UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND [GREENBELT DIVISION]

TIMOTHY A. COTTON and KATHLEEN ARNOLD, Plaintiffs, CITIMORTGAGE INCORPORATED, LEHMAN BROTHERS BANK, F.S.B., AURORA LOAN SERVICES LLC, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AND CONGRESSIONAL FUNDING USA, LLC , Defendants,	)))))))))))))	CASE NO. RWT 07-2617 **AMENDED COMPLAINT FOR FRAUD, BREACH OF FIDUCIARY DUTY, VIOLATIONS OF MARYLAND UNFAIR OR DECEPTIVE TRADE PRACTICES ACT, VIOLATIONS OF FEDERAL HOME LENDING STATUTES, CONSPIRACY, AND OTHER RELIEF**

Plaintiffs, through newly-retained undersigned counsel and pursuant to this Court's Memorandum Opinion dated September 11, 2008 and subsequent Order on Plaintiffs' *pro se* Motion for Extension of Time to file Amended Complaint, file this their Amended Complaint for damages and other relief, and state:

A. Parties and Jurisdiction

1. Plaintiffs Timothy A. Cotton and Kathleen Arnold are of majority age and are residents of the State of Maryland residing in their home located at 9543 North Side Drive, Owings, Maryland 20736 (hereafter the "Property"), and are "consumers" within the meaning of the Maryland Unfair or Deceptive Trade Practices Act, Maryland Code sec. 13-101 *et seq*.
2. Defendant CITIMORTGAGE INCORPORATED ("CMI") was, at all material times hereto, a foreign corporation which was doing business in the State of Maryland including the servicing of mortgage loans which constituted the collection of consumer debts, and is thus subject to the provisions of

Maryland Code sec. 13-101.1, 13-303(3), and 13-303(4), and is also a "creditor" as defined by the Federal Truth In Lending Act (15 USC sec. 1602(f)).

3. Defendant LEHMAN BROTHERS BANK F.S.B. ("LBB") is and was at all times material hereto a foreign corporation which was doing business in the State of Maryland including the origination of mortgage loans either directly or indirectly through one or more agents, was thus engaged in the business of extending consumer credit and the collection of consumer debts, and is thus subject to the provisions of Maryland Code sec. 13-101.1, 13-303(3), and 13-303(4) and is a "creditor" as defined by the Federal Truth In Lending Act (15 USC sec. 1602(f)).

4. Defendant AURORA LOAN SERVICES LLC ("Aurora") was, at all material times hereto, a foreign corporation which was doing business in the State of Maryland including the servicing of mortgage loans constituted the collection of consumer debts, and is thus subject to the provisions of Maryland Code sec. 13-101.1, 13-303(3), and 13-303(4), and is also a "creditor" as defined by the Federal Truth In Lending Act (15 USC sec. 1602(f)). Defendant Aurora is and was at all times material hereto an affiliate of and was controlled by Defendant LBB.

5. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") is and was at all times material hereto a foreign corporation which was engaged in the business of, *inter alia,* acting as an alleged "nominee" for various mortgage lenders and their servicing agents for

purposes of purporting to assign various rights incident to a mortgage Note and/or a mortgage to third parties.

6. Defendant CONGRESSIONAL FUNDING LLC ("CF") is and was at all times material hereto a limited liability company organized under the laws of the State of Maryland and was engaged in the business of a mortgage broker in connection with the transaction the subject of this action, and was also an agent of Defendant LBB for purposes of effecting the fraud and conspiracy the subject hereof. At all times material hereto, Defendant CF was a "creditor" as defined by the Federal Truth In Lending Act (15 USC sec. 1602(f)) with its principal place of business being located at 77 South Washington Street, Suite 205, Rockville, Maryland 20850.
7. Jurisdiction of the subject matter in this Court is proper pursuant to 28 U.S.C. sec. 1331, as Plaintiffs have sought relief under multiple Federal Statutes.
8. Jurisdiction of the Federal claims is proper in this Court pursuant to 15 U.S.C. sec. 1601 et. seq. and 15 U.S.C. sec. 1640(e).
9. Jurisdiction over the state-law claims is proper under the doctrine of Supplemental or Pendent Jurisdiction pursuant to 28 U.S.C. sec. 1367(a).
10. The cause of action herein arose in Calvert County, Maryland by virtue of a mortgage loan and related transactions associated therewith which concern the Plaintiffs' primary residential real estate which is located at 9543 North Side Drive, Owings, Maryland 20736 which is located within Calvert County which is within this Judicial District.

