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FREMONT REORGANIZING CORPORATION

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6
7 KERN COUNTY SUPERIOR COURT
8 FOR THE STATE OF CALIFORNIA
9

10 FREMONT REORGANIZING CORPORATION, a
California corporation,

11 Plaintiff,

12 v.

13 DAVID CRISP, an individual; JENNIFER CRISP,
an individual; ROBINSON NGUYEN, an individual;
14 individual; JAYSON COSTA, an individual;
DAVID WHISLER, an individual; JUSTIN
15 EDDLEMAN, an individual; LYNNMAI NGUYEN,
an individual; JOHN BALFANZ HOMES, INC., a
16 California corporation; TOWER LENDING, a
California corporation; CRISP, COLE &
ASSOCIATES dba CRISP COLE REALTY, a
17 California corporation; CARL COLE, an
individual; CHRISTOPHER STOVALL, an
18 individual; JERALD TEIXEIRA, an individual;
KIRKSEY J. NEWTON JR., an individual; SAN
19 JOAQUIN APPRAISALS, INC., a California
Corporation; JAMES RCDICK, an individual;
GARY KILLIAN, an individual; TIMOTHY
20 HUBBELL, an individual; COMPREHENSIVE
BUSINESS SOLUTIONS, a California
21 corporation; HILDA GONZALEZ, an individual;
KEVIN SLUGA, an individual; CALIFORNIA
22 BUSINESS SOLUTIONS, a California
corporation; HAYSER LOPEZ, an individual;
and DOES 1 through 100, inclusive,

23 Defendants.
24

Case No.

1. FRAUD
2. IMPLIED CONTRACTUAL INDEMNITY
3. EQUITABLE INDEMNITY
4. UNJUST ENRICHMENT
5. NEGLIGENT MISREPRESENTATION
6. BREACH OF FIDUCIARY DUTY
7. BREACH OF CONTRACT

1 Plaintiff Fremont Reorganizing Corporation f/k/a Fremont Investment and Loan
2 (“FREMONT”) alleges as follows:

3
4 **NATURE OF ACTION**

5 1. This action is brought by FREMONT, formerly a nationwide mortgage lender,
6 seeking damages suffered as a result of a scheme orchestrated by defendants to defraud
7 FREMONT in relation to loans issued for the purchase of real property located in Bakersfield,
8 California. By this action, FREMONT demands compensation for all of the losses it has incurred
9 as a result of defendants’ actions and enforcement of all of its other legal rights and remedies.

10 **JURISDICTION AND VENUE**

11 2. Jurisdiction is properly vested in the Superior Court of the State of California
12 because the amount in controversy exceeds the minimum jurisdictional sum.

13 3. Venue is proper in this Court because the acts giving rise to this claim occurred
14 herein and the properties for which the loans were issued lie in Kern County.

15 **PARTIES**

16 4. FREMONT is a California corporation formed and existing under the laws of the
17 State of California and was at all relevant times authorized and doing business in the State of
18 California as a financial institution that, among other things, provided residential loans and
19 mortgage services.

20 5. FREMONT is informed and believes, and on that basis alleges, that defendant
21 David Crisp (“CRISP”) is an individual residing in the County of Kern, State of California, and at all
22 times relevant hereto, acted as the borrower on a loan transaction that is the subject of this
23 action. CRISP was also a loan officer and principal of Tower Lending, the brokerage for the
24 subject loan transactions, and a principal of Crisp, Cole & Associates, the realtor for the subject
25 transactions. Based on a judgment rendered by the California Department of Real Estate on
26 September 24, 2008, CRISP’s real estate license has been revoked.

6. FREMONT is informed and believes, and on that basis alleges, that defendant
Jennifer Crisp (“J. CRISP”) is an individual residing in the County of Kern, State of California, and

1 at all times relevant hereto, acted as the borrower on a loan transaction that is the subject of
2 this action.

3 7. FREMONT is informed and believes, and on that basis alleges, that defendant
4 Robinson Nguyen (“NGUYEN”) is an individual residing in the County of Kern, State of California,
5 and at all times relevant hereto, acted as the borrower on a loan transaction that is the subject
6 of this action. Also, at all times relevant hereto, NGUYEN worked as a loan officer for TOWER.
7 Based on a judgment rendered by the California Department of Real Estate on September 24,
8 2008, NGUYEN’s real estate license has been revoked.

9 8. FREMONT is informed and believes, and on that basis alleges, that defendant
10 Jayson Costa (“COSTA”) is an individual residing in the County of Kern, State of California, and at
11 all times relevant hereto, acted as the borrower on a loan transaction that is the subject of this
12 action. Also, at all times relevant hereto, COSTA worked as a loan officer for TOWER.

13 9. FREMONT is informed and believes, and on that basis alleges, that defendant
14 David Whisler (“WHISLER”) is an individual residing in the County of Kern, State of California,
15 and at all times relevant hereto, acted as the borrower on a loan transaction that is the subject
16 of this action.

17 10. FREMONT is informed and believes, and on that basis alleges, that defendant
18 Justin Eddleman (“EDDLEMAN”) is an individual residing in the County of Kern, State of
19 California, and at all times relevant hereto, acted as the borrower on a loan transaction that is
20 the subject of this action.

21 11. FREMONT is informed and believes, and on that basis alleges, that defendant
22 Lynnmai Nguyen (“L. NGUYEN”) is an individual residing in the County of Kern, State of
23 California, and at all times relevant hereto, acted as the borrower on a loan transaction that is
24 the subject of this action.

