact QUALITY to request that  
7 the attorney’s fees be waived. In accordance with Mr. Cano’s instructions, Plaintiffs contacted  
8 QUALITY to get the attorney’s fees waived. Plaintiffs were advised by QUALITY that the  
9 document was generated by BANA and that BANA should make the correction. QUALITY  
10 requested that the Reinstatement Calculation be corrected by BANA.

11 27. As a result of not being able to get the Reinstatement Calculation corrected, on  
12 July 13, 2012, Plaintiffs forwarded a letter to BANA regarding the request to waive attorney’s  
13 fees, trustee’s fees and foreclosure expenses as mentioned in the Reinstatement Calculation,  
14 however, the net due under the Reinstatement Calculation did not change. Plaintiffs also  
15 requested that the Reinstatement Calculation be revised incorporating waiver of the \$3,865.75  
16 and to correct the net due to \$27,777.85. A true and correct copy of Plaintiffs’ letter, dated July  
17 13, 2012, is attached hereto as “Exhibit G” and incorporated herein by reference.

18 28. On or about July 15, 2012, Plaintiffs received an updated and recalculated  
19 Reinstatement Calculation from BANA. The calculations indicated \$29,956.10 to reinstate the  
20 mortgage loan, which was again wrong since it showed a monthly payment due of \$3,197.00.  
21 This Reinstatement Calculation was only good through July 26, 2012. A true and correct copy of  
22 Bank of America Home Loans Reinstatement Calculation, Dated July 13, 2012 is attached hereto  
23 as “Exhibit H”.

24 29. On or about July 21, 2012, QUALITY forwarded another Reinstatement  
25 Calculation which showed a total payment of \$28,768.60, which is totally different and less than

1 BANA's statement. This Reinstatement Calculation was good through July 25, 2012; but the  
2 monthly payment was different (and much higher) than the executed LMA. A true and correct  
3 copy is attached hereto as "Exhibit I" and incorporated herein by reference.

4 30. On July 27, 2012, Mr. Paul Cano accepted the request to waive attorney's fees  
5 and foreclosure fees verbally, and advised Plaintiff to forward a non-negotiable Cashier's Check  
6 in the amount \$27,777.85. Attached hereto as "Exhibit J" is a true and correct copy of Plaintiffs'  
7 letter to BANA and Cashier's Check and incorporated herein by reference.

8 31. Plaintiffs wrote a letter dated July 30, 2012 to BANA addressed to the President  
9 requesting that BANA honor the terms of the Reinstatement Calculation and LMA and for  
10 cessation of the foreclosure and trustee sale. A true and correct copy of Plaintiffs' letter is  
11 attached hereto as "Exhibit K" and incorporated herein by reference.

12 32. Plaintiffs wrote a letter dated August 27, 2012 to BANA addressed to Jose Soto  
13 requesting analysis of the Reinstatement Calculation dated July 6, 2012. A true and correct copy  
14 of Plaintiffs' letter is attached hereto as "Exhibit L" and incorporated herein by reference.

15 33. Plaintiffs wrote a letter dated September 8, 2012 to BANA addressed to the CEO  
16 and President advising of the \$27,777.85 payment and requesting assistance. A true and correct  
17 copy of Plaintiffs' letter is attached hereto as "Exhibit M" and incorporated herein by reference.

18 34. On or about October 2, 2012, Plaintiffs talked to Ivory Carson of BANA who  
19 confirmed that the system did not show receipt of \$27,777.85.

20 35. Plaintiffs wrote a letter dated October 2, 2012 addressed to Jose Soto, Customer  
21 Advocate of BANA explaining mistakes in BANA's accounting with regard to Plaintiffs' loan  
22 and requesting assistance. A true and correct copy of Plaintiffs' letter is attached hereto as  
23 "Exhibit N" and incorporated herein by reference.



1           36.     In October 2012, QUALITY informed Plaintiffs by telephone that QUALITY had  
2 not been notified by BANA regarding the receipt of the reinstatement funds in the form of a  
3 cashier's check in the amount of \$27,777.85.

4           37.     On or about October 5, 2012, Ivory Carsen of BANA telephoned Plaintiffs and  
5 informed Plaintiffs that the Cashier's Check was returned to Plaintiffs on July 30, 2012.

