

1 RICHARD D. McCUNE, Esq., State Bar No. 132124
rdm@mwtriallawyers.com
2 JAE (EDDIE) K. KIM, Esq., State Bar No.: 236805
jkk@mwtriallawyers.com
3 McCUNEWRIGHT LLP
2068 Orange Tree Lane, Suite 216
4 Redlands, California 92374
Telephone: (909) 557-1250
5 Facsimile: (909) 557-1275

E-filing

6 Attorneys for Plaintiff

7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10
11 CYNTHIA LARSEN, on behalf of herself and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 UNION BANK, N.A. (ALSO DBA "UNION
16 BANK OF CALIFORNIA"); AND
17 UNIONBANCAL CORPORATION; and DOES 1
through 125,

18 Defendants.
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Case No.:

CV 09 3250

CLASS ACTION COMPLAINT

1. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [BUSINESS & PROFESSIONS CODE SECTION 17200, ET SEQ.]
2. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [BUSINESS & PROFESSIONS CODE SECTION 17500, ET SEQ.]
3. FRAUD
4. NEGLIGENT MISREPRESENTATION
5. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

25 Plaintiff Cynthia Larsen ("Plaintiff"), on behalf of herself and all others similarly situated (i.e.,
26 the members of the Plaintiff Class described and defined, infra), herein allege as follows:
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FILED BY: RICHARD W. WHELAN
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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I

JURISDICTION AND VENUE

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1. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain members of the class are citizens of a different state than any defendant as required by 28 U.S.C., section 1332(d)(2).

2. Venue as to Defendant is proper in this judicial district because Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank have their west coast headquarters in the City and County of San Francisco. Furthermore, Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. do substantial business in this judicial district and some of the acts complained of occurred in this judicial district.

II

GENERAL ALLEGATIONS

3. This is a civil action primarily seeking from Defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (together referred hereinafter as “JPMorgan Chase,” “Defendants” or “Defendant JPMorgan Chase”) injunctive relief, as well as restitution and disgorgement of all profits gained from the up-front fees from existing customers unsuccessfully applying under one of Defendants home loan modification programs. These programs were set up to assist homeowners that were in danger of foreclosure of their home, and customers are encouraged by both the Federal government and the Defendants to apply for one of the home loan modification programs.

4. However, for Defendants’ customers who are vulnerable and potentially at risk of losing their homes, but ultimately do not qualify for Defendants’ home loan modifications programs, Defendants have put into place a plan to extract expensive up-front loan modification fees from these customers. Then, when Defendants deny the loan modification application, Defendants keep the up-front fees even though the services that the fee was supposed to pay for either did not occur or were unnecessarily spent. As such, Defendants have turned the up-front loan modification fees taken from the unqualified customers into a profit center, thereby putting these customers into an even worse financial position than they were before applying for the loan modification program.

1 5. As a result of this practice, Plaintiff also seek remedies for Defendants' failure to
2 adequately notify customers of this practice and misrepresenting that the up-front fees were for services
3 that were either unnecessary or not provided to him and the class members. Finally, Plaintiff seeks to
4 enjoin Defendants from continuing to conduct such improper activities. Plaintiff, for himself and all
5 others similarly situated, brings this action pursuant to the Unfair Business Practices Act, Business &
6 Professions Code section 17200, *et seq.* and False Advertising, Business & Professions Code section
7 17500, *et seq.*; as well as California common law fraud, negligent misrepresentation, and breach of the
8 implied covenant of good faith and fair dealing.

9 6. Plaintiff Randall Stevens is a resident of the County of San Bernardino, California.
10 Defendants own Plaintiffs home loan for his home located in the City of Loma Linda, County of San
11 Bernardino, California.

12 7. Defendant JPMorgan Chase & Co. is incorporated in Delaware and located in New York
13 and provides diversified financial services, including banking, insurance, investments, loan banking and
14 consumer finance to individuals, businesses and institutions in all counties in the State of California as
15 well as in all 50 states and internationally. Upon information and belief, the west coast headquarters of
16 JPMorgan Chase & Co., which is located in San Francisco, California, is responsible for many of the
17 policies and practices complained of herein.

18 8. Defendant JPMorgan Chase Bank is a subsidiary of JPMorgan Chase & Co. and is
19 incorporated in New York and located in Ohio, with a west coast headquarters in San Francisco,
20 California. JPMorgan Chase Bank provides banking and account services in all counties in the State of
21 California as well as in al 50 states and internationally. Upon information and belief, JPMorgan Chase
22 Bank's west coast headquarters is responsible for many of the policies and practice complained of
23 herein.

