

complicated provisions for negative amortization and for periodic recalculation of payments due.

2. Mr. Hart is, like many Massachusetts homeowners, currently a slave to Countrywide's willingness to temporarily or permanently restructure his loan. Although Mr. Hart is now working two jobs, he is unable to make monthly mortgage payments that will amortize the loan. Countrywide is using this foreseeable circumstance to manipulate Mr. Hart into restructuring agreements that require payments of interest on interest and which are otherwise costly in fees and charges. These agreements do not resolve Mr. Hart's anticipated long-term payment problem, but rather exacerbate it.

3. As Mr. Hart is 61 years old, with the likelihood of diminishing income because he cannot work two jobs indefinitely, the payment plans Countrywide has offered will not help him in the long term. Default and homelessness, for Mr. Hart and his family, is virtually inevitable absent permanent relief from the unfair loan terms.

4. Mr. Hart seeks relief from Countrywide including damages, restitution and reformation of contract on his own behalf and for other similarly situated Massachusetts homeowners.

II. JURISDICTION AND VENUE

5. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d) in that this matter is brought as a class action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and in which any member of the class of plaintiffs is a citizen of a State different from any defendant.

6. Venue lies in this District because the Plaintiff resides here.

III. PARTIES

7. The Plaintiff is a Massachusetts resident who resides at 80 Radcliffe Street in Dorchester, Massachusetts.

8. Defendant, Bank of America Home Loans, Inc., f/ka Countrywide Home Loans, Inc. and/or Countrywide Bank, N.A. (“Countrywide”) is a mortgage lender with a principal place of business at 4500 Park Granada Boulevard, Calabasas, CA 91302.

Countrywide has done business as America’s Wholesale Lender.

IV. FACTUAL ALLEGATIONS

A. Payment Option ARMs

9. Mr. Hart’s loan from Countrywide is a form of Payment Option Arm (POA).

10. POAs have been aggressively pressed on unsophisticated borrowers as a way to borrow more money with temporarily and artificially low monthly payments. Nearly \$750 billion in these loans was issued between 2004 and 2007. Ruth Simon, Option Arms See Rising Defaults, Wall Street Journal, A1, January 30, 2009.

11. POAs are a substantial cause of defaults and foreclosures. *Id*; Susan E. Barnes, Patrice Jordan, Victoria Wagner & David Wyss, Standard & Poor's, Standard & Poor's Weighs in on the U.S. Subprime Mortgage Market 12 (Apr. 5, 2007) (increase in early payment defaults within four months of origination), available at www2.standardandpoors.com/spf/pdf/media/TranscriptSubprime_040507.pdf.

12. As of December 2008, 28% of POAs were delinquent or in foreclosure, according to LPS Applied Analytics, a data firm that analyzes mortgage performance. Nearly 61% of POAs originated in 2007 will eventually default, according to a recent

analysis by Goldman Sachs. Goldman further estimates that more than half of all POAs originated in any year will default. Ruth Simon, Option Arms See Rising Defaults, Wall Street Journal, A1 January 30, 2009.

13. In a POA loan, a borrower has, in theory, a choice of three payments: a minimum non-amortizing payment; an interest only payment that covers the actual interest accruing; and a fully amortizing payment. In practice, because the loans are sold to borrowers of limited means such as the Plaintiff, three-quarters of all borrowers pay only the minimum payment, thus generating negative amortization. Indeed, many of these borrowers can afford to make only the minimum monthly payment – an amount that will never pay off the loan. Joint Ctr. for Hous. Studies, State of the Nation’s Housing 2007, at p. 17, available at

<http://www.jchs.harvard.edu/publications/markets/son2007/son2007.pdf>. *See also* Economist.com, Ticking time bomb (Aug. 14, 2008) (loans recast after a set period), available at http://www.economist.com/finance/displaystory.cfm?story_id=11921871; Les Christie, CNN Money.com, Pick-a-payment loans turn poisonous (Sep. 3, 2008) (more than 65% of option ARM borrowers make only minimum payments), available at http://money.cnn.com/2008/09/02/real_estate/pick_a_poison/index.htm.

