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Attorney for Debtor/Plaintiff

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

Miguel R. Romo aka Miguel Robles Romo,

Debtor.

Miguel R. Romo aka Miguel Robles Romo,

Plaintiff,

vs.

WELLS FARGO BANK N.A., and its
successors and assigns; WELLS FARGO
FINANCIAL ARIZONA, INC. and its
successors and assigns; JOHN DOES 1-10;
JANE ROES, 1-10; ABC CORPORATIONS
1-10; XYZ LIMITED LIABILITY
COMPANIES 1-10; AND 123
PARTNERSHIPS 1-10

Defendants.

Adversary No. 4:12-ap-01582-JMM

Bankruptcy Case No.: 4:12-bk-11796-JMM
(Chapter 13)

**ADVERSARY COMPLAINT AND
OBJECTION TO PROOF OF CLAIM**

Plaintiff, Miguel R. Romo, by and through counsel, hereby alleges as follows:

NATURE OF THE ADVERSARY ACTION

**WELLS FARGO DISCRIMINATORILY AND DECEPTIVELY STEERED
PLAINTIFF – AN UNSOPHISTICATED, UNEDUCATED HISPANIC BORROWER
WHO DOES NOT SPEAK ENGLISH – INTO A SUBPRIME, NON-STANDARD
ASSET-BASED REFINANCING ARRANGEMENT TO IMPROVE ITS POSITION**

1. On July 12, 2012, Wells Fargo Bank N.A. and the U.S. Department of Justice entered a \$175 million settlement resolving allegations that Wells Fargo Bank and its mortgage lending division unfairly and unlawfully discriminated against Hispanics and African Americans from 2004-2009 by steering them into subprime loans and excessive fees. This case is one example of such deceptive, discriminatory and unlawful conduct committed against Mr. Miguel Romo.

2. At the height of the subprime mortgage lending frenzy in 2007, before the residential mortgage and Wall Street implosion, Wells Fargo Bank N.A. and Wells Fargo Financial Arizona Inc. engaged in such deceptive, discriminatory conduct against Miguel Romo, who is an uneducated and unsophisticated Spanish speaking laborer with an 8th grade education from Mexico. In 2012, Mr. Romo discovered Defendants' unlawful conduct and discrimination.

SUMMARY OF THE CASE

3. Plaintiff re-alleges and incorporates all prior paragraphs here.

4. In May 2007, Mr. Romo responded to a direct marketing offer from Wells Fargo to refinance his residence in Tucson, Arizona, in part to pay off a Wells Fargo car loan. Mr. Romo also asked about obtaining a separate \$20,000.00 loan in relation to a second home he owned free and clear in Douglas, Arizona, where his mother resides, to fix and pay some bills.

5. However, instead of arranging two separate loans as requested, Defendants took advantage of the fact Mr. Romo is an uneducated laborer who speaks Spanish and does not read or speak English. Although Defendant(s) conducted the transaction verbally in Spanish, they tricked or negligently misled Mr. Romo, and wrongly steered him into one subprime, asset-based refinancing agreement that was cross-collateralized and secured by both properties, apparently to improve their security position in relation to the loan on the Tucson residence.

6. Defendants or their agents, nearly a week after the refinance loan was signed, went to the construction site where Mr. Romo was working, and deceived him into signing a second deed of trust that Mr. Romo understood to be the second loan transaction related to the Douglas home. But it was merely a deed of trust securing Mr. Romo's second property – owned free and clear at the time– to the refinance loan that was already approved and signed the week before.

7. At all relevant times, Wells Fargo Bank NA had a national campaign heavily targeting the Hispanic market, including a focus on Spanish speakers. Wells Fargo and Company's 2006

1 Annual Report confirms the targeting of the Hispanic market, including Spanish speakers.¹
2 (See https://www.wellsfargo.com/downloads/pdf/invest_relations/wf2006annualreport.pdf at
3 18; see also, generally, “Our Latino Heritage,” WELLS FARGO HISTORY, at
4 www.wellsfargohistory.com/history/latino.htm (last accessed 8/7/2012).

5 8. The effort began long before 2007, and as early as 2005, Wells Fargo had begun
6 aggressively seeking this market share for bank accounts. (See “Boom from Hispanic
7 population predicted”, Orange County Register, MARY ANN MILBOURN (Sept. 29, 2005),
8 available at <http://www.ocregister.com/articles/hispanics-71668-population-hispanic.html>.)

9 9. Wells Fargo had gone so far as to install “satellite branches in non-traditional mom-
10 and-pop outposts like notary offices.” (See “How Do Banks Spell 'Big Profits'? Dinero:
11 Financial institutions are scrambling to learn their Spanish and woo the fast-growing Latino
12 market, which could generate \$200 billion in banking business by 2015,” Jennifer Orduñez
13 (Newsweek, 11/28/06), at: [http://www.thedailybeast.com/newsweek/2006/11/27/how-do-](http://www.thedailybeast.com/newsweek/2006/11/27/how-do-banks-spell-big-profits-dinero.html)
14 [banks-spell-big-profits-dinero.html](http://www.thedailybeast.com/newsweek/2006/11/27/how-do-banks-spell-big-profits-dinero.html).) “In one example, Wells Fargo has opened Hispanic-
15 themed branches where the décor is done in pastels or in shades of browns and reds. The
16 paintings in the branches are done by local Latino artists and even the music has Latin flavor.
17 Of course, all the staff is bilingual and product and service information is in Spanish.” (See
18 “Banking on the Dollars: A Special Report on Financial Services in the U.S. Hispanic Market,”
19 Hispanic Market Weekly (7/1/08), at <http://www.plazabankwa.com/filestore/Media/Hispanic>
20 [Market Weekly 7-2008 Eng.pdf](http://www.plazabankwa.com/filestore/Media/Hispanic) at pp. 4 and 7.)

21 10. However, all loan documents presented to Mr. Romo were in English, despite
22
23

24
25
26 ¹ The 2006 Annual Report devotes an entire page with a color photo promoting their efforts reach the Spanish speaking Latino community to shareholders and consumers, highlighting an anecdotal story about a borrower named Ruth Florez from Florida, who obtained a car loan from Wells Fargo, and then referred 3 others to Wells Fargo. Ruth begins her testimonial as follows: “I speak only Spanish, so it’s important for me to do business with a company such as Wells Fargo because they speak Spanish, too.”

1 Defendants' knowledge he could not read English, and despite the fact the transaction was
2 conducted verbally in Spanish. Copies were never provided, either in English or Spanish.

3 11. Plaintiff is informed and believes that Defendant Wells Fargo Financial Arizona
4 arranged the deceptive transaction for Wells Fargo's Home Mortgage Division while acting as
5 a mortgage broker under state law, under a state license, an arrangement aided and abetted by
6 Wells Fargo Bank N.A.. This maneuver allowed Wells Fargo Financial Arizona Inc. to engage
7 in this sort of subprime and predatory lending tactics against Mr. Romo, and other borrowers
8 as well. If this sort of predatory lending was done by Wells Fargo as a federal bank and
9 discovered, it would be subjected to scrutiny and possible punishment by federal regulators.
10

11 12. On May 16, 2008, Wells Fargo's Home Mortgage Division shut down. Throughout
12 2008, Wells Fargo Financial Arizona Inc. apparently ceased engaging in mortgage broker
13 operations in its Arizona branches using its Arizona mortgage broker license, shutting down
14 these branch licenses. (E.g., Arizona Department of Financial Institutions, Summary of
15 Actions, October 2008, at page 23; see http://azdfi.gov/Forms/SAR_2008_06.pdf.)
16

17 13. "At the height of the subprime lending mania in 2006, the bank was more likely to loan
18 subprime mortgages to Latinos and African-Americans than whites, according to a September
19 2009 report by the Center for American Progress, a process known as 'reverse red-lining.'" (See
20 "Wells Fargo is Not Your Amigo," Salon Magazine (online), Tim Fitzsimmons, (Oct 28,
21 2011), available at http://www.salon.com/2011/10/28/wells_fargo_is_not_your_amigo/.)
22

23 14. In 2011, the Federal Reserve Bank imposed an 85 million dollar fine against Wells
24 Fargo in relation to resolving "Fed [allegations] that Wells Fargo inflated borrowers' incomes
25 on loan documents to qualify for mortgages they otherwise couldn't afford from 2004 until
26 2008. Wells Fargo sales personnel also pushed borrowers toward higher-interest, subprime
loans, even though they were eligible for lower interest mortgages, the central bank said."

