

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARROL and GREGORY CLARK, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

COUNTRYWIDE HOME LOANS, INC.;
COUNTRYWIDE BANK N.A.; LANDSAFE
APPRAISAL SERVICES; and LANDSAFE,
INC.,

Defendants.

No. C09-0036-MJP

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED



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1 Plaintiffs, Carrol and Gregory Clark, by their attorneys, on behalf of themselves and all
2 others similarly situated, demand a trial by jury, and complain as follows:

3 **I. INTRODUCTION**

4 1. This action arises from a scheme (“The Inflated Appraisal Fee Scheme” or
5 “Scheme”) between Countrywide and LandSafe to profit from: (1) imposing marked-up
6 appraisal fees on Countrywide borrowers; and (2) controlling the appraisal process and results.
7 The Scheme works as follows:

- 8 i. Countrywide is the largest lender in the United States for home loans. On many
9 of the loans it underwrites, Countrywide requires the borrower to have the
10 property appraised by its subsidiary, LandSafe.
- 11 ii. Countrywide benefits from requiring borrowers to use LandSafe both through the
12 profits rolled up to Countrywide’s and LandSafe’s common parent, and because
13 Countrywide gains control of the appraisal process and is able to influence the
14 appraised values assigned to properties on which it is lending. If appraisers refuse
15 to adhere to Countrywide’s demands with respect to an appraisal, the appraiser is
16 blacklisted from working on any Countrywide loans.
- 17 iii. LandSafe hires an outside appraiser to perform the actual appraisal.
- 18 iv. Relying on its market power derived from its parent Countrywide, LandSafe
19 demands and appraisers agree to undertake appraisals and to charge LandSafe an
20 amount far under the prevailing market rate for appraisals.
- 21 v. At the closing, the HUD-1 settlement statement presented to the borrower lists as
22 a charge an appraisal fee paid to LandSafe Appraisal that is vastly in excess of the
23 charge incurred by LandSafe, in some cases twice as much. There is no
24 disclosure of the fact that the actual cost of the appraisal is far less and that the
25 bulk of the fee is simply a markup by LandSafe – *a fee for no services rendered*.
- 26

1 vi. Appraisers are instructed by LandSafe and/or Countrywide to not include in their
2 appraisal document an invoice setting forth the fee they are paid for the appraisal.
3 The purpose of this instruction is to conceal the Scheme by preventing consumers
4 from learning the true cost to Landsafe of the third-party appraisal.

5 2. Due to Countrywide's market power and the high volume of loans it underwrites,
6 tens of thousands if not hundreds of thousands of borrowers have been victims of this Scheme.
7 If one assumes 100,000 occurrences per year with an inflated fee of \$200 per occurrence, this
8 netted Countrywide/LandSafe an additional \$20 million per year. Over time, this netted
9 Defendants over a hundred million dollars in phony unearned fees.

10 3. The Scheme works because of: (1) Countrywide's insistence that LandSafe be the
11 appraisal firm that conducts the appraisal on the loan; (2) the secret agreement between
12 Countrywide and LandSafe to mark up the actual cost of the appraisal and to have the actual
13 appraisal done by a third party at a fraction of the cost listed on HUD-1; and (3) concealment
14 from consumers of the appraiser's invoice to LandSafe. If Countrywide did not insist on
15 LandSafe's exclusivity, an independent appraiser would charge Countrywide the actual cost of
16 the appraisal and Countrywide, through its subsidiary LandSafe, would be unable to skim off
17 each appraisal hundreds of dollars for no services rendered.

18 4. Plaintiffs and putative Class members are harmed from the Scheme: (1) because
19 they end up paying both the actual cost of their appraisal – the fee the appraiser charged to
20 LandSafe – plus the mark-up for no services rendered tacked on by LandSafe; and (2) because
21 Countrywide, through LandSafe, influences the result of the appraisals so that Plaintiffs and
22 Class members do not get the benefit they pay for – an appraisal that accurately reflects the value
23 of the property. Countrywide and LandSafe benefit from the Scheme through the increase in
24 appraisal business steered to LandSafe and the ill-gotten gains rolled up to both companies'
25 parent corporation, Countrywide Financial. Through the Scheme, Countrywide and LandSafe
26 violate the federal Racketeering Influenced and Corrupt Practice Act, the Real Estate Settlement

1 Procedures Act (“RESPA”) and state law. In addition, Countrywide, when acting as the
 2 mortgage broker for Class members’ transactions, violates its fiduciary duty to its customers by
 3 earning secret profits on appraisals for itself and its subsidiary, LandSafe.

4 **II. JURISDICTION AND VENUE**

5 5. This Court has subject-matter jurisdiction over this class action pursuant to the
 6 Class Action Fairness Act of 2005, which confers federal jurisdiction over class actions where,
 7 as here, “any member of a class of plaintiffs is a citizen of a State different from any
 8 Defendants” and the aggregated amount in controversy exceeds five million dollars
 9 (\$5,000,000). *See* 28 U.S.C. §§ 1332(d)(2) and (6). This Court has personal jurisdiction over
 10 the parties because Plaintiffs submit to the jurisdiction of the Court and Defendants
 11 systematically and continually conduct business throughout the State of Washington.

12 6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c). Many of
 13 the acts and transactions giving rise to the violations of law complained of herein occurred in this
 14 District.

15 7. Much of Defendants’ activities and operations have been performed in this
 16 District, and Defendants maintain many offices in this District, including at the following
 17 locations:

18 810 Alabama Street Bellingham, WA 98225	221 A Street, Ste. #4 Eastsound, WA 98245	11555 SE 8th St., Ste. 101 Bellevue, WA 98004
19 200 112th Ave. NE Suite 210 Bellevue, WA 98004	Bellevue Place 10500 NE 8th St., Ste. 1760 Bellevue, WA 98004	2210 Riverside Drive Suites 110 & 120 Mt. Vernon, WA 98273
20 1 Front Street, Ste. E-2 Friday Harbor, WA 98250	1645 140th Ave. NE, Ste. A3 Bellevue, WA 98005	1200 Third Ave. Suite 100 Seattle, WA 98101
21 3400 188th St., Suite 101 Lynnwood, WA 98037	2103 NE 129th St., Suite 201 Vancouver, WA 98686	8525 120th Ave. NE Kirkland, WA 98275

1 Eastlake Center
2 2825 Eastlake Ave. E
3 Suite 305
4 Seattle, WA 98102

Westgate North Shopping
Center
2631 N Pearl St.
Tacoma, WA 98407

Westwood Village
2515 SW Trenton Street
Suite 103
Seattle, WA 98126

5 Greentree Plaza
6 305 SE Everett Mall Wy #21
7 Everett, WA 98208

5500 Olympic Drive
Suite H-103
Gig Harbor, WA 98335

Lakewood Pavilion
5700 100th St. SW, Ste. 550
Lakewood, WA 98499

8 Rainier Professional Plaza
9 18209 ST Hwy 410 E, #302
10 Bonney Lake, WA 98391

32001 32nd Avenue S
Suite 110
Federal Way, WA 98001

Cooper Point Pavilion
1520 Cooper Pt Rd SW #350
Olympia, WA 98502

11 The Clocktower at Town
12 Center
13 15021 Main St., Ste. C
14 Mill Creek, WA 98012

Vancouver Center North
Office Tower
700 Washington St. Ste. 201
Vancouver, WA 98660

Triangle Landing
1208 Washington Way #140,
150
Longview, WA 98632

15 350 North East 4th Ave.
16 Camas, WA 98607

The Western Creek Building
5001 25th Ave. NE, Ste. 201
Seattle, WA 98105

17 **III. PARTIES**

18 **A. Plaintiffs**

19 8. Plaintiffs Carrol and Gregory Clark (the “Clarks”) are a married couple residing
20 within the State of Washington. During the Class Period, the Clarks refinanced their home
21 located at 17314 38th Place South in Seattle, Washington.

22 **B. Defendants**

23 9. Defendant Countrywide Bank, N.A. (“Countrywide Bank”) is a national banking
24 association headquartered at 1199 North Fairfax Street, Suite 500, Alexandria, Virginia 22314.
25 Countrywide Bank is a subsidiary of Countrywide Financial and funds loans for Countrywide
26 Financial’s mortgage banking segment.

10. Defendant Countrywide Home Loans, Inc. (“Countrywide Home Loans”) is a
New York corporation headquartered at 4500 Park Granada Blvd., Calabasas, California 91302.
Countrywide Home Loans is a subsidiary of Countrywide Financial and engages in the business
of brokering and originating mortgage loans.

11. Collectively, these entities are referred to as “Countrywide.”



1 18. In addition to over 15,000 field salespersons pursuing customer leads and
2 originating home loans, Countrywide has sourced loans through a network of over 30,000
3 contracted mortgage brokers.

4 19. According to its 2007 Form 10-K annual report, Countrywide's retail channel
5 consisted of its Consumer Markets Division and the Full Spectrum Lending Division. The
6 Company's Consumer Markets Division ("CMD") generally has originated loans through the
7 Company's joint ventures. The Company has reached customers through call centers, the
8 Internet, and retail branches.

9 20. The Company's Full Spectrum Lending Division has focused on new customer
10 acquisitions through Internet, direct mail and mass media marketing channels and has specialized
11 in refinance and home equity products. Countrywide's Full Spectrum Lending Division has been
12 accused of predatory lending practices by multiple state attorneys general.¹

13 21. Countrywide's wholesale lending channel has underwritten and funded mortgage
14 loans sourced by mortgage loan brokers and other financial intermediaries.

