

1 Daniel Alberstone (SBN 105275)  
dalberstone@baronbudd.com  
2 Roland Tellis (SBN 186269)  
rtellis@baronbudd.com  
3 Mark Pifko (SBN 228412)  
mpifko@baronbudd.com  
4 BARON & BUDD, P.C.  
1999 Avenue of the Stars, Suite 3450  
5 Los Angeles, California 90067  
Telephone: (310) 860-0476  
6 Facsimile: (310) 860-0480

7 Attorneys for Plaintiffs  
8 LATARA BIAS, ERIC BREAUX,  
9 NAN WHITE-PRICE, and DIANA ELLIS,  
individually, and on behalf of other members of  
the public similarly situated

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 LATARA BIAS, ERIC BREAUX, NAN  
13 WHITE-PRICE, and DIANA ELLIS,  
14 individually, and on behalf of other  
15 members of the general public similarly  
situated,

16 Plaintiffs,

17 vs.

18 WELLS FARGO & COMPANY, a  
19 Delaware corporation, WELLS FARGO  
20 BANK, N.A., a national association, J.P.  
21 MORGAN CHASE & CO., a Delaware  
corporation, J.P. MORGAN CHASE  
22 BANK, N.A., a national association, and  
CHASE HOME FINANCE LLC, a  
23 Delaware limited liability company,

24 Defendants.

Case Number:

**CV12**

**0664**

**CLASS ACTION**

**Jury Trial Demanded**

**COMPLAINT FOR:**

- (1) Violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (2) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c));
- (3) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(d)); and
- (4) Unjust Enrichment

FILED  
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NP

DMR

1 For their complaint against Wells Fargo & Company, Wells Fargo Bank, N.A.,  
2 J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., and Chase Home Finance  
3 LLC (collectively "Defendants"), Plaintiffs Latara Bias, Eric Breaux, Nan White-Price,  
4 and Diana Ellis ("Plaintiffs"), individually, and on behalf of all other members of the  
5 public similarly situated, based on information and belief, allege as follows:

### 6 INTRODUCTION AND NATURE OF THE ACTION

7 1. This case concerns fraudulent and misleading practices committed by  
8 Defendants in connection with their home mortgage loan servicing businesses. Together,  
9 Defendants service almost 20 million loans, approximately 25% of the total number of  
10 loans in the United States. Using an automated mortgage loan management system and an  
11 enterprise of subsidiaries and inter-company departments and divisions, Defendants have  
12 engaged in a scheme to fraudulently conceal their unlawful assessment of improperly  
13 marked-up or unnecessary fees for default-related services, cheating borrowers who can  
14 least afford it.

15 2. When home mortgage borrowers get behind on their payments and go into  
16 "default," lenders conduct various default-related services, purportedly designed to protect  
17 the lender's interest in the property. However, lenders are not permitted to mark-up the  
18 fees for such services to earn a profit. Nor are lenders permitted to assess borrowers'  
19 accounts for default-related service fees that are unreasonable and unnecessary.  
20 Nevertheless, as discussed in detail below, using false pretenses to conceal the truth from  
21 borrowers, that is precisely what Defendants do.

22 3. In effect, to generate hearty profits, Defendants have substituted inflated  
23 interest rates with inflated fees. Defendants formed enterprises -- associations of  
24 subsidiaries and affiliated companies -- and designed schemes to disguise hidden mark-  
25 ups, and unnecessary fees so that they could earn additional, undisclosed profits. Through  
26 these unlawful enterprises, Defendants mark-up the fees charged by vendors, often by  
27 100% or more, and then, without disclosing the mark-up, assess borrowers' accounts for  
28 the hidden profits. In connection with their schemes, Defendants also have a practice of

1 routinely assessing fees for default-related services, even when they are unnecessary and  
2 inappropriate. Employing this strategy, Defendants are able to quietly profit from default-  
3 related service fees at the expense of struggling consumers. Indeed, in the fourth quarter  
4 of 2011 alone, defendant Wells Fargo & Company saw a 20% increase in profits.<sup>1</sup>

5 4. Many borrowers reasonably believe the lender from whom they obtained  
6 their mortgage will hold and service their loan until it is paid off. Instead, through  
7 relatively recent mortgage industry practices, such as securitization and the sale of  
8 mortgage backed securities, that is often not the case. In today's market, loans and the  
9 rights to service them are bought and sold at will, multiple times over. Because banks like  
10 Defendants who service loans do not profit directly from interest payments made by  
11 borrowers, rather than ensuring that borrowers stay current on their loans, Defendants are  
12 more concerned with generating revenue from fees assessed against the mortgage  
13 accounts they service. According to one member of the Board of Governors of the  
14 Federal Reserve System, "a foreclosure almost always costs the investor [who owns the  
15 loan] money, but [it] may actually earn money for the servicer in the form of fees."<sup>2</sup>

16 5. Banks like Defendants see opportunity where investors see failure because  
17 borrowers are captives to companies who service their loans. Accordingly, when  
18 borrowers go into default and Defendants unilaterally decide to perform default-related  
19 services, borrowers have no option but to accept Defendants' choice of providers.

20 6. Taking advantage of these circumstances, the Wells Fargo defendants and  
21 Chase defendants each formed enterprises with their respective subsidiaries and affiliates,  
22 and then, developed a uniform practice of unlawfully marking up default-related service  
23

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24 <sup>1</sup> See Ben Protess, New York Times, *Wells Fargo Profit Rose 20% in Fourth Quarter*, Jan. 17, 2012,  
25 available at <http://dealbook.nytimes.com/2012/01/17/wells-fargo-fourth-quarter-profit-up-20/> (last visited  
Jan. 17, 2012).

26 <sup>2</sup> See Sarah Bloom Raskin, Member Board of Governors of the Federal Reserve System, *Remarks at the*  
27 *National Consumer Law Center's Consumer Rights Litigation Conference*, Boston Massachusetts, Nov.  
28 12, 2010, available at [www.federalreserve.gov/newsevents/speech/raskin20101112a.htm](http://www.federalreserve.gov/newsevents/speech/raskin20101112a.htm) (last visited Jan.  
23, 2012).

1 charges assessed against borrowers' accounts so that Defendants can earn undisclosed  
2 profits in connection with these services. Defendants' marked-up fees violate borrowers'  
3 mortgage agreements because the fees exceed the actual cost of the services, and  
4 therefore, they are not, as the mortgage agreements require, "reasonable" or "appropriate"  
5 to protect the note holder's interest in the property.

6 7. Defendants are aware that it is improper to mark-up the fees assessed on  
7 borrowers' accounts for default-related services. Therefore, Defendants fraudulently  
8 conceal these fees on borrowers' accounts, omitting any information about Defendants'  
9 additional profits, by identifying them on mortgage statements only as "Other Charges,"  
10 "Other Fees," "Miscellaneous Fees," or "Corporate Advances."

11 8. The rampant abuses by mortgage servicers like Defendants, has led federal  
12 regulators to enter into numerous Consent Orders, but according to Mark Pearce, Director,  
13 Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation,  
14 "these consent orders do not fully identify and remedy past errors in mortgage-servicing  
15 operations of large institutions; in fact, the scope of the interagency review did not  
16 include a review of . . . the fees charged in the servicing process. Much work remains to  
17 identify and correct past errors and to ensure that the servicing process functions  
18 effectively, efficiently, and fairly going forward."<sup>3</sup>

19 9. Plaintiffs bring this action, seeking injunctive relief and damages on behalf of  
20 themselves and the thousands of borrowers who have been victimized by the Defendants'  
21 uniform schemes.