25 12. FREMONT is informed and believes, and on that basis alleges, that defendant
26 John Balfanz Homes, Inc. (“BALFANZ HOMES”), a California corporation in good standing, was at
all times relevant hereto doing business in the County of Kern, State of California as a home
builder, and acted as the seller for a transaction that is the subject of this action.

1 13. FREMONT is informed and believes, and on that basis alleges, that defendant
2 Tower Lending (“TOWER”), a California corporation in good standing, was at all times relevant
3 hereto doing business in the County of Kern, State of California as a loan brokerage, and acted
4 as the loan broker for the loan transactions that are the subject of this action.

5 14. FREMONT is informed and believes, and on that basis alleges, that defendant
6 Crisp, Cole & Associates dba Crisp Cole Realty (“CRISP COLE REALTY”), a California corporation in
7 good standing, was at all times relevant hereto doing business in the County of Kern, State of
8 California as a realty company, and acted as the realtor for loan transactions that are the subject
9 of this action.

10 15. FREMONT is informed and believes, and on that basis alleges, that defendant Carl
11 Cole (“COLE”) is an individual residing in the County of Kern, State of California, and at all times
12 relevant hereto acted as the loan officer and broker of record for TOWER in connection with the
13 loans that are the subject of this action. Also, at all relevant times hereto, COLE was a principal
14 of CRISP COLE REALTY, the realtor for the subject transactions. Based on a judgment rendered
15 by the California Department of Real Estate on September 24, 2008, COLE’s real estate license
16 has been revoked.

17 16. FREMONT is informed and believes, and on that basis alleges, that defendant
18 Christopher Stovall (“STOVALL”) is an individual residing in the County of Kern, State of
19 California, and at all times relevant hereto acted as the loan officer for TOWER in connection
20 with a loan that is the subject of this action.

21 17. FREMONT is informed and believes, and on that basis alleges, that defendant
22 Jerald Teixeira (“TEIXEIRA”) is an individual residing in the County of Kern, State of California,
23 and acted as the loan officer for TOWER in connection with loans that are the subject of this
24 action. FREMONT is informed and believes, and on that basis alleges, that Teixeira was, at all
25 relevant times prior to his employment with TOWER, employed by FREMONT as an Account
26 Executive, and while employed by FREMONT conspired with the TOWER principals (CRISP and
COLE) and others named as defendants, as well as DOES 1 through 100, to defraud

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1 FREMONT in connection with the loan transactions identified herein, as well as other loans
2 made by FREMONT.

3 18. FREMONT is informed and believes, and on that basis alleges, that defendant
4 Kirksey J. Newton Jr. ("NEWTON") is an individual residing in the County of Kern, State of
5 California, and at all times relevant hereto acted as the appraiser in connection with loan
6 transactions that are the subject of this action.

7 19. FREMONT is informed and believes, and on that basis alleges, that defendant San
8 Joaquin Appraisals, Inc., ("SAN JOAQUIN APPRAISALS"), a California corporation in good
9 standing, was at all times relevant hereto doing business in the County of Kern, State of
10 California as an appraisal company, and acted as the appraiser in connection with loan
11 transactions that are the subject of this action.

12 20. FREMONT is informed and believes, and on that basis alleges, that defendant
13 James Rudick ("RUDICK") is an individual residing in the County of Kern, State of California, and
14 at all times relevant hereto acted as the appraiser in connection with a loan that is the subject of
15 this action.

16 21. FREMONT is informed and believes, and on that basis alleges, that defendant
17 Gary Killian ("KILLIAN") is an individual residing in the County of Kern, State of California, and at
18 all times relevant hereto acted as the appraiser in connection with a loan that is the subject of
19 this action.

20 22. FREMONT is informed and believes, and on that basis alleges, that defendant
21 Timothy Hubbell ("HUBBELL") is an individual residing in the County of Kern, State of California,
22 and at all times relevant hereto acted as the Certified Public Accountant ("CPA") in connection
23 with a loan that is the subject of this action.

24 23. FREMONT is informed and believes, and on that basis alleges, that defendant
25 Comprehensive Business Solutions ("COMPREHENSIVE BUSINESS SOLUTIONS"), a California
26 corporation, was at all times relevant hereto doing business in the County of Kern, State of
California as tax preparation service company.

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1 24. FREMONT is informed and believes, and on that basis alleges, that defendant
2 Hilda Gonzalez (“GONZALEZ”) is an individual residing in the County of Kern, State of California,
3 and at all times relevant hereto acted as the CPA in connection with loan transactions that are
4 the subject of this action.

5 25. FREMONT is informed and believes, and on that basis alleges, that defendant
6 Kevin Sluga (“SLUGA”) is an individual residing in the County of Kern, State of California, and at
7 all times relevant hereto acted as the CPA in connection with a loan transaction that is the
8 subject of this action.

9 26. FREMONT is informed and believes, and on that basis alleges, that defendant
10 California Business Solutions (“CALIFORNIA BUSINESS SOLUTIONS”), a California corporation,
11 was at all times relevant hereto doing business in the County of Kern, State of California as a tax
12 preparation company.

13 27. FREMONT is informed and believes, and on that basis alleges, that defendant
14 Hayser Lopez (“LOPEZ”) is an individual residing in the County of Kern, State of California, and at
15 all times relevant hereto acted as the CPA in connection with a loan transaction that is the
16 subject of this action.

