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the Liquidating Trusts of PCHLI, PCFI and PCFC
8

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**

12 In re:
13 PEOPLE'S CHOICE HOME LOAN, INC.,
14 *et al.*,¹
15 Debtors.

Case No. 2:12-bk-15811-RK
(Jointly Administered with 2:12-bk-16200-RK and
2:12-bk-16201-RK)
(Transferred from 8:07-bk-10765-RK and Jointly
Administered with Case Nos. 8:07-bk-10767-RK
and 8:07-bk-10772-RK)

Chapter 11

**MOTION FOR ORDER DISALLOWING
PROOF OF CLAIM OF JOSEPH MUSSO
[PCHLI CLAIMS DOCKET NO. 305];
DECLARATIONS OF TAMARA D.
MCGRATH AND GREGORY A. MARTIN IN
SUPPORT THEREOF**

Date: May 14, 2013
Time: 2:30 p.m.
Place: Courtroom 1675
255 East Temple Street
Los Angeles, CA 90012

Judge: Hon. Robert N. Kwan

28 ¹ The Debtors were People's Choice Home Loan, Inc., People's Choice Funding, Inc. and People's
Choice Financial Corporation.



1 The Liquidating Trusts of People's Choice Home Loan, Inc., People's Choice
2 Funding, Inc. and People's Choice Financial Corporation (collectively, the "PC Trusts"), by and
3 through Ronald F. Greenspan, solely as the duly authorized and acting Liquidating Trustee for each
4 of the PC Trusts (the "Liquidating Trustee" or "Trustee"), hereby objects (the "Objection") to the
5 claims asserted by Joseph Musso ("Claimant") against the Debtors (as defined below), as more
6 particularly set forth herein. Claimant asserts a general unsecured claim "in excess of \$250,000"
7 resulting from the Debtors' alleged "predatory loan practices." Ex. A at 14. Claimant, however, has
8 failed to provide any evidence showing that an allowable claim exists against any of the Debtors.
9 Accordingly, the Liquidating Trustee requests that this Court enter an order disallowing Claimant's
10 claim in its entirety.

11 In support of this Objection, the Liquidating Trustee submits the Declarations of
12 Tamara D. McGrath and Gregory A. Martin. In further support hereof, the Liquidating Trustee
13 respectfully represents as follows:

14 I.

15 BACKGROUND

16 A. **The Debtors' Cases**

17 1. Each of People's Choice Home Loan, Inc. ("PCHLI"), People's Choice
18 Funding, Inc. ("PCFI") and People's Choice Financial Corporation ("PCFC," and collectively, the
19 "Debtors") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States
20 Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") in the Bankruptcy Court for the Central
21 District of California (the "Court") on March 20, 2007 (the "Petition Date"), commencing the
22 above-captioned bankruptcy cases (collectively, the "Cases").

23 2. On August 6, 2008, the Court entered its order (the "Confirmation Order")
24 confirming the Committee's First Amended Liquidating Plan under Chapter 11 of the Bankruptcy
25 Code (the "Plan"). The "Effective Date" under and as defined in the Plan occurred on August 12,
26 2008.

27 3. On the Effective Date of the Plan, and subject to the terms and conditions of
28 the Plan and Confirmation Order, among other things, (i) the Liquidating Trust Agreements for

1 each of the PC Trusts became effective, and the Liquidating Trustee for each of the PC Trusts
2 began to manage and administer the PC Trusts subject to the terms and conditions of the
3 Liquidating Trust Agreements, (ii) the Official Committee of Unsecured Creditors appointed in the
4 Cases by the Office of the United States Trustee was dissolved and discharged from any further
5 duties and obligations in the Cases, and the Post-Effective Date Committees for each of the
6 PC Trusts became operative, (iii) except as provided in the Plan, all of the assets and property of the
7 Debtors, including any and all affirmative claims for relief, were transferred into the PC Trusts, and
8 (iv) except as otherwise provided in the Plan, each of the Debtors was deemed dissolved or directed
9 to be dissolved as soon as practicable following the Effective Date.

10 4. Pursuant to the Plan, and subject to the terms and conditions of the Plan, the
11 Confirmation Order and the Liquidating Trust Agreements, the Liquidating Trustee is directed to
12 administer the PC Trusts by, among other things, (i) reducing remaining property to cash,
13 (ii) evaluating Claims against the Debtors and objecting to, allowing or otherwise resolving such
14 Claims, (iii) evaluating and pursuing, releasing or otherwise resolving affirmative relief against
15 third-parties, and (iv) making distributions of cash to Beneficiaries under and as defined in the
16 Liquidating Trust Agreements.

17 5. The Plan provides that the Liquidating Trustee is the representative of the
18 estates under 11 U.S.C. § 1123(b)(3)(B), and is a liquidator of the assets of the estates.

19 **B. Claimant's Proofs of Claim**

20 6. On or about August 6, 2007, Claimant filed a proof of claim (the "Claim")
21 using the form cover page provided by the bankruptcy court. A true and correct copy of the Claim,
22 as on file with the Court, is attached as Exhibit A to the Objection. Claimant did not provide any
23 supporting documentation for the Claim. See Ex A. The Claim seeks damages "in excess of
24 \$250,000.00" based on alleged "predatory loan practices." Ex A at 14.

25 **C. PC Trusts' Communications with Claimant**

26 7. Counsel to the PC Trusts ("Counsel") contacted Claimant a number of times
27 to attempt to resolve the Claim without involving the Court. Martin Decl. ¶ 4. On March 6, 2012,
28 Counsel spoke to Claimant's attorney, Ronald M. Katzman, on the telephone and explained that the

1 Liquidating Trustee was in the process of evaluating claims asserted against the bankruptcy estates.
2 Martin Decl. ¶ 4. Counsel further explained that filing only the form proof of claim cover page was
3 insufficient to prove that the Claim was an allowable claim. Martin Decl. ¶ 4. Counsel requested
4 that Mr. Katzman provide documentation showing that Claimant was entitled to an allowable claim
5 and then memorialized the conversation in an email to Mr. Katzman on that same date.
6 Martin Decl. ¶ 4; *see* Ex. B (March 6, 2012 email to Katzman). In a letter dated March 13, 2012,
7 Mr. Katzman responded to Counsel's request by provided the Liquidating Trustee with several
8 documents related to the state court litigation matter, *Musso vs. Storm, et al.*, case number
9 LC 076437, filed in the Los Angeles Superior Court. *See* Ex C (March 13, 2012 letter from
10 Katzman to Martin). One such document provided by Mr. Katzman was a complaint from that state
11 court proceeding in which he asserted (in his correspondence) that the “First, Third and Fifth
12 Causes of Action” were evidence showing that the Claimant was entitled to relief on his Claim.
13 Ex C at 18.

14 8. After reviewing the documents provided by Mr. Katzman, Counsel sent an
15 email in response explaining that the documents did not sufficiently describe why the Claimant was
16 entitled to an allowable claim against the Debtors. Ex D at 66 (April 25, 2012 email to Katzman).
17 Counsel explained that the First and Third Causes of Action did not apply because the Debtors were
18 only listed in the heading for those claims but were not addressed in the factual allegations.
19 Counsel further noted that the Fifth Cause of Action – which alleged that PCHLI was negligent
20 with respect to its review of Claimant’s loan documents – was legally insufficient as lenders do not
21 usually owe a duty of care to their borrowers (as discussed below). The April 25 email also stated
22 that if Mr. Katzman failed to provide evidence supporting and quantifying the Claim against the
23 PCHLI, the Liquidating Trustee would object to the Claim.

24 9. In the following months, Counsel did not receive any response from
25 Mr. Katzman regarding the April 25, 2012 email or the Claim. During this time period, Counsel
26 reached out to Mr. Katzman several times by both phone and email, again requesting information
27 related to the Claim. As of the date of this Objection, Counsel has received no additional
28 information regarding the Claim.

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II.

RELIEF REQUESTED

10. By this Objection, the Liquidating Trustee requests that the Court enter an order, pursuant to section 502 of the Bankruptcy Code, sustaining this Objection and disallowing the Claim in full and on a final basis since Claimant has failed to provide any evidence supporting the Claim.

III.

OBJECTION

A. The Claim Should Be Disallowed in its Entirety Because Claimant has Failed to Present Any Evidence Showing that an Allowable Claim Exists

11. Despite multiple requests, Claimant has failed to provide the Liquidating Trustee with any documentation demonstrating that the Claim is allowable. Adequate documentation is essential to establish a claim's *prima facie* validity. In order for a claim to be *prima facie* valid, it must comply with Bankruptcy Rule 3001 and set forth the facts necessary to support the claim. *See In re Stoecker*, 143 B.R. 879, 883 (N.D. Ill. 1992), *aff'd in part, vacated in part on other grounds*, 5 F.3d 1022 (7th Cir. 1993); *In re Chain*, 255 B.R. 278, 280-81 (Bankr. D. Conn. 2000). The Bankruptcy Rules and the official form governing proofs of claim (Official Form 10) call for claimants to attach copies of supporting documents to substantiate their claims. *See Fed. R. Bankr. P. 3001(a)*; Official Form 10. Claimant has not produced documentation sufficient to substantiate his claim, despite the Liquidating Trustee's specific requests that he do so. As noted by Counsel in the April 25 email, the complaint that is the purported basis for the Claim (provided to Counsel well after Claimant filed the Claim) fails to state a valid claim against any of the Debtors as a matter of law. Accordingly, the complaint, by itself, "fails to 'allege facts sufficient to support a legal liability,' and thus does not constitute prima facie evidence of the validity of the claim." *Hilton v. Hongisto (In re Hongisto)*, 293 B.R. 45, 51 (N.D. Cal. 2003) (quoting *In re Consol. Pioneer Mortg.*, 178 B.R. 222, 226 (9th Cir. B.A.P. 1995); *see also In re Roasters Corp.*, Nos. 98-80704C-11D, 98-81049C-11D, 2001 WL 1699692, at *4 (Bankr. M.D.N.C. March 7, 2001) ("A claimant who files a proof of claim that fails to set forth the

1 necessary facts loses the benefit of Rule 3001(f) and is not entitled to have the proof of claim
2 treated as *prima facie* evidence of the validity and amount of the claim.”) (citations omitted);
3 9 COLLIER ON BANKRUPTCY 3001.09[1] (Resnick and Sommer eds., 16th ed. 2012) (“In order for a
4 claim to be entitled to the weight [of *prima facie* validity] afforded by Rule 3001(f), it must comply
5 with the rules, including Rule 3001, and set forth the facts necessary to support the claim. . . . [I]f the
6 original proof of claim contains only summary information and lacks the documentation necessary
7 under Rule 3001 to establish a *prima facie* validity, the claimant may have the burden of
8 establishing its claim for the excess amounts . . .”).

9 12. Although a Rule 3001 violation is not by itself an objectionable ground in the
10 Ninth Circuit, the failure of a creditor to respond to a specific information request to substantiate its
11 claim “may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a
12 basis for evidentiary sanctions, thereby coming within Section 502(b)’s grounds to disallow the
13 claim.” *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P.
14 9th Cir. 2005); *see also Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436
15 (B.A.P. 9th Cir. 2005) (“We emphasize, as we did in *Heath*, that a creditor who files a proof of
16 claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of
17 claim will lack *prima facie* validity, so any objection that raises a legal or factual ground to disallow
18 the claim will likely prevail absent an adequate response by the creditor. Moreover, a creditor’s
19 lack of adequate response to a debtor’s formal or informal inquiries ‘in itself may raise an
20 evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary
21 sanctions, thereby coming within Section 502(b)’s grounds to disallow the claim.”) (quoting *In re*
22 *Heath*, 331 B.R. at 437); *In re Lasky*, 364 B.R. 385, 389 (Bankr. C.D. Cal. 2007) (same); *In re*
23 *Shank*, 315 B.R. 799, 816 (Bankr. N.D. Ga. 2004) (“The Court expects creditors who file proofs of
24 claim like the ones in this case to respond promptly and fully to an appropriate request for
25 information; if their failure to do so precludes an objecting party from determining the debtor’s
26 liability or amount thereof, then an objection asserting same will be appropriate. In the context of a
27 legitimate basis for questioning a claim and an appropriate request, formal or informal, for
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1 supporting documentation, a creditor who stands on an unadorned proof of claim such as the ones
2 in this case may well find itself with a disallowed claim.”).

3 13. The Debtor’s records do not support the validity of the Claim.
4 McGrath Decl. ¶ 3. Counsel contacted Claimant a number of times to attempt to obtain evidence
5 supporting the Claim. Martin Decl. ¶ 4. On March 6, 2012, Counsel informed Claimant’s attorney,
6 Mr. Katzman that the proof of claim cover page submitted by Claimant (with no supporting
7 documentation) in support of the Claim was insufficient to prove an allowable claim. Martin Decl.
8 ¶ 4. Counsel requested that Mr. Katzman provide documentation showing that Claimant was
9 entitled to relief. Martin Decl. ¶ 4; Ex B. In response, in a letter dated March 13, 2012,
10 Mr. Katzman provided the Liquidating Trustee with several documents related to a state court
11 litigation matter, none of which provided any basis for the Liquidating Trustee to conclude
12 Claimant was entitled to the relief requested. *See* Ex C. The only document relevant to the Claim
13 was the complaint, which did not assert a legally sufficient claim against the Debtors.

14 14. Mr. Katzman claimed that the First, Third and Fifth Causes of Action assert
15 claims against the Debtors. The First and Third Causes of Action, however, did not even mention
16 PCHLI in the factual allegations relating to those claims; PCHLI was merely listed in the title line.
17 *See* Ex. C. at 58-59, 61. And the Fifth Cause of Action is unfounded as a matter of law. *See* Ex. C
18 at 63-64. That cause of action asserts a claim for negligence against the Debtor in its capacity as
19 lender which is baseless as a matter of law – lenders do not ordinarily owe a duty of care to their
20 borrowers. *See, e.g., Quinteros v. Aurora Loan Servs.*, 740 F. Supp. 2d 1163,1173 (E.D. Cal. 2010)
21 (“Lender-borrower relations do not normally give rise to a duty supporting a negligence cause of
22 action.”); *Grant v. Aurora Loan Servs., Inc.*, 736 F. Supp. 2d 1257, 1273 (C.D. Cal. 2010) (“As a
23 general rule, ‘a financial institution owes no duty of care to a borrower when the institution’s
24 involvement in the loan transaction does not exceed the scope of its conventional role as a mere
25 lender of money.’”) (citations omitted); *Champlaine v. BAC Home Loans Servicing, LP*, 706 F.
26 Supp. 2d 1029, 1061 (E.D. Cal. 2009) (“[A]s a matter of law, the lender did not owe a duty in
27 negligence not to place borrowers in a loan even where there was a foreseeable risk borrowers
28

1 would be unable to repay.”) (citing *Wagner v. Benson*, 101 Cal. App. 3d 27, 35 (Cal. Ct. App.
2 1980)).