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25 <sup>3</sup> See Mark Pearce, Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance  
26 Corporation, *Mortgage Servicing: An Examination of the Role of Federal Regulators in Settlement*  
27 *Negotiations and the Future of Mortgage Servicing Standards*, before the Subcommittees on Financial  
28 Institutions and Consumer Credit, and Oversight and Investigations Committee on Financial Services,  
U.S. House of Representatives, July 7, 2011, available at  
<http://financialservices.house.gov/UploadedFiles/070711pearce.pdf> (last visited, Feb. 1, 2012).



1           17. Defendant Wells Fargo & Company is a publicly traded corporation  
2 organized under the laws of Delaware and headquartered in San Francisco, California.

3           18. Defendant Wells Fargo Bank, N.A. is a subsidiary of Wells Fargo &  
4 Company, and is a national bank organized and existing as a national association under  
5 the National Bank Act, 12 U.S.C. §§ 21 *et seq.*, with its principal place of business in San  
6 Francisco, California.

7           19. Defendant J.P. Morgan Chase & Co. is a publicly traded corporation  
8 organized under the laws of Delaware, with its principal place of business in New York,  
9 New York.

10          20. Defendant J.P. Morgan Chase Bank, N.A. is a subsidiary of J.P. Morgan  
11 Chase & Co., and is a national bank organized and existing as a national association under  
12 the National Bank Act, 12 U.S.C. §§ 21 *et seq.*, with its principal place of business in  
13 Columbus, Ohio.

14          21. Defendant Chase Home Finance LLC, is a subsidiary of J.P. Morgan Chase  
15 & Co. and J.P. Morgan Chase Bank, N.A., and is a Delaware limited liability company,  
16 with its principal place of business in Iselin, New Jersey.

17          22. Whenever, in this Complaint, reference is made to any act, deed, or conduct  
18 of Defendants committed in connection with the enterprise, the allegation means that  
19 Defendants engaged in the act, deed, or conduct by or through one or more of their  
20 officers, directors, agents, employees or representatives, each of whom was actively  
21 engaged in the management, direction, control or transaction of the ordinary business and  
22 affairs of Defendants and the enterprise.

23          23. Plaintiffs are informed and believe, and based thereon, allege that, at all  
24 material times herein, each Wells Fargo defendant, Wells Fargo & Company and Wells  
25 Fargo Bank, N.A. (collectively "Wells Fargo"), was the agent, servant, or employee of,  
26 and acted within the purpose, scope, and course of said agency, service, or employment,  
27 and with the express or implied knowledge, permission, and consent of the other Wells  
28 Fargo defendant, and ratified and approved the acts of the other Wells Fargo defendant.



1 repayment of loans that they once did. Instead, banks like Wells Fargo and Chase service  
2 or administer mortgages for hedge funds and investment houses who own the loans.  
3 Rather than earn income from the interest on these loans, banks like Wells Fargo and  
4 Chase are paid a fee for their loan administration services.

5 28. Additionally, under agreements with investors (pooling and service  
6 agreements), loan servicers like Defendants are entitled to assess fees on borrowers'  
7 accounts for default-related services in connection with their administration of borrowers'  
8 loans. These fees include Broker's Price Opinion fees, and appraisal fees. Defendants'  
9 collection of these fees, however, exemplifies how America's lending industry has run off  
10 the rails.

11 29. As one Member of the Board of Governors of the Federal Reserve System  
12 has explained, "[w]hile an investor's financial interests are tied more or less directly to the  
13 performance of a loan, the interests of a third-party servicer are tied to it only indirectly, at  
14 best. The servicer makes money, to oversimplify it a bit, by maximizing fees earned and  
15 minimizing expenses while performing the actions spelled out in its contract with the  
16 investor. . . . The broad grant of delegated authority that servicers enjoy under pooling  
17 and servicing agreements (PSAs), combined with an effective lack of choice on the part of  
18 consumers, creates an environment ripe for abuse."<sup>4</sup>

19 30. For banks like Wells Fargo and Chase, who are unhappy with the flat fee  
20 they earn for servicing loans, the right to charge exorbitant fees has opened the door to a  
21 world of exploitation. As a result of the disassociation between loan servicers and the  
22 monies generated from the interest borrowers pay on their loans, Wells Fargo and Chase  
23 have been incentivized to find other ways to grow their profits.

24 31. Wells Fargo and Chase, with their subsidiaries, and affiliated companies each  
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26 <sup>4</sup> See Sarah Bloom Raskin, Member Board of Governors of the Federal Reserve System, *Remarks at the*  
27 *National Consumer Law Center's Consumer Rights Litigation Conference*, Boston Massachusetts, Nov.  
28 12, 2010, available at [www.federalreserve.gov/newsevents/speech/raskin20101112a.htm](http://www.federalreserve.gov/newsevents/speech/raskin20101112a.htm) (last visited Jan. 23, 2012).



1 formed an unlawful enterprise and decided to game the system, under the guise of  
2 collecting default-related service fees, and then, they sought to increase mortgage  
3 servicing revenues by fraudulently concealing marked-up fees assessed on borrowers'  
4 accounts.

5 32. In short, as explained by Adam J. Levitin, Associate Professor of Law at the  
6 Georgetown University Law Center, in testimony to the United States House Financial  
7 Services Committee, Subcommittee on Housing and Community Opportunity, "Servicers'  
8 business model also encourages them to cut costs wherever possible, even if this involves  
9 cutting corners on legal requirements, and to lard (sic) on junk fees and in-sourced  
10 expenses at inflated prices."<sup>5</sup>

### 11 **Defendants' Automated Loan Servicing Practices**

12 33. Together, Defendants service approximately 20 million loans. To maximize  
13 profits, Defendants assign the complex task of administering these millions of loans to  
14 computer software programs. Chase and Wells Fargo automate their loan servicing  
15 businesses through a computer software program provided by Fidelity National  
16 Information Services, Inc., which is called Mortgage Servicing Package ("Fidelity MSP").  
17 Fidelity MSP is a sophisticated home loan management program, and is one of the most  
18 widely used such programs in the United States.

19 34. When a loan is originated, guidelines for managing the loan are imported into  
20 Fidelity MSP. Loans serviced by Defendants are then automatically managed by the  
21 Fidelity MSP software according to those guidelines. For example, among other things, if  
22 a loan in Defendants' systems is past due, the guidelines instruct the computer when to  
23 impose late fees. Defendants also assess other charges and fees against borrowers'  
24 accounts by using "wrap around" software packages that work with the Fidelity MSP  
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26 <sup>5</sup> See Adam J. Levitin, *Robo-Singing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage*  
27 *Servicing*, before the House Financial Services Committee, Subcommittee on Housing and Community  
28 Opportunity, Nov. 18, 2010, available at  
<http://financialservices.house.gov/Media/file/hearings/111/Levitin111810.pdf> (last visited Feb. 1, 2012).

1 system. Based on parameters inputted into these programs, Defendants' computer  
2 systems automatically implement decisions about how to manage borrowers' accounts  
3 based on internal software logic. The systems are designed to manage borrowers'  
4 accounts and assess fees, according to a protocol designed by the executives at Chase and  
5 Wells Fargo.

6 35. The Fidelity MSP software Defendants use also has a platform called  
7 Bankruptcy Work Station ("BWS") that is purportedly infused with computer logic  
8 designed to manage a loans during a pending bankruptcy. To manage loans in default,  
9 Chase also uses a software program called "FORTRACS." "FORTRACS automates  
10 default management processing, decisioning and documentation of a loan. With fully  
11 integrated modules and synchronization of activities, it supports the lender's credit and  
12 collateral risk management through loss mitigation, foreclosure processing, bankruptcy  
13 monitoring, claims processing and REO management."<sup>6</sup>

14 36. Plaintiffs are informed and believe, and based thereon, allege that as part of  
15 the Chase and Wells Fargo enterprises' efforts to conceal the extent of their activities,  
16 Defendants also program their computer systems to automatically remove from account  
17 statements submitted in court proceedings, some of the fees and charges typically assessed  
18 against borrowers accounts because they have been prohibited by a particular jurisdiction  
19 or judge within a jurisdiction.