17 28. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants and DOES 1 through 100, inclusive, are unknown to FREMONT, and
19 therefore, FREMONT sues these Defendants by such fictitious names. FREMONT is informed
20 and believes, and on that basis alleges, that each of the Defendants designated as a fictitiously
21 named defendant is, in some manner, responsible for the events and happenings referred to
22 herein.

23 29. FREMONT is informed and believes, and on that basis alleges, that each of the
24 Defendants named herein, including DOES 1 through 100, inclusive, were, at all material times,
25 the agents, servants, employees, or partners of each of the other Defendants, and in doing the
26 things alleged, the Defendants, and each of them, were acting with notice, within the course
and scope of their agency, and with the consent, approval, and/or ratification of each of the
other Defendants.

1 and \$182,000.00 2nd) plus interest thereon in accordance with the terms of the notes.

2 36. In order to obtain the loans, CRISP applied for the home loans through TOWER
3 and specifically with its loan officer, COLE. COLE was at all relevant times the broker of record
4 for TOWER.

5 37. The loan application represents that this was a bona fide refinance of the subject
6 property. The refinance amount of the subject property was \$910,000.00 and CRISP was shown
7 on the loan documents to be a qualified buyer. It was represented that CRISP worked as a self-
8 employed realtor and earned \$100,000.00 per month. To support that representation,
9 submitted with the loan application were bank statements from Kern Schools Federal Credit
10 Union. Furthermore, it was represented by NEWTON and SAN JOAQUIN APPRAISALS that the
11 value of the property was \$910,000.00.

12 38. The loan application is signed by COLE and represents that COLE took the
13 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
14 for loan approval. The file was underwritten, and relying upon the information provided by
15 CRISP, COLE and TOWER, was approved.

16 39. The loan was obtained on the basis of substantially false and misleading
17 information. The true facts were that this was not a true refinance, but an equity grab in which
18 the identity of CRISP was used to obtain the loan proceeds and deliver those proceeds to CRISP
19 in the form of a \$105,971.73 cash payoff at the close of escrow. None of the representations in
20 the loan file concerning CRISP's financial qualifications were true. CRISP failed to disclose that
21 he was a principal of TOWER, the brokerage for the subject transaction, and all documentation
22 included with the loan application to support that representation was falsified. Furthermore,
23 CRISP had purchased the subject property fifteen (15) months before the subject transaction for
24 \$487,500.00 and refinanced it for \$910,000.00 (an 87% increase in value); the classic equity
25 grab. FREMONT is informed and believes and on that basis alleges that CRISP orchestrated this
26 equity grab, and knew that the sole purpose of obtaining a loan of \$910,000.00 was to funnel
those proceeds to CRISP, COLE, and others. The appraisers, NEWTON and SAN JOAQUIN
APPRAISALS, assisted in this fraudulent scheme by falsely stating the value of the subject

1 property as \$910,000.00.

2 40. The false documents provided with the loan application were created for the sole
3 purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
4 the loan would not have been approved.

5 41. FREMONT relied on the accuracy of the information provided in the loan
6 application in approving the loans. FREMONT, after approving the loans, and as is the common
7 industry practice, sold the loans to Greenwich Capital and Deutsche Bank. The terms of the
8 sales requires FREMONT to cover Greenwich Capital and Deutsche Bank for losses. When the
9 loans went into default and the property went into foreclosure, FREMONT repurchased the
10 loans from Greenwich Capital and Deutsche Bank. On or about April 11, 2008 (date of the REO
11 sale), FREMONT suffered a loss of \$532,298.00.

12 **Loan Summary No. 2: 8702 Oak Hills Avenue, Bakersfield, CA 93312**

13 42. On or about July 29, 2005, J. CRISP obtained two loans through FREMONT and
14 secured by real property located at 8702 Oak Hills Avenue, Bakersfield, CA 93312. J. CRISP
15 executed two promissory notes whereby J. CRISP agreed to pay the total sum of \$659,340.00
16 (\$527,472.00 1st and \$131,868.00 2nd) plus interest thereon in accordance with the terms of the
17 notes.

18 43. In order to obtain the loans, J. CRISP applied for the home loans through TOWER
19 and specifically with its loan officer, STOVALL. COLE was at all relevant times the broker of
20 record for TOWER.

21 44. The loan application represents that this was a bona fide sale of the subject
22 property. The sale amount of the subject property was \$659,340.00 and J. CRISP was shown on
23 the loan documents to be a qualified buyer. It was represented that J. CRISP worked as a self-
24 employed consultant and earned \$25,500.00 per month. To support that representation,
25 submitted with the loan application is a purported CPA letter signed by HUBBELL of
26 COMPREHENSIVE BUSINESS SOLUTIONS. Furthermore, it was represented by RUDICK that the
value of the property was \$660,000.00.

45. The loan application is signed by STOVALL and represents that STOVALL took the

1 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
2 for loan approval. The file was underwritten, and relying upon the information provided by J.
3 CRISP, STOVALL and TOWER, was approved.