6           38.     Plaintiffs wrote a letter dated October 8, 2012 addressed to Ivory Carsen of  
7 BANA providing tracking information of the certified check for \$27,777.85. A true and correct  
8 copy of Plaintiffs' letter is attached hereto as "Exhibit O" and incorporated herein by reference.

9           39.     On or about October 15, 2012, BANA informed Plaintiffs that foreclosure status  
10 of their home was "taken away."

11           40.     Plaintiffs wrote a letter dated October 27, 2012 to QUALITY questioning the  
12 foreclosure status of their loan. A true and correct copy of Plaintiffs' letter is attached hereto as  
13 "Exhibit P" and incorporated herein by reference.

14           41.     In October 2012, Ivory Carson of BANA confirmed to Plaintiffs by telephone that  
15 the foreclosure status of their home was "taken away."

16           42.     Plaintiffs wrote a letter dated October 27, 2012 to Ivory Carsen of BANA  
17 confirming their telephone call in which foreclosure status was "taken away" and questioning the  
18 foreclosure letter received from QUALITY dated October 24, 2012. This letter also requested  
19 that BANA issue a letter to San Ramon Branch of Bank of America (where the non-negotiable  
20 Cashier's Check was purchased) to cancel and reissue the Cashier's Check if they believed that  
21 the check got misplaced. BANA did not take any action. A true and correct copy of Plaintiffs'  
22 letter is attached hereto as "Exhibit Q" and incorporated herein by reference.

23           43.     Defendants, by telephone, requested the tracking number and date of sending the  
24 Cashier's Check in the amount of \$27,777.85.

1           44. In or about October 2012, Ivory Carson, at BANA, confirmed over phone to  
2 Plaintiffs that BANA's system is not showing a tracking number or letter showing the date of  
3 mailing the Cashier's Check back to Plaintiffs.

4           45. Letter from QUALITY to Plaintiffs dated November 19, 2012 which  
5 acknowledges QUALITY's awareness of the fact that BANA was reviewing the accounts and  
6 documents of Plaintiffs. A true and correct copy of QUALITY's letter is attached hereto as  
7 "Exhibit R" and incorporated herein by reference.

8           46. Plaintiffs wrote a letter dated December 5, 2012 addressed to the CEO and  
9 President of BANA thanking them for forwarding a copy of an agreement dated November 12,  
10 2010 to Plaintiffs and asking for a written response to Plaintiffs' communications. A true and  
11 correct copy of Plaintiffs' letter is attached hereto as "Exhibit S" and incorporated herein by  
12 reference.

13           47. In or about December 2012, QUALITY informed Consumer Finance Protection  
14 Bureau that BANA advised QUALITY that the funds sent by Plaintiffs (USD 27,777.85) was  
15 less than half of the amount due in July 2012 and check was returned on August 9, 2012 which  
16 was different from the date provided by BANA to Plaintiffs. A true and correct copy of  
17 QUALITY's exchange with Consumer Finance Protection Bureau is attached hereto as "Exhibit  
18 T" and incorporated herein by reference.

19           48. On December 18, 2012, Ivory Carson, at BANA informed Plaintiffs over the  
20 phone that the home was foreclosed on December 17, 2012 by trustees due to BANA's failure to  
21 enter a code on their system to show that the loan was under active review and confirmed that  
22 she had already sent a request to foreclosure department to rescind the sale which occurred due  
23 to BANA's error.

24           49. Plaintiffs sent a letter dated December 19, 2012 addressed to the CEO and  
25 President of BANA thanking BANA and Ivory Carson for trying to reverse the sale

1 which occurred due to BANA's mistake. A true and correct copy of Plaintiffs' letter is attached  
2 hereto as "Exhibit U" and incorporated herein by reference.

3 50. On December 17, 2012, QUALITY foreclosed the home.

4 51. On December 22, 2012, Plaintiffs received a letter from BANA dated December  
5 20, 2012 advising that the loan modification request was rejected and Plaintiffs should contact  
6 BANA to avoid foreclosure. A true and correct copy of this letter is attached hereto as "Exhibit  
7 V" and incorporated herein by reference. From the above it is clear that home was foreclosed  
8 when loan was under active review and there was lack of coordination and communication  
9 between BANA and QUALITY.