14. Once POA principal caps are reached (typically at 110% to 125% of principal), the borrower must pay an amount sufficient to pay off the loan in the remaining time of the loan term. This means that if the original loan term was thirty years, and the remaining term is now twenty-five years, the aggregate principal plus accrued (unpaid) interest will be amortized over the remaining twenty-five years of the loan. *See e.g.* USA Today, ‘Pick-a-payment’ Mortgage Risks are High, July 18, 2005

available at http://www.usatoday.com/money/perfi/columnist/block/2005-07-18-pick-a-payment_x.htm.

15. The combination of negative amortization and forced payment restructuring including interest coming due on unpaid interest results in significant “payment shock”, significantly higher payment obligations thirty to sixty months after loan consummation.

16. POA loans are complex. They involve concepts that are unfamiliar and confusing to most, even fairly sophisticated, homeowners. *See e.g.* Consumer Fed'n. of America press release, Lower-Income and Minority Consumers Most Likely to Prefer and Underestimate Risks of Adjustable Mortgages 3, July 26, 2004, (consumers cannot calculate the increase in the payment in an adjustable rate mortgage and minimize the interest rate risk by understating the increase in the payment) available at <http://www.consumerfederation.org/releases.cfm#Consumer%20Literacy>; Business Week, Nightmare Mortgages (Sep. 11, 2006) (option ARM “might be the riskiest and most complicated home loan product ever created”) available at http://www.businessweek.com/magazine/content/06_37/b4000001.htm.

17. Lenders, including Countrywide, made these loans knowing that borrowers cannot afford the fully indexed rate or the anticipated fully amortizing payments. Subprime Mortgage Market Turmoil: Examining the Role of Securitization, Hearings Before the S. Comm. On Banking, Hous., & Urban Dev., 110th Cong. (2007) (statement of Sandor Samuels, Executive Managing Dir., Countrywide Fin. Corp.) (60% of borrowers from Countrywide could not qualify at the fully indexed rate). Steven Sloan & Joe Adler, How Freddie Cutbacks in Hybrids May Reverberate, *Am. Banker*, Feb. 28,

2007 (quoting Wright Andrews, a lobbyist for nonbank lending institutions, as saying that most subprime borrowers cannot afford the fully indexed rate and requiring underwriting to the fully indexed rate would prevent adjustable rate mortgages from being made).

18. On information and belief, hundreds of Massachusetts homeowners have POAs originated by Countrywide that will ultimately require payments that those homeowners cannot afford. Many of those borrowers have been subjected to various loan modification agreements that require payment of interest on interest together with substantial costs and fees to avoid foreclosure.

B. Jerome Hart's Transaction with Countrywide

Origination Issues

19. Mr. Hart is a 61-year old individual with little expertise in mortgage lending.

20. Mr. Hart is a Vietnam veteran and suffers from the ongoing effects of exposure to Agent Orange.

21. Mr. Hart was a first-time homebuyer in 2001, when he purchased his multi-family home from his elderly parents. He made the decision to buy the home from his parents in light of his parents advanced age and his father's inability to manage the property due to the effects of Alzheimer's disease.

22. On December 5, 2005, Mr. Hart refinanced his mortgage with Countrywide. A true and correct copy of the Adjustable Rate Note applicable to the transaction, together with the riders thereto, is attached as Exhibit 1.

23. The adjustable rate note in the transaction has, *inter alia*, the following deceptive features: 1) a statement that the interest rate on the loan would be at a "yearly

rate” of 1.5% when such rate would only be in effect for less than two months; and 2) a statement that payments would be \$1,667.62, when those payments would lead to negative amortization, thereby triggering a complicated annual payment change regime that could only lead to substantial and unmanageable upward-only payment changes.

24. Based on information in its possession, Countrywide knew or should have known that Mr. Hart could not afford payments that would amortize the loan and that the loan would ultimately either require further refinancing, forced sale of the property or default.

25. The interest rate in the loan is based on a margin and an index. The margin is 3.5% added to the “Index.” The Index described in the note is the “‘Twelve Month Average’ of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled ‘Selected Interest Rates (H.15).’” The note goes on to state:

The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the ‘Current Index.’

26. Countrywide knew or should have known that this language would be impenetrable to its average customer. The note language was designed to obscure the actual rate that would be applied to the transaction so that typical borrowers, such as Mr. Hart, would be forced to focus on the short-term “1.500%” temporary interest rate that is described as the interest rate in the note. The note is deceptive and intended to deceive about the interest rate applicable to the transaction.

27. The payment change provision of the note provides:

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.500% of my prior monthly payment. This 7.500% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment.