1 (“Wells Fargo Agrees to Pay \$85 Million Over Loans,” New York Times, 7/20/2011 (AP),
2 available at [http://www.nytimes.com/2011/07/21/business/wells-fargo-to-settle-mortgage-](http://www.nytimes.com/2011/07/21/business/wells-fargo-to-settle-mortgage-charges-for-85-million.html)
3 [charges-for-85-million.html](http://www.nytimes.com/2011/07/21/business/wells-fargo-to-settle-mortgage-charges-for-85-million.html); see also [http://www.businessweek.com/news/2011-07-20/wells-](http://www.businessweek.com/news/2011-07-20/wells-fargo-fined-85-million-for-pushing-subprime-loans.html)
4 [fargo-fined-85-million-for-pushing-subprime-loans.html](http://www.businessweek.com/news/2011-07-20/wells-fargo-fined-85-million-for-pushing-subprime-loans.html).)

5 15. In February 2012, Wells Fargo and other large mortgage servicers finalized agreements
6 with States' Attorneys General (including Arizona) and several federal agencies over mortgage
7 servicing, foreclosure and origination issues in U.S. Bankruptcy Court, District of Columbia, in
8 *United States of America, et al. v. Bank of America Corp., et al.*, 1:12-cv-00361-RMC. (See
9 generally [https://www.wellsfargo.com/downloads/pdf/homeassist/attorneys_general_settlement.](https://www.wellsfargo.com/downloads/pdf/homeassist/attorneys_general_settlement.pdf)
10 [pdf](https://www.wellsfargo.com/downloads/pdf/homeassist/attorneys_general_settlement.pdf) and also see <http://www.azag.gov/consumer/foreclosure/documents/SettlementFAQ.pdf>
11 and available at <http://www.justice.gov/opa/documents/wellsfargo-consent-judgement.pdf>.)

12 16. On July 12, 2012, Wells Fargo Bank N.A. and the U.S. Department of Justice reached a
13 \$175 million settlement resolving allegations that Wells Fargo Bank – and its mortgage-
14 lending division – unfairly, unlawfully discriminated against Hispanics and African Americans
15 from 2004-2009 by steering them into subprime loans and excessive fees. (See
16 <http://www.justice.gov/opa/pr/2012/July/12-dag-869.html> and see Documents 1 and 2, in
17 *United States of America v. Wells Fargo Bank, N.A.*, U.S. District Court, Dist. Of Columbia,
18 Case No. 1:12-cv-01150.) The settlement includes a proposed Consent Order. (See
19 <http://www.justice.gov/iso/opa/resources/14201271211384881962.pdf>.)

20 17. Defendants actions violated state and federal law. Plaintiff Romo will prove that the
21 Defendants’ actions were the acts of an evil hand guided by an evil mind or were in willful
22 disregard of the rights of Mr. Romo, giving rise to Defendants’ liability for punitive damages.
23

24 **FALSE/MANIPULATED DOCUMENTATION IN THE PROOF OF CLAIM**

25 18. In the underlying Chapter 13 bankruptcy case, Wells Fargo Financial Arizona has
26

1 apparently sought to deceive the Bankruptcy Court by intentionally submitting a misleading
2 Proof of Claim - under penalty of perjury – with an attached Deed of Trust document that has
3 been manipulated to falsely suggest that the Tucson and Douglas residence were both clearly
4 listed as security in one Deed of Trust for the alleged debt (loan agreement). (See Claim No. 4,
5 filed on 8/6/2012 in Case 4:12-bk-11796 JMM, at pages 8 and 21).

6 19. Wells Fargo Financial Arizona Inc. has presented a manipulated document that falsely
7 purports to be a correct copy of a Deed of Trust recorded in Cochise County, Arizona which
8 clearly lists both properties as security. (Id.) But pages 8 and 21 in the Proof of Claim are not
9 part of any recorded document. Wells Fargo Financial Arizona Inc. has manipulated this Deed
10 of Trust and falsely replaced these two pages of the actual Deed of Trust recorded in Cochise
11 County with two pages which were not part of the document actually recorded in Cochise
12 County (or in the Deed of Trust recorded in Pima County). Each of these two pages are
13 missing the sequence numbers stamped by the Cochise County Recorder's Office, visible at the
14 bottom right on all of the other pages. The actual deeds of trust recorded in Pima County and
15 in Cochise County, both signed on different dates, did not have both addresses listed as
16 security. (See Exhibits A and C.) The Proof of Claim and attached manipulated document
17 wrongly and fraudulently serves to conceal defendants' fraudulent activity in these loans.
18
19

20 **JURISDICTION AND VENUE**

21 20. This Court possess subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
22 157 and 1334. This Court possesses supplemental jurisdiction over the common law, Arizona
23 state law, and equitable causes of action under 28 U.S.C. § 1367(a). This Court exercises
24 personal jurisdiction over Defendants because they reside or transact business in this District.
25

26 21. This is a core proceeding because it will determine the validity and extent of liens on
Romo's primary residence and the validity and extent of liens on his second residence as well,

1 and therefore will impact the estate being administered in this bankruptcy action. See also,
2 Bankr. Rule 7001.

3 22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because the
4 Defendants either reside in or transact business in this District.

5 **PARTIES**

6 23. Plaintiff is a married man, who was previously single at the time of Defendants'
7 unlawful conduct, and who resides at 2649 N. 15th Ave., Tucson, Arizona, 85705.

8 24. Defendant Wells Fargo Financial Arizona Inc., is, on information and belief, a wholly-
9 owned subsidiary of Wells Fargo Bank, N.A., and was previously licensed by the State of
10 Arizona as a mortgage broker, and at all relevant times transacted business within the District
11 of Arizona. It has acted both as a lender and representative of other entities listed herein.

12 25. Defendant Wells Fargo Bank, N.A., is a federally chartered banking entity, that at all
13 relevant times transacted business within the District of Arizona. It has acted both as a lender
14 and representative of other entities as listed in this complaint. Its principal office is in Des
15 Moines, Iowa. Wells Fargo Bank N.A. and Wells Fargo Financial Arizona Inc. will be
16 hereafter referred to as Wells Fargo unless otherwise specified.

17 26. Defendants JOHN DOES 1-10, JANE ROES 1-10, ABC CORPORATIONS 1-10, XYZ
18 LIMITED LIABILITY COMPANIES 1-10, and 123 PARTNERSHIPS 1-10, are individuals
19 and entities whose true names and domiciles are unknown, each of which was responsible for
20 making representations to Plaintiff, acted in or was responsible for handling Plaintiff's loan(s).

21 **FACTS**

22 27. Plaintiff re-alleges and incorporates all prior paragraphs here.

23 28. Mr. Romo is a 43 year old Hispanic man of Mexican national origin, who has only an
24 8th grade education that was received at about age 13 in Agua Prieta, Mexico.

1 29. Mr. Romo cannot read or write English fluently, and Spanish is his primary language.
2 He has a very limited understanding of the English language in both written and spoken form.

3 30. Romo owns his primary residence at 2649 N. 15th Ave., Tucson, Arizona, 85705
4 (hereafter "Tucson Property"), with the following legal description:

5 Lot 32, BLOCK 3, OF MIRACLE MILE MANOR, ACCORDING TO THE PLAT OF
6 RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY,
7 ARIZONA, RECORDED IN BOOK 8 OF MAPS, PAGE 11.
8 EXCEPT THE WEST 35 FEET THEREOF.

9 (Exhibit A.)

10 31. Mr. Romo's primary residence in Tucson was purchased on or about May 3, 2005, with
11 subprime financing produced by BNC Mortgage LLC in 2005, with a subprime adjustable rate
12 loan of \$84,000, secured by a Deed of Trust recorded at Sequence 20050900020 in the Pima
13 County Recorder's Office, and a second loan in the amount of \$21,100.00 secured by a Deed of
14 Trust recorded at sequence 20050900021. (Exh. D and Exh. E.) "BNC was one of the top 20
15 subprime producers in 2006, originating over \$14 Billion in loans."; BNC closed in August
16 2007, as the mortgage crisis hit. (Mortgage News Daily, 8/22/2007, available at
17 http://www.mortgagenewsdaily.com/8222007_BNC_Mortgage.asp.)