11. Venue of this action is proper within this Court as at least one named Defendant is subject to suit within this Court, and thus all Defendants are properly sued in this Court.

B. Material Facts Common to All Counts

13. Between approximately 2001 and 2007, numerous Wall Street financial institutions, including Defendant LBB and its affiliates, engaged in generating, through one or more agents or entities, mortgage loans which were initiated for the primary purpose of resale to one or more third parties, with the "lender" selling the various rights incident to the mortgage loan (e.g. the right to the income stream from the promissory Note; the right to "service" the loan; and the security interest evidenced by the mortgage) to third parties for profit.

14. The "servicing rights" to the loan were either retained by an affiliate of the originating "lender" (as herein where Defendant Aurora, an affiliate of and controlled by Defendant LBB, was "assigned" the servicing rights to Plaintiff's loan), and the right to the income stream from the loan was either retained or sold to yet another third party, sometimes incident to the sale of the mortgage instrument.

15. The mortgage instrument was sold separately to an "aggregator", which would "bundle" hundreds (and in certain instances thousands) of mortgages and sell same in bulk to an investment banking concern for the purpose of these mortgages serving as collateral for specialized or "exotic" investment vehicles (SIVs) in the form of collateralized mortgage

obligations (CMOs) or collateralized debt obligations (CDOs), commonly known and marketed as “mortgage backed securities”.

16. As such, originating “lenders” could make more money from the resale of a mortgage loan in a parsed sale format then simply retaining the loan over the life thereof.

17. Although these mortgage loans were initiated at low “teaser” rates to borrowers who could barely afford the monthly payment under the initial interest rate (and were certain to default under the interest rate once it escalated), the loans were sold on the secondary market at their “ultimate” value, which was computed using the monthly payment at the much higher variable interest rate which escalated after the “teaser” rate expired.

18. In connection with this scheme, borrowers were told “not to worry” about the expiration of the “teaser” rate, as they could (allegedly) just “come back and refinance at the low rate” once the “teaser” rate expired. However, what the originating lenders did not disclose to the borrowers was the fact that once the loan closed that it would be sold in parsed format to various third parties, and thus refinancing the loan may be difficult if not impossible, and it may not be possible to pay off the underlying loan as the identity of the then-owners of the Note and mortgage may not be ascertainable, especially where the mortgage was sold to an aggregator and further re-sold to an investment banking concern.

19. Thus, the only certainty for the borrower was foreclosure, which was marketed to the investment banking concerns as further “protection”, as this afforded collection of the collateral for the CMO or CDO SIV.
20. These mortgage loans were marketed through mortgage brokers (such as Defendant CF herein) who were paid significant commissions to close loans with high variable interest rates and prepayment penalties. In many instances, the brokers would not disclose loans with more favorable terms to borrowers (and which the borrowers qualified for), as such loans did not generate the level of commissions as the “teaser rate” variable interest loans with prepayment penalties and were not as marketable to aggregators.
21. Although these “lenders” and their mortgage brokers affirmatively represented favorable loan terms to borrowers prior to closing in order to induce borrowers to commit to close, what would often occur, after the borrowers had arranged their finances based on the original Truth-In-Lending Disclosure, is that a “bait and switch” would take place (as herein) where the “lender”, through and with the mortgage broker, would present materially different loan terms to the borrower either at or just prior to closing, essentially hamstringing the borrower into a “take it or leave it” position at closing knowing that the borrower needed to close for one or more reasons.
22. The reason for this tactic was that the “lenders” and their mortgage brokers knew that if they disclosed the true terms of the loan they

intended to have the borrower commit to at closing sufficiently in advance of closing that the borrowers would most likely refuse to close, resulting in the "lender" not being able to follow through on its separate commitment to sell the mortgage loan to an aggregator, servicing agent, or other third party.