28. Countrywide knew or should have known that this language concerning payments would be impenetrable to its average customer. The note language was designed to obscure the actual payments that would be due to amortize the loan in the transaction so that typical borrowers, such as Mr. Hart, would be forced to focus on the initial monthly payment of \$1,667.62, payments that would be in effect for just one year (and which would result in negative amortization requiring an upward payment adjustment). The note is deceptive and intended to deceive with respect to the amount of monthly payments.

29. The deception was reinforced by a "Good Faith Estimate" Countrywide provided to Mr. Hart prior to loan consummation. That document provides that the Total Monthly Payment of \$1667.62 would cover "Principal and Interest" even though Countrywide knew or should have known that the payment would not cover even the monthly interest due following the inevitable rate change required by the loan note.

30. The problems associated with the loan are illustrated by payment statements sent by Countrywide after the loan was made. For example, on March 14, 2007, Countrywide sent Mr. Hart an account statement offering Mr. Hart the following payment options:

Option 1 Amortized Payment:	\$4,579.91
Option 2 15-Year Amortized Payment:	\$5,833.36
Option 3 Minimum Payment:	\$2,491.10
Option 4 Interest Only Payment:	\$4,242.33

31. Countrywide sent the payment statement even though it had information in its possession by which it knew of or should have known that Mr. Hart could not afford even the described “Interest Only” payment.

32. Countrywide also knew that making the monthly minimum payment would result in deferral of more than \$1,750 in monthly interest charges, inevitably resulting in higher and even more unaffordable payments to amortize the loan thereafter.

33. The billing statement also offers Mr. Hart an opportunity to refinance the balance owed Countrywide, an option that Countrywide knew would capitalize deferred interest owed and thereby result in a substantial payment of interest on interest – payments that, absent refinancing, would be barred by law.

34. At the time of the loan, Countrywide advanced Mr. Hart money on a contemporaneously made high-rate home equity line of credit, resulting in a second mortgage. Countrywide knew or should have known that this additional mortgage and advance could or would put Mr. Hart into a negative equity situation such that he could not sell the property to pay his debt. Countrywide also knew or should have known that Mr. Hart could not afford to pay this additional debt.

35. It is unfair for a lender to make a home mortgage loan secured by the borrower's principal residence in circumstances where the lender does not reasonably believe that the borrower will be able to make the scheduled payments and avoid foreclosure.

36. Countrywide owed Mr. Hart and other similarly situated borrowers a duty of care to underwrite the loan by considering whether the loan could eventually be paid off by amortizing payments.

37. Rather than underwrite the loan properly, Countrywide considered only whether Mr. Hart and other similarly situated borrowers could make the initial monthly payment.

38. Countrywide offered commissions or other similar forms of compensation to its underwriters based on the volume of loans approved by that underwriter, thereby incentivizing approval of loans that the underwriters knew or should have known could not be repaid.

39. Countrywide knew or should have known that its POA loans would almost always result in default and foreclosure unless the borrower refinanced or sold the property.

40. Countrywide's POAs were deliberately designed to deprive Mr. Hart and other POA borrowers of a long-term plan to amortize his debt, leaving only the following expensive and undesirable choices:

- a. Make minimum payments and allow interest to accrue and thereby reduce or eliminate any equity remaining in the property;

- b. refinance with Countrywide and capitalize interest in a never-ending spiral of additional debt service charges;
- c. refinance with another lender and pay Countrywide all of its fees, costs and compound interest (together with a prepayment penalty if the loan is paid in the first year);
- d. sale of the home to pay Countrywide; and/or
- e. delinquency and foreclosure.

41. Written information Countrywide provided about the loan is confusing and/or deceptive.

42. The loan is structurally unfair.

Loan Servicing Issues

43. Mr. Hart has had to work two jobs in order to make even the minimum monthly payments on the mortgage.

44. Over the course of his loan, Mr. Hart's limited financial resources have led him to fall behind on payments on several occasions.

45. As a result, Mr. Hart contacted Countrywide about restructuring the loan to make it affordable for the long-term.

46. Countrywide has refused to offer relief that would make the loan permanently affordable.

47. Instead it has offered modifications that preserve or reinforce the unfair, deceptive and unconscionable terms of the original loan and otherwise advantage Countrywide.