#### 20 **Marked-Up and Unnecessary Fees for Default-Related Services**

21 37. In their loan servicing operations, Defendants follow a strategy to generate  
22 fraudulently concealed default-related fee income. Rather than simply obtain default-  
23 related services directly from independent third-party vendors, and charge borrowers for  
24 the actual cost of these services, Defendants assess borrowers' accounts for services that  
25 are unnecessary and they unlawfully add additional, undisclosed profits on to the charges  
26 before they are assessed on borrowers' accounts.

27 \_\_\_\_\_  
28 <sup>6</sup> See <http://www.isgn.com/Products/Fortracs.htm> (last visited Feb. 8, 2012).

1           38. Defendants' scheme works as follows. Defendants order default-related  
2 services from their subsidiaries and affiliated companies, who, in turn, obtain the services  
3 from third-party vendors. The third-party vendors charge Defendants for their services.  
4 Defendants, in turn, charge borrowers a fee that is significantly marked-up from the third-  
5 party vendors' actual fees for the services. As a result, even though the mortgage market  
6 has collapsed, and more and more borrowers are falling into delinquency, Defendants  
7 continue to earn substantial profits by assessing undisclosed, marked-up fees for default-  
8 related services on borrowers' accounts.

9           39. The mortgage contract between a lender and a borrower consists of two  
10 documents: the promissory note ("Note") and the mortgage or deed of trust ("Security  
11 Instrument"). The mortgage contracts serviced by Defendants are substantially similar  
12 because they conform to the standard Fannie Mae/Freddie Mac form contract. These  
13 contracts contain form language regarding what occurs if borrowers default on their loans.  
14 The Security Instrument authorizes the loan servicer, in the event of default, to:

15                     pay for whatever is reasonable or appropriate to protect the note  
16 holder's interest in the property and rights under the security  
17 instrument, including protecting and/or assessing the value of  
18 the property, and securing and/or repairing the property.

19           40. The Security Instrument further provides that any such amounts disbursed by  
20 the servicer shall become additional debt of the borrower secured by the Security  
21 Instrument and shall bear interest at the Note rate from the date of disbursement. The  
22 Note provides that the note holder:

23                     will have the right to be paid back by [the borrower] for all of its  
24 costs and expenses in enforcing this Note to the extent not  
25 prohibited by applicable law. Those expenses include, for  
26 example, reasonable attorneys' fees.

27 Thus, the mortgage contract allows the servicer to pay for default-related services when  
28

1 necessary or appropriate, and to be reimbursed by the borrower, but it does not authorize  
2 the servicer to mark-up the actual cost of those services to make a profit.

3 41. Broker's Price Opinions ("BPOs") are a significant category of default-  
4 related service fees that, in furtherance of Defendants' unlawful enterprises, are assessed  
5 on borrowers' accounts with substantial, undisclosed mark-ups, fraudulently generating  
6 revenue in the loan servicing business.

7 42. As discussed above, by charging marked-up fees for BPOs, Defendants  
8 violate the agreements with borrowers because, among other things, charges that exceed  
9 the actual cost of the services provided are neither reasonable, nor appropriate to protect  
10 the note holder's interest in the property and the rights under the security instrument.

11 43. Furthermore, the wrongful nature of the marked-up fees is demonstrated by  
12 the fact that Defendants do not disclose to borrowers that the fees assessed on their  
13 accounts are marked-up from the amount actually charged by the vendor.

14 44. Although Defendants assess fees for BPOs on borrowers' accounts in  
15 amounts ranging from \$95 to \$135, as of December 2010, under Fannie Mae guidelines,  
16 the maximum reimbursable rate for an exterior BPO is \$80,<sup>7</sup> and in practice, the actual  
17 cost is much less. According to the National Association of BPO Professionals, the actual  
18 cost of a BPO may be as little as \$30.<sup>8</sup>

### 19 Practices Specific to the Wells Fargo Enterprise

20 45. Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. administer  
21 approximately 10.3 million home mortgage loans, which is about one out of every seven  
22 mortgages in the United States. Defendant Wells Fargo & Company, and its subsidiary,  
23 defendant Wells Fargo Bank, N.A. formed an enterprise and devised a scheme to defraud  
24 borrowers and obtain money from them by means of false pretenses.


25 \_\_\_\_\_  
26 <sup>7</sup> See Fannie Mae, *Broker Price Opinion Providers and Pricing Structure*, available at  
<https://efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce121710a.pdf> (last visited Feb. 1, 2012).

27 <sup>8</sup> See National Association of BPO Professionals (NABPOP), *Broker Price Opinion – BPO Brief*,  
28 available at <http://www.nabpop.org/Advocacy-BPOBrief-2.php> (last visited Feb. 2, 2012).


1           46. Using its computerized automated mortgage loan management system and an  
2 enterprise of Wells Fargo subsidiaries and inter-company departments and divisions,  
3 Wells Fargo engaged in a scheme to fraudulently conceal and assess unlawfully marked-  
4 up BPO fees on borrowers' accounts, cheating hundreds of thousands of borrowers out of  
5 hundreds of millions dollars. Furthermore, to conceal its actions and mislead borrowers  
6 about the true nature of its actions, Wells Fargo has employed a corporate practice that  
7 omits the true nature of the fees that are being assessed on borrowers' accounts. Wells  
8 Fargo conceals these marked-up BPO fees, by identifying the charges on borrowers'  
9 statements only as "Other Charges," or "Other Fees." These practices are common to all  
10 of Wells Fargo's files.

11           47. Additionally, in order to further conceal its activities and mislead both  
12 borrowers and the courts, Wells Fargo established an inter-company division or d/b/a,  
13 who participates as a member of the enterprise, called Premiere Asset Services ("PAS").  
14 PAS exists to generate revenues for Wells Fargo and it does not operate at arms-length  
15 with Wells Fargo & Company or Wells Fargo Bank, N.A. According to PAS' website,  
16 PAS is located, among other places, in San Bernardino, California.

17

18 **PREMIERE**  
Asset Services  Specialists in REO Properties

19 Home **Company Profile** Buying an REO Property Search Home Buying Resources Business Partners

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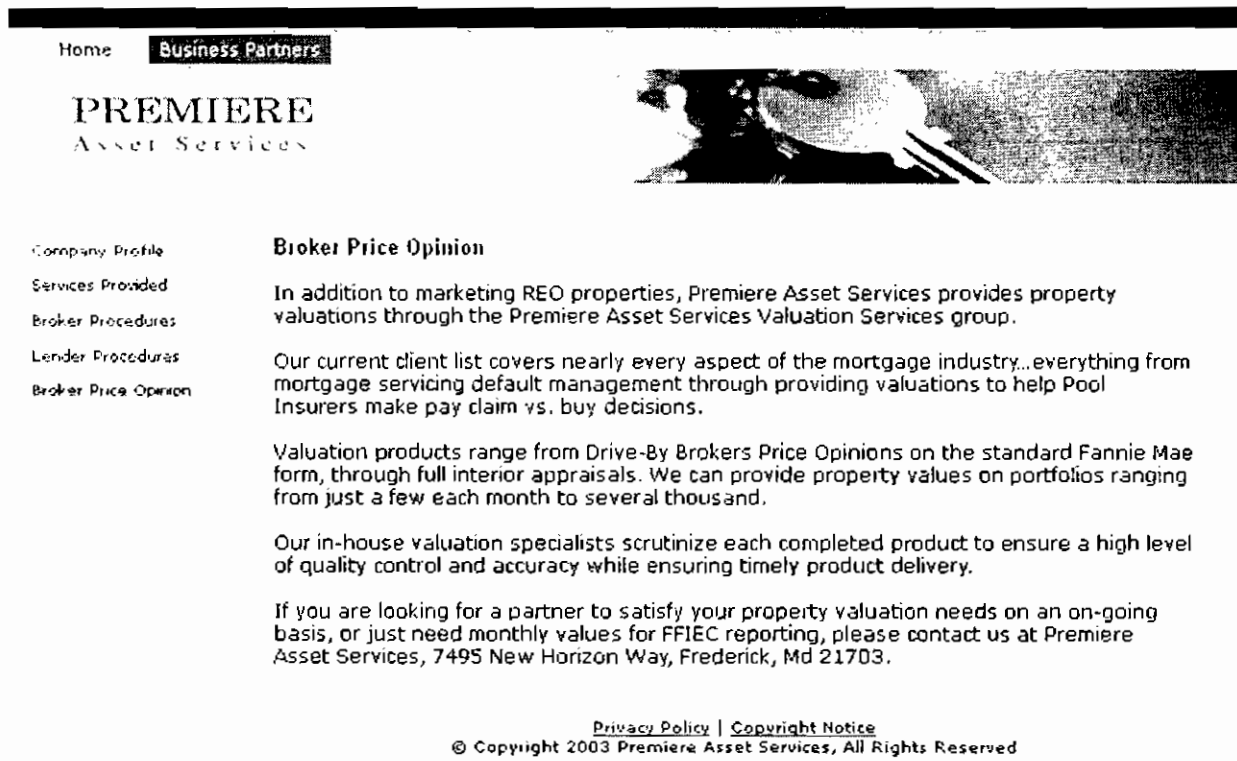
21 **Company Profile**