10 52. Jose Soto of BANA wrote a letter to Plaintiffs dated December 24, 2012  
11 responding to Plaintiffs' inquiry received on December 19, 2012 offering resolution of Plaintiffs'  
12 concerns. A true and correct copy of this letter is attached hereto as "Exhibit W and incorporated  
13 herein by reference.

14 53. In January 2013, Plaintiffs received a letter dated August 13, 2012 from Jose Soto  
15 of BANA on behalf of Ivory Carson of BANA as attachment to "Exhibit Y," infra, which  
16 acknowledges BANA's receipt of the cashier's check for \$27,777.85. A true and correct copy of  
17 this letter is attached hereto as "Exhibit X" and incorporated herein by reference.

18 54. Plaintiffs received a letter dated January 14, 2013 from Jose Soto of BANA on  
19 behalf of Ivory Carson of BANA in response to Plaintiffs' letters dated December 5, 2012,  
20 December 19, 2012, December 20, 2012, December 22, 2012, December 26, 2012, and  
21 December 28, 2012. A true and correct copy of this letter is attached hereto as "Exhibit Y" and  
22 incorporated herein by reference.

23  
24 ///

25 ///

**FIRST CAUSE OF ACTION**  
**FOR DECLARATORY RELIEF**  
**(As Against All Defendants)**

1  
2  
3       55.     Plaintiffs incorporate Paragraphs 1 through 54 of the General Allegations as  
4 though such have been fully set forth herein.

5       56.     An actual controversy exists in which the parties must ascertain their rights, duties  
6 and right to title in the Subject Property.

7       57.     A judicial determination is necessary that the parties may ascertain their rights,  
8 duties and right to title in the Subject Property.

9       58.     The parties desire that the court may a judicial determination as to their rights,  
10 duties and right to title in the Subject Property.

11       59.     An actual controversy has arisen and now exists between Plaintiffs and  
12 Defendants, and each of them, concerning their respective rights, obligations and duties as it  
13 relates to the Subject Property. In particular, on one hand, Plaintiffs contend: (a) that Plaintiffs  
14 tendered the full amount owing as of the date of tender as more particularly alleged in paragraph  
15 28; (b) that improper accounting and mismanagement caused errors in amounts due as of the  
16 date of the NOD; that misinformation through carelessness caused a non-judicial foreclosure to  
17 occur; (c) that Plaintiffs are entitled to have the Trustee Sale of the Property rescinded; On the  
18 other hand Defendants contend that Plaintiffs have not tendered the correct amount owing and  
19 that they are not required to respond to rescind the non-judicial Trustee Sale of Plaintiffs'  
20 Property.

21       60.     Plaintiffs desire a judicial determination of Defendants rights, obligations and  
22 duties, and a declaration as to who owns Plaintiffs' Subject Property.

23  
24 ///

25 ///



1           66.     Mr. Cano was the Customer Relationship Manager and representative of BANA.  
2 Mr. Cano held himself out as having authority to make agreements and act as an agent of BANA.

3           67.     Plaintiffs sold their automobile to obtain funds to comply with the terms of the  
4 Reinstatement Calculation.

5           68.     Based upon Mr. Cano's statements, Plaintiffs forwarded \$27,777.85 in the form  
6 of a cashier's check to BANA.

7           69.     Based upon the Reinstatement Calculation, Mr. Cano's verbal statements, and the  
8 LMA executed by Plaintiffs, Plaintiffs authorized BANA to receive automatic debits to facilitate  
9 timely monthly payments.

10          70.     On or about December 17, 2012, after receipt of the agreed upon reinstatement  
11 funds and after the making of timely monthly payments, BANA foreclosed upon the home  
12 owned by Plaintiffs.

13          71.     Plaintiffs relied on the Reinstatement Calculation produced by BANA, Mr.  
14 Cano's statements, and the LMA to their detriment.