48. On or about December 15, 2007, Countrywide offered Mr. Hart a “loan modification agreement” that capitalized nearly \$25,000 in back-due interest payments to generate a total principal balance of \$536,890.92.

49. A true and correct copy of the December, 2007 loan modification paperwork is attached as Exhibit 2.

50. Much of the back due interest had accumulated based on the negative-amortizing structure of the loan. By capitalizing interest arrears, the loan modification led to payment of interest on interest, thus adding to the overall cost of the loan.

51. Other terms of the loan remained unchanged, including the negative amortization and payment features described above.

52. The loan modification paperwork provided for total payments of \$2,699.62 purportedly covering “Principal and Interest” even though Countrywide knew or should have known that these payments would not cover the monthly interest due and would therefore result in further negative amortization and future upward payment adjustments.

53. Rather than explaining the consequences of making payments that would not cover the monthly interest then due, Countrywide’s paperwork stated “this payment is subject to change if your escrow account is reanalyzed or if you have a step rate or adjustable rate loan type.”

54. Countrywide’s statement fails to include information that the loan modification payments would, by their terms, further negatively amortize the loan, resulting in additional accumulation of back due interest and future upward increases in payments.

55. It also failed to state accurately that Mr. Hart does have an adjustable rate loan type, information plainly available to Countrywide.

56. Countrywide also imposed fees for the loan modification agreement including, without limitation, a “modification fee” of \$500, and a “field inspection fee” of \$75.00, which Mr. Hart paid in cash.

57. Countrywide knew or should have known that the December 15, 2007 loan modification payments were unaffordable to Mr. Hart and that Mr. Hart would not be able to make amortizing payments under the agreement.

58. Believing he had no other options, Mr. Hart agreed to the December 15, 2007 loan modification in order to avoid the risk of foreclosure.

59. Mr. Hart was deceived by the December 15, 2007 loan modification documents provided by Countrywide into believing that his payments would cover principal and interest then due on a monthly basis.

60. In February 2009, Mr. Hart again approached Countrywide about a loan modification due to financial pressures.

61. On February 26, 2009, Countrywide again offered Mr. Hart a “loan modification agreement.”

62. The February 26, 2009 agreement capitalized more than \$27,500 in back-due interest payments to generate a total principal balance of \$574,335.10 arising under the December 15, 2007 loan modification agreement. A true and correct copy of the February 26, 2009 loan modification paperwork is attached as Exhibit 3.

63. Much of the back due interest had accumulated based on the negative-amortizing structure of the loan. By capitalizing back-due interest arrears, the loan

modification led to additional payment of interest on interest (including to some extent interest on interest on interest), thus adding to the overall cost of the loan. Other terms of the loan remained unchanged, including the negative amortization and payment features described above.

64. The loan modification paperwork provided for total monthly payments of \$2,700.96, but now acknowledged that such payments would be “interest only.”

65. Countrywide’s loan modification paperwork encouraged Mr. Hart to make larger payments “to reduce the impact of the Agreement on your future monthly payments,” but failed to specify the size of the payment that would actually amortize the loan.

66. The loan modification paperwork implies that the payment of \$2,700.96 is sufficient to cover all of the monthly interest then due.

67. Believing he had no other options, Mr. Hart agreed to the February 26, 2009 loan modification in order to avoid the risk of foreclosure.

68. Countrywide’s loan modification documents deceived Mr. Hart into believing that his payments would cover at least the monthly interest as it came due.

69. The February 26, 2009 Loan Modification Agreement is not likely to be affordable to Mr. Hart over the term of the loan.

70. Even if Mr. Hart is able to continue working two jobs indefinitely, Countrywide knew or should have known based on information in its possession that he could have no plan for managing the mortgage as payments increase and no plan for making payments that will amortize the loan.

71. At all times relevant Countrywide knew or should have known that Mr. Hart could not afford to make amortizing payments to satisfy the note and mortgage.

72. The loan modification agreements were signed under the duress associated with the risk of unmanageable payments and foreclosure.

73. The loan modification agreements were signed based on unfair and/or deceptive information about the consequences of modification under the terms imposed.

74. On May 29, 2009, Plaintiff sent a demand for relief to Countrywide pursuant to G.L. c. 93A, § 9.

75. Countrywide did not make a timely written tender of settlement.

CLASS ALLEGATIONS

76. Plaintiff brings this action on behalf of himself and a class of all other persons similarly situated, pursuant to Fed. R. Civ. P. 23.