3 15. As of the date of this Objection, Counsel has received no additional
4 information regarding the Claim. Martin Decl. ¶ 5. Because Claimant has not provided evidence
5 sufficient to support his *prima facie* burden (and the Trustee has discovered no evidence in the
6 Debtors’ records to support the Claim), the Claim should be disallowed. See *In re Sandifer*,
7 318 B.R. 609 (Bankr. M.D. Fla. 2004) (proofs of claim which failed to provide documentation of
8 charges, payments, fees, and interest, but simply set forth balances allegedly owing on debtor’s
9 accounts, failed to satisfy the requirements of Bankruptcy rule and would be disallowed); *In re*
10 *Parrish*, 326 B.R. 708 (Bankr. N.D. Ohio 2005) (creditor’s failure to include supporting
11 documentation negates its *prima facie* validity).

12 16. The burden is upon the Claimant. If an objection to a proof of claim is made,
13 as it has been here with respect to the Claim, the ultimate burden of proof rests upon the purported
14 creditor. See *Cal. State Bd. of Equalization v. Official Unsecured Creditors’ Comm. (In re Fidelity*
15 *Mortgage Holding Co., Ltd.)*, 837 F.2d 696, 698 (5th Cir. 1988) (affirming disallowance of claim;
16 “the claimant must . . . ‘prove the validity of the claim by a preponderance of the evidence.’
17 The ultimate burden of proof always rests upon the claimant.”); *Spencer v. Pugh (In re Pugh)*,
18 157 B.R. 898, 901 (9th Cir. B.A.P. 1993) (burden of proof rests upon the claimant).
19 Unless Claimant provide evidence sufficient to meet their *prima facie* burden, the Claim should be
20 disallowed.

21 IV.

22 RESERVATION OF RIGHTS

23 17. Nothing contained in this Objection shall be deemed an admission by the
24 Liquidating Trustee of liability on any claims against the Debtors’ estates, and the Liquidating
25 Trustee does not waive any rights against any party. The Liquidating Trustee expressly reserves the
26 right to amend, modify, or supplement this Objection, respond to any opposition filed by Claimant
27 with respect hereto, file further objections to any claims asserted by Claimant in these Cases,
28 including, without limitation, objections as to the amounts and priority asserted in any proof of

1 claim or motion for administrative claim, whether filed or not, and to seek affirmative relief with
2 respect to Claimant.

3 18. Without limiting the generality of the foregoing, the Liquidating Trustee
4 reserves the right to bring other and further objections to the claims that are the subject of this
5 Objection whether or not such claims survive this Objection in whole or in part and to any other
6 claims.

7 V.

8 NOTICE

9 19. The Liquidating Trustee will serve copies of this Objection (together with all
10 exhibits) on: (a) Claimant; and (b) the Office of the United States Trustee. Claimant will be served
11 through Mr. Katzman at the address listed on the Claim. The Liquidating Trustee submits that such
12 service is consistent with Rule 7004 of the Federal Rules of Bankruptcy Procedure and that, in light
13 of the nature of the relief requested, no further notice is required.

14 VI.

15 CONCLUSION

16 **WHEREFORE**, based upon the foregoing, the Liquidating Trustee respectfully requests that
17 the Court enter its order (a) sustaining the Objection, (b) preserving other and further objections and
18 affirmative claims of the PC Trusts, (c) approving the form and scope of notice given of the relief
19 requested, and (d) granting such other and further relief as this Court may deem just and proper
20 under the circumstances of this Case.

21 Dated: April 8, 2013

WINSTON & STRAWN LLP

22
23 By: /s/ Gregory A. Martin

24 Gregory A. Martin
25 Counsel for Ronald Greenspan, as Trustee
26 of the Liquidating Trusts of PCHLI, PCFI
27 and PCFC
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DECLARATION OF TAMARA MCGRATH

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DECLARATION OF TAMARA D. MCGRATH

I, Tamara D. McGrath, declare and state as follows:

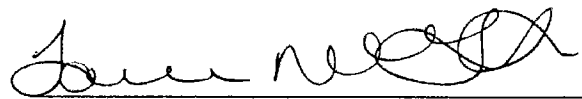
1. I am a Managing Director of Corporate Finance at FTI Consulting Inc. ("FTI"), financial advisor in these chapter 11 cases to (a) the Committee prior to plan confirmation and (b) the Liquidating Trustee since plan confirmation. In that capacity, I am custodian of and have become personally familiar with the books, records, and files (the "Records") of People's Choice Home Loan, Inc. ("PCHLI"), People's Choice Funding, Inc. ("PCFI"), and People's Choice Financial Corporation ("PCFC") (collectively, the "Debtors"). I am informed that the Records were created and updated by the Debtors' employees in the ordinary course of business at or near the time of the events recorded. Those Records are now in the possession of the Liquidating Trustee, and as to the following facts, I know them to be true from my review of the Debtors' business records. My business address is 633 West Fifth Street, 16th Floor, Los Angeles, CA 90071-2027.

2. I make this declaration in support of the Liquidating Trustee's *Motion for Order Disallowing Proof of Claim of Joseph Musso [PCHLI Claims Docket No.305]* (the "Objection"). Capitalized terms not defined in this declaration shall have the same meanings ascribed to them in the Objection.

3. During my review of the Records I discovered no evidence that would support a claim by the Claimant against PCHLI.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. If called upon as a witness, I could and would testify competently to the foregoing.

Executed on March ~~16~~ 2013, at Los Angeles, California.



Tamara D. McGrath

DECLARATION OF GREGORY A. MARTIN

DECLARATION OF GREGORY A. MARTIN

I, Gregory A. Martin, declare and state as follows:

1. I am an attorney at law admitted and in good standing to practice in the state of California and before the United States District Court for the Central District of California.

2. I am an attorney with Winston & Strawn LLP ("Winston & Strawn"). I am one of the lawyers responsible for the firm's representation of the PC Trusts. I have personal knowledge of the matters set forth below and, if called upon as a witness, I could and would testify competently thereto.

3. I make this declaration in support of the Liquidating Trustee's *Motion for Order Disallowing Proof of Claim of Joseph Musso [PCHLI Claims Docket No. 305]* (the "Objection"). Capitalized terms not defined in this declaration shall have the same meanings ascribed to them in the Objection.

4. As counsel to the PC Trusts, I contacted Claimant's attorney, Ronald Katzman, a number of times to obtain evidence supporting the claim. I initially contacted Mr. Katzman by telephone on March 6, 2012. I explained to Mr. Katzman that the Liquidating Trustee was in the process of evaluating claims asserted against the bankruptcy estates and that after reviewing the Claim – which included only the form cover page provided by the Bankruptcy Court – the Liquidating Trustee did not believe there was a basis for an allowable Claim. I requested that Mr. Katzman provide any documentation evidencing an allowable claim. After the call, I sent an email to Mr. Katzman memorializing the conversation. A true and correct copy of that email is attached as Exhibit B to the Objection.

5. In a letter dated March 13, 2012, Mr. Katzman provided the Liquidating Trustee with several documents related to the state court litigation matter, *Musso vs. Storm, et al.*, case number LC 076437, filed in the Los Angeles Superior Court. A true and correct copy of that letter, including all documents enclosed with the letter, is attached to the Objection as Exhibit C. After reviewing the documents provided by Mr. Katzman and discussing the Claim and new documents with the Liquidating Trustee, I responded to Mr. Katzman's March 13 email with an email sent on April 25, 2012. A true and correct copy of the April 25 email is attached to the

1 Objection as Exhibit D. In the April 25 email, I outlined the Trustee’s position with respect to the
2 Claim, including that the complaint failed to state a claim against PCHLI. I requested that
3 Mr. Katzman describe the factual circumstances (and provide documents supporting the factual
4 circumstances) that support the Claim. The April 25 email also stated that absent any additional
5 information provided by Mr. Katzman showing a basis for (and quantifying) the Claim against
6 PCHLI, the Liquidating Trustee would object to the Claim.

7 6. In the following months, my firm did not receive any response from
8 Mr. Katzman regarding the Claim. During this time period, I reached out to Mr. Katzman several
9 times by both phone and email, again to request information related to the Claim. As of the date of
10 this Objection, my firm has not received any additional information regarding the Claim.

11 7. A true and correct copy of the Claim, as on file with the Court, is attached as
12 Exhibit A to the Objection.

13 I declare under penalty of perjury under the laws of the United States of America that
14 the foregoing is true and correct.

15 Executed on April 8, 2013, at Los Angeles, California.

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/s/ Gregory A. Martin

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Gregory A. Martin

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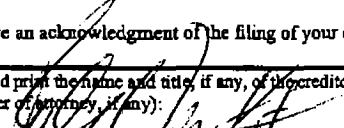
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EXHIBIT A

of 1 United States Bankruptcy Court for the Central District of California		PROOF OF CLAIM This Space For Court Use Only
Name of Debtor People's Choice Home Loan, Inc.		Case Number 07-10765 R/K
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p style="margin: 0;">FILED</p> <p style="margin: 0; font-size: 1.2em;">AUG - 6 2007</p> <p style="margin: 0; font-size: 0.8em;">CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</p> </div>
Name of Creditor (The person or other entity to whom the debtor owes money or property): JOSEPH MUSSO		
Name and Address where notices should be sent: JOSEPH MUSSO C/O RONALD MARSHAL KATZMAN 15300 VENTURA BLVD NO 507 SHERMAN OAKS CA 91403-5841		
Telephone Number: (818) 501-3501		This Space For Court Use Only
Last four digits of account or other number by which creditor identifies debtor: 6593		Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim dated: _____
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Predatory Loan Practices</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: 3/1/05		3. If court judgment, date obtained:
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
Unsecured Nonpriority Claim \$ <u>in excess of \$250,000.00</u>		
<input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		<input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____
Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). * Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
5. Total Amount of Claim at Time Case Filed: \$ <u>in excess of \$250,000.00</u> <u>\$250,00.00</u> (Unsecured) (Secured) (Priority) (Total)		
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		This Space For Court Use Only
7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date: 7/20/07	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):  RONALD M. KATZMAN, Attorney for	

Penalty for presenting fraudulent claim: Fine up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

EXHIBIT B

daSilva, Linda J.

From: Martin, Greg A.
Sent: Tuesday, March 06, 2012 10:12 AM
To: 'rmkronlaw@msn.com'
Subject: People's Choice Home Loan Inc. - Musso Claim

Ron,

Per our telephone conversation this morning I'm emailing you regarding Joseph Musso's claim filed in the People's Choice Home Loan, Inc. ("PCHLI") bankruptcy case. I have attached the claim to this email. As I mentioned, my firm represents the Liquidating Trustee in the case. The Liquidating Trustee is currently evaluating and resolving claims asserted against the bankruptcy estates. Mr. Musso's claim consists of only the form cover page provided by the bankruptcy court and seeks damages "in excess of \$250,000.00" for "predatory loan practices." It contains no documentation supporting his claim. To evaluate Mr. Musso's claim we need to know what he is asking for and why. To that end, please provide the following: (1) an explanation of the legal and factual bases supporting Mr. Musso's claim; (2) any documents that show that Mr. Musso had a relationship with PCHLI, including any mortgage with PCHLI and any communications between Mr. Musso and PCHLI; and (3) any other documents that support Mr. Musso's claim, including the amount of damages claimed. In the absence of such information, the Trustee will be forced to object to Mr. Musso's claim for lack of supporting documentation.

Thank you for your cooperation in resolving this matter.

Best regards,

Greg

Gregory A. Martin

Associate

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

D: +1 (213) 615-1918

F: +1 (213) 615-1750

Bio | VCard | Email | www.winston.com

**WINSTON
& STRAWN
LLP**

EXHIBIT C

Law Offices of

RONALD M. KATZMAN
A PROFESSIONAL CORPORATION

RONALD M. KATZMAN, ESQ.

15300 VENTURA BOULEVARD
SUITE 305
SHERMAN OAKS, CALIFORNIA
91403-3153
(818) 501-3501
FAX (818) 986-5109

March 13, 2012

Greg Martin, Esq.
Winston & Strawn
333 South Grand Avenue
Los Angeles, CA 90071-1543

Re: People's Choice Home Loan, Inc.
My Client: Joseph Musso

Dear Greg:

In response to your e-mail dated March 6, 2012, my files in this matter are in storage. However, I have enclosed the following (some of which are non-conformed copies):

1. Case Summary for *Musso vs. Storm, et al.*, case number LC 076437;
2. First Amended Complaint which was filed on May 29, 2007 without exhibits (our claims as to People's Choice are contained in the First, Third and Fifth Causes of Action);
3. Mr. Musso's Mandatory Settlement Conference Brief;
4. [Proposed] Order Determining Good Faith Settlement, which was granted on June 7, 2007;
5. The Default Judgment entered on October 16, 2008 in the amount of \$194,032.73 and which remains unsatisfied; and
6. The Dismissal without prejudice of People's Choice filed on November 26, 2008.

Because of People's Choice's bankruptcy, the Judgment was not entered against People's Choice and the Dismissal was filed.

Greg Martin, Esq.
March 13, 2012
Page Two

Following your review of the enclosed, please let me know what additional documents, if any, you require so that I can have them retrieved from storage.

Both Mr. Musso and I appreciate your courtesy and cooperation in potentially resolving this matter in Mr. Musso's favor. In the meantime, I look forward to hearing from you.