18 32. Plaintiff also owns a second home and property (not his principal residence) located at
19 1891 E. 23rd Street, Douglas, AZ 85607 (hereafter, "Douglas Property"), where his mother
20 lives, which has the following legal description:

21 LOTS 11 AND 12, BLOCK 8 OVERLOCK ADDITION, ACCORDING TO BOOK 1
22 OF MAPS, PAGE 122, RECORDS OF COCHISE COUNTY, ARIZONA.

23 (Exhibit F.)

24 33. Prior to June 5, 2007, this second home had been owned free and clear by Mr. Romo
25 since 1991. (Exhibit F.)

26 34. On information and belief, Wells Fargo obtained either ownership of and/or servicing

1 rights to the loan and/or Deed of Trust related to Mr. Romo's Tucson home because Mr. Romo
2 began getting bills from Wells Fargo for his loans.

3 35. In mid-2007, Wells Fargo Bank N.A. and/or Wells Fargo Financial Arizona or their
4 agents offered to refinance Mr. Romo's residential loans.

5 36. Wells Fargo Bank N.A. and/or Wells Fargo Financial Arizona or their agents (hereafter
6 “Wells Fargo” unless otherwise indicated) advertised in some manner to Mr. Romo that he
7 could refinance the loan for his Tucson residence to consolidate bills, pay off vehicle loans, etc.
8

9 37. At all times, Defendants were aware of Mr. Romo's national origin and the fact that he
10 could not read or fluently speak English.

11 38. Defendants utilize a proprietary computer underwriting system, and have done so since
12 at least 1997 for the purpose of providing consistent, objective, and rapid loan decisions.

13 39. Defendants were aware that a refinancing agreement on the Tucson property was not
14 objectively in their interest.

15 40. At the time, Mr. Romo had a vehicle loan with Wells Fargo. On or about May 31,
16 2007, Mr. Romo went to a Wells Fargo Bank and/or Wells Fargo Financial branch in person,
17 responding to the offer to refinance his mortgage.
18

19 41. Mr. Romo desired to refinance his primary residence in Tucson, primarily to pay off his
20 Wells Fargo vehicle loan. Mr. Romo also separately expressed to the Wells Fargo
21 representatives that he also wanted to borrow money to pay property taxes for – and to do some
22 repairs for – the other home that he owned, where his mother resides, in Douglas, Arizona.
23

24 42. The Douglas Property was owned free and clear and was worth more than \$100,000.00.

25 43. However, Defendants and their agents only processed one loan for Mr. Romo, while
26 deceiving and/or negligently misrepresenting otherwise to Mr. Romo. The documents shown
to and signed by Mr. Romo were entirely in English, even though he conducted the transaction

1 verbally and entirely in Spanish with the Wells Fargo representative. (Exhs. A and B and C.)

2 44. Wells Fargo Financial and Wells Fargo Bank N.A. conducted the transaction through
3 its in house mortgage-lender operation, and also did not use an outside title company. (Exhs. A
4 and C.)

5 45. On information and belief, on or about that time period in 2007, the fair market value of
6 the Tucson residence was approximately \$104,579.00, which was less than what the property
7 was sold and financed for in 2005, which was approximately \$105,500.00.

8 46. Wells Fargo knew or should have known of the values and debt on the Tucson property,
9 and that the equity in the Tucson Property was over-leveraged.

10 47. On or about May 31, 2007, Defendants approved a refinance for the Tucson residence.
11 (Exhibits A and B.)

12 48. On May, 31, 2007, Mr. Romo signed the loan and a Deed of Trust for the Tucson
13 residence, and initialed wherever the loan officer told him to. (Exh. And B.)

14 49. The Deed of Trust also listed the Douglas Property address. Upon viewing this, the
15 Wells Fargo representative crossed out the Douglas address and had Mr. Romo initial this
16 action again, telling him that the refinancing was not related to the Douglas property. (Exh. A.)
17 These documents were signed and notarized on May 31, 2007. The Deed of Trust was later
18 recorded with the Pima County Recorder on June 6, 2007, at Sequence No. 20071090456.

19 50. The Deed of Trust securing the Tucson Property included a material amendment titled
20 "Adjustable Rate Rider" that was attached to and purportedly incorporated into the Deed of
21 Trust, but which was not notarized as required under Arizona law. (See Exh. A.)

22 51. A few days later, Mr. Romo spoke with Wells Fargo representatives to inquire about his
23 second loan. He desired to know when he would get the money.

24 52. On June 5, 2007, Wells Fargo representatives went to the workplace/construction site of
25
26

1 Mr. Romo, and told him he needed to sign for the money being loaned in relation to the
2 Douglas home, which he did. (Exhibit C.)

3 53. Wells Fargo's agent represented to – and it was understood by – Mr. Romo that this was
4 for the \$20,000.00 loan amount that he wanted to use in connection with the home that he
5 owned in Douglas, Arizona.

6 54. However, this document was not a memorialization of a second loan as represented to
7 and understood by Mr. Romo. Instead, he was deceptively asked to sign a second Deed of
8 Trust securing Mr. Romo's second property in Douglas for the previous loan that had already
9 been approved and signed by Mr. Romo nearly a week earlier, on May 31, 2007. (Exh. C.)
10

11 55. Mr. Romo signed this document, understanding and believing it to reflect a second loan
12 in relation to the Douglas property. This second Deed of Trust did not list or mention the
13 Tucson property; it only referenced the Douglas home. (Exhibit C.)

14 56. The Deed of Trust securing the Douglas Property included a material amendment titled
15 “Adjustable Rate Rider” that was attached to and purportedly incorporated into the Deed of
16 Trust, but which was not notarized as required under Arizona law. (See Exh. C.)
17

18 57. On June 7, 2007, Wells Fargo's agent recorded that second Deed of Trust in the Cochise
19 County Recorder's office, at Sequence No. 070619126. (Exhibit C.)

20 58. Wells Fargo Financial Arizona Inc. listed itself as the Trustee on both Deeds of Trust,
21 for purposes of foreclosure, etc.. (See Exhibits A and C.)

22 59. Mr. Romo asked for but never received any copies of the loan or security documents
23 that Wells Fargo representatives asked him to sign.
24

25 60. Mr. Romo was never given the required federal disclosure documents related to his
26 loans. He was never given a 3-day right of rescission notice after the second Deed of Trust.

61. On or about July of 2007, when Mr. Romo received his first billing statement, he could

1 not understand why the payments for the two loans had been combined into one account and
2 payment. Mr. Romo complained verbally to the Wells Fargo representative, who told him he
3 had to make his payments. When Mr. Romo asked why his loan payments had been combined
4 into one monthly payment, the Wells Fargo representative who had processed the loan did not
5 explain that Mr. Romo only had one loan. Instead, they told Mr. Romo that he if he made his
6 payments for a year, the Bank would refinance the loan for the Douglas property.

7
8 62. In 2008, Mr. Romo went back to Wells Fargo to fix the account as suggested, but the
9 Wells Fargo representative he spoke with at that time refused to refinance or fix the account to
10 reflect the two loans.

11 63. In 2011, Mr. Romo went to Wells Fargo and requested his loan documents. The Wells
12 Fargo representative said that they were requesting and would provide his documents. When
13 Mr. Romo went back to get the documents about a week later, the Wells Fargo representative
14 said that they no longer had the documents.

15
16 64. At all relevant times until 2012, Mr. Romo understood he had two loans but understood
17 that they were combined into one account and that he had to make one combined payment.

18 65. In 2010, due to job loss and a downturn in the construction industry, Mr. Romo had
19 trouble make his payments (which was one combined payment), and he fell into arrears.

20 66. On July 14, 2010, Wells Fargo Financial Inc. substituted First American Title Insurance
21 Company as Trustee for the Deed of Trust securing the Douglas property. (Exh. G.)

22 67. On July 14, 2010, Wells Fargo Financial through First American Title Insurance Co.
23 commenced a trustee sale process in Cochise County, Arizona, with respect to the Douglas
24 property, recording a Notice of Sale at the Cochise County Recorder's Office. (Exh. H.)

25
26 68. On July 28, 2010, Wells Fargo Financial through First American Title Insurance Co.
commenced a second trustee sale process in Cochise County, Arizona, with respect to the

1 Douglas property, recording a second Notice of Sale. (Exh. I.)

2 69. On November 26, 2010, 2010, Mr. Romo filed a Chapter 13 case, believing it would
3 save his Douglas property. Initially, Wells Fargo sought to lift the stay due to a mix up about
4 payments, but the lift-stay proceedings were dropped as the issue was cleared up. (Exh. J.)