22 Congratulations for discovering an alternative to the typical home buying process. In many  
23 areas of the United States the market is still slanted in favor of sellers, causing buyers to  
24 compete for homes, raising prices to their maximum, and effectively shutting many out of  
25 realizing the dream of home ownership.

26 We believe that REO (Real Estate Owned) properties still provide an excellent opportunity  
27 to acquire affordable properties in all areas of the country. Our clients' portfolios include  
28 properties in all states and cover the full range of property types and property  
conditions...everything from homes in "move-in" condition to homes that will require  
substantial renovations. So no matter if you are looking for your first home or are a  
veteran renovation enthusiast, we have the home for you.

Premiere Asset Services is an REO property management and marketing firm located in  
Frederick, MD, and San Bernardino, CA. Our mission is to provide property valuation,  
management, and marketing services to banks, mortgage companies, and other investors  
that own real estate as a result of foreclosure actions. We maintain a close relationship  
with real estate agents nationwide and utilize those agents to list properties. All offers or  
questions concerning any specific property should be addressed to the listing agent.

1 48. In furtherance of the enterprise's unlawful activities, Wells Fargo also has  
2 used the Internet to make it appear as though PAS is an independent company that  
3 provides, among other things, BPOs, fraudulently concealing the fact that PAS is really  
4 just a vehicle that provides Wells Fargo with a false pretense for obtaining money from  
5 borrowers so that it can earn undisclosed profits.



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19 49. Acting as Wells Fargo's agent under the scheme, PAS performs the BPOs  
20 ordered by Wells Fargo. When Wells Fargo orders BPOs, PAS sub-contracts the BPOs to  
21 different local real estate brokers. PAS does not actually perform the BPOs itself.  
22 Nevertheless, consistent with the design of Wells Fargo's illegal enterprise, when  
23 borrowers demand that Wells Fargo substantiate charges for BPOs, PAS, at Wells Fargo's  
24 direction, invoices to Wells Fargo as if PAS was an independent, third-party vendor.

25 50. Wells Fargo never actually pays the invoices because they are not legitimate  
26 invoices. Instead, as Wells Fargo has admitted in other federal court proceedings, PAS is  
27 merely a division of Wells Fargo, and the "invoices" produced by PAS as purported  
28 evidence of third-party vendor costs for BPOs are actually internal memos between Wells

1 Fargo departments allocating costs of administration.

2 51. The amount paid by Wells Fargo for the BPOs is approximately one-half to  
3 one-third as much as the amounts assessed on borrowers' accounts based on the invoices  
4 generated by PAS. Wells Fargo assesses fees for BPOs on borrowers' accounts, charging  
5 from \$95 to \$125, when in fact, the actual cost of each BPO is approximately \$50 or less.

6 52. Wells Fargo never pays PAS for the BPOs, but rather when the BPOs are  
7 completed by real estate brokers, Wells Fargo issues checks directly to the real estate  
8 brokers. Despite this reality, driven to increase profits with illegally marked-up charges,  
9 Wells Fargo assesses borrowers' accounts with fees for these "pass through" expenses,  
10 even though the assessed amounts include a profit of two to three times more than the  
11 actual expenses incurred by Wells Fargo.

12 53. In furtherance of its scheme to conceal its illegal charges, PAS was created as  
13 part of Wells Fargo's enterprise to act as a phony third party vendor, making it appear to  
14 borrowers, and the courts as though the amounts assessed on borrowers' accounts are  
15 actual third party costs. Wells Fargo never discloses that it is generating profits from the  
16 BPO charges that are illegally and improperly assessed on borrowers' accounts.

17 54. Similarly, Plaintiffs are informed and believe, and on that basis, allege that  
18 when Wells Fargo assesses borrowers' accounts for property inspections, Wells Fargo  
19 includes an unlawful and undisclosed mark-up. The actual cost of property inspections  
20 performed by Wells Fargo's vendors, such as First American Field Services, is \$15.  
21 Nevertheless, when Wells Fargo assess borrowers' accounts for the fees, it adds an  
22 undisclosed profit for itself, and assesses borrowers' accounts \$20 for the inspection.  
23 Wells Fargo conceals its unlawful profits by merely identifying the fee as "Other  
24 Charges," or "Inspection," without informing borrowers that the fee is marked-up. If  
25 borrowers inquire about the nature of these fees, Wells Fargo further conceals and  
26 misleads borrowers, attempting to dissuade them from challenging the charge, by telling  
27 them that such fees are "[i]n accordance with the terms of your mortgage."  
28





1 assesses fees for BPOs on borrowers' accounts, charging from \$95 to \$135, when in fact,  
2 on information and belief, the actual cost of each BPO is approximately \$50 or less.  
3 Plaintiffs are informed and believe, and on that basis, allege that a significant number of  
4 these BPOs are ordered by Chase's Bankruptcy Processing team and Collection  
5 Department in San Diego, California.

6       60. Plaintiffs are informed and believe, and on that basis, allege that under the  
7 "Miscellaneous Fees," "Corporate Advances," "Other Fees," or "Advances" categories on  
8 borrowers' statements, Chase also assesses unnecessary and unreasonable fees for  
9 property inspections. In order to generate profits from these fees, Chase's automated loan  
10 servicing system is set up to order property inspections and assess fees against borrowers  
11 when they are a certain number of days late on their mortgage, regardless of whether the  
12 assessment of such fees is appropriate, reasonable, or necessary under the circumstances.  
13 Although such inspections purportedly are conducted to guard against property loss,  
14 Chase's practices are designed to ensure that these fees are charged to as many accounts  
15 as possible, even if the inspections are inappropriate, unnecessary, or unreasonable.

16       61. Plaintiffs are informed and believe, and on that basis, allege that guidelines  
17 inputted into Chase's loan management software system automatically trigger property  
18 inspections if a loan is past due by a certain number of days. After a borrower's account  
19 is past due by a set number of days, as inputted into the software, Chase's computer  
20 automatically generates a work order for a property inspection automatically, *and without*  
21 *human intervention*. Moreover, so long as a borrower's account is past due by the  
22 requisite number of days inputted into the loan management software, Chase's system  
23 automatically continues to order inspections, regardless of whether it is reasonable or  
24 appropriate under the circumstances.