15 22. In 2004, Countrywide became the largest home mortgage lender in the United
16 States, built on years of primarily offering customary fixed-rate mortgage loans to borrowers.
17 By that time, Countrywide, led by its CEO and founder Angelo Mozilo, was intent on elbowing
18 out competing lenders that tried to horn in on Countrywide's market share by originating more
19

20
21 ¹ See, e.g., http://ag.ca.gov/cms_attachments/press/pdfs/n1582_draft_cwide_complaint2.pdf
(California); [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7G5G7L/\\$file/CountrywideComplaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7G5G7L/$file/CountrywideComplaint.pdf) (Florida);
22 http://www.ag.state.oh.us/press/08/12/pr081230_c.pdf (Ohio);
23 http://www.illinoisattorneygeneral.gov/consumers/countrywide_final_judgement.pdf (Illinois);
24 The State of Illinois, in fact, banned Countrywide as a whole from originating loans in that state
25 by refusing to renew its license. The Illinois Department of Financial and Professional
26 Regulation concluded: "By no reasonable estimation does Countrywide 'command the
confidence of the community.' See 205 ILCS § 635/2-2(6). Therefore, it is impossible for the
Department to make 'positive findings' about the Company sufficient to warrant the
unconditional renewal of its license. See *id.*" (Complete text found at:
<http://www.idfpr.com/NEWSRLS/10162008HCountrywideHomeLoansRelease.asp>).

1 exotic mortgage loans. As a result, Countrywide’s mortgage portfolio – and lending standards –
2 changed dramatically.

3 23. From mid-2003 onward, Countrywide continually loosened its underwriting
4 guidelines to the point of nearly abandoning them by 2006. Countrywide’s highest-level
5 managers authored official documents – underwriting matrices and guidelines – such as those for
6 Countrywide’s Corresponding Lending Division (“CLD”) that memorialized Countrywide’s
7 systematically lowered lending standards. Numerous Confidential Witnesses (“CWs”) from
8 different levels and involved in different aspects of the Company corroborate the nature of
9 Countrywide’s strategy shift. Chairman and CEO Angelo Mozilo’s stated goal was to gain 30%
10 of the national market share for mortgage originations. To do so, he and other high-ranking
11 executives at Countrywide ordered many of the lowered standards.

12 24. Underwriting standards changed so much during the Class Period that, in
13 December 2007, Countrywide told reporters that billions of dollars of loans in 2005 and 2006
14 could not have been made under “new” guidelines.

15 25. Whereas in 2003, adjustable rate mortgages (“ARMs”) made up 18 percent of
16 Countrywide’s portfolio, by 2004, the number of ARM loans increased dramatically, to 49
17 percent of all loans. Subprime loans rose from 4.6 percent to 11 percent of all loans during the
18 same period. By offering these loans, and other non-traditional loans like interest-only loans and
19 reduced documentation, Countrywide was not only able to grow its marketshare, it also earned a
20 significant profit off of the higher fees that borrowers paid and the higher prices investors were
21 willing to pay for these loans as securitized assets on the secondary market.

22 **1. The Countrywide Brokerage Network**

23 26. Countrywide also has made home mortgage loans arranged by its network of
24 mortgage brokers. Brokers became authorized to become an approved Countrywide broker by
25 submitting a Mortgage Broker Application and entering into a “Wholesale Broker Agreement”
26 with Countrywide. These contracted brokers were provided access to Countrywide’s CLUES™

1 computer system, which was designed to allow the mortgage broker to submit loan information
2 and receive a qualified underwriting decision within minutes. The CLUES™ computer system
3 purportedly automated the process of placing loans, and was pre-programmed to push as many
4 borrowers as possible into risky – and more profitable – subprime loans, irrespective of
5 reasonable objective criteria that would indicate the appropriateness of such loans for a particular
6 borrower.

7 27. Countrywide has incentivized its brokers to push subprime loans by offering
8 larger commissions on subprime loans than on prime loans, and by offering special perks, such
9 as all-expense-paid trips to Las Vegas, to brokers who successfully pushed a large number of
10 subprime loans onto borrowers. Countrywide’s mortgage brokers have induced borrowers to
11 enter into loans via telemarketing and other sales efforts that have been carefully directed by
12 Countrywide. Those loans are made in reliance on Countrywide’s credit-granting policies and
13 with the participation of Countrywide.

14 28. Countrywide has needed its network of authorized brokers to accomplish its
15 scheme, as Countrywide could not have marshaled its significant market power without a
16 network of brokers across the country pushing borrowers into as many loans as they could. For
17 instance, a single broker could never have generated the volume of loans needed to bundle the
18 loans into securities, which is where the real money lay for Countrywide. Countrywide has
19 needed thousands of brokers to work with a single goal in mind – to make as many loans as
20 possible to bundle and sell on the secondary market, irrespective of their suitability for the
21 borrowers.

22 29. This industry change has transformed incentives in such a manner that lenders
23 have often been less vigilant in accepting risky loans since the risk is quickly transferred to the
24 purchasers of the loans. Historically, lenders had great interest in securing an accurate appraisal
25 of a property because the lender itself held the loans it originated and the appraisal dictated the
26 amount of a loan that could be secured by a given property. However, with the vast majority of



1 loans being sold into the secondary market, the lender's interest in ensuring the accuracy of the
2 appraisal backing the loan is diminished, if not eliminated altogether. And because lenders'
3 profits are determined by the quantity of loans that they successfully close, and not the quality of
4 those loans, the lender has an incentive to pressure appraisers to reach values that will allow the
5 loan to close – without regard to whether the appraisal accurately reflects the subject property's
6 actual value.

7 **2. The National Appraisal Market**

8 30. With the real estate boom of 2000-2006, the number of transactions in real estate
9 (purchases and refinances) increased significantly. To service the drastic increase in
10 transactions, the number of real estate-related service providers also grew tremendously. For
11 example, the number of Realtors in the United States grew from 750,000 in 2000 to over
12 1.3 million in 2006.² Likewise, Countrywide's fleet of corporate and affiliated mortgage brokers
13 grew as did the number of property appraisers.

14 31. With the growing number of appraisers and increased competition in the appraisal
15 marketplace, the environment was ripe for a market force such as Countrywide to exert its will
16 on appraisers, forcing "independent" appraisers to lower the amounts they charged on
17 Countrywide loans, while all the while Countrywide maintained market rates to its borrowers
18 and kept the excess, all for no additional services rendered.

19 32. Countrywide created LandSafe and required Plaintiffs and Class members to use
20 LandSafe both to reap the significant profits derived from the appraisals on Countrywide loans
21 and to control the appraisal process and guarantee that Countrywide could close whatever loans
22 it wanted to, irrespective of the actual market values of the properties on which it was lending.

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² <http://bubblemeter.blogspot.com/2008/04/realtors-leaving-nar-at-fast-clip.html>.

1 **B. Countrywide Corrupts the Appraisal System**

2 33. According to Mark Zachary, a former Regional Vice President of Countrywide's
3 joint venture with KB Home, Countrywide Mortgage Ventures, LLC, and the Company blatantly
4 ignored its underwriting policies and procedures. In September 2006, Mr. Zachary informed
5 Countrywide executives that there was a problem with appraisals performed on KB Home
6 properties being purchased with Countrywide's loans. KB is one of the largest homebuilders in
7 the nation. According to Mr. Zachary, Countrywide executives knew that appraisers were
8 strongly encouraged to inflate appraisal values to allow homeowners to "roll up" all closing
9 costs. According to Mr. Zachary, this practice resulted in borrowers being "duped" as to the
10 values of their homes. This also made loans more risky because when values were falsely
11 increased, loan-to-value ratios calculated with these phony numbers were necessarily incorrect.

12 34. Mr. Zachary also believed this practice misled investors who later purchased these
13 loans through securitizations because these investors were not made aware that the actual home
14 values were less than the inflated appraised values. According to Mr. Zachary, the inflated
15 appraised values put buyers "upside down" on their homes immediately after purchasing them;
16 that is, the borrowers immediately owed more than their homes were worth. Thus, the buyers
17 were set up to be more susceptible to defaulting on their loans.

18 35. Mr. Zachary brought his concerns to executives of the Countrywide/KB Homes
19 joint venture, as well as Countrywide executives in Houston, the Company's Employee Relations
20 Department and the Company's Senior Risk Management Executives.

21 36. According to Mr. Zachary, the Company performed an audit investigating these
22 matters in January 2007, and the findings of the audit corroborated his story. According to
23 Mr. Zachary, the findings of this audit were brought to the attention of Countrywide executives.

24 37. On information and belief, the inflated appraisal practice was not limited to KB
25 Homes but was a common feature of many loans. As such, it was essential to Defendants'
26 Scheme that there be a pool of appraisers who would play ball – *i.e.*, inflate their appraisals.

1 38. The foregoing allegations provide background into the corporate mentality of
2 Countrywide and LandSafe.

3 39. In addition to the above wrongful acts, Countrywide and LandSafe have worked
4 together to abuse the appraisal process for wrongful purposes and to benefit Countrywide and
5 LandSafe. The following allegations provide additional background.

6 **1. The Blacklisting of Honest Appraisers**

7 40. Part of Countrywide’s Scheme to increase market share and to make many loans
8 as possible involved the corruption of the appraisal process. Countrywide needed appraisals that
9 supported the loans it wished to make, irrespective of the actual values of the properties being
10 appraised.

11 41. To accomplish this objective, Countrywide, directly and in conjunction with
12 LandSafe, has engaged in a pattern and practice of pressuring appraisers to write an appraisal
13 designed to have the loan underwritten even if the appraisal violates USPAP.³ In other words,
14 Countrywide is more interested in having the property pass appraisal than it is in determining
15 whether an appraisal is fair and accurate and prepared in accordance with industry standards. If
16 an appraiser does not “play ball” and produce a report affirming the property value or parameters
17 that Countrywide expects or wants, it places the appraiser on its “Field Review List,” or some
18 other list of exclusion (“Exclusion List”). A complete description of this process is detailed in
19 the Amended Class Action Complaint in *Capitol West Appraisals v. Countrywide Financial*
20 *Corp., et al.*, No. 2.08 cv 01520 (W.D. Wash.) (Dkt. No. 16), pending before Judge Jones.