5 70. Eventually, however, Mr. Romo voluntarily dismissed the Chapter 13 case.

6 71. Wells Fargo dropped its pursuit of the trustee sale for the Douglas property. (Exh. K.)

7 72. On or about April 18, 2012, the Trustee subsequently confirmed in writing that the
8 Trustee's foreclosure proceeding for the Douglas property had been closed per Wells Fargo
9 Financial's request. (Exh. K.) No official cancellation of sale has been recorded as of today.

10 73. On February 23, 2012, Wells Fargo (through substitute Trustee First American Title
11 Insurance Company) commenced a trustee sale notice process in relation the Tucson property,
12 by recording a Notice of Sale with the Pima County Recorder's Office, with a trustee sale
13 scheduled for May 29, 2012. (Exhibit L.)
14

15 74. On May 28, 2012, Mr. Romo filed for emergency Chapter 13 protection.
16

17 **DEFENDANTS' INEQUITABLE CONDUCT AND CONCEALMENT OF THE**
18 **UNLAWFUL AND FRAUDULENT CONDUCT RESULTED IN DELAYED**
19 **DISCOVERY OF HARM; DISCOVERY OF THE HARM OCCURRED IN 2012**

20 75. In late 2011, and early 2012, Mr. Romo went to two different attorneys seeking
21 assistance about his situation with Wells Fargo, but due to the language barrier, the full scope of
22 what had occurred was not understood or explained to Mr. Romo.

23 76. Mr. Romo finally consulted with an attorney more fluent in Spanish than prior attorneys
24 he had consulted, namely, undersigned counsel.

25 77. On or about February 18, 2012, Mr. Romo discovered what had occurred and that he did
26 not have two loans. Mr. Romo discovered that he had been duped into one loan agreement,
secured by two separate properties, and discovered that he had various rights which had been

1 violated, and that Defendants had breached certain obligations.

2 78. As the result of Defendants' inequitable conduct and concealment, Mr. Romo did not
3 discover Defendants' wrongdoing because Defendants conducted the transactions verbally in
4 Spanish, yet asked Mr. Romo to sign documents in English knowing that he could not read,
5 write or speak English, and thereafter never gave him copies of any underlying loan application,
6 documents, or required disclosures despite his efforts to obtain copies of the documents.

7 79. In July 2012, as the result of the announced federal settlement between Defendant Wells
8 Fargo NA and the U.S. Department of Justice, Mr. Romo further discovered various facts related
9 to allegations regarding Defendants' discriminatory conduct and subprime steering, etc.

10 80. Because Plaintiff did not discover Plaintiffs' violations until on or about February 18
11 2012, any time limits and/or statutes of limitations did not, or should not commence, until
12 Plaintiff's discovery, and/or should be equitably tolled as a result of Defendants' inequitable
13 conduct and concealment.

14 81. Moreover, minority borrowers such as Mr. Romo who do not speak or read or write
15 English are “in a special class of consumers who can easily be taken advantage of by the banks.
16 Non-English speakers' inability to read the documents places them at a significant disadvantage
17 when, down the road, issues arise over the terms of the agreement.” (See “Mortgage Lending:
18 Confusing in Any Language,” Greg Jones, Vol. 24, Issue 4, Loyola Consumer Law Review
19 (2012); see <http://www.luc.edu/law/activities/publications/clrdocs/vol24issue4/jones.pdf>.)

20 **BANKRUPTCY PROOF OF CLAIM WITH A MANIPULATED, FALSE DOCUMENT**

21 82. On August 6, 2012, Wells Fargo Financial Arizona filed a proof of claim alleging a
22 secured interest but only alleging the Douglas Property as the security, in the debt amount of
23 \$208,155.03 (based on the loan with an alleged principal \$ 170,291.47, and approximately
24 \$37,863.56 due in arrearages including interest and foreclosure and other fees). (See Claim No.

1 4, filed on 8/6/2012 in Case 17. 4:12-bk-11796 JMM.)

2 83. In the underlying Chapter 13 bankruptcy case, Wells Fargo Financial Arizona has
3 apparently sought to deceive the Bankruptcy Court by intentionally submitting a misleading
4 Proof of Claim - under penalty of perjury – with an attached Deed of Trust document that has
5 been manipulated to falsely suggest that the Tucson and Douglas residence were both clearly
6 listed as security in one Deed of Trust for the alleged debt (loan agreement). (See Claim No. 4,
7 filed on 8/6/2012 in Case 17. 4:12-bk-11796 JMM, at pages 8 and 21).

8
9 84. Wells Fargo Financial Arizona Inc. has presented a manipulated document that falsely
10 purports to be a correct copy of a Deed of Trust recorded in Cochise County, Arizona which
11 clearly lists both properties as security. (Id.) But pages 8 and 21 in the Proof of Claim are not
12 part of any recorded document. Wells Fargo Financial Arizona Inc. has manipulated this Deed of
13 Trust and falsely replaced these two pages of the actual Deed of Trust recorded in Cochise
14 County with two pages which were not part of the document actually recorded in Cochise
15 County (or in the Deed of Trust recorded in Pima County). Each of these two pages are missing
16 the sequence numbers stamped by the Cochise County Recorder's Office, visible at the bottom
17 right on all of the other pages. The actual deeds of trust recorded in Pima County and in Cochise
18 County, both signed on different dates, did not have both addresses listed as security. (See
19 Exhibits A and C.) The Proof of Claim and attached manipulated document wrongly and
20 fraudulently serves to conceal defendants' fraudulent activity.
21

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26 ///

(COUNT 1)

**WELLS FARGO UNLAWFULLY DISCRIMINATED AGAINST AND STEERED
PLAINTIFF INTO A SUBPRIME, CROSS-COLLATERALIZED REFINANCE,
VIOLATING THE FAIR HOUSING ACT AND EQUAL CREDIT ACT**

85. Plaintiff re-alleges and incorporates all prior paragraphs.

86. On information and belief, Plaintiff alleges that Defendants unlawfully took advantage of Mr. Romo's and his Hispanic background and his national origin, the fact he could not speak or read English, as well as his uneducated background and unsophisticated nature, and steered Plaintiff into a single subprime refinancing arrangement for his Tucson home with an adjustable rate mortgage that was secured with the free and clear Douglas property, despite the fact that Mr. Romo wanted two separate loans and actually qualified for a better and separate loan in connection with his second property in Douglas.

87. Defendants further discriminated against Mr. Romo in their policy and practice of speaking Spanish with potential clients such as him, but misrepresenting material terms of the transaction as reflected in the English-only documents.

88. On information and belief, Defendants discriminated against Mr. Romo because of his race and/or national origin in violation of the federal Fair Housing Act and Equal Credit Opportunity Act, and related federal regulations at 12 CFR 202 et seq., and 24 CFR 100 et seq, respectively, in violation of their obligation to not discriminate on the basis of race and/or national origin.

89. Defendants Wells Fargo discriminatorily and deceptively steered Mr. Romo – an unsophisticated, uneducated Hispanic borrower who does not speak English – into a non-standard refinancing that was cross-collateralized to improve Defendants' position.

90. On information and belief, Defendants discriminated and unfairly steered Plaintiff into this refinancing arrangement that was cross collateralized, without regard to Plaintiff's

1 creditworthiness, and instead because of his Hispanic background.

2 91. Plaintiff is in a special class of vulnerable consumers because he and similar borrowers
3 are and were targeted by Defendants in Spanish, but Defendants thereafter conducted the written
4 refinancing agreement and related transactions in English, and Defendants are aware that
5 Plaintiff and similar borrowers cannot read or understand the documents, and are at a significant
6 disadvantage than other consumers, and this allows Banks such as Defendants to take advantage
7 of them. (See generally, "Mortgages: "Mortgage Lending: Confusing in Any Language," Greg
8 Jones, Loyola Consumer Law Review, Vol. 24, Issue 4, at pp. 661-662 (2012), available
9 <http://www.luc.edu/law/activities/publications/clrdocs/vol24issue4/jones.pdf>.)
10

11 92. Plaintiff is entitled to compensatory damages for these violations of his rights in a sum to
12 be determined at trial.