25       62. Plaintiffs are informed and believe, and on that basis, allege that even if the  
26 property inspections were properly performed and actually reviewed by someone at the  
27 bank, Chase's continuous assessment of fees for these inspections on borrowers accounts  
28 is still improper and unreasonable because of the frequency with which they are

1 performed. If the first inspection report shows that the property is occupied and in good  
2 condition, it is unnecessary and inappropriate for Chase's system to automatically  
3 continue to order monthly inspections. Nothing in the reports justifies continued  
4 monitoring.

5 63. In order to further lull borrowers into a sense of trust, conceal Chase's  
6 unlawful fees, and dissuade borrowers from challenging Chase's unlawful fee  
7 assessments, Chase falsely represents on statements provided to borrowers that "Other  
8 Fees" and "Advances," which are charges for BPOs and property inspections, include  
9 "amounts allowed by [borrowers'] Note and Security Instrument."

10 64. As a result of Chase's unlawful enterprise, hundreds of thousands of  
11 unsuspecting borrowers are cheated out of hundreds of millions of dollars.

12 **Injuries Borrowers Suffer as a Result of Defendants' Practices**

13 65. In addition to the direct monetary damages caused to borrowers, in the form  
14 of the difference between the actual cost of the services provided and the marked-up fees  
15 assessed on borrowers' accounts, borrowers suffer other, less obvious injuries as a result  
16 of the practices described herein.

17 66. The assessment of these marked-up fees can make it impossible for  
18 borrowers to become current on their loan. Charges for default-related services can add  
19 hundreds or thousands of dollars to borrowers' loans over time, driving them further into  
20 default.

21 67. When borrowers get behind on their mortgage, and fees for these default-  
22 related services are stacked on to the past-due principal and interest payments,  
23 Defendants' practices make it increasingly difficult for borrowers to ever bring their loan  
24 current. Even if borrowers pay the delinquent principal and interest payments, the  
25 marked-up fees for default-related services ensure that borrowers stay in default. After  
26 paying delinquent principal and interest, although the next payment comes in on time,  
27 often through automatic payment deductions from borrowers' bank accounts, part of the  
28 payment is applied to the fees first, so there is not enough to cover the entire monthly

1 payment. This makes that payment late, creating a cascade of more fees, and more  
2 arrears, that keeps borrowers in delinquency. By the time borrowers are aware,  
3 Defendants are threatening to foreclose unless a huge payment is made, and the weight of  
4 these unnecessary fees drops borrowers into a financial abyss.

5 68. As a result of Defendants' practices, which force borrowers to move deeper  
6 into default, borrowers suffer damage to their credit score. Defendants provide  
7 information about borrowers' payment history to credit reporting companies, including  
8 whether they have been late with a payment or missed any payments. By keeping  
9 borrowers in default with these practices, Defendants affect whether borrowers can get a  
10 loan in the future – and what borrowers' interest rate will be on such loans.

11 69. Additionally, as a result of Defendants' practices, which force borrowers to  
12 move deeper into default, borrowers are driven into foreclosure.

### 13 **PLAINTIFFS' CLAIMS AGAINST WELLS FARGO**

14 70. Plaintiff Latara Bias is a resident of Napoleonville, which is in Assumption  
15 Parish, Louisiana.

16 71. Plaintiff Eric Breaux is a resident of Napoleonville, which is in Assumption  
17 Parish, Louisiana.

18 72. Plaintiffs Bias and Breaux have a mortgage serviced by Wells Fargo.

19 73. Wells Fargo continually assessed \$95 fees for BPOs on the mortgage account  
20 of Plaintiffs Bias and Breaux, beginning on December 28, 2006. Wells Fargo also  
21 assessed \$95 fees for BPOs on the mortgage account of Plaintiffs Bias and Breaux on  
22 September 27, 2007 and March 28, 2008.

23 74. Plaintiff White-Price is a resident of Abita Springs, which is in St. Tammany  
24 Parish, Louisiana.

25 75. Plaintiff White-Price has a mortgage serviced by Wells Fargo.

26 76. A "Monthly Mortgage Statement," dated September 19, 2011, mailed to  
27 Plaintiff White-Price by defendant Wells Fargo included an assessment of \$100.00 for  
28 "Other Charges." Plaintiff is informed and believes, and on that basis, alleges that these

1 charges included unlawful marked-up fees for default-related services.

## 2 **PLAINTIFFS' CLAIMS AGAINST CHASE**

3 77. Plaintiff Ellis is a resident of Los Angeles County, California.

4 78. Plaintiff Ellis has a mortgage serviced by Chase.

5 79. A "Mortgage Loan Statement," dated July 1, 2011, issued to Plaintiff Ellis by  
6 defendant Chase included an assessment of \$154.24 for "Miscellaneous Fees." Plaintiff is  
7 informed and believes, and on that basis, alleges that these fees included unlawful  
8 marked-up and unnecessary fees for default-related services, and that over the history of  
9 her loan, her account was assessed numerous other unlawful and unnecessary fees for  
10 default-related services.

## 11 **STATUTE OF LIMITATIONS**

12 80. Any applicable statutes of limitations have been tolled by Defendants'  
13 knowing and active concealment, denial, and misleading actions, as alleged herein.  
14 Plaintiffs and members of the Class, as defined below, were kept ignorant of critical  
15 information required for the prosecution of their claims, without any fault or lack of  
16 diligence on their part. Plaintiffs and members of the Class could not reasonably have  
17 discovered the true nature of the Defendants' marked-up fee scheme.

18 81. Defendants are under a continuous duty to disclose to Plaintiffs and members  
19 of the classes the true character, quality, and nature of the fees they assess on borrowers'  
20 accounts. Defendants knowingly, affirmatively, and actively concealed the true character,  
21 quality, and nature of their assessment of marked-up fees against borrowers' accounts.  
22 Plaintiffs and members of the Class reasonably relied upon Defendants' knowing,  
23 affirmative, and active concealment. Based on the foregoing, Defendants are estopped  
24 from relying on any statutes of limitation as a defense in this action.

25 82. The causes of action alleged herein did or will only accrue upon discovery of  
26 the true nature of the charges assessed against borrowers' accounts, as a result of  
27 Defendants' fraudulent concealment of material facts. Plaintiffs and members of the  
28 Class did not discover, and could not have discovered, through the exercise of reasonable

1 diligence, the true nature of the unlawful fees assessed against their accounts.

2 83. Legal scholars have explained that, as a result of these deceptive practices, it  
3 is impossible for borrowers to determine that they are victims of these violations, because  
4 “without a true itemization that identifies the nature of each fee, parties cannot verify that  
5 a mortgage claim is correctly calculated . . . the servicer could be overreaching and  
6 charging fees that are not permitted by law or by the terms of the contract. . . . By  
7 obscuring the information needed to determine the alleged basis for the charges, servicers  
8 thwart effective review of mortgage claims. The system can only function as intended if  
9 complete and appropriate disclosures are made.”<sup>11</sup>

10 84. Additionally, judges examining Wells Fargo’s conduct have found that, “[a]t  
11 the heart of the problem is Wells Fargo’s failure to disclose to its borrowers/debtors, the  
12 trustee, or the Court, the nature or amount of fees and charges assessed . . . [l]ack of  
13 disclosure facilitates the injury. Naive borrowers/debtors, trustees and creditors rightly  
14 assume that Wells Fargo is complying with the plain meaning of its notes, mortgages,  
15 court orders and confirmed plans. Why would anyone assume otherwise? . . . How are  
16 they to challenge a practice or demand correction of an error they do not know exists.”<sup>12</sup>

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<sup>11</sup> See Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 Tex. L. Rev. 121,  
27 155 (2008).

28 <sup>12</sup> See *In re: Jones*, 418 B.R. 687, 699 (E.D. La. 2009).

1 **CLASS ACTION ALLEGATIONS**

2 85. Plaintiffs bring this action, on behalf of themselves and all others similarly  
3 situated, as a class action under Rule 23 of the Federal Rules of Civil Procedure.