21 42. The Field Review List or Exclusion List is a Countrywide database containing the
22 names of appraisers whose reports Countrywide will not accept unless the mortgage broker also
23 submits a report from a second appraiser. The practical effect of being placed on the Field
24 Review List is to be “blacklisted” – no mortgage broker will hire an appraiser appearing on the
25

26 ³ “USPAP” stands for Uniform Standard of Professional Appraisal Practice.

1 Field Review List to review a property sale in which Countrywide will be the lender because the
2 broker simply will not pay to have two appraisals done. Instead, the broker will simply retain
3 another appraiser who is not on the Field Review List.

4 43. When it is performing appraisals on Countrywide loans, LandSafe follows
5 Countrywide's will. It is instructed as to what Countrywide wants to accomplish with its
6 blacklist and facilitates Countrywide's Scheme by attacking the appraisals of persons on the list
7 and undercutting valuations, whether warranted or not.

8 44. Capitol West, an appraisal firm in Boise, has been subjected to the Countrywide
9 Scheme. Countrywide loan officers pressured Capitol West to increase valuations or vary from
10 the USPAP on appraisals that Capitol West provided for three separate loan transactions.

11 45. Capitol West refused to succumb to Countrywide's pressure to compromise its
12 integrity and independence and refused to commit fraud and violate federal and state laws. Its
13 reward? Countrywide placed Capitol West on the Field Review List. Capitol West learned this
14 from a Countrywide employee.

15 46. Capitol West does not stand alone. The following are examples of experiences of
16 other appraisers, each of whom were appraisers who did business with Countrywide or LandSafe
17 and were blacklisted by Countrywide and/or LandSafe:

18 (a) Confidential Witness 1 ("CW 1") went from a Première
19 appraiser after completing about 1,400 appraisals for
20 LandSafe/Countrywide to the Review/Black List. There were
21 about 4 appraisals that did not make value and were audited by
22 LandSafe Quality Control Board saying they were excessive. I
23 tried to communicate with the review appraiser with no success.
24 However during the conversation with the review appraiser on one
25 of the appraisals under review, he stated my appraisal was not
26 much different than the field review and couldn't understand why
it was still under review. When the appraisal did not make the
value they would call many times and ask if there was anyway to
up the value as they were saying that they weren't applying any
pressure but could I please re-look at the comps and try to up the
value.

(b) Confidential Witness 2 ("CW 2") has been a Countrywide
"preferred" appraiser for many years and was doing a considerable

1 amount of work for LandSafe/Countrywide until 12-18 months
2 ago. Then the work pretty much stopped coming in. I am fully
3 aware that Countrywide/LandSafe is still ordering work from other
4 appraisers in this area who aren't on the "preferred" list, who have
many less years of experience than I, and are known for "hitting
the number the lender wants" without pointing out any negative
things.

5 So yes, after being an appraiser for 32+ years, I am disheartened by
6 Countrywide's dishonest business practices. Because of their size
7 and appraisal management company, Countrywide has
8 purposefully chosen to make loans using poor quality appraisals
completed by appraisers who give them what they want to hear.
And I believe they used their in-house polling system to identify
the specific appraisers that would – and would not – get work.

9 **2. LandSafe Also Blacklists or Excludes Honest Appraisers**

10 47. LandSafe also created its own "blacklist" or "Exclusion List" that applied to work
11 on Countrywide loans. An appraiser from Florida, Confidential Witness 3 ("CW 3"), describes
12 his experience with LandSafe as follows:

13 I was "black listed" from Countrywide because I was unwilling to
14 comply with their underwriting guidelines which would have
15 caused me to present appraisals with misleading and non-credible
16 results. I have been doing appraisals for Countrywide for Decades,
and was the VERY FIRST EDI approved LandSafe appraiser in
Florida in the early '90s.

17 According to local Countrywide Mortgage offices, I was deemed
18 "uncooperative" by LandSafe, and was blacklisted. The local
branches protested, to no avail.

19 This has devastated my business, as nearly all local mortgage
20 brokers broker to Countrywide. If they continue to use me, a
mandatory review appraisal is required at an additional cost to the
broker of \$350! (though LandSafe only pays the appraiser \$150!!).

21 I was informed of my removal, after a review of 7 appraisals I had
22 completed (out of about 50 in a several month period). Oddly
23 enough, each of the appraisals reviewed came in below sale price,
or below LandSafe's "target" value (what they say is a USPAP
legal "qualifying value"!!!)

24 Lastly, I attempted to report this to a supposedly separate
25 "Appraiser Independence Hotline" at LandSafe, only to have the
26 same individual who reviewed the appraisals answer the phone!
How is that for appraiser independence!

1 48. Another example comes from Confidential Witness 4 (“CW 4”):

2 I was asked to reconsider appraisals that had been completed. A
3 LandSafe representative would call and indicate that based on
4 other “sales” that the value should be changed. The “sales” turned
5 out to be properties in an AVM (Automated Valuation Model).
6 These were not actual closed sales but were properties which the
7 AVM applied to them. When I asked them to provide these
8 “sales” they would not.

9 **C. The Inflated Appraisal Fee Scheme**

10 49. Not content to increase profits solely from the widespread abuse of good lending
11 practices, and confident in their market power to force their will upon most appraisers,
12 Countrywide and LandSafe set out to use their combined market power to illegally squeeze
13 additional monies out of home buyers, and have implemented the Inflated Appraisal Fee
14 Scheme.

15 50. Pursuant to the Scheme, Countrywide sends to prospective borrowers a Good
16 Faith Estimate (“GFE”) detailing an offered loan. In the GFE, Countrywide tells the borrower
17 that it requires “an appraisal from an appraiser we select from our approved list.” Countrywide
18 then designates the specified appraiser as LandSafe.

19 51. For most real estate settlement service providers, RESPA forbids one company
20 from requiring the use of another company as this would inherently invite pricing abuse by the
21 required provider to the benefit of itself and the requiring provider – all at the expense of the
22 home buyer. However, RESPA has an exception for lenders, such as Countrywide, to permit
23 them to require a specific appraiser, ostensibly because the purpose of the appraisal is supposed
24 to be to protect the lender and thus the lender should be incentivized to get a fair and accurate
25 appraisal. Yet, as set forth above, Countrywide’s interest is closing loans irrespective of actual
26 value of the secured property. So for Countrywide, the required use exception in RESPA
became merely a loophole in the regulation through which it could squeeze extra profits from
unknowing and unsuspecting home buyers.

1 52. As part of the Scheme, LandSafe then contacts independent appraisers to perform
2 the appraisal and insists that the appraisals be performed at a very low rate.

3 53. Due to its economic clout, and as part of the Scheme, LandSafe informs
4 appraisers that if they wish to perform appraisals for Countrywide loans, they must agree to a
5 reduced fee that is far below the market rates that the appraiser had been charging. If the
6 appraiser does not agree, he or she is removed from the approved appraiser list and/or placed on
7 an Exclusionary List. In addition, appraisers who have already been placed on an Exclusionary
8 List are told that they can only be removed from the Exclusionary List if they agree to become a
9 LandSafe-approved appraiser, which in turn requires them to perform appraisals for LandSafe
10 and Countrywide at much lower than market rates.

11 54. When the loan is closed, however, LandSafe does not pass on the reduced
12 appraisal fees to the home buyer. Instead, it inflates the appraisal fee and represents to borrowers
13 that the appraisal cost is far in excess of the actual cost of the appraisal. There is no disclosure of
14 this markup to the borrower and LandSafe performs no additional appraisal services beyond
15 merely forwarding the appraisal to Countrywide or the escrow provider for the transaction.

16 55. Countrywide and LandSafe also implement and operate the Scheme through the
17 “Premier” appraiser program, an appraiser program dedicated to supporting Countrywide’s retail
18 branch business. Countrywide sends appraisers an offer to become a member and thus eligible
19 for Countrywide appraisal orders if the appraiser will accept a reduced fee, “a mutually
20 beneficial fee agreement.”

21 56. The following is a typical offer from Countrywide that is co-signed by LandSafe:

22 Dear Business Partner,

23 We want to again welcome you as a member of the new Premier
24 appraiser network dedicated to supporting Countrywide’s retail
25 branch business. Your relationship is critical to Countrywide and
26 we value retaining you as a Premier appraiser. However, Premier
membership requires each appraiser to agree to a mutually
beneficial fee arrangement. We need to reach such an agreement

1 with you in the next 2 weeks for you to remain a Premier appraiser
2 eligible for Countrywide’s appraisal orders.

3 Let us reiterate the benefits of Premier membership:

- 4 • The potential for increased volume, now that you
are part of a selected group of appraisers
- 5 • Access to the other Countrywide companies’
6 appraisal orders
- 7 • Expedited payment of your invoices
- 8 • Access to AppraiserLink which allows you to
manage your orders on line 24 hours a day
- 9 • Expert technical support
- 10 • Discounted EDI software
- 11 • Access to centralized and regional senior review
12 appraisers who provide support and guidance
related to USPAP, FNMA new forms, underwriting
13 and technical issues
- 14 • Access to LandSafe sponsored continuing education
sessions presented nationwide.

15 One of LandSafe’s Business Partner Relationship Managers will
16 contact you in the next few days to reach a mutually beneficial fee
17 structure. Alternatively, you may also contact us at 800-701-9073
Option 1, and then choose Option 4. Unfortunately, if we do not
18 reach an agreement within 2 weeks of the date of this letter, you
will be removed from Premier membership and be ineligible for
Countrywide’s appraisal orders. Thanks in advance and we look
19 forward to our continued relationship.