13 93. Plaintiff further alleges that these acts show the sign of an evil mind, and entitle Plaintiff
14 to obtain punitive damages for Defendants malevolent subprime financial behavior against him.
15

16 **(COUNT 2)**

17 **WELLS FARGO BREACHED THE DUTY OF GOOD FAITH AND FAIR**
18 **DEALING BY DISCRIMINATORILY STEERING PLAINTIFF INTO A**
SUBPRIME CROSS-COLLATERALIZED REFINANCING AGREEMENT

19 94. Plaintiff re-alleges and incorporates all prior paragraphs here.

20 95. On information and belief, Defendant Wells Fargo Financial Arizona Inc. owned and/or
21 serviced the 2005 loans secured by Plaintiff's primary residence in Tucson at the time when
22 Plaintiff responded to the Defendants' offer for refinancing.
23

24 96. Even if Defendant did not previously own or service the 2005 loans, Defendants
25 thereafter offered to and entered into refinance loan agreement and deed of trust agreements with
26 Plaintiff in 2007.

97. In holding and/or entering such contracts with Plaintiff, Defendants had a duty of good

1 faith and fair dealing to Plaintiff to not discriminate against him or take advantage of his
2 language and educational barriers.

3 98. In holding and/or entering such contracts with Plaintiff, Defendants had a duty of good
4 faith and fair dealing to Plaintiff to not deceive or otherwise misrepresent the terms.

5 99. Defendants took advantage of Plaintiff's language and educational barriers, and breached
6 their duty of good faith and fair dealing with respect to negotiation and consummation of the
7 refinancing loan and deeds of trust signed by the parties.

8 100. By taking advantage of Plaintiff's language and educational barriers, Defendants
9 breached their duty of good faith and fair dealing with respect to the original loan and/or
10 refinance agreement.

11 101. Defendants deceived and/or negligently misrepresented that Plaintiff would be able to
12 refinance his home and pay off his Wells Fargo vehicle debt, and get a separate loan so he could
13 pay some bills and fix up some things at his second property in Douglas, Arizona.

14 102. Defendants, in the course of refinancing the loan held by Defendants, also breached their
15 duty of good faith and fair dealing to Plaintiff by seeking to improve their position with respect
16 to their lien on Plaintiff's primary residence by cross-collateralizing the refinance loan with a
17 property that was held free and clear by Plaintiff.

18 103. Defendants steered Plaintiff without his knowledge into a sub-prime financial situation
19 by cross-collateralizing a refinanced loan for his Tucson primary residence with the other
20 property that was free and clear – and worth more – in order to better their secured position with
21 respect to the first loan.

22 104. Defendants knew that the refinancing loan was approved and the deed of trust signed on
23 May 31, 2007, without any deed of trust being signed for the Douglas, Arizona property.

24 105. Defendant's cross-collateralization on the refinancing agreement was not necessary with
25
26

1 respect to the second loan sought by Plaintiff and was not in Plaintiff's best interest, but instead
2 was only in Defendants' best interest vis-a-vis any refinancing of the loans secured by the
3 Tucson property.

4 106. Defendants knew, or should have known, that Plaintiff wanted two separate loans.

5 107. Defendants knew of Plaintiff's national origin and language barrier, and negotiated with
6 Plaintiff in Spanish but intentionally consummated the written transactions in English.

7 108. Defendant breached their duty and harmed Plaintiff by securing the Douglas property to
8 the refinancing agreement for the Tucson property.

9 109. Defendants placed Plaintiff's property in Douglas at risk of foreclosure and loss.

10 110. On or about July 14, and 28th, 2012, the Douglas property was placed in foreclosure
11 when Defendant's trustee recorded a Notice of Sale with the Cochise County Recorder's Office.

12 111. Defendant's second property was placed in foreclosure when Defendant's trustee
13 recorded a Notice of Sale with the Cochise County Recorder's Office.

14 112. Defendants internally canceled this foreclosure and instructed the trustee not to proceed,
15 but Defendants have not caused the trustee to record a notice of cancellation of sale.

16 113. Plaintiff was damaged by Plaintiff's breach of their duty of good faith and fair dealing.

17 114. Defendant's actions placed at unwarranted risk a property that previously had been
18 owned free and clear, clouded and slandered the title to his property with the foreclosure notice
19 that is still recorded, and froze all equity in the Douglas property since 2007 that should have
20 been available with a \$20,000 loan, because the property was tied to a refinance that was more
21 than the potential \$100,000-plus in equity that otherwise would have been available.

22 115. Defendants have acted jointly and/or in concert. Defendants are jointly and severally
23 liable for all of Plaintiff's damages.

24 116. Plaintiff is entitled to compensatory damages for these violations of his rights in a sum to
25
26

1 be determined at trial.

2 117. Plaintiff is entitled to relief in the form of damages and/or such other relief is available at
3 law or at equity, to be elected by Plaintiffs in due course in this case.

4 118. Plaintiff further alleges that these acts show the sign of an evil mind, and entitle Plaintiff
5 to obtain punitive damages for Defendants' malevolent subprime financial behavior against him.
6 Plaintiff is entitled to punitive damages for Defendant's intentional and outrageous conduct.

7
8 **(COUNT 3)**

9 **FRAUD**

10 119. Plaintiff re-alleges and incorporates all prior paragraphs.

11 120. Wells Fargo defrauded Plaintiff into signing the refinancing loan agreement and the
12 separate Deed of Trust related to the Douglas property under the pretenses that he was getting
13 two separate loans, instead of one loan secured by two separate properties.

14 121. Plaintiff would not have signed the refinancing agreement or the Douglas property Deed
15 of Trust if it had been disclosed that he was actually getting one loan, instead of two loans.

16 122. The representation that there were two loans was a material representation because it
17 placed the home which Plaintiff then owned free and clear as additional but unnecessary security
18 for the refinancing agreement on the Tucson home.

19 123. The representation was material because Mr. Romo would never have placed the home
20 where his mother resides into such financial risk by tying its fate to that of another property or
21 loan, particularly since he owned the Douglas home free and clear at the time.

22 124. Plaintiff relied on Defendants to accurately disclose to him the terms of the loan and
23 refinancing because he did not speak or read English, and because he was an uneducated, and
24 unsophisticated borrower.

25 125. Defendants knew or should have known that Plaintiff was relying on their
26

1 representations because they verbally conducted the transaction in Spanish and were aware that
2 he did not speak, read or write English.

3 126. Plaintiff's actual reliance and belief that he obtained two separate loans was reasonable
4 and justifiable because Defendants conducted two transactions and had Plaintiff sign
5 different sets of documents nearly a week apart.

6 127. Plaintiff's reliance and belief that he obtained two separate loans was reasonable and
7 justifiable because Defendants' initial Deed of Trust (for the Tucson property) had the Douglas
8 address and Plaintiff – at the request of and/or in the presence of Defendant's agents-- crossed
9 out the mention of the Douglas property and placed his initials, thereby confirming to Plaintiff
10 that the refinance of the Tucson property was a separate loan refinancing agreement.

11 128. Defendants intended that Plaintiff rely on the misrepresentation because it asked and/or
12 allowed him to cross out the Douglas property address on the Deed of Trust when he was
13 approved for the refinancing of his Tucson home.

14 129. Because Plaintiff does not speak, read or write English, Plaintiff was ignorant of the
15 falsity of the transaction which had actually occurred.

16 130. Because Plaintiff was never provided with any of the required disclosures and loan
17 documentation, Plaintiff continued to be ignorant of the falsity of the representations.

18 131. Plaintiff had the right to rely on Defendants' representations, particularly because there is
19 a duty of good faith and fair dealing that accompanies every contract made in Arizona.

20 132. Plaintiff has been damaged because his Douglas property was deceptively secured to one
21 single refinancing agreement which included the full amount owed on his Tucson property that
22 was used to pay off a subprime adjustable rate mortgage, and also included the sum loaned to
23 pay off his vehicle, and thus wrongly and deceptively secured and obligated his Douglas
24 property in a manner and at an amount that was neither desired nor required.
25
26

1 133. Plaintiff has been further damaged to the extent once he was in arrears, this placed both
2 properties at risk of foreclosure, and foreclosure proceedings were commenced against the
3 Douglas property and the Tucson property, which would not have occurred at least with respect
4 to the Douglas property if he had been loaned \$20,000.00 for a second loan as requested.

5 134. Plaintiff has been damaged thereby in an amount to be proved at trial.

6 135. Defendants have acted jointly and/or in concert. Defendants are jointly and severally
7 liable for all of Plaintiff's damages.

8 136. Plaintiff is entitled to compensatory damages for these violations of his rights in a sum to
9 be determined at trial.