24 9. Based on information and belief, some of the decisions relating to developing, marketing
25 and implementing the actions complained herein originated from JPMorgan Chase's headquarters in San
26 Francisco, California.

27 10. The true names and capacities of Defendants sued herein as DOES 1 through 125,
28 inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible in some manner for
2 the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect
3 the true names and capacities of the Defendants designated herein as DOES when such identities
4 become known.

5 11. Based upon information and belief, Plaintiff alleges that at all times mentioned herein,
6 each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and
7 at all times mentioned was acting within the course and scope of said agency and/or employment with
8 the full knowledge, permission and consent of each of the other Defendants. In addition, each of the acts
9 and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the
10 other Defendants.

11 III

12 FACTUAL ALLEGATIONS

13 12. Based on information and belief, JPMorgan Chase is one of the largest providers of home
14 loans in the United States, servicing millions of customers nationwide. JPMorgan Chase is a participant
15 in the Troubled Asset Relief Program (“TARP”), created by the United States government to purchase
16 assets and equity from financial institutions in large part to address the nation’s housing crisis. As a
17 participant of TARP, Defendants agreed to offer the Obama administration’s “Making Homes
18 Affordable” program to vulnerable homeowners who are at risk to lose their homes because of their
19 inability to attain refinancing or modify their loan payments. Defendants’ program purportedly offers
20 home loan modifications for such vulnerable homeowners. Defendants also offer their own separate
21 loan modification programs.

22 13. However, as part of the offering of these loan modification programs, Defendants charge
23 a large up-front fee for services in processing the loan modification program without disclosing that
24 such fees are for services that are either unnecessary, or not provided at all, to the homeowner who does
25 not qualify for the programs.

26 14. Defendants further take actions that will increase the likelihood those customers who do
27 not meet the qualifications of the loan modification programs will pay Defendants a large up-front fee
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1 for which they will receive nothing in return. This is done through using appraisals that are artificially
2 low; so as to decrease the likelihood the loan will meet the loan modification threshold requirements.

3 15. Plaintiff Randall Stevens secured a loan from Washington Mutual on a residential
4 property located in Loma Linda, California. That loan was subsequently purchased by Defendants. On
5 April 8, 2009, Plaintiff Randall Stevens spoke by telephone with a JP Morgan Chase representative
6 inquiring about whether he would be able to modify his loan under the available programs. Plaintiff was
7 advised by Defendants that it was likely he could, but it would be necessary to pay \$750 to reimburse
8 Defendants for the cost of an appraisal, title search and processing of the paperwork. Plaintiff then paid
9 Defendants \$750 by credit card.

10 16. On April 10, 2009, Defendants sent an appraiser from Bakersfield, CA, with no apparent
11 knowledge of the real estate market in Loma Linda, California to appraise Plaintiff's property. Using
12 what appeared to be foreclosures and short sales, the appraisal was for substantially less than the amount
13 of the loan. Based on information and belief, that appraisal was provided to Defendants on April 11,
14 2009, only three days from when Plaintiff entered into the contractual relationship for the loan
15 modification.

16 17. However, even though Defendants were aware that Plaintiff did not qualify for the loan
17 modification program based on an appraisal that was less than the threshold requirement, it did not
18 notify Plaintiff of that fact for over a month later, and then only in response to Plaintiff's inquiry as to
19 the status of the loan modification. Plaintiff then requested a refund on the \$750, and Defendants denied
20 the request and refused to refund any portion of the \$750.

21 18. For Plaintiff, Defendants misrepresented to him over the telephone that the up-front fees
22 were for services that were either unnecessary or not provided to him if he did not qualify for the loan
23 modification. For many putative class members who obtained information about the program from
24 Defendants' website, brochures, or telephone contact, Defendants failed to disclose that there is a large
25 up-front fee for applying for the loan modification, that in the event of the customer non qualifying for
26 the loan, results in the customer paying Defendants for services that are either unnecessary or not
27 provided. The website further advises customers to avoid loan modification "scams" that charge large
28 up-front fees, then do not deliver a loan modification, which is precisely Defendants' program.

1 IV

2 CLASS ACTION ALLEGATIONS

3 19. Plaintiff initially proposes a nationwide class – the “Class” – in litigating this case, as
4 defined as follows:

5 All JPMorgan Chase customers who paid up-front fees for enrollment in Defendants’
6 home loan modification program on or after July 10, 2005, and upon not qualifying for
7 the program, were not refunded total or partial fees for unnecessary services or services
8 not rendered.

9 Excluded from the above class is any entity in which Defendants have a controlling interest, and
10 officers or director of Defendants.