4 46. The loan was obtained on the basis of substantially false and misleading
5 information. The true facts were that this was not a true sale, but a builder bailout in which the
6 identity of J. CRISP was used to obtain the loan proceeds and deliver those proceeds to BALFANZ
7 HOMES, the seller, and CRISP and COLE through CRISP COLE REALTY. None of the
8 representations in the loan file concerning J. CRISP's financial qualifications were true. J. CRISP
9 was not a self-employed consultant and did not earn \$25,500.00 per month. All documentation
10 included with the loan application to support that representation, including the CPA letter, was
11 falsified. FREMONT is informed and believes on that basis alleges that CRISP, COLE, TOWER,
12 and CRISP COLE REALTY orchestrated this builder bailout. The appraiser, RUDICK, assisted in this
13 fraudulent scheme by falsely stating the value of the subject property as \$660,000.00.

14 47. The false documents provided with the loan application were created for the sole
15 purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
16 the loan would not have been approved.

17 48. FREMONT relied on the accuracy of the information provided in the loan
18 application in approving the loans. FREMONT, after approving the loans, and as is the common
19 industry practice, sold the loans to GMAC and Greenwich Capital. The terms of the sales
20 requires FREMONT to cover GMAC and Greenwich Capital for losses. When the loans went into
21 default and the property went into foreclosure, FREMONT suffered a loss of \$659,278.15.

22 **Loan Summary No. 3: 3507 Rancho Santa Fe Street, Bakersfield, CA 93311**

23 49. On or about August 10, 2005, NGUYEN obtained two loans through FREMONT
24 and secured by real property located at 3507 Rancho Santa Fe Street, Bakersfield, CA 93311.
25 NGUYEN executed two promissory notes whereby NGUYEN agreed to pay the total sum of
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\$333,000.00 (\$296,000.00 1st and \$37,000.00 2nd) plus interest thereon in accordance with the
terms of the notes.

1 50. In order to obtain the loans, NGUYEN applied for the home loans through TOWER
2 and specifically with its loan officer, COLE. COLE was at all relevant times the broker of record
3 for TOWER.

4 51. The loan application represents that this was a bona fide sale of the subject
5 property. The sale amount of the subject property was \$370,000.00 and NGUYEN was shown on
6 the loan documents to be a qualified buyer. It was represented that NGUYEN worked as a self-
7 employed consultant and earned \$8,000.00 per month. To support that representation,
8 submitted with the loan application was a purported CPA letter from GONZALEZ of H & R Block.
9 Furthermore, it was represented by NEWTON and SAN JOAQUIN APPRAISALS that the value of
10 the property was \$370,000.00.

11 52. The loan application is signed by COLE and represents that COLE took the
12 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
13 for loan approval. The file was underwritten, and relying upon the information provided by
14 NGUYEN, COLE and TOWER, was approved.

15 53. The loan was obtained on the basis of substantially false and misleading
16 information. The true facts were that this was not a true sale, but an equity grab in which the
17 identity of NGUYEN was used to obtain the loan proceeds and deliver those proceeds to CRISP in
18 the form of a \$22,200.00 cash payoff to CRISP and COLE through CRISP COLE REALTY at the close
19 of escrow. None of the representations in the loan file concerning NGUYEN's financial
20 qualifications were true. All documentation included with the loan application to support that
21 representation, including the CPA letter, was falsified. At the time of the subject transaction,
22 NGUYEN was a loan officer working for TOWER. FREMONT is informed and believes and on that
23 basis alleges that CRISP, COLE, NGUYEN, TOWER, and CRISP COLE REALTY orchestrated this
24 equity grab. The appraisers, NEWTON and SAN JOAQUIN APPRAISALS, assisted in this fraudulent
25 scheme by falsely stating the value of the subject property as \$370,000.00.

26 54. The false documents provided with the loan application were created for the sole
purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
the loan would not have been approved.

1 55. FREMONT relied on the accuracy of the information provided in the loan
2 application in approving the loans. FREMONT, after approving the loans, and as is the common
3 industry practice, sold the loans to Greenwich Capital and Credit Suisse. The terms of the sales
4 requires FREMONT to cover Greenwich Capital and Credit Suisse for losses. When the loans
5 went into default and the property went into foreclosure, FREMONT suffered a loss of
6 \$332,986.44.

6 **Loan Summary No. 4: 1906 Heaton, Bakersfield, CA 93311**

7 56. On or about September 27, 2005, COSTA obtained two loans through FREMONT
8 and secured by real property located at 1906 Heaton, Bakersfield, CA 93311. COSTA executed
9 two promissory notes whereby COSTA agreed to pay the total sum of \$860,000.00 (\$688,000.00
10 1st and \$172,000.00 2nd) plus interest thereon in accordance with the terms of the notes.

11 57. In order to obtain the loans, COSTA applied for the home loans through TOWER
12 and specifically with its loan officer, COLE. COLE was at all relevant times the broker of record
13 for TOWER.

14 58. The loan application represents that this was a bona fide refinance of the subject
15 property. The refinance amount of the subject property was \$860,000.00 and COSTA was
16 shown on the loan documents to be a qualified buyer. It was represented that COSTA worked as
17 a self-employed consultant for two years and earned \$50,000.00 per month. To support that
18 representation, submitted with the loan application was a purported CPA letter from GONZALEZ
19 of H & R Block. Furthermore, it was represented by NEWTON and SAN JOAQUIN APPRAISALS
20 that the value of the property was \$909,000.00.

21 59. The loan application is signed by COLE and represents that COLE took the
22 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
23 for loan approval. The file was underwritten, and relying upon the information provided by
24 COSTA, COLE and TOWER, was approved.