10 137. Plaintiff is entitled to relief in the form of damages and/or such other relief is available at
11 law or at equity, to be elected by Plaintiffs in due course in this case.

12 138. Plaintiff further alleges that these acts show the sign of an evil mind, and entitle Plaintiff
13 to obtain punitive damages for Defendants' malevolent subprime financial behavior against him.
14 Plaintiff is entitled to punitive damages for Defendant's intentional and outrageous conduct.
15

16
17 **(COUNT 4)**

18 **FRAUDULENT INDUCEMENT**

19 139. Plaintiff re-alleges and incorporates all prior paragraphs.

20 140. Defendants fraudulently induced Plaintiff into signing the refinancing loan agreement
21 under the pretenses that he was getting two separate loans, instead of one loan secured by two
22 separate properties.

23 141. Plaintiff would not have signed the refinancing agreement if it had been disclosed that he
24 was actually getting one loan, instead of two loans.

25 101. Defendants intended that Plaintiff rely on the misrepresentation because it asked and/or
26 allowed him to cross out the Douglas property address on the Deed of Trust when he was

1 approved for the refinancing of his Tucson home.

2 142. Because Plaintiff does not speak, read or write English, Plaintiff was ignorant of the
3 falsity of the transaction which had actually occurred.

4 143. Because Plaintiff was never provided with any of the required disclosures and loan
5 documentation, Plaintiff continued to be ignorant of the falsity of the representations.

6 144. Plaintiff had the right to rely on Defendants' representations, particularly because there is
7 a duty of good faith and fair dealing that accompanies every contract made in Arizona.

8 145. Plaintiff has been damaged because his Douglas property was deceptively secured to one
9 single refinancing agreement which included the full amount owed on his Tucson property that
10 was used to pay off a subprime adjustable rate mortgage, and also included the sum loaned to
11 pay off his vehicle, and thus wrongly and deceptively secured and obligated his Douglas
12 property in a manner and at an amount that was neither desired nor required.

13 146. Plaintiff has been further damaged to the extent once he was in arrears, this placed both
14 properties at risk of foreclosure, and foreclosure proceedings were commenced against the
15 Douglas property and the Tucson property, which would not have occurred at least with respect
16 to the Douglas property if he had been loaned \$20,000.00 for a second loan as requested.

17 147. Plaintiff has been damaged thereby in an amount to be proved at trial.

18 148. Defendants have acted jointly and/or in concert. Defendants are jointly and severally
19 liable for all of Plaintiff's damages.

20 149. Plaintiff is entitled to compensatory damages for these violations of his rights in a sum to
21 be determined at trial.

22 150. Plaintiff is entitled to relief in the form of damages and/or such other relief is available at
23 law or at equity, to be elected by Plaintiffs in due course in this case.

24 151. Plaintiff further alleges that these acts show the sign of an evil mind, and entitle Plaintiff
25
26

1 to obtain punitive damages for Defendants' malevolent subprime financial behavior against him.
2 Plaintiff is entitled to punitive damages for Defendant's intentional and outrageous conduct.

3 (COUNT 5)

4 ARIZONA CONSUMER FRAUD

5 152. Plaintiff re-alleges and incorporates all prior paragraphs.

6 153. Wells Fargo defrauded Plaintiff into signing the refinancing loan agreement and the
7 separate Deed of Trust related to the Douglas property under the pretenses that he was getting
8 two separate loans, instead of one loan secured by two separate properties.
9

10 154. Plaintiff would not have signed the refinancing agreement or the Douglas property Deed
11 of Trust if it had been disclosed that he was actually getting one loan, instead of two loans.

12 155. The representation that there were two loans was a material representation because it
13 placed the home which Plaintiff then owned free and clear as additional but unnecessary security
14 for the refinancing agreement on the Tucson home.
15

16 156. The representation was material because Mr. Romo would never have placed the home
17 where his mother resides into such financial risk by tying its fate to that of another property or
18 loan, particularly since he owned the Douglas home free and clear at the time.

19 157. Plaintiff relied on Defendants to accurately disclose to him the terms of the loan and
20 refinancing because he did not speak or read English, and because he was an uneducated, and
21 unsophisticated borrower.

22 158. Defendants knew or should have known that Plaintiff was relying on their
23 representations because they verbally conducted the transaction in Spanish and were aware that
24 he did not speak, read or write English.
25

26 159. Plaintiff's actual reliance and belief that he obtained two separate loans was reasonable
and justifiable because Defendants conducted two transactions and had Plaintiff him sign

different sets of documents nearly a week apart.

160. Plaintiff's reliance and belief that he obtained two separate loans was reasonable and justifiable because Defendants' initial Deed of Trust (for the Tucson property) had the Douglas address and Plaintiff – at the request of and/or in the presence of Defendant's agents-- crossed out the mention of the Douglas property and placed his initials, thereby confirming to Plaintiff that the refinance of the Tucson property was a separate loan refinancing agreement.

161. Defendants intended that Plaintiff rely on the misrepresentation because it asked and/or allowed him to cross out the Douglas property address on the Deed of Trust when he was approved for the refinancing of his Tucson home.

162. Because Plaintiff does not speak, read or write English, Plaintiff was ignorant of the falsity of the transaction which had actually occurred.

163. Because Plaintiff was never provided with any of the required disclosures and loan documentation, Plaintiff continued to be ignorant of the falsity of the representations.

164. Plaintiff had the right to rely on Defendants' representations, particularly because there is a duty of good faith and fair dealing that accompanies every contract made in Arizona.

165. Plaintiff has been damaged because his Douglas property was deceptively secured to one single refinancing agreement which included the full amount owed on his Tucson property that was used to pay off a subprime adjustable rate mortgage, and also included the sum loaned to pay off his vehicle, and thus wrongly and deceptively secured and obligated his Douglas property in a manner and at an amount that was neither desired nor required.

166. Plaintiff has been further damaged to the extent once he was in arrears, this placed both properties at risk of foreclosure, and foreclosure proceedings were commenced against the Douglas property and the Tucson property, which would not have occurred at least with respect to the Douglas property if he had been loaned \$20,000.00 for a second loan as requested.

167. Defendants' actions violated the Arizona Consumer Fraud Act, A.R.S. 44-1522, et seq.

168. Plaintiff has been damaged thereby in an amount to be proved at trial.

169. Defendants have acted jointly and/or in concert. Defendants are jointly and severally liable for all of Plaintiff's damages.

170. Plaintiff is entitled to compensatory damages for these violations of his rights in a sum to be determined at trial.

171. Plaintiff is entitled to relief in the form of damages and/or such other relief is available at law or at equity, to be elected by Plaintiffs in due course in this case.

172. Plaintiff further alleges that these acts show the sign of an evil mind, and entitle Plaintiff to obtain punitive damages for Defendants' malevolent subprime financial behavior against him. Plaintiff is entitled to punitive damages for Defendant's intentional and outrageous conduct.

(COUNT 6)

**UNILATERAL MISTAKE - RESCISSION AND/OR REFORMATION AS REMEDY
(REFINANCE AGREEMENT & DEED OF TRUST FOR DOUGLAS PROPERTY)**

173. Plaintiff re-alleges and incorporates all prior paragraphs.

174. Plaintiff mistakenly believed he was obtaining two separate loans.

175. Defendants were in a superior position with respect to their financial sophistication and language and education, compared with Plaintiff's inability to speak or read English, the fact that he speaks Spanish, and his 8th grade education from Mexico.

176. Plaintiff would not have gone through with the refinance of his original mortgage if Defendants had properly disclosed that he was getting only one loan and that he was actually entering a non-traditional residential refinancing arrangement whereby cross-collateralization of a different property that Plaintiff owned free and clear would be tied to his primary residence.

177. Plaintiff would not have signed the second deed of trust that secured the Douglas residence to the refinancing agreement if Defendants had properly disclosed that this agreement

1 was not a second loan related to the Douglas property.

2 178. Plaintiff trusted that Wells Fargo and its representatives would not take advantage of his
3 language and educational barriers and that they were telling him the truth.

4 179. Plaintiff mistakenly signed the refinance agreement with justifiable belief that he had
5 entered into two separate lending arrangements with Wells Fargo.