4 86. The classes Plaintiffs seek to represent (collectively, the “Class”) are defined  
5 as follows:

6 All residents of the United States of America who had a loan  
7 serviced by Wells Fargo and whose accounts were assessed fees  
8 for default-related services, including Broker’s Price Opinions,  
9 and inspection fees, at any time, continuing through the date of  
10 final disposition of this action (the “Wells Fargo Subclass”).

11 All residents of the United States of America who had a loan  
12 serviced by Chase and whose accounts were assessed fees for  
13 default-related services, including Broker’s Price Opinions, and  
14 inspection fees, at any time, continuing through the date of final  
15 disposition of this action (the “Chase Subclass”).

16 87. Plaintiffs reserve the right to amend the Class definitions if discovery and  
17 further investigation reveals that the Class should be expanded or otherwise modified.

18 88. Plaintiffs reserve the right to establish sub-classes as appropriate.

19 89. This action is brought and properly may be maintained as a class action  
20 under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2)  
21 or (b)(3), and satisfies the requirements thereof. As used herein, the term “Class  
22 Members” shall mean and refer to the members of the Class.

23 90. Community of Interest: There is a well-defined community of interest  
24 among members of the Class, and the disposition of the claims of these members of the  
25 Class in a single action will provide substantial benefits to all parties and to the Court.

26 91. Numerosity: While the exact number of members of the Class is unknown to  
27 Plaintiffs at this time and can only be determined by appropriate discovery, membership  
28 in the Class is ascertainable based upon the records maintained by Defendants. At this  
time, Plaintiffs are informed and believe that the Class includes hundreds of thousands of

1 members. Therefore, the Class is sufficiently numerous that joinder of all members of the  
2 Class in a single action is impracticable under Federal Rule of Civil Procedure Rule  
3 23(a)(1), and the resolution of their claims through the procedure of a class action will be  
4 of benefit to the parties and the Court.

5 92. Ascertainability: Names and addresses of members of the Class are available  
6 from Defendants' records. Notice can be provided to the members of the Class through  
7 direct mailing, publication, or otherwise using techniques and a form of notice similar to  
8 those customarily used in consumer class actions arising under California state law and  
9 federal law.

10 93. Typicality: Plaintiffs' claims are typical of the claims of the other members  
11 of the Class which they seek to represent under Federal Rule of Civil Procedure 23(a)(3)  
12 because each Plaintiff and each member of the Class has been subjected to the same  
13 deceptive and improper practices and has been damaged in the same manner thereby.

14 94. Adequacy: Plaintiffs will fairly and adequately represent and protect the  
15 interests of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4).  
16 Plaintiffs are adequate representatives of the Class, because they have no interests which  
17 are adverse to the interests of the members of the Class. Plaintiffs are committed to the  
18 vigorous prosecution of this action and, to that end, Plaintiffs have retained counsel who  
19 are competent and experienced in handling class action litigation on behalf of consumers.

20 95. Superiority: A class action is superior to all other available methods of the  
21 fair and efficient adjudication of the claims asserted in this action under Federal Rule of  
22 Civil Procedure 23(b)(3) because:

23 (a) The expense and burden of individual litigation make it economically  
24 unfeasible for members of the Class to seek to redress their claims  
25 other than through the procedure of a class action.

26 (b) If separate actions were brought by individual members of the Class,  
27 the resulting duplicity of lawsuits would cause members to seek to  
28 redress their claims other than through the procedure of a class action;

1 and

2 (c) Absent a class action, Defendants likely would retain the benefits of  
3 their wrongdoing, and there would be a failure of justice.

4 96. Common questions of law and fact exist as to the members of the Class, as  
5 required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any questions  
6 which affect individual members of the Class within the meaning of Federal Rule of Civil  
7 Procedure 23(b)(3).

8 97. The common questions of fact include, but are not limited to, the following:

- 9 (a) Whether Defendants engaged in unlawful, unfair, misleading, or  
10 deceptive business acts or practices in violation of California Business  
11 & Professions Code sections 17200 *et seq.*;
- 12 (b) Whether Defendants' practice of charging marked-up fees to  
13 borrowers, as alleged herein, is illegal;
- 14 (c) Whether Defendants were members of, or participants in the  
15 conspiracy alleged herein;
- 16 (d) Whether Defendants engaged in a pattern or practice of racketeering,  
17 as alleged herein;
- 18 (e) Whether documents and statements provided to Plaintiffs and  
19 members of the Class omitted material facts;
- 20 (f) Whether Plaintiffs and members of the class sustained damages, and if  
21 so, the appropriate measure of damages; and
- 22 (g) Whether Plaintiffs and members of the Class are entitled to an award  
23 of reasonable attorneys' fees, pre-judgment interest, and costs of this  
24 suit.

25 98. In the alternative, this action is certifiable under the provisions of Federal  
26 Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- 27 (a) The prosecution of separate actions by individual members of the  
28 Class would create a risk of inconsistent or varying adjudications with



1 respect to individual members of the Class which would establish  
2 incompatible standards of conduct for Defendants;

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

8 (c) Defendants have acted or refused to act on grounds generally  
9 applicable to the Class, thereby making appropriate final injunctive  
10 relief or corresponding declaratory relief with respect to the Class as a  
11 whole and necessitating that any such relief be extended to members of  
12 the Class on a mandatory, class-wide basis.

13 99. Plaintiffs are not aware of any difficulty which will be encountered in the  
14 management of this litigation which should preclude its maintenance as a class action

15 **FIRST CAUSE OF ACTION**

16 **Violation of Unfair Business Practices Act**

17 **(California Business & Professions Code §§ 17200 *et seq.*)**

18 100. Plaintiffs incorporate by reference in this cause of action each and every  
19 allegation of the preceding paragraphs, with the same force and effect as though fully set  
20 forth herein.

21 101. California Business and Professions Code section 17200 prohibits “any  
22 unlawful, unfair or fraudulent business act or practice.” For the reasons described above,  
23 Defendants have engaged in unfair, or fraudulent business acts or practices in violation of  
24 California Business and Professions Code sections 17200 *et seq.*

25 102. In the course and conduct of their loan servicing and collection, Chase and  
26 Wells Fargo omit a true itemization that identifies the nature of each fee, and they fail to  
27 disclose the nature of the charges and fees assessed. Defendants conceal the fact the  
28 category identified as “Miscellaneous Fees” or “Other Charges” reflects marked-up and/or

1 unnecessary fees that were never incurred by Defendants. Relying on Defendants,  
2 Plaintiffs and members of the Class believe they are obligated to pay the amounts  
3 specified in Chase and Wells Fargo's communications for default-related services.

4 103. In truth and in fact, borrowers are not obligated to pay the amounts that have  
5 been specified in Chase and Wells Fargo's communications for default-related services,  
6 such as BPOs. Chase and Wells Fargo omit the fact that the amounts they represent as  
7 being owed have been marked-up beyond the actual cost of the services, or they are  
8 unnecessary, in violation of the mortgage contract. Contrary to Chase and Wells Fargo's  
9 communications, Defendants are not legally authorized to assess and collect these fees.

10 104. Defendants' omissions of material facts, as set forth herein, constitute an  
11 unlawful practice because they violate Title 18 United States Code sections 1341, 1343,  
12 and 1962, as well as California Civil Code sections 1572, 1573, 1709, 1710, and 1711,  
13 among others, and the common law.

14 105. Defendants' omissions of material facts, as set forth herein, also constitute  
15 "unfair" business acts and practices within the meaning of California Business and  
16 Professions Code sections 17200 *et seq.*, in that Defendants' conduct was injurious to  
17 consumers, offended public policy, and was unethical and unscrupulous. Plaintiffs also  
18 assert a violation of public policy by withholding material facts from consumers.  
19 Defendants' violation of California's consumer protection and unfair competition laws in  
20 California resulted in harm to consumers.