13. In the summer of 2003, Plaintiffs sought and made application for a refinance mortgage loan on their residential real property (the "Property" identified hereinabove).

14. In connection therewith, Plaintiffs met with one or more representatives of Defendant CF, who recommended that Plaintiffs make application for a mortgage loan with Defendant LBB.

15. Plaintiffs expressly advised Defendant CF that they wanted a loan program with payments which would be in accordance with their financial abilities.

16. Defendant CF ultimately advised Plaintiffs that it had located a loan program for Plaintiffs through Defendant LBB.

17. Plaintiffs were lead to believe by Defendants CF and LBB that they were being placed into a loan which they could afford to repay based on their income as provided to said Defendants during the loan application process.

18. Pursuant to the original Truth-In-Lending Disclosure (TIL) provided to Plaintiffs by Defendant CF on or about July 15, 2003, Plaintiff's loan would be made at an initial interest rate of 5.630% resulting in a monthly

payment of $1,410.94 for the first 60 months, followed by a monthly payment of $1,443.75 for the next 60 months, and $2,166.85 for the final 240 months.

19. The subject TIL was checked with the box which provided that there was no prepayment penalty, and no statement as to any prepayment penalty was included on the TIL. As such, Plaintiffs would be permitted to refinance this loan at any time without any prepayment penalty.

20. Plaintiffs agreed to the terms proffered by Defendant CF as to the loan to be funded by Defendant LBB and rearranged their finances accordingly.

21. Defendant CF scheduled a closing on the loan for September 15, 2003.

22. Less than 19 hours prior to the closing, Defendants LBB and CF executed the second act in their "bait and switch" scheme by providing Plaintiffs with a second Truth-In-Lending Disclosure dated September 14, 2003 (sixty days after the original TIL upon which Plaintiffs relied and which they understood would reflect the loan terms at closing), which second TIL was materially different from the July 15, 2003 TIL, as the initial monthly payment was now $1,542.19 for the first 60 months, followed by a monthly payment of $1,443.75 for the next 60 months, and thereafter a monthly payment of $2,166.85 for the next 240 months.

23. This second TIL made no mention of any payment requirement for private mortgage insurance (PMI), and Defendant Aurora has admitted in writing that no such disclosure appears on the Settlement Statement from the closing.

24. Further, this second TIL now had a statement indicating a 3 year prepayment penalty and a checkmark in the box for prepayment penalty, when Defendants LBB and CF knew that Plaintiffs had not previously agreed to any prepayment penalty.

25. The loan documents which were disclosed to the Plaintiffs less than 24 hours prior to the closing were also devoid of escrow impounds or other amounts which would have made the monthly payment greater than $1,542.19.

26. The “bait and switch” was executed by Defendants LBB and CF for the express purpose of Defendant CF being able to reap significant commissions and for Defendant LBB to be able to acquire a high variable interest rate loan with a prepayment penalty and additional undisclosed fees and charges which it then intended to sell, in parsed fashion, to various third parties for profit through and with the aid and assistance of Defendant MERS, and where Defendant LBB, through its agent Defendant Aurora, intended to sell what would be a certain foreclosure to Defendant CMI.

27. Plaintiffs were lead to believe that all taxes and insurance were included within the monthly payment of $1,542.19 and all subsequent payments.

28. The alleged signature of the borrower, Plaintiff Kathleen Arnold, on the “Interest-Only Addendum to Adjustable Rate Promissory Note” (Exhibit E:E 38 to original Complaint, incorporated herein by reference) is materially different from and bears no relation to the signature of the

borrower Kathleen Arnold on the “Signature/Name Affidavit” signed at closing (Exhibit E:F 1-8 attached to original Complaint and incorporated herein by reference).

29. Prior to the closing and pursuant to applicable Federal Statutes, Defendants LBB and CF were legally required to make certain disclosures to the Plaintiffs in connection with the mortgage loan.