Sincerely,



RONALD M. KATZMAN

RMK/pak
encl.
cc: Joseph Musso

MINUTE 6 21 12 12
GARY 13 12

Case Summary

Case Number: LC076437
JOSEPH MUSSO VS DEAN DAVID STORM, ET AL

Filing Date: 12/01/2006
Case Type: Contractural Fraud (General Jurisdiction)
Status: Dismissed-Other 11/26/2008

Future Hearings
None

[Documents Filed](#) | [Proceeding Information](#)

Parties

- CHUTE DAVID MICHAEL - Attorney-Defendant
- DOES 1 TO 50 - Defendant
- DULBERG JEFFREY WAYNE - Attorney-Defendant
- GAINES KENNETH STEVEN - Attorney-Defendant
- KATZMAN RONALD MARSHAL - Attorney-Plaintiff
- LIFETIME FINANCIAL - Defendant's DBA
- MUSSO JOSEPH - Plaintiff
- PEDNEAU MARY JEAN - Attorney-Defendant
- PENCILLE CAROL - Defendant
- PEOPLE'S CHOICE HOME LOAN INC. - Defendant
- PHILHOWER KRISTEN H. - Attorney-Defendant
- PONY ERIC MICHAEL - Defendant
- PONY PAULETTE - Defendant
- SHEPPARD BRIAN J. - Mediator
- STEWARD TITLE GUARANTY COMPANY - Defendant
- STEWARD TITLE OF CALIFORNIA A CA CORP - Defendant
- STORM DEAN DAVID - Defendant

VIRTUAL ESCROW INC. - Defendant

WASSERMAN LARRY E. - Attorney-Defendant

WOLFE STUART BRUCE - Attorney-Defendant

[Case Information](#) | [Party Information](#) | [Proceeding Information](#)

Documents Filed (Filing dates listed in descending order)

Click on any of the below link(s) to see documents filed on or before the date indicated:

[05/20/2008](#) [09/13/2007](#) [05/18/2007](#) [02/02/2007](#)

01/14/2009 Notice (RE STATUS CONFERENCE OFF CALENDAR)
Filed by Attorney-Plaintiff

12/09/2008 Abstract (1 ISSUED)
Filed by Judgment Creditor

12/09/2008 Writ-Execution (1 ISSUED TO LOS ANGELES COUNTY)
Filed by Judgment Creditor

12/03/2008 Application-Appearance and Exam &
Filed by Attorney-Plaintiff

11/26/2008 Request-Dismissal-Partial (WITHOUT PREJUDICE AS TO DEFENDANT
PEOPLE'S CHOICE HOME LOAN, INC.)
Filed by Attorney-Plaintiff

10/16/2008 Judgment (DEFAULT JUDGMENT AFTER PROVE UP (complaint))
Filed by Attorney-Plaintiff

10/16/2008 Judgment (DEFAULT JUDGMENT AFTER PROVE UP (x-c))
Filed by Attorney for Deft/X-Complainant

08/21/2008 Default Entered (AS TO VIRTUAL ESCROW INC.)
Filed by Attorney-Plaintiff

08/20/2008 Default Entered (AS TO VIRTUAL ESCROW INC.)
Filed by Attorney-Plaintiff

08/20/2008 Memorandum-Costs
Filed by Attorney-Plaintiff

08/18/2008 Request-Enter Judgment (JUDGMENT AFTER PROVE UP HEARING
SUBMITTED TO NWM FOR PROCESSING RS)
Filed by Attorney-Plaintiff

08/08/2008 Notice-Unavailability-Counsel
Filed by Attorney-Plaintiff

08/06/2008 Notice-Ruling
Filed by Attorney-Plaintiff

07/31/2008 Acknowledgement-Satisfaction-Jdgmt
Filed by Attorney-Defendant

07/08/2008 Notice-Entry-Judgment
Filed by Attorney-Defendant

07/07/2008 Notice-Hearing
Filed by Attorney-Plaintiff

06/24/2008 Proof of Service (RE ORDER GRANTING SUMMSRY JUDGMENT)
Filed by Attorney-Defendant

06/24/2008 Proof of Service (OF STIPULATION AND ORDER FOR AWARD OF COSTS
TO DEFENDANT CAROL PENCILLE)
Filed by Attorney-Defendant

06/19/2008 Stipulation & Order (STIP AND ORDER FOR AWARD OF COSTS TO
DEFENDANT CAROL PENCILLE)
Filed by Attorney-Defendant

06/19/2008 Order (ORDER GRANTING SUMMARY JUDGMENT)
Filed by Attorney-Defendant

06/06/2008 Notice-Ruling
Filed by Attorney-Defendant

06/05/2008 Order (ORDER RELIEVING KRISTINE H. PHILHOWER AS COUNSEL FOR
VIRTUAL ESCROW INC.)
Filed by Attorney-Defendant

05/29/2008 Objection
Filed by Attorney-Plaintiff

05/28/2008 Judgment (SUMMARY JUDGMENT IN FAVOR OF DEFENDANT CAROL
PENCILLE)
Filed by Attorney-Defendant

05/22/2008 Notice-Unavailability-Counsel
Filed by Attorney-Defendant

Click on any of the below link(s) to see documents filed on or before the date
indicated:

[TOP](#) [05/20/2008](#) [09/13/2007](#) [05/18/2007](#) [02/02/2007](#)

05/20/2008 Notice-Ruling
Filed by Attorney-Defendant

05/09/2008 Motion-Relieved/Withdraw
Filed by Attorney-Defendant

05/06/2008 Objection (OBJECTIONS TO REQUEST FOR JUDICIAL NOTICE AT HEARING ON DEFENDANT'S MSJ)
Filed by Attorney-Defendant

05/06/2008 Reply (REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT)
Filed by Attorney-Defendant

05/02/2008 Miscellaneous (IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT)
Filed by Attorney-Plaintiff

05/02/2008 Request-Judicial Notice
Filed by Attorney-Plaintiff

04/04/2008 Substitution-Attorney
Filed by Attorney-Defendant

02/29/2008 Notice-Unavailability-Counsel
Filed by Attorney-Defendant

02/29/2008 Declaration
Filed by Attorney-Plaintiff

02/05/2008 Miscellaneous (RULING)
Filed by Attorney-Plaintiff

02/05/2008 Reply
Filed by Attorney-Plaintiff

02/05/2008 Objection
Filed by Attorney-Plaintiff

01/31/2008 Opposition
Filed by Attorney-Defendant

01/31/2008 Brief
Filed by Attorney-Defendant

01/31/2008 Objection
Filed by Attorney-Defendant

01/31/2008 Notice-Lodging
Filed by Attorney-Defendant

01/30/2008 Notice (RE : COURT CALL APPEARANCE)
Filed by Attorney-Defendant

01/29/2008 Statement-Non-Agreement (FIRST SANA FILED. MEDIATION ENDED IN NONAGREEMENT.)
Filed by Mediator

01/28/2008 Motion-Continuance (HEARING OF MOTION FOR SUMMARY JUDGMENT)

ON 2/08/08)
Filed by Attorney-Plaintiff

12/13/2007 Notice-Unavailability-Counsel
Filed by Attorney-Defendant

11/28/2007 Stipulation & Order (TO CONTINUE POST MEDIATION STATUS
CONFERENCE)
Filed by Attorney-Defendant

11/26/2007 Miscellaneous (APPENDIX OF EXHIBITS IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT)
Filed by Attorney for Deft/X-Complainant

11/26/2007 Statement-Separate
Filed by Attorney for Deft/X-Complainant

11/26/2007 Motion-Summary Judgment
Filed by Attorney for Deft/X-Complainant

11/05/2007 Notice-Mediation Hrg Date
Filed by Mediator

10/26/2007 Notice-Mediation Hrg Date
Filed by Mediator

10/17/2007 General Denial to Cross-Complaint
Filed by Attorney-Defendant

10/02/2007 Notice-Assignment-Mediator
Filed by ADR Clerk

09/26/2007 Notice-Ruling
Filed by Attorney-Plaintiff

09/18/2007 Statement-Case Management
Filed by Attorney for Deft/X-Complainant

Click on any of the below link(s) to see documents filed on or before the date
indicated:

[TOP](#) [05/20/2008](#) [09/13/2007](#) [05/18/2007](#) [02/02/2007](#)

09/13/2007 Answer-Cross-Complaint
Filed by Attorney-Defendant

09/13/2007 Statement-Case Management
Filed by Attorney-Plaintiff

09/11/2007 Statement-Case Management
Filed by Attorney for Deft/X-Complainant

09/07/2007 Answer-1st Amended Comp (ANSWER STRICKEN BY COURT 8/5/08)
Filed by Attorney-Defendant

09/07/2007 Cross-Comp-No Summons Issued (X-C STRICKEN BY COURT 8/5/08)
Filed by Attorney-Defendant

09/06/2007 Answer-1st Amended Comp
Filed by Attorney-Defendant

09/06/2007 Cross-Comp-No Summons Issued
Filed by Attorney for Deft/X-Complainant

08/31/2007 Notice (NOTICE OF COURT CALL APPEARANCE)
Filed by Attorney-Defendant

08/08/2007 Order-Auth Atty To Withdraw as Att (TO WITHDRAW AS ATTORNEY FOR
DEFENDANT PENCILLE (ONLY))
Filed by Attorney-Defendant

08/02/2007 Notice-Unavallablity-Counsel
Filed by Attorney-Defendant

07/31/2007 Reply
Filed by Attorney-Defendant

07/24/2007 Opposition (OPPOSITION TO DEMURRER TO 1ST AMENDED
COMPLAINT)
Filed by Attorney-Plaintiff

07/13/2007 Demurrer (DEMURRER TO PLAINTIFF'S VERIFIED FIRST AMENDED
COMPLAINT FOR DAMAGES)
Filed by Attorney-Defendant

07/09/2007 Declaration (OF CAROL PENCILLE IN OPPOSTION TO MTN TO
WITHDRAW AS ATTY OF RECORD)
Filed by Attorney-Defendant

07/09/2007 Notice-Continuance (OF MOTION TO BE RELIEVED AS COUNSEL OF
RECORD AND NTC OF CMC)
Filed by Attorney-Defendant

06/26/2007 Brief (MSC BRIEF)
Filed by Attorney-Plaintiff

06/22/2007 Brief (MSC BRIEF)
Filed by Attorney-Defendant

06/13/2007 Proof of Service
Filed by Attorney-Defendant

06/13/2007 Request-Dismissal-Partial (WITH PREJUDICE ENTIRE ACTION AS TO
DEFENDANTS STEWART TITLE GUARANTY COMPANY, A TEXAS CORPORATION AND
STEWART TITLE OF CALIFORNIA, A CORPORATION ONLY)
Filed by Attorney-Plaintiff

06/13/2007 Request-Dismissal-Partial (WITH PREJUDICE ENTIRE ACTION AS TO
DEFENDANTS DEAN DAVID STORM, INDIVIDUALLY AND DBA LIFETIME FINANCIAL;

ERIC MICHAEL PONY AND PAULETTE PONY, ONLY)
Filed by Attorney-Plaintiff

06/13/2007 Notice-Rulling
Filed by Attorney-Plaintiff

06/11/2007 Notice-Continuance
Filed by Attorney-Defendant

06/07/2007 Order (ORDER FOR DETERMINATION OF GOOD FAITH SETTLEMENT)
Filed by Attorney-Plaintiff

06/06/2007 Notice-Change-Firm Name & Addr
Filed by Attorney-Defendant

06/06/2007 Motion-Relieved/Withdraw
Filed by Attorney-Defendant

06/01/2007 Memorandum-Points & Authorities
Filed by Attorney-Defendant

06/01/2007 Declaration (DECLARATION OF MARY JEAN PEDNEAU IN SUPPORT OF
MOTION FOR GFS)
Filed by Attorney-Defendant

06/01/2007 Declaration (DECLARATION OF LORE HILLBURG IN SUPPORT OF
MOTION FOR GFS)
Filed by Attorney-Defendant

06/01/2007 Reply (REPLY TO OPPOSITION TO MOTION FOR AN ORDER FOR GOOD
FAITH SETTLEMENT)
Filed by Attorney-Plaintiff

05/30/2007 Complaint-Amended (1st) (VERIFIED FIRST AMENDED COMPLAINT)
Filed by Attorney-Plaintiff

05/21/2007 Opposition (OPPOSITION TO PLAINTIFF'S MOTION FOR GOOD FAITH
SETTLEMENT)
Filed by Attorney-Defendant

Click on any of the below link(s) to see documents filed on or before the date
indicated:

[TOP](#) [05/20/2008](#) [09/13/2007](#) [05/18/2007](#) [02/02/2007](#)

05/18/2007 Motion (MOTION FOR AN ORDER FOR A GODD FAITH SETTLEMENT)
Filed by Attorney-Plaintiff

04/18/2007 Notice (NOTICE OF COURT CALL APPEARANCE)
Filed by Attorney-Defendant

04/11/2007 Statement-Case Management
Filed by Attorney-Plaintiff

04/10/2007 Statement-Case Management
Filed by Attorney-Defendant

04/10/2007 Reply (REPLY TO PLTF'S OPPOSITION TO DEMURRER)
Filed by Attorney-Defendant

04/06/2007 Notice-Bankruptcy
Filed by Attorney-Defendant

04/05/2007 Statement-Case Management
Filed by Attorney-Defendant

03/28/2007 Notice-Bankruptcy
Filed by Attorney-Defendant

03/13/2007 Notice-Continuance
Filed by Attorney-Defendant

03/13/2007 Notice (CHANGE OF DEMURRER DATE)
Filed by Attorney-Defendant

03/09/2007 Notice (re: ccp section 170.6 reassignment)
Filed by Attorney-Defendant

03/09/2007 Notice-Continuance
Filed by Attorney-Defendant

03/08/2007 Notice-Case Management Conference
Filed by Attorney-Plaintiff

03/08/2007 Opposition
Filed by Attorney-Plaintiff

03/06/2007 Notice-Case Management Conference
Filed by Clerk

03/02/2007 Notice-Ruling
Filed by Attorney-Defendant

03/02/2007 Statement-Case Management
Filed by Attorney-Defendant

03/01/2007 Statement-Case Management
Filed by Attorney-Defendant

02/26/2007 Affidavit-Prejudice-Peremptory
Filed by Attorney-Defendant

02/26/2007 Notice-Demurrer (To The Complaint)
Filed by Attorney-Defendant

02/23/2007 Notice-Ruling
Filed by Attorney-Plaintiff

02/22/2007 Reply (To Opposition to Demurrer)
Filed by Attorney-Defendant

02/20/2007 Ex-Parte Application (To Coordinate Hearings On Demurrers/Motions To Strike)
Filed by Attorney-Plaintiff

02/20/2007 Reply (To Demurrer)
Filed by Attorney-Defendant

02/20/2007 Reply (to Motion To Strike)
Filed by Attorney-Defendant

02/14/2007 Opposition (To Demurrer)
Filed by Attorney-Plaintiff

02/14/2007 Reply (To Opposition To Demurrer)
Filed by Attorney-Defendant

02/13/2007 Opposition (to motion to strike)
Filed by Attorney-Plaintiff

02/13/2007 Opposition (to demurrer)
Filed by Attorney-Plaintiff

02/07/2007 Opposition (To Demurrer)
Filed by Attorney-Plaintiff

Click on any of the below link(s) to see documents filed on or before the date indicated:

[TOP](#) [05/20/2008](#) [09/13/2007](#) [05/18/2007](#) [02/02/2007](#)

02/02/2007 Notice-Demurrer (To The Complaint)
Filed by Attorney-Defendant

02/01/2007 Proof of Service-Summons & Com (To Virtual Escrow, Inc.)
Filed by Attorney-Plaintiff

01/22/2007 Motion-Strike
Filed by Attorney-Defendant

01/22/2007 Notice-Demurrer (To The Complaint)
Filed by Attorney-Defendant

01/16/2007 Notice-Continuance
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (Paulette Pony)
Filed by Attorney-Plaintiff

01/11/2007 Demurrer (To Complaint)
Filed by Attorney-Defendant

01/11/2007 Demurrer (To The Complaint)
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Mail
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (Carol Pencille)
Filed by Attorney-Plaintiff

01/11/2007 Declaration-Diligence
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (Dean David Storm)
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (Stewart Title of California)
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (Virtual Escrow, Inc.)
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (Stewart Title Guaranty Company, A
Texas Corporation)
Filed by Attorney-Plaintiff

01/11/2007 Proof of Service-Summons & Com (People's Choice Home Loan, Inc.)
Filed by Attorney-Plaintiff

12/01/2006 Complaint

12/01/2006 Summons Filed
Filed by Attorney-Plaintiff

12/01/2006 Notice-Case Management Conference

Click on any of the below link(s) to see documents filed on or before the date
indicated:

[TOP](#) [05/20/2008](#) [09/13/2007](#) [05/18/2007](#) [02/02/2007](#)

[Case Information](#) | [Party Information](#) | [Documents Filed](#)

Proceedings Held (Proceeding dates listed in descending order)

01/07/2009 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Examination-Judgment Debtor - **Off calendar-Moving party**

10/16/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Hearing-Default Prove-up (AGAINST VIRTUAL ESCROW ONCOMPLAINT AND X-
COMPLAINT) - **Judgment-Default After Prove-up**

08/05/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
OSC-Order to Show Cause (OSC RE DEFAULT OF VIRTUAL ESCROW.TRIAL SETTING
CONFERENCE) - **Order-Court**

07/03/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Conference-Status (STATUS CONFERENCE AND TRIALSETTING) - **Held-Continued**

06/05/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Motion-Withdraw as Atty of Rec (MOTION TO WITHDRAW AS COUNSEL.TRIAL SETTING
CONFERENCE) - **Granted**

05/14/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Motion-Summary Judgment (DEFENDANT PENCILLE'S MOTION FORSUMMARY
JUDGMENT/ADJUDICATION.TRIAL SETTING CONFERENCE) - **Granted**

03/12/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Motion-Summary Judgment (PLAINTIFF'S MOTION TO CONTINUEMSJ, TRIAL AND
DISCOVERY.DEFENDANT PENCILLE'S MOTION FORSUMMARY
JUDGMENT/ADJUDICATION) - **Not held-Continued**

02/08/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Motion-Summary Judgment (MOTION TO CONTINUE HEARING OFTODAY'S MOTION
FOR SUMMARYJUDGMENT) - **Continued**

01/29/2008 at 10:00 am in Department ADRO, ADR Neutral, Presiding
Closed-ADR (1/23/08BRIAN SHEPPARD, MEDIATOR) - **Non-Agreement**

01/28/2008 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Conference-Post-Mediation Status (MEDIATION TO BE COMPLETED BY1/28/08) -
Held-Trial date to stand

09/24/2007 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Conference-Case Management (CASE MANAGEMENT CONFERENCE) - **Held-Trial date
set**

08/08/2007 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Motion-Withdraw as Atty of Rec (MOTION TO BE RELIEVED AS COUNSEL(DEFENDANT)
DEMURRER TO PLAINTIFF'S VERIFIEDFIRST AMENDED COMPLAINT FORDAMAGESCMC)
- **Granted**

06/26/2007 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Conference-Mandatory Settlement (POST MEDIATION/TRIAL
SETTINGCONFERENCE.MANDATORY SETTLEMENT CONFERENCE) - **Held-Not settled,
conf & trial set**

06/07/2007 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Motion-Good Faith Settlement - **Granted**

04/27/2007 at 08:30 am in Department NWM, MICHAEL HARWIN, Presiding
Hearing-Demurrer (CASE MANAGEMENT CONFERENCEDEM/MS BY PEOPLE'S CHOICE
HOME LNDEM BY VIRTUAL ESCROW AND CAROLPENCILLEmp ct call (San Jose)) - **Held**

03/05/2007 in Department NWA, MICHAEL R. HOFF, Presiding
Order-Case Reassigned - **Transferred-Other dept-per 170.6 C**

02/28/2007 at 09:00 am in Department NWY, RICHARD ADLER, Presiding
Affidavit-170.6 - **Transferred-Other department**

02/22/2007 at 09:00 am in Department NWY, RICHARD ADLER, Presiding
Hearing-Demurrer - **Sustained-With leave to amend**

02/21/2007 at 09:02 am in Department NWY, RICHARD ADLER, Presiding
Hearing-Demurrer (To The Complaint by Defendants Stewart Title of California, Inc. and
Stewart Title Guaranty Co) - **Continued**

02/20/2007 at 09:00 am in Department NWY, RICHARD ADLER, Presiding
Application-Ex-Parte (By Plaintiff To Coordinate hearings on Demurrers/Motions
To Strike) - **Continued**

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): RONALD M. KATZMAN (048093) 15300 Ventura Boulevard, Suite 507 Sherman Oaks, CA 91403-5844 TELEPHONE (818) 501-3501 FAX NO. (Optional): (818) 986-5109 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Joseph Musso	FOR COURT USE ONLY LOS ANGELES SUPERIOR COURT OCT 16 2008 ORIGINAL FILED						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 6230 Sylmar Avenue MAILING ADDRESS: CITY AND ZIP CODE: Van Nuys, CA 91401 BRANCH NAME: Northwest District	CASE NUMBER: LC 076 437						
PLAINTIFF: JOSEPH. MUSSO DEFENDANT: DEAN DAVID STORM, et al.-							
<p style="text-align: center;">JUDGMENT</p> <table style="width:100%; border: none;"> <tr> <td><input type="checkbox"/> By Clerk</td> <td><input checked="" type="checkbox"/> By Default</td> <td><input type="checkbox"/> After Court Trial</td> </tr> <tr> <td><input checked="" type="checkbox"/> By Court</td> <td><input type="checkbox"/> On Stipulation</td> <td><input type="checkbox"/> Defendant Did Not Appear at Trial</td> </tr> </table>		<input type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial	<input checked="" type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial
<input type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial					
<input checked="" type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial					

JUDGMENT

1. **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. **ON STIPULATION**
 - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. the signed written stipulation was filed in the case.
 - c. the stipulation was stated in open court the stipulation was stated on the record.

3. **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time):
before (name of judicial officer):
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each): (1) (2)	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each): (1) (2)	<input type="checkbox"/> Defendant's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 3b.	
 - c. Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

PLAINTIFF: JOSEPH MUSSO DEFENDANT: DEAN DAVID STORM, et al	CASE NUMBER: LC 076 437
---	-----------------------------------

JUDGMENT IS ENTERED AS FOLLOWS BY: THE COURT THE CLERK

4. **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

- a. for plaintiff (name each): **Joseph Musso**
 and against defendant (names):
Virtual Escrow, Inc., a California corporation
- c. for cross-complainant (name each):
 and against cross-defendant (name each):

Continued on Attachment 5a. Continued on Attachment 5c.

- b. for defendant (name each):
 d. for cross-defendant (name each):

6. **Amount.**

- a. Defendant named in item 5a above must pay plaintiff on the complaint:
- c. Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1)	<input checked="" type="checkbox"/> Damages		\$ 140,000.00
(2)	<input checked="" type="checkbox"/> Prejudgment interest at the annual rate of	%	\$ 49,893.35
(3)	<input type="checkbox"/> Attorney fees		\$
(4)	<input checked="" type="checkbox"/> Costs		\$ 4,139.38
(5)	<input type="checkbox"/> Other (specify):		\$
(6)	TOTAL		\$ 194,032.73

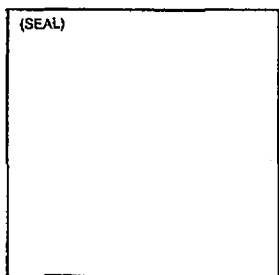
(1)	<input type="checkbox"/> Damages		\$
(2)	<input type="checkbox"/> Prejudgment interest at the annual rate of	%	\$
(3)	<input type="checkbox"/> Attorney fees		\$
(4)	<input type="checkbox"/> Costs		\$
(5)	<input type="checkbox"/> Other (specify):		\$
(6)	TOTAL		\$

- b. Plaintiff to receive nothing from defendant named in item 5b.
 Defendant named in item 5b to recover costs \$ _____ and attorney fees \$ _____
- d. Cross-complainant to receive nothing from cross-defendant named in item 5d.
 Cross-defendant named in item 5d to recover costs \$ _____ and attorney fees \$ _____

7. Other (specify):

Date: **OCT 16 2008** Michael B. Hamilton
JUDICIAL OFFICER

Date: Clerk, by _____, Deputy



CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date: _____

Clerk, by _____, Deputy

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): RONALD M. KATZMAN, ESQ. (048093) Law Offices of Ronald M. Katzman 15300 Ventura Boulevard, Suite 507 Sherman Oaks, CA 91403-5844 ATTORNEY FOR (Name): Plaintiff Joseph Musso Insert name of court and name of judicial district and branch court, if any: Los Angeles Superior Court, Northwest District PLAINTIFF/PETITIONER: JOSEPH MUSSO DEFENDANT/ RESPONDENT: DAVID DEAN STORM, et al.	TELEPHONE NO.: (818) 501-3501	FOR COURT USE ONLY <div style="text-align: center;"> ORIGINAL LOS ANGELES SUPERIOR COURT NOV 26 2008 JOHN A. CLARKE, CLERK BY E. VINCE CRUZ, DEPUTY </div>
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Fraud, Breach of Contract, etc.		CASE NUMBER: <div style="text-align: center;">LC 076 437</div>
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:

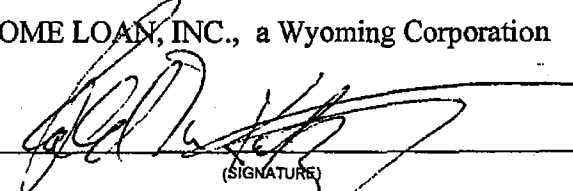
- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
- (3) Cross-complaint filed by (name): _____ on (date): _____
- (4) Cross-complaint filed by (name): _____ on (date): _____
- (5) Entire action of all parties and all causes of action
- (6) Other (specify):* **Defendant PEOPLE'S CHOICE HOME LOAN, INC., a Wyoming Corporation**

Date: November 25, 2008

RONALD M. KATZMAN

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.


 (SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross - complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (j).

(SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross - complainant

(To be completed by clerk):

3. Dismissal entered as requested on (date): _____
4. Dismissal entered on (date): **NOV 26 2008** as to only (name): _____
5. Dismissal not entered as requested for the following reasons (specify): _____
6. a. Attorney or party without attorney notified on (date): _____
- b. Attorney or party without attorney not notified. Filing party failed to provide _____
- a copy to conformed means to return conformed copy

Date:

NOV 26 2008

Clerk, by **E. VINCE CRUZ**, Deputy

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Law Offices of
RONALD M. KATZMAN
A PROFESSIONAL CORPORATION
15300 VENTURA BOULEVARD, SUITE 507
SHERMAN OAKS, CALIFORNIA 91403-5844
TELEPHONE (818) 501-3501

(SPACE BELOW FOR COURT FILING STAMP ONLY)

RONALD M. KATZMAN - STATE BAR NUMBER 048093

Attorney for Plaintiff Joseph Musso

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSEPH MUSSO,

Plaintiff,

-vs-

DEAN DAVID STORM, individually and dba
Lifetime Financial; ERIC MICHAEL PONY;
PAULETTE PONY; VIRTUAL ESCROW, INC., a
California Corporation; CAROL PENCILLE;
PEOPLE'S CHOICE HOME LOAN, INC., a
Wyoming Corporation; STEWART TITLE
GUARANTY COMPANY, a Texas Corporation;
STEWART TITLE OF CALIFORNIA, a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. LC 076 437
Assigned to: Judge Michael Harwin
Dept: NW "M"
Complaint Filed: December 1, 2006
[PROPOSED] ORDER DETERMINING
GOOD FAITH SETTLEMENT (CCP
§ 877.6(a)(2))
Date: June 7, 2007
Time: 8:30 a.m.
Dept: "M"

On June 7, 2007, Plaintiff Joseph Musso's Motion for an Order for a Good Faith Settlement; Joinder of the Lifetime and Stewart Defendants came on regularly for hearing in Department "M" of the above entitled Court, the Honorable Michael Harwin, presiding. Ronald M. Katzman appeared on behalf of Plaintiff Joseph Musso; Defendants Dean David Storm, individually and dba Lifetime Financial, Eric Michael Pony and Paulette Pony (collectively "Lifetime") and Stewart Title Guaranty Company, a Texas Corporation and Stewart Title of California, a Corporation (collectively "Stewart") having joined in the Motion, their respective counsel made no appearance;

1 Defendant People's Choice having filed bankruptcy made no appearance; and Kristen Nguyen
2 appeared on behalf of Defendants Virtual Escrow, Inc., a California Corporation and Carol Pencille,
3 collectively "Virtual".

4 The Court, having read and considered the Motion, the supporting Declaration, the
5 Points and Authorities and the terms and conditions of the Settlement Agreement as between Musso
6 and the Stewart and Lifetime Defendants, any documents filed in Opposition and the oral argument
7 of counsel, and good cause appearing therefore,

8 IT IS HEREBY ORDERED that the Settlement Agreement attached as Exhibit "A"
9 to the Declaration of Ronald M. Katzman, was made in good faith between/among the parties to that
10 Agreement within the meaning and effect of *Code of Civil Procedure §877.6*.