20 Russ Smith
21 Managing Director/COO
Countrywide Consumer
Markets Division

Todd Baur
Managing Director – President/COO
LandSafe Appraisal Services, Inc.

22 57. The reduced fee structure is a key component of the offer as it is the vehicle by
23 which LandSafe can skim increased profits from borrowers.

24 58. If an appraiser fails to respond to the offer, a follow-up letter is sent which
25 threatens to cut the appraiser off if he/or she will not agree to a new fee: “I know the retail
26

1 branches who recommended you to our network are eager to know we've agreed to a fee
2 agreement." A form letter sent by Countrywide and LandSafe thus states:

3 Dear Business Partner,

4 We are writing to reiterate our desire to retain you as a select
5 member of the new Premier appraiser network designed to capture
6 Countrywide's retail branch business. I know the retail branches
7 who recommended you to our network are eager to know we've
8 agreed to a fee arrangement.

9 However, as of today we have not reached an agreement, which
10 threatens your Premier membership and exclusive access to
11 Countrywide's retail appraisal orders.

12 We encourage you to call us at 800-701-9073 Option 1, and then
13 choose Option 4 so we may finalize our fee structure agreement.
14 Unfortunately, if we have not reached an agreement by May 31,
15 2006 you will be removed from Premier and be ineligible for
16 Countrywide's appraisal orders. We hope to hear from you soon.

17 Russ Smith
18 Managing Director/COO
19 Countrywide Consumer
20 Markets Division

21 Todd Baur
22 Managing Director – President/COO
23 LandSafe Appraisal Services, Inc.

24 59. To hide the Scheme, LandSafe reminds appraisers to not create a written record of
25 the real fee:

26 **IMPORTANT REMINDER!**

Removing invoices from appraisal reports

Please be sure that you are following the Appraisal Delivery instructions on the LandSafe orders and are only delivering appraisal reports to LandSafe Appraisal Services. **Please do not include an invoice in any appraisal report being delivered to LandSafe.** It is no longer necessary to fax or transmit an invoice to LandSafe once the appraisal is completed. Our order management system automatically invoices the order for payment upon receipt of the appraisal. **Please do not send a copy of your invoice to the lender. LandSafe bills its customers directly through our management system upon delivery of the approved, completed appraisal report.**

If you have any questions or concerns, please contact your Business Partner Relations Manager at 800-701-9073, Option 1 and then Option 4.



1 60. The fee is hidden in part due to instructions from Countrywide and/or LandSafe
2 that the appraiser not send a written invoice to LandSafe and/or Countrywide.

3 61. The appraisers often don't know what the buyer is charged as evidenced below:

4 To Whom It May Concern;

5 I am an appraiser in [redacted], Colorado, and presently work for
6 RELS Valuation on a regular basis. I was reading about the
7 lawsuit, and everything that was outlined in the article is true. We
8 are forced to accept lower fees for their work, ***but we never know***
9 ***the fee the borrower is charged.*** I live in a small community, and
10 the word has been getting around about the appraisal fees-
11 unfortunately, ***we are often accused of charging those extremely***
high fees. I have never understood how we could be considered
independent fee contractors and have to agree to their lower fees to
receive work. Our firm is overjoyed that this issue is finally being
addressed, and if we can provide any other information or
opinions, please don't hesitate to contact our firm.⁴

12 62. While the exception to RESPA's required use prohibition allows Countrywide to
13 require the use of LandSafe for appraisals, under other RESPA provisions, due to the relationship
14 between Countrywide and LandSafe, Countrywide is required to provide an "Affiliated Business
15 Arrangement" ("ABA") disclosure to its customers. The ABA disclosure must note "the
16 existence of such an arrangement to the person being referred and, in connection with such
17 referral, [the customer must be] provided a written estimate of the charge or range of charges
18 generally made by the provider to which the person is referred...at or before the time of the
19 referral" 12 U.S.C. § 2607.

20 63. While some Countrywide customers are told of the affiliated relationship between
21 Countrywide and LandSafe, none know – or have any reason to suspect – that the appraisal fee
22 set forth on the HUD-1 Settlement Statement is actually far in excess of the actual charge the
23 appraiser made for his appraisal. For many borrowers, however, Countrywide fails to provide
24 the required ABA disclosures. As a result, these borrowers are not aware that LandSafe is even
25 an affiliate of Countrywide.

26 ⁴ From Confidential Witness 1 ("CW1").

1 64. As a *quid pro quo* exchange for the referral from Countrywide to LandSafe,
2 LandSafe gives Countrywide visibility into the appraisal process and substantial control over the
3 outcome of the appraisal. Countrywide loan officers directly or through LandSafe, exert control
4 and pressure over appraisers to reach the values Countrywide wishes to achieve. This benefit is
5 a “thing of value” as defined in RESPA and is utilized by Countrywide to control and maximize
6 its ability to control the mortgage lending process. Even when Countrywide makes the RESPA
7 required ABA Disclosures, it nonetheless violates RESPA’s prohibition on referral fees because
8 it gets a thing of value – *i.e.*, control of the appraisal process and outcome – beyond merely the
9 return on its ownership interest in LandSafe.

10 **D. The Clarks’ Refinanced Mortgage Transaction Was Subject to the Inflated**
11 **Appraisal Fee Scheme**

12 65. In February 2007, the Clarks refinanced the mortgage on their residence in
13 Seattle, Washington through Countrywide Home Loans, Inc.

14 66. The Clarks’ refinancing transaction was a loan for \$350,700. This loan was a
15 “federally related mortgage loan” as defined in RESPA.

16 67. An initial packet of loan disclosure documents was sent via U.S. mail by
17 Countrywide to the Clarks on or about February 9, 2007.

18 68. As part of the Scheme, Countrywide Home Loans, Inc. required the Clarks in a
19 document sent via U.S. mail in February 2007 to have their home appraised through LandSafe.

20 69. The packet of documents provided to the Clarks at the closing of their loan with
21 Countrywide referenced, but did not contain, an “ABA Disclosure” concerning the affiliated
22 business arrangement between Countrywide and LandSafe.

23 70. The Clarks’ HUD-1 Settlement statement transmitted to them via U.S. mail in
24 2007 indicates that a \$410 appraisal fee for the appraisal of their property was paid to LandSafe
25 Appraisal.
26

1 71. A copy of the appraisal of the Clarks' property was sent by Countrywide to Carrol
2 Clark, via email (interstate wires) on February 27, 2007. The appraisal indicates that it was, in
3 fact, performed by a third-party appraiser, "Sound Value." On information and belief, LandSafe
4 Appraisal paid Sound Value a fraction of the appraisal fee it collected from the Clarks and kept
5 the marked-up portion of the fee.

6 72. On information and belief, LandSafe Appraisal performed *no work* and provided
7 *no services* on the Clarks' appraisal.

8 73. On information and belief, Countrywide was able to dictate and control the
9 outcome of the Clark's appraisal through its affiliated relationship with LandSafe.

10 **E. Federal Regulation Under RESPA**

11 74. The Real Estate Settlement Procedures Act of 1974 ("RESPA") was enacted to
12 protect consumers from "unnecessarily high settlement charges caused by certain abusive
13 practices" in mortgage lending. *See* 12 U.S.C. § 2601(a).

14 75. Section eight of RESPA prohibits kickbacks and unearned fees. It provides in
15 relevant part to this Complaint as follows:

16 (a) Business Referrals. No person shall give and no person shall
17 accept any fee, kickback, or thing of value pursuant to any
18 agreement or understanding, oral or otherwise, that business
incident to or part of a real estate settlement service involving a
federally related mortgage loan shall be referred to any person.

19 (b) Splitting charges. No person shall give and no person shall
20 accept any portion, split, or percentage of any charge made or
21 received for the rendering of a real estate settlement service in
connection with a transaction involving a federally related
mortgage loan other than for services actually performed.

22 (c) Fees, salaries, compensation, or other payments. Nothing in this
23 section shall be construed as prohibiting ..., (2) the payment to any
24 person of a bona fide salary or compensation or other payment for
25 goods or facilities actually furnished or for services actually
26 performed....(4) affiliated business arrangements so long as (A) a
disclosure is made of the existence of such an arrangement to the
person being referred and, in connection with such referral, such
person is provided a written estimate of the charge or range of
charges generally made by the provider to which the person is

referred...at or before the time of the referral...; (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship...

(d) Penalties for violations...

...

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

....

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys' fees.

12 U.S.C. § 2607.

76. RESPA confers on the Secretary of the Department of Housing and Urban Development ("HUD") the authority to prescribe rules and regulations to achieve the statute's purposes. See 12 U.S.C. § 2617(a). The relevant regulation adopted by HUD is known as Regulation X and sets forth in relevant part:

§ 3500.14 Prohibition against kickbacks and unearned fees.

(a) Section 8 violation. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607) and is subject to enforcement as such under § 3500.19.

(b) No referral fees. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 3500.15(g)(1). A business entity (whether or not in an affiliate relationship) may not pay any other business entity or the employees of any other business entity for the referral of settlement service business.



1 (c) No split of charges except for actual services performed.
2 No person shall give and no person shall accept any portion, split,
3 or percentage of any charge made or received for the rendering of a
4 settlement service in connection with a transaction involving a
5 federally related mortgage loan other than for services actually
6 performed. A charge by a person for which no or nominal services
7 are performed or for which duplicative fees are charged is an
8 unearned fee and violates this section. The source of the payment
9 does not determine whether or not a service is compensable. Nor
10 may the prohibitions of this Part be avoided by creating an
11 arrangement wherein the purchaser of services splits the fee.

7 24 C.F.R. § 3500.14.