25 60. The loan was obtained on the basis of substantially false and misleading
26 information. The true facts were that this was not a true refinance, but an equity grab in which
the identity of COSTA was used to obtain the loan proceeds and deliver those proceeds to

1 COSTA in the form of a \$77,029.82 cash payoff at the close of escrow. None of the
2 representations in the loan file concerning COSTA's financial qualifications were true. COSTA
3 failed to disclose that he was working as a loan officer for TOWER, and had not been self-
4 employed for two years. All documentation included with the loan application to support that
5 representation, including the CPA letter, was falsified. Furthermore, COSTA had purchased the
6 subject property eight (8) months before the subject transaction from CRISP for \$750,000.00
7 and refinanced it for \$860,000.00; the classic equity grab. FREMONT is informed and believes
8 and on that basis alleges that CRISP, COLE, COSTA, and TOWER orchestrated this equity grab,
9 and knew that the sole purpose of obtaining a loan of \$860,000.00 was to funnel those proceeds
10 to COSTA, CRISP and others. The appraisers, NEWTON and SAN JOAQUIN APPRAISALS, assisted
11 in this fraudulent scheme by falsely stating the value of the subject property as \$909,000.00.

12 61. The false documents provided with the loan application were created for the sole
13 purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
14 the loan would not have been approved.

15 62. FREMONT relied on the accuracy of the information provided in the loan
16 application in approving the loans. FREMONT, after approving the loans, and as is the common
17 industry practice, retained the 1st and sold the 2nd to Goldman Sachs. The terms of the sale
18 requires FREMONT to cover Goldman Sachs for losses. When the loans went into default and
19 the property went into foreclosure, FREMONT suffered a loss of \$859,775.34.

20 **Loan Summary No. 5: 600 Stable Avenue, Bakersfield, CA 93307**

21 63. On or about August 10, 2005, WHISLER obtained two loans through FREMONT
22 and secured by real property located at 600 Stable Avenue, Bakersfield, CA 93307. WHISLER
23 executed two promissory notes whereby WHISLER agreed to pay the total sum of \$269,950.00

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25 (\$215,960.00 1st and \$53,990.00 2nd) plus interest thereon in accordance with the terms of the
26 notes.

64. In order to obtain the loans, WHISLER applied for the home loans through TOWER
and specifically with its loan officer, TEIXEIRA. COLE was at all relevant times the broker of

1 record for TOWER.

2 65. The loan application represents that this was a bona fide sale of the subject
3 property. The sale amount of the subject property was \$269,950.00 and WHISLER was shown
4 on the loan documents to be a qualified buyer. It was represented that WHISLER worked as a
5 self-employed construction inspector and earned \$8,900.00 per month. To support that
6 representation, submitted with the loan application was a purported CPA letter from SLUGA of
7 CALIFORNIA BUSINESS SOLUTIONS. Furthermore, it was represented by NEWTON and SAN
8 JOAQUIN APPRAISALS that the value of the property was \$270,000.00.

9 66. The loan application is signed by TEIXEIRA and represents that TEIXEIRA took the
10 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
11 for loan approval. The file was underwritten, and relying upon the information provided by
12 WHISLER, TEIXEIRA and TOWER, was approved.

13 67. The loan was obtained on the basis of substantially false and misleading
14 information. The true facts were that this was not a true sale, but an equity grab in which the
15 identity of WHISLER was used to obtain the loan proceeds and deliver those proceeds to CRISP
16 in the form of a \$13,497.50 cash payoff to CRISP COLE REALTY at the close of escrow. None of
17 the representations in the loan file concerning WHISLER's financial qualifications were true. All
18 documentation included with the loan application to support that representation, including the
19 CPA letter, was falsified. The appraisers, NEWTON and SAN JOAQUIN APPRAISALS, assisted in
20 this fraudulent scheme by falsely stating the value of the subject property as \$270,000.00.

21 68. The false documents provided with the loan application were created for the sole
22 purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
23 the loan would not have been approved.

24 69. FREMONT relied on the accuracy of the information provided in the loan
25 application in approving the loans. FREMONT, after approving the loans, and as is the common
26 industry practice, sold the loans to Deutsche Bank. The terms of the sale requires FREMONT to
cover Deutsche Bank for losses. When the loans went into default and the property went into
foreclosure, FREMONT suffered a loss of \$269,886.32.

1 **Loan Summary No. 6: 12610 Crown Crest, Bakersfield, CA 93311**

2 70. On or about August 16, 2005, EDDLEMAN obtained two loans through FREMONT
3 and secured by real property located at 12610 Crown Crest, Bakersfield, CA 93311. EDDLEMAN
4 executed two promissory notes whereby EDDLEMAN agreed to pay the total sum of
5 \$750,000.00 (\$600,000.00 1st and \$150,000.00 2nd) plus interest thereon in accordance with the
6 terms of the notes.

7 71. In order to obtain the loans, EDDLEMAN applied for the home loans through
8 TOWER and specifically with its loan officer, COLE. COLE was at all relevant times the broker of
9 record for TOWER.

10 72. The loan application represents that this was a bona fide refinance of the subject
11 property. The refinance amount of the subject property was \$750,000.00 and EDDLEMAN was
12 shown on the loan documents to be a qualified buyer. It was represented that EDDLEMAN as
13 the self-employed owner of Axis Group and earned \$17,000.00 per month. To support that
14 representation, submitted with the loan application was a purported CPA letter from GONZALEZ
15 of H & R Block. Furthermore, it was represented by NEWTON and SAN JOAQUIN APPRAISALS
16 that the value of the property was \$756,500.00.