21 106. There were reasonable alternatives available to Defendants to further  
22 Defendants' legitimate business interests, other than the conduct described herein.

23 107. California Business and Professions Code section 17200 also prohibits any  
24 "fraudulent business act or practice." Defendants' concealment of material facts, as set  
25 forth above, was false, misleading, or likely to deceive the public within the meaning of  
26 California Business and Professions Code section 17200. Defendants' concealment was  
27 made with knowledge of its effect, and was done to induce Plaintiffs and members of the  
28 Class to pay the marked-up and/or unnecessary fees for default-related services.

1           108. Plaintiffs relied their reasonable expectation that Defendants comply with the  
2 plain meaning of the mortgage agreement, Notes, Security Instruments, court orders and  
3 confirmed plans, and as a result, Plaintiffs relied on Defendants' disclosures about the fees  
4 on their statements, reasonably believing the "Other Charges," "Other Fees," or  
5 "Miscellaneous Fees" to be valid charges that were not unlawfully marked-up and/or  
6 unnecessary. Indeed, to lull borrowers into a sense of trust and dissuade them from  
7 challenging Defendants' unlawful fee assessments, Defendants further conceal their  
8 scheme by telling borrowers, in statements and other documents, that such fees are  
9 "allowed by [borrowers'] Note and Security Instrument," or that they are "[i]n accordance  
10 with the terms of your mortgage." Had the true nature of the fees been disclosed to  
11 Plaintiffs and members of the Class, they would have been aware of the mark-ups, or  
12 unnecessary nature of the fees, and Plaintiffs would have disputed the charges and not  
13 paid them.

14           109. Plaintiffs and members of the Class have been injured in fact and suffered a  
15 loss of money or property as a result of Defendants' fraudulent, unlawful, and unfair  
16 business practices. Plaintiffs and members of the Class would not have paid Defendant's  
17 unlawful fees or they would have challenged the assessment of such fees on their accounts  
18 had it not been for Defendants' concealment of material facts.

19           110. Defendants have thus engaged in unlawful, unfair, and fraudulent business  
20 acts entitling Plaintiffs and members of the Class to judgment and equitable relief against  
21 Defendants, as set forth in the Prayer for Relief.

22           111. Additionally, under Business and Professions Code section 17203, Plaintiffs  
23 and members of the Class seek an order requiring Defendants to immediately cease such  
24 acts of unlawful, unfair, and fraudulent business practices, and requiring Defendants to  
25 correct its actions.

1 **SECOND CAUSE OF ACTION**

2 **Violations of the Racketeer Influenced and Corrupt Organizations Act**

3 **(18 U.S.C. § 1962(c))**

4 112. Plaintiffs incorporate by reference in this cause of action each and every  
5 allegation of the preceding paragraphs, with the same force and effect as though fully set  
6 forth herein.

7 **The Wells Fargo Enterprise**

8 113. Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. are each  
9 persons within the meaning of Title 18 United States Code section 1961(3). At all  
10 relevant times, in violation of Title 18 United States Code section 1962(c), Wells Fargo &  
11 Company and Wells Fargo Bank, N.A. conducted the affairs of an association-in-fact  
12 enterprise, as that term is defined in Title 18 United States Code section 1961(4). The  
13 affairs of this enterprise affected interstate commerce through a pattern of racketeering  
14 activity.

15 114. Wells Fargo's enterprise is an ongoing, continuing group or unit of persons  
16 and entities associated together for the common purpose of limiting costs and maximizing  
17 profits by fraudulently concealing assessments for unlawfully marked-up and/or  
18 unnecessary fees for default-related services on borrowers' accounts.

19 115. While defendants Wells Fargo & Company and Wells Fargo Bank, N.A.  
20 participate in and are part of the enterprise, they also have an existence separate and  
21 distinct from the enterprise.

1 **The Chase Enterprise**

2 116. Defendants J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., and  
3 Chase Home Finance LLC are each persons within the meaning of Title 18 United States  
4 Code section 1961(3). At all relevant times, in violation of Title 18 United States Code  
5 section 1962(c), J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., and Chase  
6 Home Finance LLC conducted the affairs of an association-in-fact enterprise, as that term  
7 is defined in Title 18 United States Code section 1961(4). The affairs of this enterprise  
8 affected interstate commerce through a pattern of racketeering activity.

9 117. Chase’s enterprise is an ongoing, continuing group or unit of persons and  
10 entities associated together for the common purpose of limiting costs and maximizing  
11 profits by fraudulently concealing assessments for unlawfully marked-up and/or  
12 unnecessary fees for default-related services on borrowers’ accounts.

13 118. While defendants J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A.,  
14 and Chase Home Finance LLC participate in and are part of the enterprise, they also have  
15 an existence separate and distinct from the enterprise.

16 **The Predicate Acts**

17 119. Defendants’ systematic scheme to fraudulently conceal assessments of  
18 unlawfully marked-up fees on the accounts of borrowers who have mortgage loans  
19 administered by Wells Fargo and Chase, as described above, which was facilitated by the  
20 use of the United States Mail and wire, constitutes “racketeering activity” within the  
21 meaning of Title 18 United States Code section 1961(1) as acts of mail fraud and wire  
22 fraud under Title 18 United States Code sections 1341 and 1343.

23 120. In violation of Title 18 United States Code sections 1341 and 1343, Wells  
24 Fargo and Chase utilized the mail and wire in furtherance of their scheme to defraud  
25 borrowers whose loans are serviced by Wells Fargo and Chase by obtaining money from  
26 borrowers using false or fraudulent pretenses.

27 121. Through the mail and wire, Wells Fargo and Chase enterprises provided  
28 mortgage invoices, loan statements, or proofs of claims to borrowers, demanding that

1 borrowers pay fraudulently concealed marked-up and/or unnecessary fees for default-  
2 related services, such as BPOs.

3 122. Defendants fraudulently and unlawfully marked-up fees in violation of  
4 borrowers' mortgage agreements because the fees exceed the actual cost of the services,  
5 and therefore, they are not, as the mortgage agreements require, "reasonable" or  
6 "appropriate" to protect the note holder's interest in the property. Defendants' assessment  
7 of fees that were unnecessary are also unlawful because unnecessary fees are not, as the  
8 mortgage agreements require, "reasonable" or "appropriate" to protect the note holder's  
9 interest in the property.

10 123. The mortgage invoices, loan statements, or proofs of claims provided to  
11 borrowers fraudulently concealed the true nature of assessments made on borrowers'  
12 accounts. Using false pretenses, identifying the fees on mortgage invoices, loan  
13 statements, or proofs of claims only as "Other Charges," "Other Fees," "Miscellaneous  
14 Fees," or "Corporate Advances" to obtain full payments from borrowers, Defendants  
15 disguised the true nature of these fees and omitted the fact that the fees include  
16 undisclosed mark-ups and/or were unnecessary.

17 124. Furthermore, to lull borrowers into a sense of trust, conceal Defendants'  
18 unlawful fees, and dissuade borrowers from challenging Defendants' unlawful fee  
19 assessments, Defendants further conceal their scheme from borrowers by telling them, in  
20 statements and other documents, that such fees are "allowed by [borrowers'] Note and  
21 Security Instrument," or that they are "[i]n accordance with the terms of your mortgage."

22 125. Each of these acts constituted an act of mail fraud for purposes of Title 18  
23 United States Code section 1341.

24 126. Additionally, using the Internet, telephone, and facsimile transmissions to  
25 fraudulently communicate false information about these fees to borrowers, to pursue and  
26 achieve their fraudulent scheme, Defendants engaged in repeated acts of wire fraud in  
27 violation of Title 18 United States Code section 1343.