77. The Class is represented by Mr. Hart and consists of all Massachusetts residents who entered into a Payment Option Arm mortgage loan with Countrywide on or after four years prior to the date of this Complaint.

78. There are questions of law and fact common to all members of the class, which questions predominate over any question affecting only individual class members.

The principal common issues are:

- a. whether the structure of Countrywide's POAs is unfair and violative of G.L. 93A, § 2;
- b. whether the loan notes in POA transactions are unfair and/or deceptive within the meaning of G.L. 93A, § 2;

- c. whether the descriptions Countrywide provides of various payment options are unfair or deceptive within the meaning of G.L. 93A, §2;
- d. whether the loan contracts at issue contain illegal and unenforceable terms;
- e. whether Countrywide's use of POAs was designed to result in profitable fees and costs and/or payments of interest on interest through repayment plans and refinancing arrangements resulting from duress; and
- f. whether Countrywide was grossly negligent in its underwriting practices for POAs.

79. The only individual questions concern the identification of members of each class and the computation of relief to be afforded each class member and can be determined by a ministerial examination of the relevant account records. Notice can be provided to the class by various means of communication, as identified in the Defendant's computerized databases of customers.

80. Plaintiff's claims are typical of the claims of class members. All are based on the same legal and remedial theories.

81. Plaintiff will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. He is similarly situated with, and has suffered similar injuries as, the members of the class he seeks to represent. Plaintiff has retained counsel experienced in handling class action suits involving unfair business practices and consumer law. Neither the named Plaintiff nor his counsel have any interest that might cause them not to vigorously pursue this action.

82. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, in that:
- a. the losses suffered by the class members are such that prosecution of individual actions is impractical or economically unfeasible;
 - b. by contrast, the illegal profits obtained by the Defendant as a result of its unlawful practices are substantial;
 - c. the form of proof required is such that prosecution of individual actions is impractical or economically infeasible;
 - d. in the absence of the class action device, Plaintiff and Class Members would be left without a remedy for the wrongful acts alleged, and the Defendant would be unjustly enriched;
 - e. the prosecution of separate lawsuits by individual members of the class would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for the Defendant, making concentration of the litigation concerning this matter in this Court desirable;
 - f. the claims of the representative Plaintiff are typical of the claims of the class; and
 - g. no unusual difficulties are likely to be encountered in the management of this action as a class action.

83. The class is so numerous as to make it impracticable to join all members of the class. Based upon the investigation of counsel, the number of class members is estimated to be in excess of 300 persons.

COUNT I: UNFAIRNESS AND DECEPTION (M.G.L. c. 93A, § 9)

84. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

85. In its transactions with Plaintiff and each member of the class, Countrywide used or employed methods, acts and practices that were unfair, deceptive, and/or unconscionable as described herein.

86. Such methods, acts and practices include, without limitation:

- a. Making loans which included unfair, deceptive, and/or unconscionable terms as described above;
- b. Making loans involving interest rate and payment terms that Countrywide knew or should have known would be incomprehensible to an average consumer;
- c. Making loans involving interest rate and payment terms that Countrywide knew or should have known would deceive customers about the cost of the loan;
- d. Making loans involving interest rate and payment terms that Countrywide knew or should have known would obscure the true nature and terms of the transactions including the transactions' long-term affordability;
- e. Failing to provide essential information about the transaction to borrowers in comprehensible form;
- f. Sending account statements and/or other correspondence to borrowers that Countrywide knew or should have known would be incomprehensible to an average consumer;
- g. Sending account statements and/or other correspondence to borrowers that Countrywide knew or should have known would deceive customers about the cost of the loan;
- h. Providing compensation to loan brokers, loan officers, underwriters and others designed to incentivize them to make and/or approve the loan on unfair and deceptive terms;