17 73. The loan application is signed by COLE and represents that COLE took the
18 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
19 for loan approval. The file was underwritten, and relying upon the information provided by
20 EDDLEMAN, COLE and TOWER, was approved.

21 74. The loan was obtained on the basis of substantially false and misleading
22 information. The true facts were that this was not a true refinance, but an equity grab in which
23 the identity of EDDLEMAN was used to obtain the loan proceeds and deliver those proceeds to
24 CRISP in the form of a \$100,000.00 cash payoff at the close of escrow. None of the
25 representations in the loan file concerning EDDLEMAN's financial qualifications were true. All
26 documentation included with the loan application to support that representation, including the
CPA letter, was falsified. Furthermore, CRISP had purchased the subject property eight (8)
months before the subject transaction for \$668,000.00 and refinanced it for \$750,000.00; the

1 classic equity grab. FREMONT is informed and believes an on that basis alleges that CRISP,
2 COLE, TOWER, and CRISP COLE REALTY orchestrated this equity grab, and knew that the sole
3 purpose of obtaining a loan of \$750,000.00 was to funnel those proceeds to CRISP, COLE, and
4 others. The appraisers, NEWTON and SAN JOAQUIN APPRAISALS, assisted in this fraudulent
5 scheme by falsely stating the value of the subject property as \$756,500.00.

6 75. The false documents provided with the loan application were created for the sole
7 purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
8 the loan would not have been approved.

9 76. FREMONT relied on the accuracy of the information provided in the loan
10 application in approving the loans. FREMONT, after approving the loans, and as is the common
11 industry practice, sold the loans to UBS Real Estate Securities and NLC Finance. The terms of the
12 sale requires FREMONT to cover UBS Real Estate Securities and NLC Finance for losses. When
13 the loans went into default and the property went into foreclosure, FREMONT suffered a loss of
14 \$747,611.75.

15 **Loan Summary No. 7: 11600 Crabbett Park Drive, Bakersfield, CA 93311**

16 77. On or about March 24, 2006, L. NGUYEN obtained two loans through FREMONT
17 and secured by real property located at 11600 Crabbett Park Drive, Bakersfield, CA 93311. L.
18 NGUYEN executed two promissory notes whereby L. NGUYEN agreed to pay the total sum of
19 \$850,000.00 (\$680,000.00 1st and \$170,000.00 2nd) plus interest thereon in accordance with the
20 terms of the notes.

21 78. In order to obtain the loans, L. NGUYEN applied for the home loans through
22 TOWER and specifically with its loan officer, TEIXEIRA. COLE was at all relevant times the broker
23 of record for TOWER.

24 79. The loan application represents that this was a bona fide refinance of the subject
25 property. The refinance amount of the subject property was \$850,000.00 and L. NGUYEN was
26 shown on the loan documents to be a qualified buyer. It was represented that L. NGUYEN
worked as a self-employed sales manager for Pure Water, Inc. and earned \$15,500.00 per
month. To support that representation, submitted with the loan application was a purported

1 CPA letter from LOPEZ of H & E Lopez. Furthermore, it was represented by KILLIAN that the
2 value of the property was \$854,000.00.

3 80. The loan application is signed by TEIXEIRA and represents that TEIXEIRA took the
4 application on behalf of TOWER. The loan application was submitted from TOWER to FREMONT
5 for loan approval. The file was underwritten, and relying upon the information provided by
6 TEIXEIRA and TOWER, was approved.

7 81. The loan was obtained on the basis of substantially false and misleading
8 information. The true facts were that this was not a true refinance, but an equity grab in which
9 the identity of L. NGUYEN was used to obtain the loan proceeds and deliver those proceeds to
10 CRISP. None of the representations in the loan file concerning L. NGUYEN's financial
11 qualifications were true. L. NGUYEN was not a self-employed sales manager for Pure Water, Inc.
12 and the mortgage payments were made by CRISP. Furthermore, L. NGUYEN had purchased the
13 subject property 6 months before the subject transaction for \$775,000.00 and refinanced it for
14 \$850,000.00; the classic equity grab. FREMONT is informed and believes on that basis alleges
15 that CRISP orchestrated this equity grab, and knew that the sole purpose of obtaining a loan of
16 \$850,000.00 was to funnel those proceeds to CRISP and others. The appraiser, KILLIAN, assisted
17 in this fraudulent scheme by falsely stating the value of the subject property as \$850,000.00.

18 82. The false documents provided with the loan application were created for the sole
19 purpose of defrauding FREMONT into approving the loan. Had FREMONT known the true facts,
20 the loan would not have been approved.

21 83. FREMONT relied on the accuracy of the information provided in the loan
22 application in approving the loans. FREMONT, after approving the loans, and as is the common
23 industry practice, sold the loans to HomEq Servicing Corp. and Ocwen Federal Bank. The terms
24 of the sales requires FREMONT to cover HomEq Servicing Corp. and Ocwen Federal Bank for
25 losses. When the loans went into default and the property went into foreclosure, FREMONT
26 suffered a loss of \$850,000.00.

FIRST CAUSE OF ACTION

(For Fraud Against All Defendants And Does 1 Through 100, Inclusive.)

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84. FREMONT incorporates by reference the allegations set forth hereinabove as if fully set forth at length in support of this First Cause of Action against Defendants.