30. Specifically, Defendants LBB and CF were obligated to make certain preliminary disclosures to the Plaintiffs as to the true cost of the loan, which preliminary disclosures are required by the Federal Truth-In-Lending Act pursuant to 12 CFR (also known as and referred to herein as “Regulation Z) sec. 226.17 and 18, and to also provide to the Plaintiffs certain preliminary disclosures required by the Real Estate Settlement Procedures Act (“RESPA”) pursuant to 24 CFR sec. 3500.6 and 35007, with said disclosures to be made through what is otherwise known as the Good Faith Estimate (“GFE”).

31. These obligations included the pre-closing disclosure, through a GFE, of all Origination Fees, Loan Discount Fees, Appraisal Fees, Lenders’ Inspection Fees, Lender Doc Prep Fees, Underwriting Fees, Construct/Perm Admin Fees, and other fees.

32. On or about September 15, 2003 at the closing, Plaintiffs executed Promissory Notes and Security Agreements in favor of Defendant LBB. These transactions extended consumer credit which was subject to a finance charge and which was initially payable to the Defendant LBB.

33. The end result of the false and misleading representations and material omissions of Defendants LBB and CF as to the loan program which said Defendants placed Plaintiffs into was that the Plaintiffs were placed into a transaction without prior disclosure of various fees, and into a loan program which was predetermined for default which default was known to said Defendants to be certain, as said Defendants had fraudulently caused Plaintiffs to execute predatory loan documents in the first instance which placed Plaintiffs into a loan program which said Defendants knew Plaintiffs could not ultimately afford.

34. At no time whatsoever did Defendants LBB or CF ever advise Plaintiffs that:

    (a) the mortgage loan being processed was not in their best interest;

    (b) the terms of the mortgage loan being processed would result in a certain default given the Plaintiffs' income and ability to pay; and

    (c) that as a direct and proximate result of the certain default that the Plaintiffs would likely be placed in a position of default, foreclosure, and deficiency judgment upon not being able to meet their loan obligations.

35. As part of the consumer credit transaction the subject of the closing, Defendant LBB retained a security interest in the Property which was Plaintiffs' principal residential dwelling. It is not known at this point who is the true owner and holder of the mortgage and the original mortgage

document in view of what appears to have been a securitized mortgage transaction.

36. Although Defendant CMI purports to possess an interest in the servicing rights to the Note, it is unknown whether said Defendant (or any other Defendant) owns and holds and/or is in actual possession of both the original Note and mortgage.

37. As a direct and proximate result of the actions of Defendants LBB and CF which placed Plaintiffs into an adjustable rate mortgage program which said Defendants knew that Plaintiffs did not and could not qualify for *ab initio,* Plaintiffs were subjected to a pre-manufactured default resulting in a foreclosure proceeding.

38. Said proceeding was instituted even though Plaintiffs made several good-faith attempts to make payments and otherwise maintain the loan in effect with Defendants.

39. As such, the entire process by which Defendant LBB, through and with its agent Defendant CF, placed Plaintiffs into a loan program which Defendant LBB knew that Plaintiffs could not qualify for and which would result in certain default, was a conspiracy by said Defendants to construct a pre-manufactured theft of property and fraud through the perpetration of a fraud upon the Plaintiffs which was known to Defendants LBB and CF at the time to be fraudulent and with an illegal and unlawful purpose.

40. Defendants LBB and CF were under numerous legal obligations, including Defendant CF's obligations as a fiduciary, and had the responsibility for overseeing the purported loan consummation to insure that the consummation was legal, proper, and that Plaintiffs received all legally required disclosures pursuant to the Truth-In-Lending Act and RESPA both before and after the closing.

41. Plaintiffs, not being in the consumer lending, mortgage broker, or residential loan business, reasonably relied upon Defendants LBB and CF to insure that the consumer credit transaction was legal, proper, and complied with all applicable laws, rules, and Regulations, especially as Plaintiffs had previously advised Defendant CF to place Plaintiffs into an affordable loan program prior to the closing on the loan.

42. At all times material hereto, Defendants LBB and CF regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four (4) installments and was initially payable to the person the subject of the transaction, rendering said Defendants "creditors" within the meaning of the Truth-In-Lending Act, 15 U.S.C. sec. 1602(f) and Regulation Z sec. 226.2(a)(17).