11
12 Dated: _____, 2007

13 THE HONORABLE MICHAEL HARWIN,
14 Judge of the Los Angeles Superior Court
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(SPACE BELOW FOR COURT FILING STAMP ONLY)

RONALD M. KATZMAN - STATE BAR NUMBER 048093

Attorney for Plaintiff Joseph Musso

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSEPH MUSSO,

Plaintiff,

-vs-

DEAN DAVID STORM, individually and dba
Lifetime Financial; ERIC MICHAEL PONY;
PAULETTE PONY; VIRTUALESCROW, INC., a
California Corporation; CAROL PENCILLE;
PEOPLE'S CHOICE HOME LOAN, INC., a
Wyoming Corporation; STEWART TITLE
GUARANTY COMPANY, a Texas Corporation;
STEWART TITLE OF CALIFORNIA, a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. LC 076 437

Assigned to: Judge Michael B. Harwin
Dept: NW "M"

Complaint Filed: December 1, 2006

PLAINTIFF'S MANDATORY
SETTLEMENT CONFERENCE
BRIEF

Date: June 26, 2007
Time: 8:30 a.m.
Dept: NW "M"

Plaintiff Joseph Musso ("Plaintiff") hereby submits his Mandatory Settlement Conference Brief as to Defendants Virtual Escrow, Inc. and Carol Pencille as follows:

The Good Faith Settlement

A Good Faith Settlement was approved by this Court as to the Lifetime and Stewart Defendants (\$35,000.00 by Lifetime and \$30,000.00 by Stewart). At Mediation, Defendants Virtual and Pencille offered nothing by way of settlement. At the Good Faith hearing, Plaintiff offered to settle with the Virtual Defendants for \$40,000.00, which offer was rejected. Following the Good

1 Faith hearing, Virtual and Pencille offered to settle for the sum of \$5,000.00 each, which offer
2 Plaintiff rejected.

3 Because the underlying facts were fully briefed in the Good Faith Motion, they will not be
4 repeated here.

5 *Virtual's Serious Liability Exposure*

6 Virtual's obligation was to hold the funds in escrow from the People's Choice loan and
7 distribute them according to the instructions from their principals (Plaintiff and People's Choice). One
8 of those instructions was to pay off underlying liens. As escrow agent, Virtual and Pencille are bound
9 to perform and comply strictly with each and every term and condition of the instructions. *Virtual had*
10 *the duty to make sure that the Countrywide loan was paid off, which they did not do.*

11 The Virtual Defendants violated escrow law by disbursing or causing the disbursement of escrow
12 funds knowingly or recklessly (other than according to Escrow Instructions) and by making or causing
13 to be made statements and omissions in any document pertaining to the People's Choice loan escrow
14 (*Financial Code § 17414*).

15 When Virtual received the excess proceeds from Stewart, rather than returning them to
16 Stewart to make sure that the Countrywide loan was paid off (as required by the Escrow Instructions),
17 Virtual issued a new Closing Statement. In the new Closing Statement, Virtual improperly adjusted
18 the mortgage broker's commission from \$12,500.00 to \$37,500.00 (using the funds that should have
19 gone to pay off Countrywide) and eliminated the Countrywide payoff line completely from that
20 Closing Statement.

21 In order to hide the facts that Countrywide had not been paid off as required and that Virtual
22 had increased the mortgage broker's commission by \$20,000.00, Virtual, in violation of escrow law,
23 knowingly disbursed escrow funds in a manner that was not in accordance with the Escrow
24 Instructions from the parties and omitted the Countrywide loan payoff. But for Virtual's failure to
25 perform the duties that it was hired to perform (issue valid Estimated and Final Closing Statements,
26 deliver those statements to Plaintiff and make sure that the Countrywide loan was paid off), Plaintiff
27 would never have known, among other concealments, that he would not net out \$77,000.00 from the
28

1 transaction because a substantial portion of that sum would be required to payoff Countrywide. By
2 such conduct, Virtual allowed the Countrywide loan to go into default. Virtual should have returned
3 the excess proceeds to Stewart, but instead, Virtual falsified the Closing Statement and allowed the
4 Countrywide loan to go into default, without even disclosing to Plaintiff that Virtual had not paid it
5 off.

6 Virtual also failed to follow the Closing Instructions provided by the lender, which required
7 all liens to be paid. Virtual owed a fiduciary duty to Plaintiff. By eliminating the payoff information
8 for the second and paying the mortgage broker an additional commission of \$20,000.00, Virtual is
9 exposed to liability based on a breach of their fiduciary duties, as well as their regular duties to
10 properly handle the escrow funds, including punitive damages.

11 ***Fraud Provides the Potential for an Award of Punitive Damages.***

12 Virtual should be aware of their serious liability exposure for the obvious breach of their
13 fiduciary duties and liability exposure that they have to Plaintiff. Virtual, as escrow, failed to
14 disclose material facts to Plaintiff as to the disbursement and application of funds. The Virtual
15 Defendants' numerous non-disclosures and concealments of material facts, where there is a
16 duty to disclose, form the basis for Virtual's fraud and a threshold for potential punitive
17 damages.

18 These circumstances demonstrate Virtual's very significant liability exposure. In fact, it was
19 Stewart's position that Virtual has the lion's share of the liability for a breach of their fiduciary duties
20 to Plaintiff.

21 ***Virtual's Mandatory Settlement Conference Brief***

22 Virtual cites numerous irrelevant and factually distinguishable cases to come to the erroneous
23 conclusion that:

- 24 1. Virtual can not be responsible for fraud "because the element of representation is missing";
25 2. There is no contract between Plaintiff and the Virtual Defendants;
26 3. Virtual had no duty to verify or certify the loan escrow documents nor obtain any
27 authorization for payment of costs;

28

1 4. Plaintiff sustained no damages (fuzzy math, which is not based on the difference in costs
2 and expenses over the life of the People's Choice loan);

3 5. Virtual ignores that Plaintiff would not have consummated the People's Choice loan had
4 all facts been properly disclosed; and

5 6. Virtual also ignores the attorney's fee provision in its own Escrow Instructions and its
6 exposure to same.

7 *The Virtual Defendants have duties arising as a matter of law as Escrow. California law*
8 *imposes on them numerous duties as an escrow agent, including the obligations of a fiduciary and*
9 *agent with the duty to properly disburse escrow funds in accordance with the Escrow Instructions.*
10 *The Virtual Defendants had the duty to provide accurate Estimated and Final Closing Statements and*
11 *disburse funds only in the manner required by proper Escrow Instructions and to properly certify*
12 *documents as complete. Such duties are imposed by law and which this court is obligated to take*
13 *judicial notice (Financial Code § 17414.).*

14 ***The Current Settlement Demand***

15 Considering the liability exposure for the Virtual Defendants and the costs of defense, the
16 Plaintiff's reduced demand for settlement of \$40,000.00 is both fair and realistic.

17 ***Relevant Authorities***

18 The escrow law is not as narrow as the Virtual Defendants suggest by adopting
19 the phrase "...The escrow instructions constitute the full measure of the obligations assumed
20 by the escrow holder and owing to the parties". California escrow law is as follows:

21 ***a. An Escrow Agent That Fails to Comply with Instructions May Be Liable to***
22 ***the Injured Party Either on a Theory of Breach of Contract, Negligence, or Negligent Breach of***
23 ***Contract.***

24 *Amen v. Merced County Title Co. (1962) 58 Cal.2d 528, 531-532*

25 *Bruckman v. Parliament Escrow Corp. (1987) 190 Cal.App.3d 1051, 1057-1058*

26 ***b. It Is the Duty of an Escrow Agent to Comply Strictly with the Instructions.***

27 *Zang v. Northwestern Title Co. (1982) 135 Cal.App.3d 159, 165-166*
28

1 c. ***An Escrow Agent Who Delivers Documents or Money Without Complying***
2 ***Strictly with its Duties and Instructions, or Who Otherwise Performs or Violates its Instructions***
3 ***in a Negligent Manner, Is Liable to the Injured Party for All Damages Proximately Caused by its***
4 ***Negligence.***

5 *Civ. Code, § 3333;*

6 *Prentice v. North Am. Title Guaranty Corp., Alameda Division (1963)*
7 *59 Cal.2d 618, 621)*

8 d. ***In addition to the Express Obligations Provided in the Escrow Instructions,***
9 ***the Escrow Agent also Impliedly Promises to All Parties to the Escrow that it Will Do All Things***
10 ***Normally Done by an Escrow Agent that Were Not Expressly Excluded by the Express Provisions***
11 ***of the Escrow Instructions. A Failure to Perform the Implied Promise May Give Rise to a Cause***
12 ***of Action for a Negligent Breach of Contract.***

13 *Bruckman v. Parliament Escrow Corp., supra at pages 1057-1058).*

14 e. ***An Escrow Agent who Fails to Perform the Implied Promises Properly,***
15 ***Particularly where it is Foreseeable that a Party would Capitalize on the Errors of the Escrow***
16 ***Agent, is Liable for Negligence and Breach of Contract .***

17 *Bruckman v. Parliament Escrow Corp. supra at pages 1057-1058).*

18 f. ***When the Property that was Delivered Wrongfully by the Escrow Agent***
19 ***Cannot Be Recovered, or the Agent is Otherwise Negligent in the Performance of the Instructions,***
20 ***the Injured Party Can Recover All Damages Proximately Caused by the Agent's Negligence.***

21 *Civ. Code, § 3333*

22 *Lee v. Escrow Consultants, Inc. (1989) 210 Cal.App.3d 915, 921,*

23 g. ***An Escrow Agent is a Fiduciary to All Parties to the Escrow.***

24 *Amen v. Merced County Title Co., supra at page 534*

25 h. ***The Escrow Agent Must, at All Times, Exercise the Utmost Loyalty and***
26 ***Good Faith Toward the Parties to the Escrow and Must Exercise Reasonable Skill and Diligence***
27 ***in Performing the Duties Provided in the Instructions.***

28 *Kirby v. Palos Verdes Escrow Co. (1986) 183 Cal.App.3d 57, 65).*

1 i. ***It is a Violation of the Escrow Law to Disburse or Cause the Disbursal of***
2 ***Escrow Funds Knowingly or Recklessly Other than According to Escrow Instructions, or to Make***
3 ***or Cause to Be Made Any Statement or Omission in Any Document Pertaining to an Escrow.***

4 *Fin. Code, § 17414*

5 j. ***In addition to the Express Obligations Provided in the Escrow Instructions,***
6 ***the Escrow Agent also Impliedly Promises to All Parties to the Escrow that it Will Do All Those***
7 ***Things Normally Done by an Escrow Agent that Were Not Expressly Excluded by the Provisions***
8 ***of the Instructions***

9 *Kirk Corp. v. First American Title Co. , supra at page 807(1990) 220 Cal.App.3d*
10 *785, 807).*

11 k. ***An Escrow Holder is the Agent of all the Parties to the Escrow at all Times***
12 ***Prior to Performance of the Conditions of the Escrow, Bears a Fiduciary Relationship to Each of***
13 ***Them and Owes an Obligation to Each Measured by an Application of the Ordinary Principles of***
14 ***Agency.***

15 *Virtanen v. O'Connell, 140 Cal. App. 4th 688,*

16 l. ***An Escrow Holder is an Agent and Fiduciary of All Parties to an Escrow***
17 ***and, as such, has a Fiduciary Duty to Communicate to such Agent's Principal Knowledge***
18 ***Acquired in the Course of its Agency with Respect to Material Facts that Might Affect the***
19 ***Principal's Decision as to a Pending Transaction.***

20 *Kangarlou v. Progressive Title Co., Inc., 128 Cal. App. 4th 1174*

21 ***Conclusion***

22 Because Plaintiff is likely to have sustained damages, costs and fees substantially in
23 excess of \$150,000.00 with potential recovery of additional punitive damages, Plaintiff's
24 reduced demand for settlement of \$40,000.00 is both fair and realistic.

25 Dated: March 6, 2012

LAW OFFICES OF RONALD M. KATZMAN
A Professional Corporation

26 BY: _____

27 RONALD M. KATZMAN, Attorney for
28 Plaintiff Joseph Musso

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(SPACE BELOW FOR COURT FILING STAMP ONLY)

RONALD M. KATZMAN - STATE BAR NUMBER 048093

Attorney for Plaintiff Joseph Musso

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSEPH MUSSO,

Plaintiff,

-vs-

DEAN DAVID STORM, individually and dba
Lifetime Financial; ERIC MICHAEL PONY;
PAULETTE PONY; VIRTUAL ESCROW, INC., a
California Corporation; CAROL PENCILLE;
PEOPLE'S CHOICE HOME LOAN, INC., a
Wyoming Corporation; STEWART TITLE
GUARANTY COMPANY, a Texas Corporation;
STEWART TITLE OF CALIFORNIA, a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. LC 076 437
Assigned to: Judge Michael Harwin
Dept: NW "M"
Complaint Filed: December 1, 2006
VERIFIED FIRST AMENDED
COMPLAINT FOR:
1) FRAUD;
2) BREACH OF CONTRACT;
3) BREACH OF FIDUCIARY
DUTY; and
4) NEGLIGENCE

To: DEFENDANTS DEAN DAVID STORM, INDIVIDUALLY AND DBA LIFETIME
FINANCIAL ("Lifetime"); ERIC MICHAEL PONY("Eric"); PAULETTE PONY ("Paulette");
VIRTUAL ESCROW, INC. ("Virtual"); CAROL PENCILLE ("Pencille"); PEOPLE'S CHOICE
HOME LOAN, INC.; STEWART TITLE GUARANTY COMPANY; and STEWART TITLE OF
CALIFORNIA (collectively "Stewart Title") AND TO THEIR ATTORNEYS OF RECORD
HEREIN:

//

1 Pursuant to leave of Court, Plaintiff Joseph Musso ("Plaintiff") files his First Amended
2 Verified Complaint herein and alleges:

3 ***Introductory Statement:***

4 On February 22, 2007, the Honorable Judge Richard Adler sustained the Demurrer of
5 Stewart Title with leave to amend with such Amended Complaint to be filed and served following
6 the Court's rulings on the remaining Demurrers of People's Choice, Virtual/Pencille and
7 Lifetime/Eric/Paulette. Following the reassignment of this action to the Honorable Judge Michael
8 Harwin, those remaining Demurrers were rescheduled by the Court on its own Motion to April 27,
9 2007.

10 On March 20, 2007, People's Choice filed Bankruptcy, which rendered its Demurrer moot
11 due to the automatic stay. On April 27, 2007, the Court overruled Lifetime/Eric/Paulette's Demurrer
12 and sustained Virtual/Pencille's Demurrer with 30 days leave to amend.

13 On May 10, 2007, all of the parties except People's Choice participated in a Mediation with
14 the Honorable Edwin Osborne, Judge of the Superior Court, Retired. The Mediation lasted
15 approximately 9 hours and culminated in the Settlement Agreement as between Plaintiff and Stewart
16 and Lifetime/Eric/Paulette. A condition of that Settlement is the requirement that this Court confirm
17 the Settlement Agreement as a good faith settlement within the meaning of CCP § 877.6. The
18 hearing date for the Good Faith Motion is June 7, 2007.

19 Plaintiff's First Amended Complaint is due to be served on May 29, 2007. In the unlikely
20 event that the Good Faith Motion is denied, Plaintiff will be obligated to file his First Amended
21 Complaint as against both Stewart and Virtual/Pencille. However, if the Good Faith Motion is
22 granted, Plaintiff will only be obligated to file an Amended Complaint as to Virtual/Pencille. As a
23 matter of accommodation and courtesy, Plaintiff's counsel requested from Virtual/Pencille's counsel
24 a reasonable extension of time following the June 7, 2007 hearing on the Good Faith Motion in
25 which to file Plaintiff's First Amended Complaint. Such request was refused by Virtual/Pencille's
26 counsel necessitating Plaintiff to either seek an Ex Parte Order extending time or to serve his First
27 Amended Complaint on or prior to May 29, 2007.

28

1 In the interests of minimizing time and expense of an Ex Parte Application, and on the
2 assumption that the Good Faith Motion will be granted, the following First Amended Complaint is
3 amended:

4 1. To omit those causes of action against Stewart and Lifetime/Eric/Paulette consistent
5 with the Settlement Agreement (a copy of which is attached to the Good Faith Motion); and

6 2. To amend the Complaint as to the Causes of Action as against Virtual/Pencille, only.

7 In the unlikely event that the Good Faith Motion is denied, Plaintiff will request further leave
8 to file his Second Amended Complaint as to Stewart and reinstate his causes of action against
9 Lifetime/Eric/Paulette.

10 THEREFORE, PURSUANT TO LEAVE OF COURT, PLAINTIFF JOSEPH MUSSO FILES
11 HIS FIRST AMENDED VERIFIED COMPLAINT HEREIN AND ALLEGES:

12 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13 1. The true names and capacities of the Defendants sued herein as Does 1 through 50,
14 inclusive, are unknown to Plaintiff and Plaintiff therefore sues said Defendants by such fictitious
15 names. Plaintiff will amend this Complaint to allege their true names and capacities when such are
16 ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
17 Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's
18 damages as herein alleged were proximately caused by said Defendants' acts or omissions.

19 2. At all times mentioned herein, Plaintiff was and now is an individual and resident of
20 the County of Los Angeles, California. and has been and now is the owner of his personal residence
21 located at 13103 Angeles Trail Way, Los Angeles, CA 91342 (the "Property"). In connection with
22 the ownership of his home, Plaintiff obtained two real estate loans from Countrywide Home Loans.
23 At the end of January 2005 or early February 2005, the approximate loan balance on the First Deed
24 of Trust was \$489,158.41 and in second position, a line of credit with a balance of \$53,424.89 (total
25 encumbrances of \$542,583.30). All of Plaintiff's payments were current and Plaintiff enjoyed a good
26 credit rating.

27 //

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1 3. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, David Dean Storm was and now is a real estate broker (California license number 01134881)
3 duly licensed as such under the laws of the State of California and engaged in business as a real estate
4 loan mortgage broker in the counties of Los Angeles and Orange, California under the fictitious firm
5 name and style of Lifetime Financial (collectively "Lifetime") with offices in Encino, California.

6 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
7 herein, Eric Michael Pony ("Eric") and Paulette Pony ("Paulette") were and now are employed by
8 Lifetime in the following capacities:

9 a. Eric is a real estate salesperson (California license number 01324854). Eric
10 holds himself out as "Senior Loan Officer" and "President of Lifetime Financial's Encino Branch";

11 b. Paulette is a notary who, among other things, notarizes loan documents for
12 Lifetime loan applicants and is the assistant to Eric.

13 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
14 Defendant People's Choice Home Loan, Inc. ("People's Choice") was and now is a corporation
15 organized and existing under the laws of the State of Wyoming, engaged in business in the State of
16 California as a residential real estate lender. Plaintiff is informed and believes and thereon alleges
17 that the loan documents and escrow instructions as hereinafter alleged provide for the recovery of
18 attorneys' fees.

19 6. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
20 Stewart Title Guaranty Company and Stewart Title of California (collectively "Stewart") are
21 corporations engaged in the business of, among other things, facilitating the closure of real estate sales
22 and loan escrows, paying off existing loans and encumbrances, recording the new transactional
23 documents, including, but not limited to, full reconveyances, title transfer deeds, trust deeds etc. and
24 issuing to the requesting party an appropriate Policy of Title Insurance.

25 7. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
26 Defendant Virtual Escrow, Inc. ("Virtual") was and now is a corporation organized and existing
27 under the laws of the State of California, engaged in business in the State of California, among other
28

1 things, as a residential real estate loan escrow company.

2 8. Plaintiff is informed and believes and thereon alleges that:

3 a. On multiple occasions prior to January 2005, Lifetime and Eric had arranged
4 predatory fraudulent loans for innocent homeowners;

5 b. Such loans were financed by People's Choice, as well as other sub-prime
6 lenders, and escrowed by Pencille on behalf of Virtual; and

7 c. Such loans were closed with incomplete and inaccurate information which
8 either did or should have placed People's Choice on notice that such loans should not have been
9 funded in accordance with the Escrow Closing Instructions.

10 9. Plaintiff is informed and believes and thereon alleges that notwithstanding such
11 knowledge, People's Choice funded such loans. By reason of the forgoing facts, People's Choice was
12 or should have been aware that at the time that Lifetime and Eric arranged Plaintiff's loan that said
13 loan was likely to be predatory and fraudulent.

14 10. Plaintiff is informed and believes and thereon alleges that each of the Defendants, in
15 doing the things herein alleged, did so as the agent and/or employee of each remaining Defendant and
16 with the knowledge, assent and/or ratification of each other Defendant. Plaintiff is further informed
17 and believes and thereon alleges that each Defendant cooperated with their co-defendants and
18 engaged in predatory loan practices to wrongfully obtain and place a refinance loan on Plaintiff's real
19 property with incomplete documents, forged signatures and onerous terms, all of which were
20 undisclosed, misrepresented and concealed by Defendants from Plaintiff. By reason of such conduct,
21 each Defendant is jointly and severally liable for all of the damages sustained by Plaintiff, as alleged
22 herein.

23 11. At the end of January 2005 or early February 2005, Eric made an unsolicited "cold"
24 telephone call to Plaintiff for the purpose of soliciting Plaintiff to refinance the Property. During the
25 course of that telephone conversation, Eric represented to Plaintiff that he could arrange a refinance
26 of Plaintiff's Property whereby:

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1 a. Plaintiff's existing 30 year fixed loan with an interest rate of 6.65% and his
2 line of credit with Countrywide would be consolidated into a new loan (with the prepayment penalty
3 reduced by Lifetime and Eric from over \$12,000.00 to \$6,000.00);

4 b. Plaintiff would not have to come up with any money for fees, costs and/or
5 commissions;

6 c. Plaintiff would receive net cash of approximately \$100,000.00 if the Property
7 appraised for approximately \$700,000.00;

8 d. Plaintiff's new loan payments would be approximately \$150.00 less per month
9 than Plaintiff was then paying under his Countrywide loans and that each payment would include both
10 principal and interest; and

11 e. The new consolidated loan would be fixed a 6.5% for two years and after six
12 months, if all payments were made on time, Plaintiff could "slide back" into a 30 year fixed rate loan
13 at the "next lower increment below 6.5%".

14 12. Lifetime and Eric gained Plaintiff's trust and confidence and Plaintiff reasonably relied
15 on Lifetime and Eric as a professional loan brokers. Plaintiff believed that he would be receiving the
16 loan as represented by Lifetime and Eric. Plaintiff further reasonably relied on Lifetime and Eric to
17 properly complete the loan documents and make all appropriate disclosures to Plaintiff. Thereafter,
18 Plaintiff had several meetings with both Eric and Paulette. During these meetings, Eric and Paulette
19 completed multiple loan documents to apply for the loan from People's Choice for which Lifetime
20 and Eric were authorized agents. The initial loan documents were based upon a valuation of
21 Plaintiff's Property at \$700,000.00. Eric represented to Plaintiff that all documents were in order
22 and consistent with his representations. Plaintiff reasonably relied on such representations being
23 wholly unaware of what loan documents were required to facilitate a loan or what the complicated
24 language in the inch full of documents meant.

25 13. Thereafter, People's Choice had Plaintiff's Property appraised at \$675,000.00. Based
26 on the appraisal, the total loan would be for \$641,250.00 with a payoff in full of the Countrywide
27 loans of \$542,583.30 (plus a prepayment penalty of \$12,972.76). To further induce Plaintiff to enter
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1 into the transaction, Eric represented to Plaintiff that Eric had negotiated with Countrywide to reduce
2 the prepayment penalty to \$6,000.00.

3 14. On March 2, 2005, Eric presented new loan documents for Plaintiff's signature. Eric
4 again represented to Plaintiff that all documents were in order and consistent with his representations.
5 Plaintiff again reasonably relied on such representations. In order to induce Plaintiff to sign the
6 various documents, Eric further represented to Plaintiff that:

7 a. Plaintiff's existing 30 year fixed loan with an interest rate of 6.65% and his line
8 of credit with Countrywide would be consolidated into a new loan;

9 b. Plaintiff would not have to come up with any money for fees, costs and/or
10 commissions;

11 c. Plaintiff would receive net cash of approximately \$77,000.00 based upon the
12 appraised value of \$675,000.00. As Eric's guarantee of net cash proceeds to Plaintiff, Eric, in his
13 own handwriting, wrote on the unsigned "conditions" page of the Closing Instructions "77,000 cash
14 out" and signed and dated it (a copy of which is attached as Exhibit "A");

15 d. Plaintiff's new loan payments would be approximately \$150.00 less per month
16 than Plaintiff was then paying under his Countrywide loans and that each payment would include both
17 principal and interest; and

18 e. The new consolidated loan would be fixed a 6.5% for two years and after six
19 months, if all payments were made on time, Plaintiff could "slide back" into a 30 year fixed rate loan
20 at the "next lower increment below 6.5%".

21 15. Eric assured Plaintiff that all was in order and in reliance upon such representations
22 and assurances, Plaintiff signed multiple documents that Eric presented and represented were
23 necessary for the loan. Plaintiff did not sign the signature page of the Escrow Instructions which
24 Eric told Plaintiff did not require his signature and upon which Eric provided his guarantee.

25 16. Plaintiff is informed and believes and thereon alleges that Lifetime and Eric have a
26 fiduciary obligation to exercise the highest good faith to Plaintiff as borrower. Lifetime and Eric
27 further have an obligation to disclose to Plaintiff all such material facts concerning the transaction
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1 that may affect Plaintiff's decision to enter into the transaction, including, but not limited to, the duty
2 to explain all of the terms of the loan to the Plaintiff as borrower and advise Plaintiff of the risks of
3 the transaction.

4 17. Plaintiff is informed and believes and thereon alleges that on or about March 1, 2005,
5 Lifetime caused a loan escrow to be opened at Virtual for the new loan to Plaintiff to be funded by
6 People's Choice. Plaintiff is informed and believes and thereon alleges that at all times mentioned
7 herein Stewart acted as Virtual's sub-escrow in connection with People's Choice loan to Plaintiff
8 as herein alleged to record documents and disburse loan funds. As such, both Virtual and Stewart
9 (as sub-escrow) shared the duty to Plaintiff to properly disburse the escrow loan proceeds in
10 accordance with the express and implied provisions of the Escrow Instructions.

11 18. Plaintiff is informed and believes that at all times mentioned herein, Defendant Carol
12 Pencille was employed by Virtual and was assigned by Virtual as its escrow officer for the loan
13 arranged by Lifetime from People's Choice to Plaintiff, as herein alleged. Plaintiff is further informed
14 and believes and thereon alleges that Pencille, with the actual knowledge and authority of Virtual,
15 assumed exclusive management and control over said escrow account and was primarily in charge
16 of all documentation and disbursement of funds pertaining thereto.

17 19. As escrow, Virtual and Pencille assumed both the contractual obligations of the Escrow
18 Instructions and of a fiduciary and agent to Plaintiff with the duties, among others, to:

19 a. Comply strictly with the express and implied provisions of the Escrow
20 Instructions and the instructions of the parties to the escrow (Plaintiff as borrower and
21 People's Choice as lender);

22 b. Properly disburse escrow funds in accordance with the Escrow Instructions;

23 c. Provide, to both Plaintiff and People's Choice; prior to closing, accurate
24 Estimated and Final Closing Statements;

25 d. Accurately disclose all material facts to Plaintiff as to the disbursement
26 and application of the loan and the loan proceeds;

27 e. Properly certify escrow documents as complete;

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1 f. Exercise the utmost loyalty and good faith toward the Plaintiff as a party to the
2 escrow;

3 g. Exercise reasonable skill and diligence in performing both the express and
4 implied duties of the Escrow Instructions;

5 h. Not disburse or cause the disbursement of escrow funds knowingly or recklessly
6 other than according to Escrow Instructions;

7 I. Make or cause to be made any false statement to Plaintiff, or omission of any
8 material fact in any document provided to Plaintiff, pertaining to the escrow;

9 j. Comply both with the express and implied provisions of the Escrow
10 Instructions.