85. FREMONT is informed and believes, and on that basis alleges, that the above-named Defendants and Does 1 through 100 (collectively "Defendants"), and each of them, conspired to obtain the loans through false and fraudulent representations, including, but not limited to, the preparation and presentation of false and misleading financial information referenced above.

86. FREMONT is informed and believes, and on that basis alleges, that the Defendants named in this cause of action together ordered, supervised, and compiled the false and misleading information mentioned above with the intent to defraud, and submitted the information to obtain loan approval.

87. FREMONT is informed and believes, and on that basis alleges, that Defendants, and each of them, formed and operated a conspiracy with each of the other Defendants to commit the acts and omissions alleged, and that the acts and omissions were committed in furtherance of the conspiracy.

88. FREMONT is informed and believes, and on that basis alleges, that all Defendants participated in the preparation and communication of the misrepresentations alleged with the intent to deceive FREMONT into making the loans.

89. In making the loans, FREMONT reasonably relied on the representations made by the Defendants.

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90. As a direct and proximate result of the conspiracies, misrepresentation, and fraud of the Defendants, and each of them, FREMONT has been damaged in an amount to be determined by this Court, but which is not less than the sum of \$4,251,836.00.

91. The acts and conduct of Defendants, and each of them, were done with a conscious disregard of FREMONT's rights and with a specific intent to defraud and injure the FREMONT, such as to constitute fraud, oppression, and malice under California Civil Code §

1 3294. By virtue of the Defendants' willful and wrongful conduct, FREMONT is entitled to
2 punitive and exemplary damages as determined by this Court.

3 **SECOND CAUSE OF ACTION**

4 **(For Implied Contractual Indemnity As To All Defendants And Does 1 Through 100,**
5 **Inclusive.)**

6 92. FREMONT incorporates by reference the allegations set forth hereinabove as if
7 fully set forth at length in support of this Second Cause of Action against Defendants.

8 93. The duty of CRISP, J. CRISP, NGUYEN, COSTA, WHISLER, EDDLEMAN, and L.
9 NYGUEN, to provide accurate employment and income information on the loan applications
10 carried an implied agreement to indemnify and discharge foreseeable damages resulting from
11 their intentional misrepresentation of the financial and employment information.

12 94. Beginning just a few weeks or months before the closing of the loan, defendants
13 COLE, STOVALL, and TEIXEIRA, as agents of TOWER, prepared and then tendered loan
14 applications on behalf of CRISP, J. CRISP, NGUYEN, COSTA, WHISLER, EDDLEMAN, and L.
15 NYGUEN, to FREMONT. COLE, STOVALL, TEIXEIRA, and TOWER had a duty to provide
16 information on the borrowers' financial and employment history as part of the loan application
17 process. This duty and obligation carried an implied agreement to indemnify and discharge
18 foreseeable damages to FREMONT resulting from any intentional misrepresentation of the
19 financial and employment information.

20 95. FREMONT is informed and believes, and on that basis alleges, that COLE,
21 STOVALL, TEIXEIRA, and TOWER acted together to falsify the information in the file, and it was
22 on this bogus information that they received loan approval.

23 96. COLE, as the broker of record, is liable for the actions of his loan officers.

24 97. By reason of the foregoing, FREMONT is entitled to be indemnified by these
25 named Defendants, and each of them, in the sum of \$4,251,836.00. Defendants, and each of
26 them, have not paid any portion of this sum to FREMONT.

THIRD CAUSE OF ACTION

(For Equitable Indemnity As To All Defendants And Does 1 Through 100, Inclusive.)

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2 98. FREMONT incorporates by reference the allegations set forth hereinabove as if
3 fully set forth at length in support of this Third Cause of Action against Defendants.

4 99. FREMONT is informed and believes, and on that basis alleges, that all Defendants
5 knew of and participated in the fraud perpetrated in order to obtain the loans. FREMONT
6 incurred legal liability as a result of the sale of the loans to investors. But for the actions and
7 conduct of Defendants, and each of them, FREMONT would not have funded the loans and
8 would not have suffered damages. FREMONT did not personally engage in any conduct, or
9 committed any negligent acts or omissions, nor failed to perform any duty that it had agreed to
10 perform.

11 100. By reason of the foregoing, FREMONT is entitled to be indemnified by
12 Defendants, and each of them, in the sum of \$4,251,836.00. None of the Defendants have paid
13 any portion of this sum to FREMONT.

14 **FOURTH CAUSE OF ACTION**

15 **(For Unjust Enrichment As To All Defendants And Does 1 Through 100, Inclusive.)**

16 101. FREMONT incorporates by reference the allegations set forth hereinabove as if
17 fully set forth at length in support of this Fourth Cause of Action against Defendants.

18 102. FREMONT is informed and believes, and on that basis alleges, that the
19 Defendants named in this cause-of-action all received money, commissions, earnings and
20 benefits as a result of the fraudulent transactions that are the subject of this suit.

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23 103. FREMONT is informed and believes, and on that basis alleges, that monies and
24 commissions were paid to all Defendants and DOES 1 through 100 in an amount to be proven at
25 time of trial.

26 104. As a direct and proximate result of the deceptions perpetrated through false and
misleading documents, each of the these Defendants has been unjustly enriched, and has
obtained money, commissions, earnings and benefits to which the Defendants are not

1 otherwise entitled, and which they would not have obtained had the true facts been known.