C. Claims for Relief

COUNT I: VIOLATIONS OF HOME OWNERSHIP EQUITY PROTECTION ACT

43. Plaintiffs reaffirm and reallege paragraphs 1 through 41 hereinabove as if set forth more fully hereinbelow.

44. In 1994, Congress enacted the Home Ownership Equity Protection Act ("HOEPA") which is codified at 15 USC sec. 1639 et seq. with the intention of protecting homeowners from predatory lending practices targeted at vulnerable consumers. HOEPA requires lenders to make certain defined disclosures and prohibits certain terms from being included in home loans. In the event of noncompliance, HOEPA imposes civil liability for rescission and statutory and actual damages.
45. Plaintiffs are "consumers" and Defendants LBB and CF are "creditors" as defined by HOEPA.
46. Defendants LBB and CF violated HOEPA by numerous acts, material omissions, and a pattern of fraudulent concealment, including but not limited to engaging in a pattern and practice of extending credit to Plaintiffs without regard to their ability to repay in violation of 15 USC sec. 1639(h).
47. By virtue of the Defendants' LBB's and CF's violations of HOEPA, Plaintiffs have a legal right to rescind the consumer credit transaction the subject of this action pursuant to 15 USC sec. 1635. This Complaint is to be construed, for these purposes, as formal and public notice of Plaintiff's Notice of Rescission of the mortgage and note.
48. Defendants LBB and CF further violated HOEPA by failing to make additional disclosures, including but not limited to the failure of said Defendants to provide an accurate TIL disclosure which failure was

executed through a pattern of fraudulent concealment and intentional nondisclosure.

49. As a direct consequence of and in connection with Plaintiffs' legal and lawful exercise of their right of rescission, the true "lender" and its agents, including Defendant CMI and, to the extent necessary, Defendant MERS, is required, within twenty (20) days of this Notice of Rescission, to:
    (a) desist from making any claims for finance charges in the transaction;
    (b) return all monies paid by Plaintiffs in connection with the transaction to the Plaintiffs;
    (c) satisfy all security interests, including mortgages, which were acquired in the transaction.

50. Upon the true "lender's" full performance of its obligations under HOEPA (including any necessary actions of Defendants CMI and MERS as agents of the lender), Plaintiffs shall tender any sums to which the true lender is legally entitled.

51. Based on Defendants' LBBs and CF's HOEPA violations, each of said Defendants is liable to the Plaintiffs for the following, which Plaintiffs demand as relief:
    (a) rescission of the mortgage loan transactions;

(b) termination of the mortgage and security interest in the property the subject of the mortgage loan documents created in the transaction;

(c) return of any money or property paid by the Plaintiffs including all payments made in connection with the transactions;

(d) an amount of money equal to twice the finance charge in connection with the transactions;

(e) relinquishment of the right to retain any proceeds; and

(f) actual damages in an amount to be determined at trial, including attorneys' fees.

<u>COUNT II: VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT</u>

52. Plaintiffs reaffirm and reallege paragraphs 1 through 41 herein as if specifically set forth more fully hereinbelow.

53. As mortgage lenders, Defendants LBB and CF are subject to the provisions of the Real Estate Settlement Procedures Act ("RESPA"), 12 USC sec. 2601 et seq.

54. In violation of RESPA and in connection with the mortgage loan to Plaintiffs, Defendants LBB and CF failed, through a pattern of fraudulent concealment, to make certain required disclosures as set forth above.

55. As a result of the Defendants' LBB's and CF's violations of RESPA, said Defendants are liable to Plaintiffs in an amount equal to three(3) times the amount of charges paid by Plaintiffs for "settlement services".

COUNT III: VIOLATIONS OF FEDERAL TRUTH-IN-LENDING ACT

56. Plaintiffs reaffirm and reallege paragraphs 1 through 41 hereinabove as if set forth more fully hereinbelow.

57. Defendants LBB and CF failed, through a pattern of fraudulent concealment, to include and disclose certain charges in a pre-closing GFE, which charges were imposed on Plaintiffs incident to the extension of credit to the Plaintiffs and were thus required to be disclosed pursuant to 15 USC sec. 1605 and Regulation Z sec. 226.4, thus resulting in an improper disclosure of finance charges in violation of 15 USC sec. 1601 et seq., Regulation Z sec. 226.18(d).