28 127. In an effort to pursue their fraudulent scheme, Defendants knowingly

1 fraudulently concealed or omitted material information from Plaintiffs and members of  
2 the Class. Defendants' knowledge that their activities were fraudulent and unlawful is  
3 evidenced by the fact that they did not disclose the mark-ups and/or unnecessary nature of  
4 the fees in their communications to borrowers.

5 128. The predicate acts specified above constitute a "pattern of racketeering  
6 activity" within the meaning of Title 18 United States Code section 1961(5) in which  
7 Defendants have engaged under Title 18 United States Code section 1962(c).

8 129. All of the predicate acts of racketeering activity described herein are part of  
9 the nexus of the affairs and functions of the Wells Fargo and Chase racketeering  
10 enterprises.

11 130. The pattern of racketeering activity is currently ongoing and open-ended, and  
12 threatens to continue indefinitely unless this Court enjoins the racketeering activity.

13 131. Numerous schemes have been completed involving repeated unlawful  
14 conduct that by its nature, projects into the future with a threat of repetition.

15 132. As a direct and proximate result of these violations of Title 18 United States  
16 Code sections 1962(c) and (d), Plaintiffs and members of the class have suffered  
17 substantial damages. Defendants are liable to Plaintiffs and members of the Class for  
18 treble damages, together with all costs of this action, plus reasonable attorney's fees, as  
19 provided under Title 18 United States Code section 1964(c).

20 **THIRD CAUSE OF ACTION**

21 **Violation of the Racketeer Influenced and Corrupt Organizations Act, Conspiracy to**

22 **Violate Title 18 United States Code section 1962(c)**

23 **(18 U.S.C. § 1962(d))**

24 133. Plaintiffs incorporate by reference in this cause of action each and every  
25 allegation of the preceding paragraphs, with the same force and effect as though fully set  
26 forth herein.

27 134. As set forth above, in violation of Title 18 United States Code section  
28 1962(d), Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. conspired to

1 violate the provisions of Title 18 United States Code section 1962(c).

2 135. As set forth above, in violation of Title 18 United States Code section  
3 1962(d), Defendants J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., and Chase  
4 Home Finance LLC conspired to violate the provisions of Title 18 United States Code  
5 section 1962(c).

6 136. As a direct and proximate result, Plaintiffs and the members of the Class  
7 have been injured in their business or property by the predicate acts which make up  
8 Defendants' patterns of racketeering activity in that unlawfully marked-up and/or  
9 unnecessary fees for default-related services were assessed on their mortgage accounts.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **Unjust Enrichment**

12 137. Plaintiffs incorporate by reference in this cause of action each and every  
13 allegation of the preceding paragraphs, with the same force and effect as though fully set  
14 forth herein.

15 138. By their wrongful acts and omissions of material facts, Defendants were  
16 unjustly enriched at the expense of Plaintiffs and members of the Class.

17 139. The mortgage contract between Defendants and borrowers like Plaintiffs and  
18 the members of the Class allows Chase and Wells Fargo to pay for default-related services  
19 when necessary or appropriate, and to be reimbursed by the borrower, but it does not  
20 authorize Defendants to mark-up the actual cost of those services to make a profit, nor  
21 does it allow Defendants to incur unnecessary fees.

22 140. Nevertheless, Defendants mark-up the prices charged by vendors, often by  
23 100% or more, and then, without disclosing the mark-up, assess borrowers' accounts for  
24 the higher, marked-up fee so that Defendants can earn a profit.

25 141. Thus, Plaintiffs and members of the Class were unjustly deprived.

26 142. Defendants are aware that it is improper to mark-up and/or assess  
27 unnecessary fees on borrowers' accounts for default-related services. Therefore,  
28 Defendants fraudulently conceal these fees on borrowers' accounts, omitting any



1 information about Defendants' additional profits, by identifying them on mortgage  
2 statements only as "Other Charges," "Other Fees," "Miscellaneous Fees," or "Corporate  
3 Advances."

4 143. Furthermore, to lull borrowers into a sense of trust, conceal Defendants'  
5 unlawful fees, and dissuade borrowers from challenging Defendants' unlawful fee  
6 assessments, Defendants further conceal their scheme from borrowers by telling them, in  
7 statements and other documents, that such fees are "allowed by [borrowers'] Note and  
8 Security Instrument," or that they are "[i]n accordance with the terms of your mortgage."

9 144. It would be inequitable and unconscionable for Defendants to retain the  
10 profit, benefit and other compensation they obtained from their fraudulent, deceptive, and  
11 misleading conduct alleged herein.

12 145. Plaintiffs and members of the Class seek restitution from Defendants, and  
13 seek an order of this Court disgorging all profits, benefits, and other compensation  
14 obtained by Defendants from their wrongful conduct.

15 **PRAYER FOR RELIEF**

16 Plaintiffs, and on behalf of themselves and all others similarly situated, request the  
17 Court to enter judgment against Defendants, as follows:

- 18 1. Certifying the Class, as requested herein, certifying Plaintiffs as the  
19 representatives of the Class, and appointing Plaintiffs' counsel as counsel for the Class;
- 20 2. Ordering that Defendants are financially responsible for notifying all  
21 members of the Class of the alleged misrepresentations discussed herein;
- 22 3. Awarding Plaintiffs and the members of the Class compensatory damages in  
23 an amount according to proof at trial;
- 24 4. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs  
25 and members of the Class;
- 26 5. Awarding Plaintiffs and the members of the Class treble damages in an  
27 amount according to proof at trial;
- 28 6. Awarding declaratory and injunctive relief as permitted by law or equity,

1 including: enjoining Defendants from continuing the unlawful practices as set forth  
2 herein, and directing Defendants to identify, with Court supervision, victims of its conduct  
3 and pay them restitution and disgorgement of all monies acquired by Defendants by  
4 means of any act or practice declared by this Court to be wrongful;

5 7. Ordering Defendants to engage in corrective advertising;

6 8. Awarding interest on the monies wrongfully obtained from the date of  
7 collection through the date of entry of judgment in this action;

8 9. Awarding attorneys' fees, expenses, and recoverable costs reasonably  
9 incurred in connection with the commencement and prosecution of this action; and

10 10. For such other and further relief as the Court deems just and proper.

11 Dated: February 10, 2012

12 BARON & BUDD, P.C.

13  
14 By: \_\_\_\_\_  
Mark Pifko

15 Daniel Alberstone (SBN 105275)  
16 Roland Tellis (SBN 186269)  
17 Mark Pifko (SBN 228412)  
18 BARON & BUDD, P.C.  
19 1999 Avenue of the Stars, Suite 3450  
Los Angeles, California 90067  
Telephone: (310) 860-0476  
Facsimile: (310) 860-0480

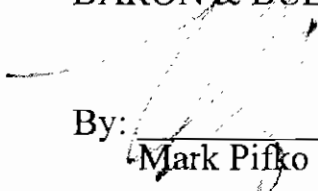
20 Attorneys for Plaintiffs  
21 LATARA BIAS, ERIC BREAUX,  
22 NAN WHITE-PRICE, and DIANA ELLIS,  
23 individually, and on behalf of other  
24 members of the public similarly situated  
25  
26  
27  
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by  
3 law.

4 Dated: February 10, 2012

5 BARON & BUDD, P.C.

6  
7 By:   
8 Mark Pifko

9 Daniel Alberstone (SBN 105275)  
10 Roland Tellis (SBN 186269)  
11 Mark Pifko (SBN 228412)  
12 BARON & BUDD, P.C.  
13 1999 Avenue of the Stars, Suite 3450  
14 Los Angeles, California 90067  
15 Telephone: (310) 860-0476  
16 Facsimile: (310) 860-0480

17 Attorneys for Plaintiffs  
18 LATARA BIAS, ERIC BREAUX,  
19 NAN WHITE-PRICE, and DIANA ELLIS,  
20 individually, and on behalf of other  
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