- i. Making loans structured in a manner designed to disguise the true advantages of the transaction to Countrywide and to hide the true disadvantages of the transaction to borrowers, including without limitation terms that would capitalize interest obligations;
- j. Acting in a manner that is unconscionable, including without limitation, imposing unconscionable terms, particularly in light of Countrywide's superior knowledge of the mortgage loan terms and in light of the borrowers' relative lack of experience with such terms;
- k. Making loans secured by borrowers' principal residences that Countrywide knew or should have known could not be paid by borrowers over the long-term from their income and/or other liquid assets;
- l. Making loans secured by borrowers' principal residences when Countrywide knew or should have known that borrowers could not make anticipated scheduled payments;
- m. Making loans to borrowers that Countrywide knew or should have known would result in default, delinquency, forced sale, and/or foreclosure.
- n. Sending deceptive notices about payment terms designed to result in profitable negative amortization;
- o. Failing to make clear to borrowers that "interest only" payments would not cover the amount of monthly interest coming due;
- p. Offering refinancing and restructuring opportunities to borrowers designed to capitalize interest then due in order to obtain payments of compound interest;
- q. Restructuring loans in a manner that would lead to further problems with affordability for borrowers as well as fees and profitable capitalized interest;
- r. Making loans that are structurally unfair;
- s. Offering and accepting loan modification agreements that Countrywide knew or should have known resulted from duress;
- t. Failing to act in compliance with Massachusetts law; and/or
- u. Failing to act in good faith or to deal fairly with borrowers.

87. The actions at issue were in the conduct of trade or commerce in the Commonwealth within the meaning of G. L. c. 93A, § 2.

88. The actions at issue were willful or knowing within the meaning of M.G.L. c. 93A, §9.

89. The Plaintiff and each member of the class were injured and suffered damages by virtue of the conduct at issue.

COUNT II: NEGLIGENT OR IMPROPER UNDERWRITING

90. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

91. Countrywide owed Mr. Hart and other similarly situated borrowers a duty of care to underwrite the loan by considering whether the loan could be paid off by amortized payments. Countrywide's underwriting of the loan was negligent and/or grossly negligent and resulted in damage to Mr. Hart and similarly situated homeowners.

92. Countrywide's underwriting of the loan was in violation of the legal standard required by 209 C.M.R. § 53.05.

93. Countrywide's underwriting was the actual and proximate cause of damage to Mr. Hart and other POA borrowers because the underwriting led to loans that could only result in compounded fees, hidden profits to Countrywide and default and/or foreclosure.

94. Mr. Hart and each class member has suffered damage.

95. The damage resulting from Countrywide's negligence was foreseeable in light of information obtained by Countrywide's possession for its underwriting process

including, without limitation, credit reports, property appraisals, income information and information about other debts.

COUNT III: UNCONSCIONABILITY AND/OR ILLEGALITY

96. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

97. The terms of the loan note described herein are unconscionable and unenforceable.

98. Said contract terms are void or voidable as a matter of public policy.

99. The Plaintiff and each member of the class are entitled to relief from unconscionable and/or illegal contract terms including but not limited to cancellation and/or refund of compound interest payments.

COUNT IV: ILLEGAL CONTRACT TERMS

100. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

101. Countrywide engaged in a pattern or practice of inducing its customers to enter contracts with illegal terms which go to the heart of the contract including, without limitation, illegal provisions for accrual and collection of compound interest; and

102. The Plaintiff and each member of the class are entitled to relief from illegal contract terms, including damages, reformation of debt, cancellation and/or restitution.

COUNT V: UNJUST ENRICHMENT

103. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

104. Countrywide has been unjustly enriched at the expense of the Plaintiff and each class member.

105. The Plaintiff and each class member are entitled to equitable remedies for unjust enrichment including, without limitation, restitution and reformation of contract.

COUNT VI: DECLARATORY JUDGMENT

106. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

107. Countrywide's actions have caused the Plaintiff and class members actual prejudice. They ask this court to enter declaratory relief concerning the propriety of Defendant's practices.

REQUESTED RELIEF

WHEREFORE, the Plaintiff requests that the Court grant:

- a. An order certifying the class as aforesaid;
- b. Actual, statutory and multiple damages for himself and the class as permitted by M.G.L. 93, § 9 and other applicable law;
- c. An injunction to prevent foreclosures against property of the Plaintiff and the class until the claims in this Complaint are resolved;
- d. Injunctive relief and other remedies for illegal contract terms;
- e. Other equitable relief as permitted by law;
- f. Attorneys' fees and costs as permitted by M.G.L. 93, § 9 and other applicable law;
- g. Damages and equitable relief for unconscionable loan terms; and
- h. Any other relief the court deems proper.

JURY DEMAND

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

Respectfully Submitted,
Jerome Hart
By his attorneys,

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Dated: July 13, 2009