58. Defendants' failure to provide the required disclosures provides Plaintiffs with the right to rescind the transaction, and Plaintiffs, through this public Complaint which is intended to be construed, for purposes of this claim, as a formal Notice of Recission, hereby elect to rescind the transaction.

COUNT IV: VIOLATION OF FAIR CREDIT REPORTING ACT

59. Plaintiffs reaffirm and reallege paragraphs 1 through 41 above as if set forth more fully hereinbelow.

60. At all times material, Defendants LBB, Aurora, and CMI qualified as providers of information to the Credit Reporting Agencies, including but not limited to Experian, Equifax, and TransUnion, under the Federal Fair Credit Reporting Act.

61. Defendant LBB, through and with its agents and successors or assigns including Defendants MERS, Aurora, and CMI, wrongfully, improperly,

and illegally, pursuant to its predetermined scheme to defraud set forth above, reported negative information as to the Plaintiffs to one or more Credit Reporting Agencies, resulting in Plaintiffs having negative information on their credit reports and the lowering of their FICO scores.

62. Pursuant to 15 USC sec. 1681(s)(2)(b), Plaintiffs are entitled to maintain a private cause of action against said Defendants for an award of damages in an amount to be proven at the time of trial for all violations of the Fair Credit Reporting Act which caused actual damages to Plaintiffs, including emotional distress and humiliation.

63. Plaintiffs are also entitled to recover damages from said Defendants for negligent non-compliance with the Fair Credit Reporting Act pursuant to 15 USC sec. 1681(o).

64. Plaintiffs are further entitled to an award of punitive damages against Defendant LBB and its agents, including Defendants Aurora and CMI, for their willful noncompliance with the Fair Credit Reporting Act pursuant to 15 USC sec. 1681(n)(a)(2) in an amount to be proven at time of trial.

COUNT V: VIOLATIONS OF MARYLAND UNFAIR OR DECEPTIVE TRADE PRACTICES ACT

65. Plaintiffs reaffirm and reallege paragraphs 1 through 41 above as if set forth more fully hereinbelow.

66. As set forth above, Defendants LBB and CF are subject to the Maryland Unfair or Deceptive Trade Practices Act (the “Act”), as Defendant LBB extended consumer credit to Plaintiffs pursuant to a consumer contract and engaged in the collection of consumer debts, thus subjecting

Defendant LBB to the Act pursuant to sections 13-101.1, 13-303(3), and 13-303(4) thereof, and Defendants Aurora and CMI engaged in the collection of consumer debt thus subjecting them to the Act pursuant to section 13-303(4) thereof.

67. In violation of the Act, Defendants LBB, Aurora, and CMI have committed unfair and/or deceptive acts and practices, including fraudulent concealment, in connection with the consumer transaction the subject of this action, including but not limited to:

    (a) making false and misleading oral and written statements and other representations which had the capacity, tendency, or effect of deceiving or misleading the Plaintiffs (Maryland Code sec. 13-301(1));

    (b) failing to state a material fact if the failure deceives or tends to deceive (Maryland Code sec. 13-301(3)); and

    (c) engaging in deception, fraud, false pretense, false premise, misrepresentation, and knowing concealment and omission of material facts with the intent that the Plaintiffs relied thereon in connection with the sale of consumer services (Maryland Code sec. 13-301(9)(i).

68. As a direct and proximate result of the Defendants LBB's, Aurora's, and CMI's violations of the Act, Plaintiffs have suffered damages.

69. Pursuant to Maryland Code sec. 13-408(a), Plaintiffs are permitted to bring this action for damages for the Defendants LBB's, Aurora's, and CMI's violations of the Act and are entitled to recover damages sustained.

70. Pursuant to Maryland Code sec. 13-408(b), Plaintiffs are entitled to seek attorneys' fees against Defendants LBB, Aurora, and CMI.