15          72.     BANA failed to perform under the Reinstatement Calculation and the LMA with  
16 Plaintiffs. BANA's refusal to perform its duties under the Reinstatement Calculation and LMA  
17 was unlawful, without justification and/or excuse, and constituted a total and material breach of  
18 the Reinstatement Calculation and the LMA.

19          73.     BANA breached its duties under the Reinstatement Calculation by failing to  
20 credit Plaintiffs' cashier's check in the amount of \$27,777.85 to Plaintiffs' loan.

21          74.     BANA breached its duties under the LMA by failing to honor the lowered  
22 monthly payment amount offered by BANA and accepted by Plaintiffs.

23          75.     Plaintiffs gave consideration that was fair and reasonable, and have performed all  
24 conditions, covenants, and promises required to be performed under their contract with BANA.  
25

1           76. As a result of BANA's breach of contract, Plaintiffs suffered and continue to  
2 suffer reasonable and foreseeable consequential damages, including payment of increased  
3 interest, damage to their credit, additional income tax liability, costs and expenses incurred to  
4 attempt to prevent and fight pending foreclosure, and other damages for breach of contract.

5           77. Plaintiffs have been damaged by BANA's breach of contract in an amount to be  
6 proven at trial.

7           78. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are entitled to  
8 recover reasonable attorney's fees, costs, and expenses incurred in bringing this action.

9  
10  
11                   **THIRD CAUSE OF ACTION FOR NEGLIGENT**  
12                   **MISREPRESENTATION AGAINST BANK OF AMERICA**  
                      **AND QUALITY LOAN SERVICING CORP., DOES 1-10**

13           79. Plaintiffs reallege and incorporate by reference the above paragraphs as set forth  
14 fully herein.

15           80. Under the circumstances alleged, BANA owed a duty to Plaintiffs to provide  
16 them with accurate information about the status of their mortgage loan accounts.

17           81. Both Ivory Carson and Paul Cano of BANA represented to Plaintiffs on multiple  
18 occasions that BANA was working to provide them with proper and correct calculations for loan  
19 reinstatement and that Plaintiffs need not worry about foreclosure nor the Trustee Sale scheduled  
20 for December 17, 2013 as their account was in active review.

21           82. Both Ivory Carson and Paul Cano of BANA represented to Plaintiffs on multiple  
22 occasions that Plaintiffs' foreclosure status on Plaintiffs' home had been "taken away" and that  
23 there was no danger of foreclosure or trustee sale.

24           83. BANA's representations were false, negligent and material.  
25

1           84.     Plaintiffs justifiably relied on BANA’s misrepresentations and acted as instructed  
2 by BANA.

3           85.     BANA foreclosed on Plaintiffs’ property despite reassurances that this would not  
4 occur during the loan accounting process. The representations were false and inflicted significant  
5 damages on Plaintiffs. Plaintiffs’ reliance on BANA’s misrepresentations was thus to their  
6 detriment.

7           86.     As a proximate result of BANA’s negligent conduct, Plaintiffs have suffered, and  
8 will continue to suffer, general and special damages in an amount according to proof at trial.

9  
10                   **FOURTH CAUSE OF ACTION FOR NEGLIGENCE AGAINST**  
11                   **BANK OF AMERICA AND QUALITY, DOES 1-10**

12           87.     Plaintiffs reallege and incorporate by reference the above paragraphs as set forth  
13 fully herein.

14           88.     All Defendants owed a duty of care to avoid foreseeable injury to Plaintiffs’  
15 person and/or property. Defendants breached that duty by not acting with reasonable care with  
16 regard to their own practices and procedures when servicing Plaintiffs’ loan and processing  
17 Plaintiffs’ modification.

18           89.     As a direct and foreseeable result of Defendants’ behavior, Plaintiffs suffered  
19 harm, including but not limited to the destruction of their credit, emotional distress because of  
20 the lack of truthful or meaningful communication from BANA, and the loss of their home by  
21 foreclosure and trustee sale.