6 180. Plaintiff is entitled to the remedy of rescission and/or reformation with respect to the
7 subsequent Deed of Trust that Wells Fargo asked him to sign on June 5, 2007, nearly a week
8 after Wells Fargo previously asked Plaintiff sign the refinancing agreement and Deed of Trust
9 (Tucson property) and told him that he had been approved for his refinancing.
10

11 181. Plaintiff is entitled to the remedy of rescission and/or reformation insofar as the
12 refinancing loan agreement signed on May 31, 2007, allegedly relates to the Douglas property,
13 and Plaintiff affirmatively alleges that any indebtedness securing the Douglas property should be
14 no more than \$20,000.00.
15

16 **(COUNT 7)**

17 **RESPA AND TILA (DISCLOSURES & 3-DAY RIGHT TO RESCIND)**

18 182. Plaintiff re-alleges and incorporates all prior paragraphs.

19 183. Defendants were obligated under federal law under the Real Estate Settlement and
20 Procedures Act (RESPA) and the Truth In Lending Act (TILA) to provide required disclosures
21 to Plaintiff.

22 184. Defendants failed to provide the requisite disclosures under RESPA and TILA.

23 185. Defendants did not provide any loan documents to Plaintiff despite his request.

24 186. Defendants did not provide a 3-day right to rescind Notice on June 5, 2007, when
25 Defendants had plaintiff consummate the apparently non-standard refinancing agreement which
26 cross-collateralized the Douglas property as well as the previously secured Tucson residence.

1 187. Plaintiff did not discover Plaintiffs' violations until on or about February 18 2012, and
2 any time limits and/or statutes of limitations did not, or should not commence, until Plaintiff's
3 discovery, and/or should be equitably tolled as a result of Defendants' inequitable conduct and
4 concealment.

5 188. Defendants violated both RESPA and TILA, and Plaintiff is hereby entitled to all rights
6 and remedies available under these federal laws.

7 189. Plaintiff is entitled to damages under RESPA and TILA as a result of Defendants' acts.

8
9 **(COUNT 8)**

10 **NEGLIGENT MISREPRESENTATION**

11 190. Plaintiff re-alleges and incorporates all prior paragraphs.

12 191. Defendants represented and promised to refinance Mr. Romo's primary residence, which
13 would pay off his vehicle loan, and also represented and promised also provide a \$20,000.00
14 loan in relation Mr. Romo's second property.

15 192. Each of said representations and promises were false when made, and/or defendants
16 negligently made such representations and promises and/or failed to exercise reasonable care or
17 competence to ascertain the truth and/or to correct their misrepresentations.

18 193. Plaintiff was ignorant of the falsity of the representations and promises.

19 194. Said representations and promises were material, and in the absence of such
20 representations and promises, Plaintiff would not have entered into the original refinancing
21 agreement if it were known to him that Defendants were actually providing one loan secured by
22 two homes, instead of two loans secured separately by separate properties
23

24 195. Defendants intended that Plaintiff act upon said representations and promises.

25 196. Plaintiff had a right to rely, and did rely to his detriment on the representations,
26 including, among other things, following instructions to make payments.

1 197. Plaintiff has been damaged thereby in an amount to be proved at trial.

2 198. Plaintiff is entitled to relief in the form of damages and/or such other relief is available at
3 law or at equity, to be elected by Plaintiffs in due course in this case.

4 199. Defendants have acted jointly and/or in concert. Defendants are jointly and severally
5 liable for all of Plaintiff's damages.

6 200. Plaintiff is entitled to compensatory damages for these violations of his rights in a sum to
7 be determined at trial.

8 201. Plaintiff is entitled to relief in the form of damages and/or such other relief is available at
9 law or at equity, to be elected by Plaintiffs in due course in this case.

10 202. Plaintiff further alleges that these acts show the sign of an evil mind, and entitle Plaintiff
11 to obtain punitive damages for Defendants' malevolent subprime financial behavior against him.

12 Plaintiff is entitled to punitive damages for Defendant's intentional and outrageous conduct.
13

14 **(COUNT 9)**

15 **AIDING AND ABETTING (WELLS FARGO BANK N.A.)**

16 203. Plaintiff re-alleges and incorporates all prior paragraphs.

17 204. Wells Fargo Bank N.A. aided and abetted its wholly-owned subsidiary Wells Fargo
18 Financial Arizona in the aforementioned unlawful, deceptive, fraudulent and/or negligent
19 conduct.
20

21 205. Wells Fargo Bank N.A. knew that its subsidiary Wells Fargo Financial Arizona Inc. was
22 operating as a state licensed mortgage broker.

23 206. Wells Fargo Bank intentionally structured its wholly owned subsidiary as as mortgage
24 lender which purported to act and operate as a separately licensed mortgage broker and/or
25 banker under Arizona law, in order to relieve the mortgage lending division from federal
26 regulatory oversight.

1 207. Wells Fargo Bank N.A. knew or should have had a general awareness that its subsidiary
2 Wells Fargo Financial Arizona Inc. was engaging in a pattern of subprime lending.

3 208. Wells Fargo Bank N.A. knew that its subsidiary Wells Fargo Financial Arizona Inc. was
4 discriminating against Hispanic and African American borrowers by steering them into
5 subprime financing arrangements.

6 209. Wells Fargo Bank N.A. knew and/or should have known of the unlawful and deceptive
7 and discriminatory lending practices which steered Mr. Romo and other Hispanic and African-
8 Americans into subprime lending arrangements.

9 210. Wells Fargo Bank N.A. knew or should have known that its subsidiary Wells Fargo
10 Financial Arizona Inc. was engaged in a pattern and practice of discriminating against Hispanic,
11 Spanish-language borrowers by negotiating residential financing terms with them in Spanish, but
12 then finalizing the written transactions in English.

13 211. Wells Fargo Bank N.A. recklessly disregarded the practices of its subsidiary Wells Fargo
14 Financial Arizona Inc., thereby condoning such unlawful and tortious conduct.

15 212. Wells Fargos tortious conduct of aiding and abetting Wells Fargo Financial Arizona Inc.
16 proximately caused damages and emotional distress to Plaintiff, including the fear of having his
17 mother evicted from a home that Plaintiff had owned free and clear prior to Defendants'
18 deceptive and discriminatory steering of Plaintiff into a subprime lending arrangement involving
19 cross-collateralization.

20 213. Wells Fargo Bank's aiding and abetting caused actual and compensable damages to
21 Plaintiff, which he is entitled to upon proof at trial.

22 214. Defendants have acted jointly and/or in concert. Defendants are jointly and severally
23 liable for all of Plaintiff's damages.

24 215. Wells Fargo Bank's knowing conduct was done with an evil heart and mind, thereby
25
26

entitling Plaintiff to punitive damages. Plaintiff is entitled to punitive damages for Defendant's intentional and outrageous subprime financial behavior against him.

(COUNT 10)

DECLARATORY RELIEF

216. Plaintiff re-alleges and incorporates all prior paragraphs.

217. The Deed of Trust securing the Tucson Property was signed and notarized on May 31, 2007. The Deed of Trust securing the Tucson Property included a material amendment titled "Adjustable Rate Rider" that was attached to and purportedly incorporated into the Deed of Trust, but which was not notarized as required under Arizona law. (See Exh. C.)

218. The Deed of Trust and amendment "Adjustable Rate Rider" was recorded with the Pima County Recorder on June 6, 2007, at Sequence No. 20071090456.

219. The Deed of Trust securing the Douglas Property was signed and notarized on June 5, 2007.

220. The Deed of Trust securing the Douglas Property included a material amendment titled "Adjustable Rate Rider" that was attached to and purportedly incorporated into the Deed of Trust, but which was not notarized as required under Arizona law. (See Exh. D.)

221. On June 7, 2007, the Deed of Trust and amendment "Adjustable Rate Rider" securing the Douglas Property were recorded together in the Cochise County Recorder's office, at Sequence No. 070619126. (Exhibit D.)

222. Under Arizona law, the Deed of Trust must be notarized. If the Deed of Trust is not properly notarized, the Beneficiary and Trustee are not permitted to utilize the Arizona Deed of Trust process to sell the property at a trustee sale after default.

223. Under Arizona law, Plaintiff is entitled to a declaratory order that the Deed of Trust documents are not in compliance with Arizona's real property law and Deed of Trust statute.

224. As a result, Defendants and any Trustee named in the Deed of Trust documents must utilize a judicial foreclosure proceeding in order to foreclose on the property.