COUNT VI: FRAUDULENT MISREPRESENTATION

71. Plaintiffs reaffirm and reallege paragraphs 1 through 41 hereinabove as if set forth more fully hereinbelow.

72. Defendants LBB and CF knowingly, intentionally, and fraudulently concealed material information from Plaintiffs which is required by Federal Statutes and Regulations to be disclosed to the Plaintiffs both before and at the closing.

73. Said Defendants also materially misrepresented material information to the Plaintiffs with full knowledge by said Defendants that their affirmative representations were false, fraudulent, and misrepresented the truth at the time said representations were made.

74. Under the circumstances, the material omissions and material misrepresentations of said Defendants were malicious.

75. Plaintiffs, not being mortgage lenders, mortgage brokers, or mortgage lenders, reasonably relied upon the representations of said Defendants (or the lack of disclosures by said Defendants) in agreeing to execute the mortgage loan documents.

76. Had Plaintiffs known of the falsity of said Defendants' representations, Plaintiffs would not have entered into the transactions the subject of this action.

77. As a direct and proximate cause of said Defendants' material omissions and material misrepresentations, Plaintiffs have suffered damages.

COUNT VII: BREACH OF FIDUCIARY DUTY

78. Plaintiffs reaffirm and reallege paragraphs 1 through 41 hereinabove as if set forth more fully hereinbelow.

79. Defendant CF, through and with its agent Defendant LBB, by their actions in contracting to provide mortgage loan services and a loan program to Plaintiffs which was not only to be best suited to the Plaintiffs given their income and expenses but by which Plaintiffs would also be able to satisfy their obligations without risk of losing their home, were "fiduciaries" in which Plaintiffs reposed trust and confidence, especially given that Plaintiffs were not and are not mortgage lenders, mortgage brokers, or mortgage lenders.

80. Defendant CF, through and with the aid and assistance of its agent Defendant LBB, breached their fiduciary duties to the Plaintiffs by fraudulently inducing Plaintiffs, through a pattern of fraudulent concealment and misrepresentation, to enter into a mortgage transaction which was contrary to the Plaintiffs' ability to repay (as known to said Defendants at all times material); contrary to the Plaintiffs' best interests; and contrary to the Plaintiffs' preservation of their home.

81. As a direct and proximate result of said Defendants' breaches of their fiduciary duties, Plaintiffs have suffered damages.

82. Under the totality of the circumstances, said Defendants' actions were willful, wanton, intentional, and with a callous and reckless disregard for the rights of the Plaintiffs justifying an award of not only actual

compensatory but also exemplary punitive damages to serve as a deterrent not only as to future conduct of Defendants CF and LBB, but also to other persons or entities with similar inclinations.

COUNT VIII: UNJUST ENRICHMENT

83. Plaintiffs reallege and reaffirm paragraphs 1 through 41 hereinabove as if set forth more fully hereinbelow.

84. Defendants CF and LBB had an implied contract with the Plaintiffs to ensure that Plaintiffs understood all fees which would be paid to said Defendants and their agents and assigns, including Defendants Aurora and CMI, to obtain credit on Plaintiffs' behalf and to not charge any fees which were not fully disclosed in advance to Plaintiffs.

85. Defendants CF and LBB had full knowledge, at all times material, that the Plaintiffs did not and could not qualify for the specific type of loan which was "approved", yet "approved" same for the benefit of Defendants CF and LBB and their assigns including Defendants Aurora and CMI so that said Defendants could reap profits at the expense of the Plaintiffs and knowing that the Plaintiffs would default on the mortgage loan.

86. Defendants CF and LBB and their agents and assigns, including Defendants Aurora and CMI, cannot, in good conscience and equity, retain the benefits from their actions.

87. Defendants CF, LBB, Aurora, and CMI have been unjustly enriched at the expense of the Plaintiffs, and maintenance of the enrichment would be contrary to the rules and principles of equity.

88. Plaintiffs thus demand restitution from Defendants CF, LBB, Aurora, and CMI in the form of actual damages, exemplary damages, and any attorneys' fees which may be awardable by law.