22           90.     BANA had a duty to competently and reasonably work with Plaintiffs in their  
23 efforts to modify their loan. BANA’s conduct breached this duty in the following ways:  
24  
25



1 a. By failing to perform an analysis of their account to provide accurate  
2 accounting figures in the initial Reinstatement Calculation and each successive  
3 Reinstatement Calculation;

4 b. By failing to adequately respond to Plaintiff's requests for information,

5 c. By sending multiple radically different Reinstatement Calculations within  
6 days of each other;

7 d. By failing to process and apply the \$27,777.85 cashier's check to  
8 Plaintiffs' loan;

9 e. By failing to communicate the receipt of the \$27,777.85 cashier's check to  
10 QUALITY;

11 f. By systematically ignoring Plaintiffs' written and verbal inquiries  
12 regarding the status of their modification requests;

13 g. By providing misleading information regarding the status of Plaintiffs'  
14 modification requests;

15 h. By systematically ignoring Plaintiffs' written and verbal inquiries  
16 regarding the accounting on their home loan;

17 i. By failing to enter the appropriate code in their computer system which  
18 would have stopped the foreclosure action by informing anyone accessing the account  
19 that the loan was under "active review;"

20 j. By withdrawing amounts from Plaintiffs' bank accounts which were in  
21 excess of the monthly payment prescribed according to the LMA;

22 k. By allowing a foreclosure action to occur on Plaintiffs' home although  
23 Plaintiffs were at that time in compliance with the then-active LMA.

24 91. QUALITY had a duty to competently and reasonably work with Plaintiffs in their  
25 efforts to modify their loan. QUALITY's conduct breached this duty in the following ways:

- 1 a. By failing to communicate with BANA regarding Plaintiffs' loan;
- 2 b. By failing to adequately respond to Plaintiff's requests for information,
- 3 c. By condoning, avowing, and furthering the unlawful and disdainful
- 4 behavior of BANA;
- 5 d. By failing to research the receipt of the \$27,777.85 cashier's check mailed
- 6 by Plaintiffs in compliance with the Reinstatement Calculated dated July 6, 2012;
- 7 e. By providing misleading information regarding the status of Plaintiffs'
- 8 account;
- 9 f. By allowing a foreclosure action to occur on Plaintiffs' home although
- 10 Plaintiffs were at that time in compliance with the then-active LMA.

11 92. As a result of Defendants' conduct, Plaintiffs have and will continue to suffer

12 reasonable and foreseeable consequential damages resulting from such actions and

13 representations, including payment of increased interest, longer loan payoff times, higher

14 principle balances, deterrence from seeking other remedies to address their default and/or

15 unaffordable mortgage payments, damage to their credit, additional income tax liability, costs

16 and expenses incurred to prevent or fight foreclosure, and other damages for breach of contract.

17 93. Plaintiffs have been damaged by Defendants' actions and inactions in an amount

18 to be proven at trial.

19

20 **FIFTH CAUSE OF ACTION FOR DAMAGES AGAINST**

21 **BANK OF AMERICA, QUALITY, DOES 1-10**

22 94. Plaintiffs reallege and incorporate by reference the above paragraphs as set forth

23 fully herein.

24 95. As a direct result of Defendants' acts, Plaintiffs have incurred actual damages

25 consisting of mental and emotional distress, nervousness, grief, embarrassment, loss of sleep,

1 anxiety, worry, mortification, shock, humiliation, indignity, pain and suffering, and other  
2 injuries.

3 96. Plaintiffs incurred out of pocket monetary damages.

4 97. Plaintiffs continue to incur monetary damages.

5 98. Plaintiffs have incurred the loss of their personal residence to a non-judicial  
6 foreclosure, and will have irreparable harm if the non-judicial Trustee Sale is not rescinded.

7 Each of the Defendants' harassing acts were so willful, vexatious, outrageous,  
8 oppressive, and maliciously calculated enough, so as to warrant statutory penalties and damages.

9 **SIXTH CAUSE OF ACTION FOR**  
10 **VIOLATION OF § 1788.17 of the RFDCPA AGAINST**  
11 **BANK OF AMERICA AND QUALITY LOAN SERVICING CORP., DOES 1-10**

12 99. Plaintiff realleges and incorporates by reference the above paragraphs as though  
13 set forth fully herein.