8 77. RESPA requires that a settlement service provider disclose any affiliated business
9 arrangement with any other service provider to whom business is referred. RESPA defines
10 “affiliated business arrangement” as:

11 An arrangement in which (A) a person who is in a position to refer
12 business incident to or a part of a real estate settlement service
13 involving a federally related mortgage loan, or an associate of such
14 person, has either an affiliate relationship with or a direct or
15 beneficial ownership interest of more than 1 percent in a provider
16 of settlement services; and (B) either of such persons directly or
17 indirectly refers such business to that provider or affirmatively
18 influences the selection of that provider.

15 24 C.F.R. § 3500.15(b)(1); 12 U.S.C. § 2602(7).

16 78. The Countrywide and LandSafe defendants have an affiliated business
17 arrangement as such term is defined in RESPA.

18 79. The appraisal services provided by independent appraisers and the appraisal fees
19 charged by LandSafe and Countrywide are settlement services and fees subject to RESPA
20 regulation.

21 80. Under RESPA, Countrywide can only refer settlement service to LandSafe if
22 “disclosure is made of the existence of such an arrangement to the person being referred and, in
23 connection with such referral, such person is provided a written estimate of the charge or range
24 of charges generally made by the provider to which the person is referred...at or before the time
25 of the referral.”
26

1 81. Even where an affiliated business arrangement is disclosed, RESPA only permits
2 a referral when *the only thing of value received for the referral is the referrer's normal return on*
3 *their investment in the affiliated company.* Thus, even when disclosed, Countrywide and
4 LandSafe violate RESPA when Countrywide refers appraisal business to LandSafe because
5 LandSafe gives Countrywide visibility into and control of the appraisal process, which is a thing
6 of value under RESPA.

7 **F. Governmental Actions Relating to Countrywide's Practices**

8 82. Countrywide and its officers have come under tremendous scrutiny for the
9 practices underlying the Scheme alleged in this Complaint.

10 83. On or about October 18, 2007, the U.S. Securities & Exchange Commission
11 began informally investigating the insider stock sales of Countrywide's Chief Executive Officer,
12 Angelo Mozilo. Mr. Mozilo – who was paid \$142 million last year and was the seventh highest
13 paid CEO in the United States – has sold nearly \$300 million in Countrywide shares since 2005
14 pursuant to the Company's prearranged selling program. Further, after October 2006, when
15 Mr. Mozilo put a new selling program in place at Countrywide, he raised the number of shares
16 executives could sell, from 350,000 shares in October 2006, to 580,000 shares in February 2007,
17 when shares were at a high of \$45.03 per share. These stock programs provided an incentive for
18 the Defendants, and the top officials of Countrywide, to develop and implement the scheme
19 alleged in this Complaint.

20 84. Countrywide and its officers have been sued by multiple state attorneys general
21 (the "AG Actions").

22 85. On October 6, 2008, in response to criticism from regulators and advocacy
23 groups, Countrywide announced a multi-state settlement of the AG Actions, pursuant to which it
24 would offer certain prospective relief, including a limited loan modification program.

25 86. A derivative action that was brought against Countrywide, in which it was alleged
26 that Countrywide essentially abandoned its underwriting standards, recently survived a motion to

1 dismiss. In her opinion, Judge Mariana R. Pfaelzer found a “strong inference of a Company-
2 wide culture that, at every level, emphasized increasing loan origination volume in derogation of
3 underwriting standards.” Derivative Action Order, 2008 WL 2064977, at *10. The Court noted
4 that numerous confidential witnesses, mostly former employees of Countrywide, who had been
5 quoted in the complaint presented a “striking[]” story of “rampant disregard for underwriting
6 standards” at Countrywide in the interest of pushing through as many loans as possible. *Id.* This
7 scheme of pushing quantity over quality, including a lack of any analysis of reasonable criteria to
8 ascertain the appropriateness of the loans Countrywide issued to its borrowers, was uniformly
9 concealed from borrowers, just as it was concealed from the public. *Id.* at *9 (holding that
10 plaintiffs had presented a “cogent and compelling inference” that the defendant Countrywide
11 executives had misled the public about the “rigor of Countrywide’s loan origination process, the
12 quality of its loans, and the Company’s financial situation – even as they realized that
13 *Countrywide had virtually abandoned its own loan underwriting practices*”) (emphasis added).

14 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

15 87. Plaintiffs’ RESPA claims are subject to both equitable estoppel, stemming from
16 Defendants knowingly and fraudulently concealing the facts alleged herein, and equitable tolling,
17 stemming from Plaintiffs’ inability to obtain vital information underlying their claims.
18 Defendants are estopped from relying upon a statute of limitations defense because they
19 purposefully concealed the true cost of the appraisals used in Plaintiffs’ transaction and,
20 therefore, concealed that these true costs were marked-up by LandSafe for no additional services
21 rendered. In addition, Defendants concealed their affiliation and concealed – on an ongoing
22 basis distinct from the Scheme – that they were using their market power to force appraisers to
23 charge Defendants less than Defendants were, in turn, charging to Plaintiffs for no additional
24 services rendered. Separate and apart from Defendants’ acts of concealment, any applicable
25 statutes of limitation are properly tolled because Plaintiffs did not know and could not have
26 learned the true facts underlying their claims until shortly before filing their Complaint.

1 **A. Equitable Estoppel**

2 88. Defendants are estopped by their own fraudulent concealment from asserting the
3 statute of limitations as an affirmative defense against Plaintiffs' claims.

4 89. LandSafe created the perception that it was charging appraisal fees for actual
5 services rendered. LandSafe concealed from Plaintiffs and the Class the true third-party costs of
6 the appraisal fees that it charged. LandSafe concealed that it was marking-up the appraisal fee
7 charges and charging fees for no services rendered.

8 90. For Plaintiffs and many Class members, Defendants concealed their affiliated
9 nature and failed to make the required RESPA ABA disclosures.

10 91. Where Countrywide acted as the loan broker, Plaintiffs and the Class members
11 reasonably relied on Countrywide's fiduciary and agency obligations to disclose the true nature
12 of the fees and charges that were made in connection with their loans. Plaintiffs and the Class
13 members reasonably relied on Countrywide's fiduciary and agency obligations to disclose that
14 Countrywide was requiring the use of its affiliate, LandSafe, and that LandSafe was making a
15 secret profit by forcing appraisers to charge fees to LandSafe that were far under the appraisal
16 fees that LandSafe was charging to Plaintiffs and the Class.

17 92. Defendants had actual or constructive knowledge that their conduct was
18 deceptive, in that they consciously concealed the schemes set forth herein, including their
19 affiliated nature and their receipt of unearned settlement service fees for no services rendered.
20 These practices were in derogation of RESPA and Defendants' fiduciary and agency duties.

21 93. The purposes of the statutes of limitations period are satisfied because Defendants
22 cannot claim prejudice due to a late filing where Plaintiffs filed suit promptly upon discovering
23 the facts essential to their claims, described herein, which Defendants knowingly concealed.

24 **B. Equitable Tolling**

25 94. Plaintiffs and members of the Class were or have been unable to obtain vital
26 information bearing on their claims absent any fault or lack of diligence on their part. As further

1 set forth below, Plaintiffs were not on inquiry notice of Defendants' wrongdoing and had no duty
2 to initiate an investigation of any nature because the charges on their HUD-1 Settlement
3 Statements appeared to be legitimate. Plaintiffs did not have any reason to know of the RESPA
4 violations or injuries described herein and did not and could not have known of Defendants'
5 violations of fiduciary and agency duties or unjust enrichment.

6 95. Plaintiffs were relieved of any duty to investigate because they reasonably and
7 justifiably relied on Countrywide to fulfill its fiduciary and agency duties. Even assuming there
8 had been some indication of wrongdoing (which there was not), and Plaintiffs had attempted to
9 investigate, such investigation would have been futile because it would not have uncovered the
10 true, unlawful nature of Defendants' profiteering schemes alleged herein.

11 96. Plaintiffs and members of the Class did not discover and could not have
12 discovered, despite all due diligence, that: (1) Countrywide and LandSafe were exerting their
13 market power to force appraisers to charge to LandSafe fees substantially under market rates;
14 (2) LandSafe was marking up these independent appraisal fees while performing no work toward
15 completion of the appraisals; and (3) for Plaintiffs and many Class members, that Countrywide
16 and LandSafe were affiliates. Plaintiffs' claims were thus equitably tolled until they discovered
17 the true facts underlying their claims shortly before the filing of the Complaint.

18 VI. CLASS ACTION ALLEGATIONS

19 A. Class Definition

20 97. Plaintiffs bring this action on behalf of themselves and on behalf of the following
21 proposed Class and Subclass:

22 All persons involved in a real estate transaction who paid an
23 appraisal fee for the appraisal of their property where Countrywide
was the lender and LandSafe was the required appraiser.

24 Countrywide Broker Subclass

25 All Class members for whom Countrywide acted as the loan broker
26 in their transaction and who paid an appraisal fee for the appraisal

1 of their property where Countrywide was the lender and LandSafe
2 was the required appraiser.

3 **B. Numerosity**

4 98. The Class is so numerous that joinder of all members is impracticable. Class
5 members number in the hundreds of thousands. The precise number of Class members and their
6 addresses are unknown to the Plaintiffs, but can be obtained from Defendants' records.

7 **C. Commonality**

8 99. There are questions of law or fact common to the Class, including at least the
9 following:

- 10 (a) Whether Defendants created and implemented the Scheme at issue;
- 11 (b) Whether Defendants used the wires and mails to further the Scheme;
- 12 (c) Whether Defendants violated RICO, RESPA and state law;
- 13 (d) Whether the statute of limitation for Plaintiffs' RESPA claims should be
14 properly tolled;
- 15 (e) Whether Defendants should be estopped from relying on the statute of
16 limitation for Plaintiffs' RESPA claims;
- 17 (f) Whether Defendants' wrongful conduct resulted in economic damage to
18 Plaintiffs and members of the Class, and the amount of said damages; and
- 19 (g) What relief should be imposed in favor of the Plaintiffs and the Class.