(COUNT 11)

FALSE/MANIPULATED DOCUMENTS IN THE PROOF OF CLAIM

225. Plaintiff re-alleges and incorporates all prior paragraphs.

226. By falsely suggesting to the Court that there was but one Deed of Trust that clearly informed Mr. Romo that both properties were security for one loan, and omitting the documentation showing that these Deeds of Trust were actually signed on different dates and that the Tucson property Deed of Trust expressly invalidated the Douglas property address, Defendants have proven their willingness to conceal the facts and this also demonstrates proof of their wrongdoing and knowledge of their culpability.

227. Furthermore, by presenting only the Cochise County Deed of Trust, Defendants are further estopped from claiming that the underlying loan transaction was for anything other than their concealed effort to provide financing primarily to obtain the Douglas property as a security (which had been owned free and clear beforehand), and it provides additional proof of Defendants' true financial motive in the overall asset-based financing transaction and further explanation for their alleged illegal, discriminatory conduct.

228. Plaintiff is entitled to relief and a punitive damages award based on sanctions under Fed. Bankr. Rules 3001 and 3002.

229. Defendants' actions as a servicer have also violated independent obligations required by the National Mortgage Settlement Agreement with the United States of America and the various States' Attorneys General in U.S. Bankruptcy Court in the District of Columbia in *United States of America, et al. v. Bank of America Corp., et al.*, 1:12-cv-00361-RMC, which requires, among other things, that Defendants submit proofs of claim and documents that are accurate and

complete and are supported by competent and reliable evidence, and that sworn statements or declarations shall not contain information that is false or unsubstantiated, and shall not file a POC in a bankruptcy proceeding which, when filed, contained materially inaccurate information. (See Document 14, filed 4/4/12, in *United States of America, et al. v. Bank of America Corp., et al.*, 1:12-cv-00361-RMC, Exhibit A, Settlement Terms, Paragraph I.A., Subsections 1, 8, and 15 and Paragraph D, subsections 1. and 1.A.)

OBJECTION TO PROOF OF CLAIM

OBJECTION: COUNTS 1 – 10 ALLEGED IN THE ADVERSARY COMPLAINT

230. Plaintiff re-alleges and incorporates all prior paragraphs.

231. Plaintiff hereby objects to the Proof of Claim for the foregoing reasons alleged in Counts 1 through 10.

232. Accordingly, Plaintiff is entitled to relief as alleged in these Counts in the Complaint.

OBJECTION: FALSE/MANIPULATED DOCUMENTS IN PROOF OF CLAIM

233. Plaintiff further objects to the Proof of Claim and alleges that Wells Fargo Financial Arizona has violated Bankr. Rule 3001, by presenting false and incorrect Proof of Claim information, concerning the Deed of Trust securing both properties, ostensibly to conceal the fraudulent aspect of their prior conduct from the Court.

234. In the underlying Chapter 13 bankruptcy case, Wells Fargo Financial Arizona has apparently sought to deceive the Bankruptcy Court by intentionally submitting a misleading Proof of Claim - under penalty of perjury – with an attached Deed of Trust document that has been manipulated to falsely suggest that the Tucson and Douglas residence were both clearly listed as security in one Deed of Trust for the alleged debt (loan agreement). (See Claim No. 4, filed on 8/6/2012 in this Case 4:12-bk-11796 JMM, at pages 8 and 21).

235. Wells Fargo Financial Arizona Inc. has presented a manipulated document that falsely

purports to be a correct copy of a Deed of Trust recorded in Cochise County, Arizona which clearly lists both properties as security. (Id.) But pages 8 and 21 in the Proof of Claim are not part of any recorded document. Wells Fargo Financial Arizona Inc. has manipulated this Deed of Trust and falsely replaced these two pages of the actual Deed of Trust recorded in Cochise County with two pages which were not part of the document actually recorded in Cochise County (or in the Deed of Trust recorded in Pima County). Each of these two pages are missing the sequence numbers stamped by the Cochise County Recorder's Office, visible at the bottom right on all of the other pages. The actual deeds of trust recorded in Pima County and in Cochise County, both signed on different dates, did not have both addresses listed as security. (See Exhibits A and C.) The Proof of Claim and attached manipulated document wrongly and fraudulently serves to conceal defendants' fraudulent activity.

236. By omitting the fact that there were two different Deeds of Trust executed on different dates and by falsely suggesting to the Court that there was but one Deed of Trust that clearly informed Mr. Romo that both properties were security for one loan, and omitting the documentation showing that these Deeds of Trust were signed on different dates and that the Tucson property Deed of Trust expressly invalidated the Douglas property address, Defendants have proven their willingness to conceal the facts and this also demonstrates proof of their wrongdoing and knowledge of their culpability.

237. Furthermore, by presenting only the Cochise County Deed of Trust, Defendants are further estopped from claiming that the underlying loan transaction was for anything other than their concealed effort to provide financing primarily to obtain the Douglas property as a security (which had been owned free and clear beforehand), and it provides additional proof of Defendants' true financial motive in the overall asset-based financing transaction and further explanation for their alleged illegal, discriminatory conduct.

238. This conduct also violates the National Mortgage Settlement Consent Judgment.

239. Plaintiff is entitled to relief and an award based on sanctions under Fed. Bankr. Rules 3001 and 3002.

OBJECTION: RECOUPMENT

240. Plaintiff re-alleges and incorporates all prior paragraphs.

241. As an objection and affirmative defense to the Proof of Claim, Plaintiff alleges that he is entitled to "recoupment" under the equitable doctrine of recoupment as an affirmative defense as a set off or reduction to the Claim by Defendants, resulting from Defendants' conduct as alleged above in each Count above. Recoupment is an equitable doctrine long-recognized under Arizona law. Even if any of Plaintiff's affirmative claims in the Adversary Complaint would otherwise be barred as direct claims under a statute of limitations, such claims of recoupment are properly alleged as affirmative defenses, and are herein incorporated and each re-alleged here.

RECOUPMENT: DISCRIMINATION/UNFAIR LENDING SETTLEMENT FUNDS

242. Plaintiff re-alleges and incorporates all prior paragraphs.

243. As an objection and affirmative defense to the Proof of Claim, Plaintiff alleges that he is entitled to recoupment under the equitable doctrine of recoupment as an affirmative defense as a set off or reduction to the Claim by Defendants.

244. Based on the foregoing reasons alleged in Counts 1 - 11, Plaintiff is a victim of the practices for which Wells Fargo reached a settlement with the U.S. Department of Justice, and is entitled to recoupment of funds from this settlement in an amount to be determined.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for the following:

1. That Plaintiff be awarded damages in an amount to be proved at trial, including but not limited to the damages for the discriminatory conduct pursuant to 42 U.S.C. Section

3614(d)(1)(B) and 15 U.S.C. Section 1691(e)(h)

2. That the Court find that Defendants have acted jointly and/or in concert and that Defendants are jointly and severally liable for all of Plaintiff's damages.

3. That Plaintiff is entitled to relief in the form of damages and/or such other relief is available at law or at equity, to be elected by Plaintiffs in due course in this case.

4. That Plaintiff is entitled to punitive damages based on Defendant's intentional and outrageous conduct, including the false document presented in the Proof of Claim.

5. That this Court determine that the Defendant's claimed secured interest in the Douglas Property and Tucson property should be modified under this Court's equitable power to reflect the intended financing arrangement of two loans.

6. That, if necessary, the Court rescind and/or reform the contracts as fraudulent and if necessary, order the equitable remedy of rescission and/or reformation, modifying the security interest on the Douglas property to an amount no greater than \$20,000.00.

7. That the Court declare the Deeds of Trust recorded as to the Tucson Property and Douglas Property are not in compliance with Arizona law because of the un-notarized but incorporated material Adjustable Rate Rider terms, and that both Deeds of Trust be declared invalid, and accordingly, that any foreclosure must be pursued through judicial foreclosure.

8. That the Court award appropriate legal and monetary sanctions, including attorneys fees and punitive damages, against Defendants for providing a false and misleading Proof of Claim to this Court in their effort to continue to conceal the true facts concerning the discriminatory asset-based financing involving Mr. Romo and his properties.

9. That the Court sustain the objection to Wells Fargo Financial Arizona Inc.'s Proof of Claim, and disallow this claim, or to reduce and modify such claim as alleged above.

10. That Plaintiff be awarded attorneys fees as permitted by statute, contract and

1 other applicable law.

2 DATED this 29th day of August, 2012.

3 /s/ Vince Rabago

4 Vince Rabago, AZ Bar #015522

5 Attorney for Debtor

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