11 20. Plaintiff is informed and believes and thereon alleges that at or prior to the opening
12 of the loan escrow herein Virtual, Pencille and Lifetime established a relationship with Lifetime
13 whereby Virtual and Pencille agreed to accept compensation from Lifetime in exchange for Virtual's
14 and Pencille's cooperation in breaching Virtual's and Pencille's contractual and fiduciary duties to
15 Plaintiff in connection with Plaintiff's loan escrow. Plaintiff is informed and believes and thereon
16 alleges that in furtherance of such agreement, Virtual and Pencille:

17 a. Failed to provide Plaintiff with accurate and completed signed Escrow
18 Instructions;

19 b. Utilized Escrow Instructions that were neither signed nor approved by Plaintiff;

20 c. Knowingly utilized Escrow Instructions that bore the forged signature of
21 Plaintiff to authorize transactions unauthorized by Plaintiff;

22 d. Cooperated with Lifetime in concealing from Plaintiff the adverse terms of
23 the loan and the outrageous charges and fees of Lifetime for Plaintiff's loan;

24 e. Failed to follow the express Escrow Instructions which required that Plaintiff's
25 Second Trust Deed to Countrywide be paid in full through escrow;

26 f. Cooperated with Lifetime so that when Stewart returned funds to Virtual and
27 Pencille, which funds should have paid Plaintiff's Second Trust Deed to Countrywide, Virtual and
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1 Pencille disbursed such funds to Plaintiff representing to Plaintiff that such funds were part of the
2 net proceeds properly due to Plaintiff rather than funds needed to pay off the Second Trust Deed;

3 g. Accepted "kick backs" in the form of monetary and other compensation from
4 Lifetime for Virtual's and Pencille's cooperation in deceiving Plaintiff as to the loan escrow, the
5 disbursement and application of loan funds, the failure to payoff of the Second Trust Deed to
6 Countrywide and multiple other improprieties of Lifetime, Virtual and Pencille in connection with
7 the loan escrow;

8 h. Failed to provide to Plaintiff nor obtain Plaintiff's approval of any Estimated
9 Closing Statement;

10 I. Failed to provide to Plaintiff prior to closing nor obtain Plaintiff's approval of
11 a completed Final Closing Statement;

12 j. Failed to provide to Plaintiff any accurate itemization of the disbursement
13 of the loan proceeds;

14 k. Breached their contractual and fiduciary duties as escrow agent for Plaintiff
15 by improperly disbursing and accounting for escrow funds contrary to the express and implied
16 provisions of the Escrow Instructions, including but not limited to the intentional failure to pay off
17 Second Trust Deed and the failure to record all deeds and reconveyances relative thereto to be
18 properly recorded.

19 21. Without having provided to Plaintiff for approval an Estimated Borrower's Closing
20 Statement or the Borrower's Final Closing Statement, on March 28, 2005, Virtual and Pencille, in
21 breach of the express provisions of the Escrow Instructions and in breach of their fiduciary duties to
22 Plaintiff, closed the loan escrow, delivered to Plaintiff a check for \$11,000.00 with Plaintiff's
23 expectation that the balance of \$66,000.00 (to total the \$77,000.00 as represented) would be wired
24 to Plaintiff's bank account.

25 22. Shortly thereafter, Virtual and Pencille wire transferred to Plaintiff's bank \$51,992.82
26 for what appeared to Plaintiff to be a total cash payout of only \$62,992.82 (over \$14,000.00 short of
27 that which Eric represented that Plaintiff would receive). Plaintiff immediately contacted Lifetime
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1 and Eric to determine what the problem was and was simply told that they were "checking into it".
2 Thereafter, Plaintiff received a two page document from Virtual and Pencille. Page one of that
3 document indicated that a check in the amount of \$51,992.82 was enclosed, as well as a Closing
4 Statement. Page two of that document ("Page 2 of 2") is entitled "Borrower's Closing Statement".
5 Plaintiff having no experience with closing statements, assumed that the 2 pages was the entire
6 "Borrower's Closing Statement". In fact, Virtual and Pencille only sent "Page 2 of 2" of the
7 Borrower's Closing Statement which did not show disbursements, other than the \$11,000.00 and
8 the \$51,992.82 to Plaintiff and Paulette's notary fee of \$200.00 (a copy of the Virtual document is
9 attached hereto as Exhibit "B").

10 23. Plaintiff is informed and believes and thereon alleges that Virtual and Pencille
11 intentionally failed to include the first page of that Closing Statement for the purpose of deceiving
12 Plaintiff and to conceal the fact that the escrow had not complied with the Escrow Instructions,
13 failed to pay off the Second Trust Deed on Plaintiff's Property, as required by the express and implied
14 provisions of the Escrow Instructions, and had misapplied the loan funds. Neither the Closing
15 Statement (Exhibit "B") nor any of the loan documents provided to Plaintiff by any of the Defendants
16 provided an itemized breakdown of the charges against the loan proceeds. Plaintiff did request an
17 itemized breakdown from Virtual and Pencille, however it was not provided.

18 24. Plaintiff confronted Lifetime and Eric as to why Plaintiff did not receive \$77,000.00
19 as had been represented and why the prepayment penalty on the First Trust Deed had not been
20 reduced as represented. In apparent response, on approximately March 31, 2005, after the close of
21 escrow, Eric explained to Plaintiff that as part of the net proceeds were utilized to pay credit card
22 obligations (which were neither authorized by Plaintiff nor required by the loan escrow), in addition,
23 Eric issued to Plaintiff a check for \$6,800.00 which Eric represented was from "his own funds" to
24 cover the non-reduction of the prepayment penalty.

25 25. On Monday, April 18, 2005, Plaintiff received a telephone call from Countrywide
26 Home Loans and was shocked to learn that neither Virtual, Pencille nor Stewart had paid off the
27 Countrywide Second Trust Deed as required by the Escrow Instructions, notwithstanding that Virtual
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1 Pencille and Stewart had been provided adequate funds to do so. Countrywide advised Plaintiff that
2 his loan was delinquent and that Plaintiff's credit was and would be placed at risk and his Property
3 subject to foreclosure unless Countrywide was brought current. As a result of Plaintiff's
4 communication with Countrywide, he learned that his loans had not been consolidated and that he
5 now had two loans against his Property (the new People's Choice loan of \$641,250.00 and the
6 existing Countrywide Second/ Trust Deed/Line of Credit of \$53,424.89 (total in excess of
7 \$694,674.89).

8 26. On approximately April 19, 2005, Plaintiff called Lifetime to find out why both of
9 his Countrywide loans had not been paid in full. Plaintiff was given no information other than that
10 Lifetime would look into it and get back to Plaintiff. Having not heard back from Lifetime, on April
11 20, 2005, Plaintiff again called Lifetime and spoke to Eric who apologized and told Plaintiff not to
12 worry. Eric represented that Lifetime would take care of the "mistake," that Countrywide would be
13 taken care of and Eric would write the necessary letters to clear up the negative rating on Plaintiff's
14 credit report. (which Eric never did).

15 27. On April 21, 2005, Plaintiff received a letter dated April 20, 2005 from Stewart
16 which stated that \$55,808.15 out of the \$62,992.82 cash-out was "erroneously returned" through
17 Virtual and Pencille to Plaintiff and requested the return of that money to Stewart "to complete the
18 payoff". Eric confirmed to Plaintiff that Stewart had neglected to payoff the Countrywide Second
19 Trust Deed/Line of Credit, but would now take care of it. At Eric's request, Plaintiff telephoned
20 Pencille at Virtual and advised her of the Countrywide problem. Pencille advised Plaintiff that she
21 would look into it and to call her back at a set time. When Plaintiff called at the set time, Pencille had
22 left for the day. Apparently neither Virtual nor Pencille did anything to resolve the problem and were
23 thereafter incommunicado to Plaintiff.

24 28. Based upon the foregoing facts, Plaintiff discovered that he had been deceived by
25 Defendants into entering into a loan transaction from which he would only cash-out approximately
26 \$7,000.00 while increasing his debt liability by an additional \$100,000.00. Of that additional
27 \$100,000.00 in debt liability, Plaintiff was unable to account for approximately \$70,000.00 and had
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1 not been provided with any information as to those funds, which information was concealed by
2 Lifetime, Virtual and Pencille.

3 29. On June 3, 2005, in an effort to clarify all issues, Plaintiff was permitted to review his
4 People's Choice's loan file at the offices of People's Choice. During the course of that file review,
5 Plaintiff, for the first time, discovered that Lifetime, Eric. Virtual and Pencille had made multiple
6 materially misleading and/or incomplete representations to and actively concealed from Plaintiff
7 material facts regarding the terms of the loan and the loan escrow, among other things, that:

8 a. The HUD-1 Settlement Statement showing either the estimated or actual fees
9 and charges was never provided to Plaintiff, by either Lifetime, Virtual or Pencille;

10 b. Lifetime and Eric demanded compensation out of the loan proceeds and
11 apparently were approximately compensated as follows:

12	1). Broker Fee 6%	\$39,720.00 ¹
13	2). Application Fee	2,595.00
14	3). Processing Fee	1,895.00
15	4). Notary Fee	200.00
16	Total to Lifetime	\$44,410.00

17 c. Lifetime, Eric, Virtual and Pencille intentionally failed to provide to Plaintiff
18 the following documents (which documents were either unsigned by Plaintiff or Plaintiff's signature
19 was forged), among others. Copies of the following identified documents are attached hereto as
20 Exhibits "C" through "I", respectively):

- 21 1). A completed Loan Application (Exhibit "C");
- 22 2). The HUD-1 Good Faith Estimate-RESPA dated February 11, 2005
23 (Exhibit "D");
- 24 3). Itemization of Amount Financed dated March 1, 2005 (Exhibit "E");
- 25 4). Lifetime Financial's Good Faith Estimate (undated) (Exhibit "F");
- 26

27
28 ¹The amount of broker's fees were not consistent within the loan documents. Therefore, the
\$39,720.00 is approximate.

1 5). Borrower's Estimated Closing Statement from Virtual Escrow dated
2 March 24, 2005 (Exhibit "G");

3 6). Page 2 of the Escrow Closing Instructions (Exhibit "H");

4 7). That front-end fees of \$4,821.60 were payable to People's Choice as
5 disclosed by the Loan Disbursement Instructions (Exhibit "I");

6 d. Virtual and Pencille intentionally failed to provide to Plaintiff any itemization
7 of the disbursement of the loan proceeds;

8 e. Plaintiff's signature had been forged on the signature page of the Escrow
9 Instructions which also bears the signature of Pencille (a copy of that signature page is attached hereto
10 as Exhibit "J"). In addition, other documents were either forged or entirely missing and contained
11 wholly inaccurate and incomplete information with many of the loan documents in the People's
12 Choice file never properly completed nor signed by Plaintiff;

13 f. The existence of a modified and unsigned signature page of the loan escrow
14 instructions (a copy of which is attached hereto as Exhibit "K"); and

15 g. The prepayment penalty to Countrywide had not been negotiated down by
16 Lifetime and Eric as had represented.

17 30. On or about May 10, 2007, Virtual's and Pencille's counsel provided to Plaintiff a
18 Estimated Closing Statement and a Borrower's Closing Statement both dated March 25, 2005 (copies
19 of which are attached hereto as Exhibits "L" and "M, respectively). Such Closing Statements are
20 highly suspect. Such Closing Statements were never approved by nor previously provided to Plaintiff.
21 The several Closing Statements of March 24, 2005 and March 25, 2005 conflict, in that, among
22 other things, that the March 24th Statement confirms Virtual's and Pencilled's contractual obligations
23 to payoff the Countrywide Second Trust Deed, while the March 25th Statements completely exclude
24 such payoff of the Countrywide Second Trust Deed.

25 31. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
26 them, in violation of their contractual and fiduciary duties to Plaintiff and the trust reposed upon them
27 by Plaintiff engaged in numerous improper and fraudulent activities including, among others:
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- 1 a. Defendants failed to disclose and actively concealed from Plaintiff material
2 facts concerning the People's Choice loan transaction which seriously affected Plaintiff's decision to
3 enter into the loan transaction with Lifetime and People's Choice and the loan escrow with Penciled
4 at Virtual;
- 5 b. Lifetime and Eric breached their duty to explain all of the terms of the loan to
6 Plaintiff;
- 7 c. Lifetime and Eric failed to advise the Plaintiff of the risks of the loan
8 transaction;
- 9 d. Lifetime and Eric made materially misleading and/or incomplete
10 representations regarding the terms of the loan as to:
- 11 1). The terms and conditions of the loan;
- 12 2). The outrageous and exorbitant fees and charges of Lifetime and Eric
13 (approximately \$44,000.00);
- 14 3). The Countrywide Second Trust Deed/Line of Credit, which was never
15 repaid from the loan proceeds;
- 16 4). Front-end fees of \$4,821.60 payable to People's Choice;
- 17 5). Failing to provide Plaintiff with a HUD-1 Settlement Statement
18 showing either the estimated or actual fees and charges;
- 19 6). Misrepresenting to Plaintiff that they had negotiated reduction of the
20 prepayment penalty on Countrywide's first mortgage from \$12,972.76 to \$6,000.00;
- 21 7). Misrepresenting to Plaintiff that Plaintiff would receive net cash
22 proceeds in the amount of \$77,000.00 from the loan proceeds;
- 23 8). Misrepresenting to Plaintiff that Plaintiff's monthly loan payments
24 would include both principle and interest when buried within the loan documents is a provision that
25 for the first five years of the loan such payments would be for interest only and that there was no
26 provision whatsoever for "slide back" into a 30 year fixed rate loan at the "next lower increment
27 below 6.5%".
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1 32. Plaintiff is informed and believes that each of the Defendants (other than Lifetime and
2 Eric) actively participated and cooperated with Lifetime and Eric to conceal and misrepresent the
3 costs and expenses related to the loan transaction for their own financial benefit and gain.

4 33. Had Plaintiff known the true facts, he would never have dealt with Defendants, let
5 alone enter into any loan transaction with them.

6 34. As a result of Defendants' concealments and misrepresentations, breach of contract
7 breach of fiduciary duties, and negligence, Plaintiff has been damaged in an amount in excess of
8 \$250,000.00.

9 FIRST CAUSE OF ACTION

10 (For Fraud Against Defendants Virtual, Pencille, People's Choice
11 and Does 1 through 50)

12 35. Plaintiff incorporates the allegations of Paragraphs 1 through 34, as though set forth in
13 full herein.

14 36. Plaintiff is informed and believes and thereon alleges that Lifetime and Eric made
15 false representations and intentional concealments of material facts to Plaintiff as more fully alleged
16 in the Allegations Common to All Causes of Action. Plaintiff is further informed and believes and
17 thereon alleges that Lifetime, Eric, Pencille and Virtual actively and intentionally concealed such
18 fraud, deceit and breach of trust, for the purpose of inducing Plaintiff to enter into the People's Choice
19 loan transaction and the loan escrow with Pencille and Virtual.