20 **D. Typicality**

21 100. Plaintiffs' claims are typical of the claims of the other members of the Class.
22 Plaintiffs have the same interests in this matter as all other members of the Class, and their
23 claims are substantially identical to and typical of the claims of all members of the Class.
24 Plaintiffs do not have interests antagonistic to or in conflict with those of the other members of
25 the Class.
26

1 **E. Adequacy**

2 101. Plaintiffs are committed to pursuing this action and have retained competent
3 counsel experienced in class actions. Plaintiffs will fairly and adequately represent the interests
4 of the Class members.

5 **F. The Prerequisites to Maintaining a Class Action for Injunctive Relief are Readily**
6 **Apparent**

7 102. The prerequisites to maintaining a class action for injunctive relief exist:

8 a. If injunctive relief is not granted, great harm and irreparable injury to
9 Plaintiffs and the members of the Class will continue; and

10 b. Plaintiffs and the members of the Class have no adequate remedy at law
11 for the injuries which are threatened to recur, in that, absent action from this Court, Defendants
12 will continue to violate RICO, RESPA and state law, and cause damage.

13 103. The prosecution of separate actions by members of the Class would create a risk
14 of establishing incompatible standards of conduct for Defendants – for example, one court might
15 decide that the challenged actions are illegal and enjoin them, while another court might decide
16 that those same actions are not illegal. Individual actions may, as a practical matter, be
17 dispositive of the interests of the Class.

18 104. Defendants' actions are generally applicable to the Class as a whole, and
19 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole.

20 **G. Common Questions Predominate, and the Class Action Device is Superior**

21 105. The common questions of law and fact enumerated above predominate over
22 questions affecting only individual members of the Class, and a class action is the superior
23 method for fair and efficient adjudication of the controversy. The likelihood that individual
24 members of the Class will prosecute separate actions is remote due to the time and expense
25 necessary to conduct such litigation. To Plaintiffs' knowledge, no similar litigation is currently
26

1 pending by other members of the Class. Plaintiffs' counsel, highly experienced in class actions,
2 foresee little difficulty in the management of this case as a class action.

3 **VII. CLAIMS FOR RELIEF**

4 **COUNT I**

5 **VIOLATION OF 18 U.S.C. §§ 1962(c)-(d)**

6 106. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and
7 incorporate herein by reference each of the allegations contained in the preceding paragraphs of
8 this Complaint.

9 107. This cause of action, which alleges violations of Section 1962(c) of RICO, 18
10 U.S.C. § 1962(c), is asserted against the Defendants on behalf of the Class.

11 108. Plaintiffs, each Class member, and each Defendant is a "person," as that term is
12 defined in 18 U.S.C. § 1961(3).

13 109. At all relevant times, in violation of 18 U.S.C. § 1962(c), the Defendants
14 conducted the affairs of certain association-in-fact enterprises identified herein, the affairs of
15 which affected interstate commerce through a pattern of racketeering activity, and engaged in a
16 conspiracy in violation of 1962(d).

17 **A. The Enterprises**

18 **1. The Countrywide Appraisal Enterprise**

19 110. The RICO "enterprise" is an association-in-fact entitled the "Countrywide
20 Appraisal Enterprise" consisting of: (1) Countrywide, including its LandSafe loan closing
21 services subsidiaries, (2) other mortgage brokers not named as defendants herein who have
22 contracts or relationships with Countrywide pursuant to which they sell, arrange, promote, or
23 otherwise assist Countrywide in directing borrowers into loans issued by Countrywide, and
24 (3) appraisers who conducted the actual appraisal. The Enterprise is an ongoing and continuing
25 business organization consisting of both corporations and individuals that are and have been
26 associated for the common or shared purposes of providing appraisals on real estate transactions

1 in which Countrywide is the mortgage lender. Members of this enterprise operate businesses
2 that perform services distinct from the pattern of racketeering alleged herein.

3 111. The Countrywide Appraisal Enterprise is an ongoing organization that engages in,
4 and whose activities affect, interstate commerce and has an existence apart from the racketeering
5 acts set forth herein.

6 112. While all Defendants participate in and are members and part of the Countrywide
7 Appraisal Enterprise, they also have an existence separate and distinct from the enterprise.

8 113. In order to inflate or manage appraisal fees to an outcome that is in keeping with
9 Countrywide's objectives, Defendants need a system that allows them to do so. The
10 Countrywide Appraisal Enterprise provides Defendants with that system and ability, and their
11 control of and participation in it is necessary for the successful operation of their Scheme.
12 Furthermore, the participation by the LandSafe subsidiaries in the Countrywide Appraisal
13 Enterprise allows the enterprise to function more effectively, given that many of the functions
14 provided by these entities, such as appraisals, would normally be conducted by independent
15 entities. LandSafe's participation in the enterprise allows the normal checks and balances within
16 the mortgage process to be eliminated, permitting Defendants to advance their Scheme and
17 conceal the fraudulent activity they have been engaging in.

18 114. The Defendants control and operate the Countrywide Appraisal Enterprise as
19 follows: (a) Countrywide tells a borrower through the Good Faith Estimate that LandSafe must
20 perform the appraisal; (b) LandSafe then hires an independent appraiser to do the actual work;
21 (c) LandSafe tells the appraiser that if he or she wishes to do business with LandSafe they must
22 perform the appraisal at a rate LandSafe sets; (d) the appraiser agrees to LandSafe/Countrywide
23 terms and conditions; (e) LandSafe then marks up the cost of the appraisal and keeps the excess
24 as its profits; (f) LandSafe/Countrywide instruct the appraiser to not send a written invoice
25 reflecting the real cost; and (g) Countrywide receives a thing of value in exchange for referring
26

1 its appraisal business by controlling the loan appraisal process and values, and through the
2 common ownership of Countrywide and LandSafe.

3 115. The Countrywide Appraisal Enterprise has an ascertainable structure separate and
4 apart from the pattern of racketeering activity in which the Defendants engage.

5 **2. Alternative Enterprise Allegations: The Countrywide Enterprise**

6 116. Plaintiffs, the Class members and Defendants are all “persons” within the
7 meaning of 18 U.S.C. § 1961(3).

8 117. Based upon Plaintiffs’ current knowledge, the following persons constitute a
9 group of individuals associated in fact that will be referred to herein as the “Countrywide
10 Enterprise”: (1) Countrywide and (2) its LandSafe loan closing services subsidiaries.

11 118. The Countrywide Enterprise is an ongoing organization that engages in, and
12 whose activities affect, interstate commerce.

13 119. While all Defendants participate in and are members and part of the Countrywide
14 Enterprise, they also have an existence separate and distinct from the enterprise. The LandSafe
15 subsidiaries market their services to third parties and in addition to providing services through
16 Countrywide referrals, provide services to third-party lenders and escrow companies.

17 120. The Countrywide Enterprise has an ascertainable structure separate and apart
18 from the pattern of racketeering activity in which the Defendants engage.

19 121. The Enterprises have a systemic linkage because there are contractual
20 relationships, financial ties, and continuing coordination of activities between Countrywide,
21 LandSafe and appraisers. There is a common communication network by which Countrywide,
22 LandSafe and brokers and appraisers shared and continued to share information on a regular
23 basis throughout the Class Period. Typically this communication occurred by use of the wires
24 and mails in which Countrywide and LandSafe as well as brokers and appraisers exchanged
25 information about properties and appraisers. Countrywide and LandSafe functioned as a
26 continuing unit for the purposes of the Scheme.

1 122. As participants in the Countrywide Enterprise, Countrywide and LandSafe act as
2 independent entities aligned with a common goal of furthering the Countrywide Enterprise.
3 LandSafe provides settlement services, including appraisals that it procures from third parties.
4 There is a cognizable marketplace for the services LandSafe provides, and LandSafe provides
5 these services to other lenders and upon request of third-party escrow providers. Though
6 LandSafe accedes to Countrywide's will with respect to manipulating the outcome of appraisals
7 on Countrywide loans, it is otherwise an operationally independent company that is
8 distinguishable legally and functionally from Countrywide.

9 123. The foregoing evidences that all Defendants are willing participants in the
10 Enterprises; had a common purpose and interest in the establishment and operations of the
11 foregoing Scheme; and agreed to a structure wherein LandSafe and Countrywide would
12 implement the Scheme.

13 **B. The Defendants' Use of the U.S. Mails and Interstate Wire Facilities**

14 124. The Enterprises engaged in and affected interstate commerce because they
15 engaged in the following activities across state boundaries: the exclusion of appraisers unwilling
16 to participate in the Scheme; the origination of mortgages by brokers in one state for borrowers
17 in other states; and the transmission and receipt of documents and information between
18 Countrywide and LandSafe offices, and between loan brokers and borrowers in diverse states.

19 125. During the Class Period, the Defendants' illegal conduct and wrongful practices
20 were carried out by an array of employees, working across state boundaries, who necessarily
21 relied upon frequent transfers of documents, information, products and funds by the U.S. mails
22 and interstate wire facilities.

23 126. The nature and pervasiveness of the Scheme, which was orchestrated out of
24 Countrywide's and LandSafe's offices, necessarily required those offices to communicate
25 directly and frequently with brokers by the U.S. mails and by interstate wire facilities.
26

1 127. Many of the precise dates of Defendants' uses of the U.S. mails and interstate
2 wire facilities (and corresponding RICO predicate acts of mail and wire fraud) have been hidden
3 and cannot be alleged without access to these Defendants' books and records. However,
4 Plaintiffs can ascertain when and how their transaction involved the mail and wire facilities and
5 can generally describe the occasions on which the RICO predicate acts of mail fraud and wire
6 fraud occurred, and how those acts were in furtherance of the Scheme. Plaintiffs describe this
7 below.