COUNT IX: CIVIL CONSPIRACY

89. Plaintiffs reaffirm and reallege paragraphs 1 through 41 hereinabove as if set forth more fully hereinbelow.

90. In connection with the application for and consummation of the mortgage loan the subject of this action, Defendants LBB and CF agreed, between and among themselves, to accomplish several unlawful acts (those being, through a pattern of fraudulent concealment, intentionally failing to disclose the true cost of the mortgage loan to the Plaintiffs in advance of the closing and to place Plaintiffs into a loan program which was *per* se unsuitable for Plaintiffs through the alteration and/or manufacturing of false information which guaranteed a default), and to use unlawful means to accomplish an act not in itself illegal (engaging in illegal actions to place Plaintiffs into an unsuitable mortgage loan, where placement into a mortgage loan not itself being an illegal act), with the acts and means employed resulting in damages to the Plaintiffs.

91. As set forth above, Defendants LBB and CF engaged in overt acts in furtherance of the conspiracy and to set the conspiracy in motion, and Defendants MERS, Aurora, and CMI have engaged in acts in furtherance

of the conspiracy to accomplish its ends which actions have resulted in damages to the Plaintiffs including the institution of a foreclosure.

92. The actions of the various Defendants were interrelated and could not have been accomplished without participation of all Defendants, as:

    (a) Defendant LBB was a "lender" but was not a loan servicer possessed with the right, under the circumstances of assignment of servicing rights, to declare a default or institute a foreclosure;

    (b) Defendant CF was a mortgage broker who had the Plaintiffs execute the loan documents but was not a lender or loan servicer possessed with the right to declare a default or institute a foreclosure;

    (c) Defendant MERS was an assigning entity as to one or more rights under the loan documents but was not a lender and did not, under circumstances of multiple assignments, possess the rights to declare a default or institute a foreclosure;

    (d) Defendant Aurora, although the "interim" loan servicer, was not the lender and did not, under the circumstances of multiple assignments, possess the rights to declare a default or institute a foreclosure at all times material; and

    (e) Defendant CMI was a subsequent assignee of servicing rights and the right to declare a foreclosure which were only available as a result of the assignment thereof from Defendant Aurora which had obtained such rights from Defendant LBB.

93. As a direct and proximate result of the actions and a course of conduct of all Defendants which were planned, designed, and orchestrated to further several illegal acts and to accomplish a legal act by unlawful means through the commission of several overt acts in furtherance of the conspiracy to defraud the Plaintiffs, Plaintiffs have suffered damages and have thus satisfied the requirements for pleading a cause of action for civil conspiracy under applicable Maryland decisional law. *See*, *e.g.,* Hoffman v. Stamper, 385 Md. 1, 24, 867 A.2d 276, 290 (2005), citing Green v. Wash. Sub. San. Comm'n., 259 Md. 206, 221, 269 A.2d 815, 824 (1970).

94. Defendants LBB and CF, through and with their agents and successors Defendants MERS, Aurora, and CMI, agreed between and among themselves to engage in the conspiracy to defraud for the common purpose of accruing economic gains for themselves at the expense of and detriment to the Plaintiffs.

95. The actions of all Defendants were committed intentionally, willfully, wantonly, and with reckless disregard for the rights of the Plaintiffs.

96. As a direct and proximate result of the actions of the Defendants in combination resulting in fraud and breaches of fiduciary duties, Plaintiffs have suffered damages.

97. Plaintiffs thus demand an award of actual, compensatory, and punitive damages.

RELIEF SOUGHT

WHEREFORE, having set forth the above-described legally sufficient causes of actions against the Defendants, Plaintiffs pray for the entry of Final Judgment against all Defendants jointly and severally canceling the Note and Mortgage and rescinding the residential mortgage transaction the subject of this action; for damages in an amount not yet quantified but to be proven at trial and such other amounts to be proven at trial; an award of three times the amount of actual damages sustained; for costs and attorneys' fees; that the Court find that the transactions the subject of this action are illegal and are deemed void; that the foreclosure which was instituted be deemed and declared illegal and void and that further proceedings in connection with the foreclosure be enjoined; and for any other and further relief which is just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all matters so triable as a matter of right.

Respectfullysubmitted

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing AMENDED COMPLAINT has been served upon the following on this 18th day of November, 2008:

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