20 37. Plaintiff reasonably relied on Defendants' false representations and was unaware of
21 Defendants' intentional concealments of the material facts and was thereby induced to enter into the
22 People's Choice loan transaction and the loan escrow with Pencille and Virtual. Until the loan closed,
23 Plaintiff was lead to believe and reasonably believed and trusted that Pencille, Virtual, Lifetime and
24 Eric were acting in Plaintiff's best interests, acting honestly and fairly and in accordance with the
25 express and implied provisions of the Escrow Instructions. However, unbeknownst to Plaintiff,
26 Pencille, Virtual, Lifetime and Eric misrepresented and/or concealed the true facts from Plaintiff, as
27 herein alleged. Had Plaintiff known the true facts, he would never have dealt with any of the
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1 Defendants, let alone enter into any loan transaction with them.

2 38. As a direct and proximate result of Defendants' fraud and other wrongful conduct,
3 Plaintiff has been damaged in an amount that is not as yet fully ascertained but that Plaintiff is
4 informed and believes that it is in an amount at least equal to the difference between the costs of the
5 People's Choice loan over the life of said loan and all of the ancillary costs associated with that loan
6 and the amount that Plaintiff would otherwise be obligated to pay under the pre-existing Countrywide
7 loans in an amount in excess of \$250,000.00, as well as damage to Plaintiff's personal credit in an
8 amount in excess of \$100,000.00. Plaintiff will amend this Complaint to insert the exact amount when
9 it is ascertained.

10 39. Plaintiff is informed and believes that Defendants' conduct, as herein alleged, was
11 fraudulent within the meaning of *California Civil Code*, §3294 justifying the award of punitive
12 damages.

13 SECOND CAUSE OF ACTION

14 (Breach Of Contract

15 Against Defendants Virtual and Pencille,

16 and Does 1 through 50)

17 40. Plaintiff repeats and religious the allegations contained in paragraphs 1 through 39, and
18 by reference thereto, incorporates the same as set forth in full therein.

19 41. Plaintiff has performed all of the express and implied obligations under the Escrow
20 Instructions on his part to be performed, except as excused therefrom by the conduct of Defendants,
21 as herein alleged.

22 42. As more fully alleged in the Allegations Common to All Causes of Action, Plaintiff is
23 informed and believes and thereon alleges that Defendants Virtual and Pencille, as well as the Doe
24 Defendants and each of them, materially breached both the express as well as the implied provisions
25 of the Escrow Instructions on their part to be performed, both the contractual obligations of the
26 Escrow Instructions and of a fiduciary and agent to Plaintiff including, but not limited to the following
27 to the obligations to:
28

- 1 a. Comply strictly with the express and implied provisions of the Escrow
2 Instructions and the instructions of the parties to the escrow (Plaintiff as borrower and People's
3 Choice as lender);
- 4 b. Properly disburse escrow funds in accordance with the Escrow Instructions;
- 5 c. Provide, to both Plaintiff and People's Choice; prior to closing, accurate
6 Estimated and Final Closing Statements;
- 7 d. Accurately disclose all material facts to Plaintiff as to the disbursement
8 and application of the loan and the loan proceeds;
- 9 e. Properly certify escrow documents as complete;
- 10 f. Exercise the utmost loyalty and good faith toward the Plaintiff as a party to the
11 escrow;
- 12 g. Exercise reasonable skill and diligence in performing both the express and
13 implied duties of the Escrow Instructions;
- 14 h. Not disburse or cause the disbursal of escrow funds knowingly or recklessly
15 other than according to Escrow Instructions;
- 16 i. Make or cause to be made any false statement to Plaintiff or omission of any
17 material fact in any document provided to Plaintiff, pertaining to the escrow; and
- 18 j. Comply both with the express and implied provisions of the Escrow
19 Instructions.

20 43. As a proximate result of said Defendants' multiple and material breaches of the express
21 and implied provisions of the Escrow Instruction, as herein alleged, Plaintiff has sustained damages
22 in an amount at least equal to the difference between the costs of the People's Choice loan over the
23 life of said loan and all of the ancillary costs associated with that loan and the amount that Plaintiff
24 would otherwise be obligated to pay under the pre-existing Countrywide loans in an amount in excess
25 of \$250,000.00, as well as damage to Plaintiff's personal credit in an amount in excess of \$100,000.00.
26 Plaintiff will amend this Complaint to insert the exact amount when it is ascertained.

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1 THIRD CAUSE OF ACTION

2 (Breach Of Contract Fiduciary Duty To Plaintiff

3 Against Defendants Virtual and Pencille, People's Choice

4 and Does 1 through 50)

5 44. Plaintiff repeats and religious the allegations contained in paragraphs 1 through 39, and
6 by reference thereto, incorporates the same as set forth in full therein.

7 45. At all times mentioned herein, Virtual and Pencille, as escrow and escrow officer,
8 owed a fiduciary duty of honesty to Plaintiff and the obligation to provide both an accurate Estimated
9 Closing Statement and a Final Closing Statement in connection with the loan transactions. Said
10 Defendants further have a fiduciary duty to disburse funds only in the manner required by proper
11 Escrow Instructions and to properly certify documents as complete.

12 46. Plaintiff is informed and believes and thereon alleges that Virtual and Pencille
13 materially breached their respective duties to Plaintiff by their misrepresentations and active
14 concealments as alleged in the Allegations Common to All Causes of Action.

15 47. As a proximate result of Defendants' multiple acts in breach of the trust reposed in them
16 to Plaintiff, Plaintiff has sustained damages in an amount at least equal to the difference between the
17 costs of the People's Choice loan over the life of said loan and all of the ancillary costs associated with
18 that loan and the amount that Plaintiff would otherwise be obligated to pay under the pre-existing
19 Countrywide loans in an amount in excess of \$250,000.00, as well as damage to Plaintiff's personal
20 credit in an amount in excess of \$100,000.00. Plaintiff will amend this Complaint to insert the exact
21 amount when it is ascertained.

22 48. Plaintiff is informed and believes that Defendants' conduct, as herein alleged, was
23 fraudulent within the meaning of *California Civil Code* §3294 justifying the award of punitive
24 damages.

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1 FOURTH CAUSE OF ACTION

2 (Negligence Against Defendant Virtual, Pencille and Does 1 through 50)

3 49. Plaintiff repeats and religious the allegations contained in paragraphs 1 through 39, and
4 by reference thereto, incorporates the same as set forth in full therein.

5 50. Plaintiff is informed and believes and thereon alleges that Virtual and Pencille owed
6 a duty of reasonable care to Plaintiff in preparing, reviewing and providing loan and escrow
7 documents to Plaintiff. Said Defendants further owed a duty to Plaintiff to, among other things:

8 a. Verify that the loan and escrow documents were in proper order and properly
9 signed before funding the loan;

10 b. Provide to Plaintiff all necessary and appropriate documents, including, but not
11 limited to: signed Closing Instructions; Estimated Closing Statement; signed authorization from
12 Plaintiff as to all expenses to be charged against the People's Choice proceeds; and a Final Closing
13 Statement reflecting same.

14 51. Plaintiff is informed and believes and thereon alleges that Virtual and Pencille breached
15 their duty of reasonable care in reviewing the loan escrow documents that had been submitted to them
16 on behalf of Plaintiff. In breach of their duties, Virtual and Pencille did not:

17 a. Verify that the loan escrow documents were in proper order before funding the
18 loan;

19 b. Provide to Plaintiff all necessary and appropriate documents, including, but not
20 limited to: signed Closing Instructions; Estimated Closing Statement; signed authorization from
21 Plaintiff as to all expenses to be charged against the People's Choice proceeds; and a Final Closing
22 Statement reflecting same.

23 52. Plaintiff is informed and believes and thereon alleges that had Virtual and Pencille
24 exercised reasonable care, Virtual and Pencille would and should have reasonably discovered that:

25 a. The loan documents submitted were not in proper form; and

26 b. Plaintiff had not properly authorized the payment of the outrageous costs or any
27 costs; and
28

1 c The loan would not have been funded and the escrow would have been
2 cancelled.

3 53. As a proximate result of Virtual's and Pencille's negligence as herein alleged, Plaintiff
4 has sustained damages in an amount at least equal to the difference between the costs of the People's
5 Choice loan over the life of said loan and all of the ancillary costs associated with that loan and the
6 amount that Plaintiff would otherwise be obligated to pay under the pre-existing Countrywide loans
7 in an amount in excess of \$250,000.00, as well as damage to Plaintiff's personal credit in an amount
8 in excess of \$100,000.00 according to proof. Plaintiff will amend this Complaint to insert the exact
9 amount when it is ascertained.

10
11 FIFTH CAUSE OF ACTION

12 (Negligence Against Defendant People's Choice and Does 1 through 50)

13 54. Plaintiff repeats and religious the allegations contained in paragraphs 1 through 39, and
14 by reference thereto, incorporates the same as set forth in full therein.

15 55. Plaintiff is informed and believes and thereon alleges that People's Choice owed a duty
16 of reasonable care to Plaintiff in reviewing the loan documents that had been submitted to it on behalf
17 of Plaintiff and to verify that they were in proper order before funding the loan.

18 56. Plaintiff is informed and believes and thereon alleges that People's Choice breached it's
19 duty of reasonable care in reviewing said loan documents by either overlooking or ignoring substantial
20 deficiencies and questionable signatures or the absence thereof.

21 57. Plaintiff is informed and believes and thereon alleges that had People's Choice
22 exercised reasonable care to Plaintiff in reviewing the loan documents that had been submitted to it
23 on behalf of Plaintiff, People's Choice would and should have reasonably discovered that the loan
24 documents submitted were not in proper form and would have declined and not funded the loan to
25 Plaintiff.

26 //

27 //

28

1 58. As a proximate result of People's Choice's negligence, as herein alleged, Plaintiff has
2 sustained damages in an amount at least equal to the difference between the costs of the People's
3 Choice loan over the life of said loan and all of the ancillary costs associated with that loan and the
4 amount that Plaintiff would otherwise be obligated to pay under the pre-existing Countrywide loans
5 in an amount in excess of \$250,000.00, as well as damage to Plaintiff's personal credit in an amount
6 in excess of \$100,000.00. Plaintiff will amend this Complaint to insert the exact amount when it is
7 ascertained.

8 WHEREFORE, Plaintiff prays for relief as follows:

9 On the First and Third Causes of Action as against all Defendants :

10 1. For damages in the amount equal to the difference between the costs of the People's
11 Choice loan over the life of said loan and all of the ancillary costs associated with that loan and the
12 amount that Plaintiff would otherwise be obligated to pay under the pre-existing Countrywide loans
13 in an amount in excess of \$250,000.00, as well as damage to Plaintiff's personal credit in an amount
14 in excess of \$100,000.00 according to proof;

15 2. For punitive damages in an amount to be proven at trial;

16 On the Second, Fourth and Fifth Causes of Action:

17 3. For damages in the amount equal to the difference between the costs of the People's
18 Choice loan over the life of said loan and all of the ancillary costs associated with that loan and the
19 amount that Plaintiff would otherwise be obligated to pay under the pre-existing Countrywide loans
20 in an amount in excess of \$250,000.00, as well as damage to Plaintiff's personal credit in an amount
21 in excess of \$100,000.00 according to proof;

22 On all Causes of Action

23 4. For reasonable attorneys' fees;

24 5. For costs of suit; and

25 6. For such other relief as this Court may deem proper.

26 //

27 //

28

EXHIBIT D

daSilva, Linda J.

From: Martin, Greg A.
Sent: Wednesday, April 25, 2012 2:19 PM
To: 'rmkronlaw@msn.com'
Subject: People's Choice Home Loan Inc. - Musso Claim
Attachments: Musso Response to Letter.pdf

Ron,

I reviewed your March 13, 2012 letter containing documents from Mr. Musso's case (that letter is attached). I guess the main thing I need to clear up is whether Mr. Musso still believes he is owed money from People's Choice, and in what amount.

After reviewing the complaint that you attached to your letter, there is nothing in it to show that Mr. Musso has valid claims against People's Choice. In your letter you stated that Mr. Musso's claims against People's Choice appear in the first, third, and fifth causes of action. And with respect to the first and third cause of action, People's Choice is listed in the heading for those causes of action. But in neither of those causes of action is People's Choice implicated in the factual discussion of the claims. It is difficult to see (and the Complaint does not explain) why People's Choice is responsible for the fraudulent conduct of Lifetime, Pencille, and Virtual (count one) and the breach of fiduciary duties allegedly owed to Mr. Musso by Virtual and Pencille when People's Choice lent your client the money he requested.

Finally, the fifth cause of action, alleging that PCHLI was negligent with respect to its review of Mr. Musso's loan documents, is unfounded as a matter of law. Lenders owe no duty of care to their borrowers. *See, e.g., Quinteros v. Aurora Loan Servs.*, 740 F. Supp. 2d 1163, 1173 (E.D. Cal. 2010) ("Lender-borrower relations do not normally give rise to a duty supporting a negligence cause of action."); *Grant v. Aurora Loan Servs., Inc.*, 736 F. Supp. 2d 1257, 1273 (C.D. Cal. 2010) ("As a general rule, 'a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money.'") (citations omitted); *Champlaie v. BAC Home Loans Servicing, LP*, 706 F. Supp. 2d 1029, 1061 (E.D. Cal. 2009) ("[A]s a matter of law, the lender did not owe a duty in negligence not to place borrowers in a loan even where there was a foreseeable risk borrowers would be unable to repay.") (citing *Wagner v. Benson*, 101 Cal. App. 3d 27, 35 (Cal. Ct. App. 1980)).

If you have facts (including documents) and/or law to support any of the three causes of action against People's Choice, please provide them. In order to allow Mr. Musso's claim, the Trustee must be provided with evidence of the validity of the claim. Absent information showing a basis for, and quantifying, the claim against People's Choice, the Trustee will conclude that the claim is invalid, and will object to the claim. Thanks in advance.

Very truly yours,

Greg

Gregory A. Martin

Associate

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Winston & Strawn, LLP, 333 S. Grand Avenue, 38th Floor, Los Angeles, CA 90071

A true and correct copy of the foregoing document entitled (*specify*): **MOTION FOR ORDER DISALLOWING PROOF OF CLAIM OF JOSEPH MUSSO [PCHLI CLAIMS DOCKET NO. 305]; DECLARATIONS OF TAMARA D. MCGRATH AND GREGORY A. MARTIN IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 8, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **April 8, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 8, 2013**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PRESIDING JUDGE'S COPY - Service by Overnight Mail

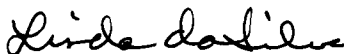
Hon. Robert Kwan
United States Bankruptcy Court
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012
Via overnight mail with Fedex
Tracking Number: 799468557266

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 8, 2013
Date

Linda daSilva
Printed Name


Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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PCHLI CLAIMS DOCKET NO. 305 - JOSEPH MUSSO

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