8 128. The Defendants' use of the U.S. mails and interstate wire facilities to perpetrate
9 the scheme involved thousands of communications throughout the Class Period including
10 telephone, email and U.S. Mail communications to borrowers and appraisers; the transmission by
11 email and/or U.S. mail of appraisals prepared by appraisers and the use of fraudulent HUD-1
12 forms to complete transactions. Use of the U.S. Mail occurred on hundreds if not thousands of
13 occasions where Countrywide and LandSafe, as outlined in ¶¶ 55-57 above, use the U.S. Mail to
14 obtain reduced fees from appraisers and warned appraisers to not disclose their fees in invoices.
15 In addition to these RICO predicate acts, it was foreseeable to each Defendant that it would
16 communicate with borrowers and appraisers by the U.S. mails and by interstate wire facilities.
17 Further, each Defendant has, in furtherance of the Scheme, communicated through use of the
18 U.S. mails and by interstate wire facilities with their various local offices or divisions.

19 129. Specifically Defendants perpetrated their Scheme against Plaintiffs through
20 interstate mail and wire facilities by sending documents from California, Texas, and potentially
21 other states, to Plaintiffs in Washington State. Defendants utilized the U.S. Mail, Federal
22 Express, and United Parcel Service, and email to send loan documents, appraisal reports, billing
23 statements, and other related documents to Plaintiffs. For example, on February 27, 2007,
24 Countrywide sent an email, attaching the Clarks' appraisal, to Plaintiff Carrol Clark; and, on or
25 about February 9, 2007, Countrywide sent a loan disclosure packet to Gregory Clark via mail.

26

1 130. Additionally, Defendant Countrywide’s closing instructions instruct Plaintiffs to
2 wire funds to The Bank of New York in New York State. This occurred on or about the closing
3 date of Plaintiffs’ transaction. Further, Defendant Countrywide required that Plaintiffs make
4 payments pursuant to a Repayment Plan Agreement through Western Union, cashier check, or
5 money order. Defendants required all “Up Front Funds” to be sent via Western Union. These
6 transactions occurred across state lines.

7 **C. Conduct of the RICO Enterprises’ Affairs**

8 131. During the Class Period, the Defendants have exerted control over the Enterprises
9 and, in violation of Section 1962(c) of RICO, the Defendants have conducted or participated in
10 the conduct of the affairs of those RICO Enterprises, directly or indirectly by controlling which
11 appraisals it would accept to qualify a loan and which appraisers would be allowed to work with
12 LandSafe. The brokers accepted the Defendants’ control over appraiser choice so that the
13 brokers would get the loan approved and receive their commission on the origination of the loan.
14 Appraisers accepted Countrywide and LandSafe’s terms in order to obtain business. LandSafe
15 followed Countrywide’s directives, as to implementation acted jointly with Countrywide in
16 implementing and enforcing the Scheme.

17 132. The Enterprises had a hierarchical decision-making structure headed by
18 Countrywide.

19 **D. The Defendants’ Pattern of Racketeering Activity**

20 133. Each of the Defendants conducted and participated in the affairs of the above-
21 referenced Enterprises through a pattern of racketeering activity, including acts that are
22 indictable under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire
23 fraud. The Defendants’ pattern of racketeering likely involved thousands of separate instances of
24 use of the U.S. mails or interstate wire facilities in furtherance of their Scheme. Each of these
25 fraudulent mailings and interstate wire transmissions constitutes a “racketeering activity” within
26 the meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a “pattern of

1 racketeering activity,” within the meaning of 18 U.S.C. § 1961(5), in which the Defendants
2 intended to defraud Plaintiffs, the members of the Class and other intended victims.

3 134. The Defendants’ racketeering activities amounted to a common course of
4 conduct, with similar pattern and purpose, intended to exclude impartial and objective appraisers,
5 that is, Plaintiffs and members of the Class. Each separate use of the U.S. mails and/or interstate
6 wire facilities employed by the Defendants was related, had similar intended purposes, involved
7 similar participants and methods of execution, and had the same results affecting the same
8 victims, including Plaintiffs and members of the Class. Each Defendant has engaged in the
9 pattern of racketeering activity for the purpose of conducting the ongoing business affairs of the
10 Enterprises.

11 **E. Damages Caused by the Defendants’ Scheme**

12 135. The Defendants’ violations of federal law and their pattern of racketeering
13 activity have directly and proximately caused Plaintiffs and members of the Class to be injured
14 in their business or property because Plaintiffs and members of the Class have lost a substantial
15 amount of money by virtue of the Scheme, including but not limited to, the profits LandSafe
16 skimmed through the Scheme and losses flowing from the corrupted appraisals made on
17 Plaintiffs’ and Class members’ properties.

18 136. Under the provisions of Section 1964(c) of RICO, the Defendants are jointly and
19 severally liable to Plaintiffs and members of the Class for three times the damages that Plaintiffs
20 and the Class members have sustained, plus the costs of bringing this suit, including reasonable
21 attorneys’ fees.

22 **COUNT II**

23 **VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT**
24 **AGAINST DEFENDANT LANDSAFE**
25 **12 U.S.C. § 2607(b)**

26 137. Plaintiffs reallege and incorporate by reference the preceding allegations.

1 138. For Plaintiffs and each Class member, Defendant LandSafe provided appraisal
2 services involving a federally-related mortgage loan.

3 139. For Plaintiffs and each Class member, Defendant LandSafe did not actually
4 perform the appraisal, but instead contracted with a third-party appraiser to perform the work of
5 the appraisal for an agreed fee.

6 140. Instead of charging Plaintiffs and each Class member the actual cost of the
7 appraisal, Defendant LandSafe marked up the third-party fee and charged Plaintiffs and the Class
8 an inflated fee for no additional services rendered.

9 141. By charging appraisal fees in transactions in which they have not performed the
10 appraisal which are far in excess of the actual cost of the appraisal charged by a third party,
11 Defendant LandSafe has engaged and continues to engage in the practice of receiving a portion,
12 split and percentage of a fee for the rendering of a real estate settlement service other than for
13 services actually performed in violation of 12 U.S.C. § 2607 and Regulation X, 24 C.F.R.
14 § 3500.14.

15 142. Plaintiffs and each Class member have been cognizably harmed by these
16 violations of RESPA because: (1) in addition to paying the actual costs of their appraisals – *i.e.*,
17 the fee that is charged and collected by the appraiser – they have had to pay an additional mark-
18 up to LandSafe for no services rendered; (2) they have received appraisals whose results have
19 been influenced by Countrywide’s exertion – through LandSafe – of control over the appraisal
20 process; and (3) they have a right to real estate settlement services free of the taint of illegal
21 referrals.

22 143. Under 12 U.S.C. § 2607(d)(2), Plaintiffs and the Class are entitled to statutory
23 damages for Defendant LandSafe’s violations of 12 U.S.C. § 2607(b) in an amount equal to three
24 times the amount of the appraisal fees charged and involved in LandSafe’s violations.

25 144. Under 12 U.S.C. § 2607(d)(5), Plaintiffs and the Class are entitled to the court
26 costs of the action together with reasonable attorneys’ fees.

COUNT III

VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT

12 U.S.C. §§ 2607(a), (c)

145. Plaintiffs reallege and incorporate by reference the preceding allegations.

146. For Plaintiffs and each Class member, Defendants provided settlement services involving a federally-related mortgage loan.

147. In connection with Plaintiffs' and each Class members' transaction, Defendant Countrywide accepted and Defendant LandSafe gave a thing of value – *i.e.*, control over the appraisal process and results – pursuant to an agreement that business incident to or part of a settlement service involving a federally related mortgage loan – *i.e.*, appraisal services – would be referred to LandSafe by Countrywide. Because Countrywide received a benefit from its referral to LandSafe beyond merely the return on its common ownership, RESPA's safe-harbor provision for affiliated business arrangements is inapplicable to the Countrywide-LandSafe referral agreement. As a result, Countrywide and LandSafe have referred real estate settlement services in violation of 12 U.S.C. § 2607(a) and Regulation X, 24 C.F.R. § 3500.14.

148. In addition, and as an independent ground for liability, for Plaintiffs and many Class members, Defendants Countrywide and LandSafe failed to provide the Affiliated Business Arrangement disclosures required by RESPA. The failure to provide the required disclosures renders RESPA's safe-harbor provision for affiliated business arrangements inapplicable to Countrywide and LandSafe. As a result, Countrywide and LandSafe have referred real estate settlement services in violation of 12 U.S.C. § 2607(a), (c) and Regulation X, 24 C.F.R. § 3500.14.

149. Plaintiffs and each Class member have been cognizably harmed by these violations of RESPA because: (1) in addition to paying the actual costs of their appraisals – *i.e.*, the fee that is charged and collected by the appraiser – they have had to pay an additional mark-up to LandSafe for no services rendered; (2) they have received appraisals whose results have

1 been influenced by Countrywide's exertion – through LandSafe – of control over the appraisal
2 process; and (3) they have a right to real estate settlement services free of the taint of illegal
3 referrals.

4 150. Under 12 U.S.C. § 2607(d)(2), Plaintiffs and the Class are entitled to statutory
5 damages for Defendants' violations of 12 U.S.C. § 2607(a) in an amount equal to three times the
6 appraisal fees charged and involved in Defendants' violations.

7 151. Under 12 U.S.C. § 2607(d)(5), Plaintiffs and the Class are entitled to the court
8 costs of the action together with reasonable attorneys' fees.

9 **COUNT IV**

10 **UNJUST ENRICHMENT**
11 **AGAINST DEFENDANT LANDSAFE**

12 152. Plaintiffs reallege and incorporate by reference the preceding allegations.

13 153. As a result of LandSafe's practice of marking up third-party appraisers' fees and
14 charging a fee when it performs no appraisal services, Defendant LandSafe has received a
15 benefit from Plaintiffs and the Class in the form of the appraisal fees Plaintiffs and the Class paid
16 to LandSafe, which fees were unearned and unreasonable and made for no additional or nominal
17 settlement services and made in violation of federal and state law.