11 20. If the Court determines that a nationwide class is not warranted, Plaintiff request, in the
12 alternative, the certification of a California class consisting of JPMorgan Chase customers whose home
13 loans relate to homes in California.

14 21. This action is brought as a class action and may properly be so maintained pursuant to the
15 provisions of the Federal Rules of Civil Procedure 23(a) and 23(b). Plaintiff reserve the right to modify
16 the class definitions and the class period based on the results of discovery.

17 22. **Numerosity of the Class** – The members of the Class are so numerous that their
18 individual joinder is impracticable. Plaintiff is informed and believes that there are at least hundreds of
19 thousands of customers in the class. Since the class members may be identified through business
20 records regularly maintained by Defendants and their employees and agents, and through the media, the
21 number and identities of class members can be ascertained. Members of the Class can be notified of the
22 pending action by e-mail, mail and supplemented by published notice, if necessary;

23 23. **Existence and Predominance of Common Question of Fact and Law** – There are
24 questions of law and fact common to the Class. These questions predominate over any questions
25 affecting only individual class members. These common legal and factual issues include, but are not
26 limited to:

- 27 a. Whether Defendants charged disqualified loan modification customers up-front fees
28 for services that were either unnecessary or not undertaken;

- 1 b. Whether Defendants encouraged customers it knew, or should have known, would
2 not qualify for the loan modification program to pay up-front loan modification fees
3 that constituted profit for Defendants;
- 4 c. Whether Defendants took actions, including encouraging artificially low appraisals,
5 which prevented customers who should have qualified for the loan modification to be
6 disqualified from the programs;
- 7 d. Whether Defendant JPMorgan Chase breached the implied covenant of good faith
8 and fair dealing with regards to these practices;
- 9 e. Whether Defendant JPMorgan Chase's contract with its customers are
10 unconscionable in that it allows the Defendants to keep fees for services not rendered,
11 thereby taking advantage of millions of vulnerable customers;
- 12 f. Whether Defendant JPMorgan Chase's conduct as described above constitutes
13 violations of the causes of action set forth below.
- 14 g. Whether Defendant JPMorgan Chase misled customers about the value of their
15 homes and/or the necessity of the fees in determining qualification for enrollment in
16 the program;
- 17 h. Whether Defendant JPMorgan Chase failed to disclose to customers each of the
18 above practices;
- 19 i. Whether Defendant JPMorgan Chase engaged in deceptive advertising campaigns
20 which created consumer expectations that are inconsistent with each of the above
21 practices;

22 24. **Typicality** – The claims of the representative Plaintiff is typical of the claims of the
23 members of the Class. Plaintiff, like all other members of the Class, has sustained damages arising from
24 Defendants' violations of the laws, as alleged herein. The representative Plaintiff and the members of
25 the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair,
26 systematic and pervasive pattern of misconduct engaged in by Defendants.

27 25. **Adequacy** – The representative Plaintiff will fairly and adequately represent and protect
28 the interests of the Class members and has retained counsel who are experienced and competent trial

1 lawyers in complex litigation and class action litigation. There are no material conflicts between the
2 claims of the representative Plaintiff and the members of the Class that would make class certification
3 inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

4 26. **Predominance and Superiority** – This suit may be maintained as a class action under
5 Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact common to the Class
6 predominate over the questions affecting only individual members of the Class and a class action is
7 superior to other available means for the fair and efficient adjudication of this dispute. The damages
8 suffered by individual class members are small compared to the burden and expense of individual
9 prosecution of the complex and extensive litigation needed to address Defendants’ conduct. Further, it
10 would be virtually impossible for the members of the Class to individually redress effectively the
11 wrongs done to them. Even if class members themselves could afford such individual litigation, the
12 court system could not. In addition, individualized litigation increases the delay and expense to all
13 parties and to the court system resulting from complex legal and factual issues of the case.
14 Individualized litigation also presents a potential for inconsistent or contradictory judgments. By
15 contrast, the class action device presents far fewer management difficulties; allows the hearing of claims
16 which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits;
17 and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by
18 a single court.

19 27. The Class Plaintiff contemplates the eventual issuance of notice to the proposed Class
20 members setting forth the subject and nature of the instant action. Upon information and belief,
21 Defendants’ own business records and electronic media can be utilized for the contemplated notices. To
22 the extent that any further notices may be required, the Class Plaintiff would contemplate the use of
23 additional media and/or mailings.