14 100. *California Civil Code §1788.17* requires that Defendants comply with the  
15 provisions of *15 U.S.C. § 1692*, through their acts including but not limited to, the following:

16 (a) The Defendants violated *California Civil Code § 1788.17* by engaging in conduct,  
17 the natural consequence of which is to harass, oppress, and abuse persons in connection with the  
18 collection of the alleged debt, a violations of *15 U.S.C. § 1692(d)*;

19 (b) The Defendants violated *California Civil Code § 1788.17* by misrepresenting the  
20 status of the debt, a violations of *15 U.S.C. § 1692(e)(s)(A)*;

21 (c) The Defendants violated *California Civil Code § 1788.17* by using unfair or  
22 unconscionable means to collect or attempt to collect a debt, a violation *15 U.S.C. § 1692(f)*; and

23 (d) The Defendants violated *California Civil Code § 1788.17* by using deceptive  
24 means to collect or attempt to collect a debt from the Plaintiff, a violation of *15 U.S.C. §*  
25 *1692e(10)*.



1           107. As a result of the aforementioned fraudulent conduct, Plaintiffs paid Bank of  
2 America, N.A. their mortgage payments for a period of approximately four and a half years.  
3 However, for the reasons stated herein, none of this money was actually owed to Bank of  
4 America, N.A. For that reason, these monies are due to be returned to Plaintiff in full.

5           108. The amount of the money due from Defendants to Plaintiffs is unknown to  
6 Plaintiffs and cannot be ascertained without an accounting of the receipts and disbursements of  
7 the aforementioned transactions. Plaintiffs are informed and believe and thereon allege that the  
8 amount due to them exceeds \$75,000.00.

9  
10                   **EIGHTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF AGAINST**  
11                   **BANK OF AMERICA, N.A., QUALITY LOAN SERVICING**  
12                   **AND DOES 1 THROUGH 10**

13           109. Plaintiffs reallege and incorporate by reference the above paragraphs as though  
14 set forth fully herein.

15           110. Defendants do not have standing or enforceable right to enforce the note and any  
16 incidental right to collateral so as to foreclose on Plaintiffs' Home, including without limitation,  
17 conducting a trustee's sale relative to that property, Defendants have not and did not correct the  
18 serving and accounting errors to correctly ascertain was amount was due under the Promissory  
19 Note.

20           111. Defendants threaten to, and did foreclose on Plaintiffs' Home by conducting a  
21 wrongful trustee sale that has cause significant damage to Plaintiffs, and such damage will be  
22 irreparable unless ordered to rescind the trustee sale. Any such action would result in a new  
23 cause of action for "wrongful foreclosure," cause irreparable harm to Plaintiffs, and will cause  
24 pecuniary compensation which will not afford adequate relief because Plaintiffs' Home is  
25 unique.

1           112. Injunctive relief is necessary to enjoin Defendants from foreclosing upon  
2 Plaintiffs' Home since they lack standing and any enforceable rights under the Promissory Note.

3  
4           WHEREFORE, Plaintiffs pray as follows:

- 5           1. For a declaration of the rights and duties of the parties, specifically that the  
6 foreclosure of Plaintiffs' residence was wrongful.
- 7           2. For civil penalties pursuant to statute, restitution, injunctive relief and  
8 reasonable attorneys fees according to proof.
- 9           3. For rescission of the Trustee Sale upon Plaintiffs' Property.
- 10          4. For an order compelling Defendants to remove any instrument which  
11 does or could be construed as constituting a cloud upon Plaintiffs title  
12 to the Property, including the purported Trustees' Deed Upon Sale.
- 13          5. For the Court to issue an order restraining Defendants, their agents or  
14 employees from continuing or initiating any action against the Property  
15 and enjoining Defendants, their agents or employees from doing so  
16 during the pendency of this matter;
- 17          6. For accounting are: 1) fiduciary relationship or other circumstances  
18 appropriate to the remedy; and 2) a balance due from the defendant to the  
19 Plaintiff that can only be ascertained by an accounting.
- 20          7. For attorney's fees, reasonable costs of suit and such other and further  
21 relief as the Court deems proper.

22  
23  
24  
25  
Dated: February 11, 2013

**NATIONAL CONSUMER LAW GROUP**

By: \_\_\_\_\_  
MANDIP S. PUREWAL  
Attorney for Plaintiffs