18 154. LandSafe is aware of their receipt of the above-described benefits.

19 155. LandSafe received the above-described benefits to the detriment of Plaintiffs and
20 each of the other members of the Class.

21 156. LandSafe continues to retain the above-described benefits to the detriment of
22 Plaintiffs and the Class.

23 157. As a result of LandSafe's unjust enrichment, Plaintiffs and the respective Class
24 have sustained damages in an amount to be determined at trial and seek full disgorgement and
25 restitution of LandSafe's enrichment, benefits, and ill-gotten gains acquired as a result of the
26 unlawful or wrongful conduct alleged above.

1 158. Further, Plaintiffs and the Class, individually and on behalf of the public, seek
2 restitution and disgorgement of profits realized by LandSafe as a result of their unfair, unlawful
3 and/or deceptive practices.

4 **COUNT V**

5 **BREACH OF FIDUCIARY DUTY**
6 **AGAINST DEFENDANT COUNTRYWIDE**

7 **(On Behalf of the Broker Subclass)**

8 159. Plaintiffs reallege and incorporate by reference the preceding allegations.

9 160. While acting as a loan broker, Defendant Countrywide has a nondelidable
10 fiduciary duty to borrowers under California law. A relationship of trust and reliance existed
11 between Countrywide in its role as a loan broker and the borrower. A mortgage loan broker
12 owes a fiduciary duty of the highest good faith toward his principal and is charged with the duty
13 of fullest disclosure of all material facts. The fiduciary duty includes the obligation to act with
14 scrupulous honesty and to refrain from self-dealing. Thus, Countrywide owed borrowers the
15 duties of utmost care, honesty, loyalty, including the duty to disclose all material facts.

16 161. As to members of the Broker Subclass, Countrywide breached its fiduciary duties
17 to Plaintiffs and members of the Broker Subclass by engaging in misrepresentations and self-
18 dealing, including the Scheme and specifically: (a) requiring borrowers to use LandSafe
19 knowing that LandSafe was charging appraisal fees that were marked-up and not incurred and/or
20 not for services actually rendered; (b) referring appraisals to LandSafe (1) in exchange for
21 control over the appraisal process and outcome, and (2) without making the required RESPA
22 ABA disclosures; and (c) controlling and manipulating the appraisal process and outcome such
23 that borrowers appraisals did not accurately reflect the values of the underlying properties.

24 162. Defendant Countrywide's breaches of its fiduciary duties have directly and
25 proximately caused damage to Plaintiffs and members of the Broker Subclass in an amount to be
26 determined at trial.

COUNT VI

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION
LAW AGAINST COUNTRYWIDE**

(Cal. Bus. & Prof. Code § 17200, *et seq.*)

163. Plaintiffs reallege and incorporate by reference the preceding allegations.

164. Through the Scheme, Defendants have (1) directly and indirectly employed a scheme, device and artifice to defraud and mislead borrowers and defraud any person; (2) directly and indirectly engaged in an unfair and deceptive act toward a person; (3) directly and indirectly obtained property by fraud and misrepresentation; and (4) knowingly made published and disseminated false, deceptive and misleading information.

165. Defendant Countrywide is a resident of the State of California. On information and belief, the actions and underlying decisions of Defendants, alleged herein emanated from and occurred within the State of California. California law applies to the claims of Plaintiffs and all Class members. Countrywide planned and implemented their wrongful scheme in California and many of the wrongful acts emanated from Countrywide's California offices. Specifically, Plaintiffs' Deed of Trust specifies that Lender Countrywide's address is in Calabasas, California. Plaintiffs were instructed to send their recorded deed to an address in Van Nuys, California. In addition, the largest concentration of Class members reside in California and the documents involving Plaintiffs were prepared in California and sent to Plaintiffs from California. Therefore, is it reasonable and appropriate to apply California law to Defendants' acts throughout the United States.

166. Countrywide has engaged and continues to engage in the Scheme. Countrywide's acts and practices as described herein constitute unlawful, fraudulent and/or unfair business acts and practices. As such, its conduct violates Cal. Bus. & Prof. Code § 17200, *et seq.* ("UCL").

167. Countrywide's conduct described herein constitutes an unlawful business practice within the meaning of Cal. Bus. & Prof. Code § 17200, *et seq.*, in that the conduct violates

1 RESPA, RICO, California law and the common law of unjust enrichment. Specifically, as
2 alleged herein, Countrywide has:

3 a. Violated 18 U.S.C. § 1962(c) by conducting the affairs of certain
4 association-in-fact enterprises identified herein, the affairs of which affected interstate commerce
5 through a pattern of racketeering activity, and engaged in a conspiracy in violation of 18 U.S.C.
6 § 1962(d).

7 b. Violated 12 U.S.C. § 2607(a)-(c), Regulation X, 24 C.F.R. § 3500.14, and
8 24 C.F.R. § 3500.2 by referring appraisal settlement services business to LandSafe (1) in
9 exchange for control over the appraisal process and values assigned through LandSafe
10 appraisals; and (2) without making the ABA disclosures required by RESPA;

11 c. Violated 12 U.S.C. § 2607(b) and Regulation X, 24 C.F.R. § 3500.14 by
12 charging marked-up appraisal fees that vastly exceed the true costs of the appraisals actually
13 charged to LandSafe by third-party appraisers, thus engaging and continuing to engage in the
14 practice of receiving a portion, split and percentage of a fee for no services rendered; and

15 d. Violated California's real estate licensing laws (Cal. Bus. & Prof. Code, §
16 10131, *et seq.*), under which it operated as a mortgage broker.

17 e. Violated the common law governing unjust enrichment by receiving a
18 benefit from Plaintiffs and the Class in the form of the marked-up appraisal fees, which fees
19 were unearned and unreasonable, not for services actually performed and made in violation of
20 federal and state law.

21 168. Countrywide's conduct as described herein violates not only the unlawful prong
22 of the UCL, but also constitutes a violation of the UCL's "unfair" prong, independent of the
23 other causes of action asserted herein. Countrywide's conduct offends public policy and is
24 immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers. Any
25 justification for Countrywide's practices is outweighed by the consequences and harm to
26 Plaintiffs and the Class.

1 169. Countrywide’s conduct as described herein also violates the “deceptive” prong of
2 the UCL, independent of the other causes of action asserted herein. Defendants acted
3 deceptively in the following manner:

4 a. Countrywide had a duty under RESPA to (1) disclose their affiliated
5 relationship; and (2) provide a written estimate of the charge or range of charges generally made
6 by LandSafe. Defendants deceptively failed to make these required disclosures.

7 b. Countrywide participates in a scheme whereby LandSafe deceives
8 consumers and members of Class by falsely charging Plaintiffs and Class members appraisal fees
9 far in excess of the actual fees charged by the third-party appraisers who performed the actual
10 appraisals.

11 c. Countrywide and LandSafe require appraisers to exclude from their
12 appraisals invoices reflecting the true costs of appraisals in order to conceal from consumers that
13 they are marking up the third-party appraisers’ fees.

14 170. Plaintiffs and the Class have suffered injury in fact and have lost money or
15 property as a result of Countrywide’s unlawful, unfair and/or deceptive business practices. Each
16 of Countrywide’s omissions was material to Plaintiffs and the Class in entering into the
17 transaction with Countrywide and Plaintiffs and the Class relied on Countrywide’s false and
18 misleading misrepresentations in entering into the transactions at issue.

19 171. The above-described unlawful, unfair and/or deceptive business practices present
20 an ongoing threat of continuing injury to Plaintiffs, the Class and the general public. Among
21 other things, Plaintiffs, the Class and the general public continue to be financially disadvantaged
22 by such conduct. Such wrongful conduct is continuing and, unless Countrywide is restrained, it
23 will continue to engage in such conduct.

24 172. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the Class, individually
25 and on behalf of the public, seek an order of this Court enjoining Countrywide from continuing
26 its unfair, unlawful, and/or deceptive business acts or practices in the State of California and

1 elsewhere. The public, Plaintiffs and the Class will be irreparably harmed if such an order is not
2 granted.

3 173. Further, Plaintiffs and the Class, individually and on behalf of the public, seek
4 restitution and disgorgement of profits realized by Countrywide as a result of their unfair,
5 unlawful and/or deceptive practices.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs demand judgment as follows:

8 A. For an order declaring that this action may be maintained as a class action
9 pursuant to Federal Rule of Civil Procedure 23, and for an order certifying this case as a class
10 action and appointing Plaintiffs as representatives of the Class;

11 B. For an order awarding compensatory damages on behalf of Plaintiffs and the
12 Class in an amount to be proven at trial;

13 C. For judgment for Plaintiffs and the Class on their claims in an amount to be
14 proven at trial, for compensatory damages caused by Defendants' unfair or deceptive practices;
15 along with exemplary damages to each Class member for each violation;

16 D. For judgment for Plaintiffs and the Class on their RICO and RESPA claims, in an
17 amount to be proven at trial, for three times the amount of the appraisal fees paid to Defendants
18 by Plaintiffs and the Class;

19 E. For restitution of all improperly collected charges and interest, and the imposition
20 of an equitable constructive trust over all such amounts for the benefit of Plaintiffs and members
21 of the Class;

22 F. For an accounting of all credits, disbursements and charges and other benefits
23 associated with Plaintiffs' and Class members' real estate transactions;

24 G. For pre-judgment and post-judgment interest as provided for by law or allowed in
25 equity;

26 H. For an order awarding Plaintiffs and the Class their attorneys' fees and costs; and

1 I. Such other and further relief as may appear necessary and appropriate.

2 **JURY TRIAL DEMANDED**

3 Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury of the claims alleged
4 herein.

5 DATED: February 13, 2009.

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