24 28. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
25 maintained as a Class Action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

26 a. Without class certification and determination of declaratory, injunctive, statutory
27 and other legal questions within the class format, prosecution of separate actions by individual members
28 of the Class will create the risk of:

1 i. Inconsistent or varying adjudications with respect to individual members
2 of the Class which would establish incompatible standards of conduct for the parties opposing the Class;
3 or

4 ii. Adjudication with respect to individual members of the Class which would
5 as a practical matter be dispositive of the interests of the other members not parties to the adjudication or
6 substantially impair or impede their ability to protect their interests;

7 b. The parties opposing the Class have acted or refused to act on grounds generally
8 applicable to each member of the Class, thereby making appropriate final injunctive or corresponding
9 declaratory relief with respect to the Class as a whole; or

10 c. Common questions of law and fact exist as to the members of the Class and
11 predominate over any questions affecting only individual members, and a Class Action is superior to
12 other available methods of the fair and efficient adjudication of the controversy, including consideration
13 of:

14 i. The interests of the members of the Class in individually controlling the
15 prosecution or defense of separate actions;

16 ii. The extent and nature of any litigation concerning controversy already
17 commenced by or against members of the Class;

18 iii. The desirability or undesirability of concentrating the litigation of the
19 claims in the particular forum;

20 iv. The difficulties likely to be encountered in the management of a Class
21 Action.

22 **FIRST CAUSE OF ACTION**

23 **Violation of Business And Professions Code Section 17200 et seq. – Unlawful, Fraudulent, and**

24 **Unfair Business Act and Practices**

25 **(Against all Defendants)**

26 29. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
27 herein.
28

1 **FOURTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 **(Against all Defendants)**

4 44. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
5 herein.

6 45. That Defendants had a duty to provide honest and accurate information regarding the
7 likelihood of customers qualifying for the home loan modification program before charging unnecessary
8 up-front fees; the true value of the property; and that the large up-front fees were for services that were
9 either unnecessary or not provided to Plaintiff and the Class members if they were disqualified from the
10 home loan modification programs.

11 46. Defendants specifically and expressly indicated to class members that the up-front fees
12 were necessary for the processing of the home loan modification program.

13 47. Such misrepresentations were and are made by JPMorgan Chase through standardized
14 telephone communications (in the case of Plaintiff and many Class members) and its website and
15 various marketing materials (in the case of many Class members).

16 48. Defendants knew, or in the exercise of reasonable diligence should have known, that the
17 ordinary consumer and customer of Defendants' services would understand Defendants' representations
18 as meaning that the up-front fees would be for services that would actually be performed. Defendants
19 also knew or in the exercise of reasonable diligence should have known, that because the ordinary
20 consumer and customer of Defendants' service would be in the desperate need of a loan modification to
21 avoid disastrous financial consequences, that they would be vulnerable to paying large fees that were
22 unnecessary as they would not result in loan modification. Any other understanding on the part of
23 consumers would not be reasonable given Defendants' representations.

24 49. Plaintiff and the Class members justifiably relied on Defendants' misrepresentations
25 when paying the large up-front fees.

26 50. As a result of the conduct of Defendants, Plaintiff and the Class Members have been
27 damaged by having relied on Defendants' misrepresentations as to the necessity of the large up-front
28 fees.

1 C. For an order awarding Plaintiff and the Class restitution and/or disgorgement and other
2 equitable relief as the Court deems proper;

3 D. For an order awarding Plaintiff and the Class punitive damages as to the appropriate cause
4 of action;

5 E. For an order enjoining Defendants:

6 1. under Business and Professions Code section 17203 from continuing to engage in
7 business acts and practices, or any of them, which are unlawful, unfair, or fraudulent,
8 as alleged herein; and

9 2. under Business and Professions Code section 17535 from continuing to engage in the
10 dissemination of advertisements which are untrue or misleading, alleged herein;


11 F. For an order mandating that Defendants engage in a corrective advertising campaign to
12 correct the misperceptions Defendants' conduct created;

13 G. For an order awarding Plaintiff and the Class pre-judgment and post-judgment interest, as
14 well as reasonable attorneys' and expert-witness fees and other costs pursuant to Code of Civil
15 Procedure section 1021.5, and other statutes as may be applicable; and

16 H. For an order awarding such other and further relief as this Court may deem just and proper.

17 DATED: July 9, 2009.

MCCUNEWRIGHT, LLP

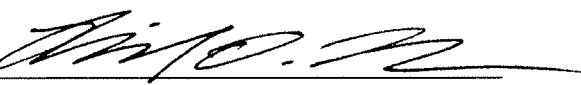
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19 BY: 
Richard D. McCune
20 Attorney for Plaintiff

21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff, and all others similarly situated, hereby demands a trial by jury herein.

24 DATED: July 9, 2009.

MCCUNEWRIGHT, LLP

25
26 BY: 
Richard D. McCune
27 Attorney for Plaintiff
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