2 105. These Defendants, therefore, hold their respective portion of the benefits,
3 money, and other gains resulting from the subject loan in constructive trust for and on behalf of
4 FREMONT with a duty to pay over and return the same.

5 **FIFTH CAUSE OF ACTION**

6 **(For Negligent Misrepresentation As To All Defendants And Does 1 Through 100, Inclusive.)**

7 106. FREMONT incorporates by reference the allegations set forth hereinabove as if
8 fully set forth at length in support of this Fifth Cause of Action against Defendants.

9 107. FREMONT is informed and believes, and on that basis alleges, that the
10 Defendants named in this cause-of-action all owed a duty of care to FREMONT to prepare and or
11 transmit information that was not knowingly false in connection with the loan application that is
12 the subject of this suit.

13 108. FREMONT is informed and believes, and on that basis alleges, that these
14 Defendants breached this duty. Neither FREMONT nor its predecessors breached any duty
15 owed to these Defendants.

16 109. FREMONT is informed and believes, and on that basis alleges, that Defendants
17 TOWER, COLE and DOES 1 through 100 are vicariously liable, both under general broker liability
18 and respondeat superior, for the actions of loan officers COLE, STOVALL, TEIXEIRA and others in
19 their employ who participated in the wrongful conduct that underlies this action.

20 110. TOWER, COLE, and DOES 1 through 100 failed to properly supervise the activities
21 of those, including COLE, STOVALL, and TEIXEIRA, who worked at TOWER as loan officers, and
22 failed to properly monitor activities and prevent the intentional and or negligent compilation of
23 the loan applications.

24 111. As a direct and proximate result of the breach of this duty, FREMONT has been
25 damaged in an amount to be proven at time of trial but which amount is no less than
26 \$4,251,836.00.

SIXTH CAUSE OF ACTION

1 **(For Breach Of Fiduciary Duty As To Tower, Cole, And Does 1 Through 100, Inclusive.)**

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3 112. FREMONT incorporates by reference the allegations set forth hereinabove as if
4 fully set forth at length in support of this Sixth Cause of Action against Defendants.

5 113. In addition to the traditional liability for intentional or actual fraud, a fiduciary is
6 liable to his principal for constructive fraud even though his conduct is not actually fraudulent.
7 Constructive fraud is a unique species of fraud applicable only to a fiduciary or confidential
8 relationship.

9 114. Constructive fraud compromises any act, omission, or concealment involving a
10 breach of legal or equitable duty, trust, or confidence which results in damage to another even
11 though the conduct is not otherwise fraudulent.

12 115. The failure of the fiduciary to disclose a material fact to his principal which might
13 affect the fiduciary's motives or the principal's decision, which is known (or should be known) to
14 the fiduciary, constitutes constructive fraud. Also, a careless misstatement may constitute
15 constructive fraud even though there is no fraudulent intent.

16 116. FREMONT is informed and believes, and on that basis alleges, that the
17 Defendants named in this cause-of-action owed a duty of care to FREMONT to review each loan
18 file submitted for approval, to properly monitor the activities of loan agents in its employ, and to
19 take all reasonable and necessary steps to assure that the information contained in a loan file
20 was true and accurate.

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23 117. FREMONT is informed and believes, and on that basis alleges, that these
24 Defendants breached this duty. Neither FREMONT nor its predecessors breached any duty
25 owed to these Defendants.

26 118. TOWER, COLE, and DOES 1 through 100 failed to properly supervise the activities
of those, including COLE, STOVALL, and TEIXEIRA who worked at TOWER as loan officers, and
failed to properly monitor activities and prevent the intentional and or negligent compilation of

1 the loan applications.

2 119. As a direct and proximate result of the breach of this duty, FREMONT has been
3 damaged in an amount to be proven at time of trial but which amount is no less than
4 \$4,251,836.00.

5 **SEVENTH CAUSE OF ACTION**

6 **(For Breach of Contract As To Tower And Does 1 Through 100, Inclusive.)**

7 120. FREMONT incorporates by reference the allegations set forth hereinabove as if
8 fully set forth at length in support of this Seventh Cause of Action against Defendants.

9 121. FREMONT is informed believes and thereon alleges that TOWER, by itself and
10 through its agents and representatives including CRISP and COLE, materially breached the
11 Broker Agreement by, among other things, (a) including false or erroneous statements and
12 information in the Loan Applications in violation of paragraph 5.1 of the Broker Agreement; (b)
13 omitting material facts necessary to make the statements and information in the Loan
14 Applications complete, accurate and understandable in violation of paragraph 5.1 of the Broker
15 Agreement; (c) accepting unreasonable and/or unearned fees for its services in relation to the
16 Loan Applications in violation of paragraph 5.10 of the Broker Agreement; and (d) failing and
17 refusing to indemnify, hold harmless and reimburse FREMONT from and against losses suffered
18 as a result of the Loan Applications, in violation of paragraph 7 of the Broker Agreement.

19 122. FREMONT has performed all conditions and covenants required of it under the
20 Broker Agreement, except those which FREMONT has been prevented from performing by
21 Defendants.

22 123. As a direct consequence of TOWER's material breaches of the Broker Agreement,
23 FREMONT has suffered damages exceeding \$4,251,836.00, not including prejudgment interest
24 at the maximum allowable rate and attorneys' fees and costs as provided for under paragraph
25 12.3 of the Broker Agreement, in an amount to be proven at trial.

26 WHEREFORE, FREMONT prays for judgment against the Defendants, and each of them,
as follows:

