WILSHIRE PALISADES LAW GROUP, P.C.
David I. Lefkowitz (SBN 127457)
Stephen D. Holz (SBN 83647)
1337 Ocean Avenue, Suite A
Santa Monica, CA 90401-1009
Telephone: (310) 393-4929
Facsimile: (310) 393-5438
Email: dl@wplawgroup.com
Attorneys for Plaintiffs

Noah L. Grynberg (SBN 296080)
Email: noah.grynberg@gmail.com
Brent R. Boos (SBN 292808)
mail: brentrb@gmail.com
1137 North Westmoreland Ave., Suite 16
Los Angeles, CA 90029
Telephone: (310) 866-7527

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BENITO LUCERO, individually and all similarly-situated individuals

Plaintiff,

v.

CARRINGTON MORTGAGE SERVICES, LLC; DEUTSCHE BANK NATIONAL TRUST COMPANY, as indenture trustee for NEW CENTURY HOME EQUITY LOAN TRUST 2005-4; and DOES 1-100,

Defendants.

CASE NO. BC 557590

FIRST AMENDED COMPLAINT FOR:

1. **Breach of Contract;**
2. **Breach of The Implied Covenant of Good Faith and Fair Dealing;**
3. **Promissory Estoppel;**
4. **Violation of Rosenthal Fair Debt Collection Practices Act;**
5. **Violation of Unfair Business Practices Act**

CLASS ACTION

Plaintiff and members of the Plaintiff Class allege:

INTRODUCTION

The Parties

1. Plaintiff Benito Lucero and his sister, Margarita Lucero, are individuals who obtained a home loan for their home in Los Angeles, California from New Century Mortgage Corporation ("New Century"). As a part of that transaction, they executed a Promissory Note in favor of the lender, New Century. New Century assigned that Promissory Note for the Luceros' home loan to Defendant Deutsche Bank National Trust Company ("DBNTC"), which now holds the loan as the Indenture Trustee for New Century Home Equity Loan Trust 2005-4. Carrington Mortgage Services, LLC ("CMS") is the loan servicer for the Luceros' home loan and, among other things, manages the loan, collects the payments, performs the accounting related to the loan and, after deducting the fees it is permitted to retain, sends the interest and principal payments to DBNTC. At all times mentioned herein, CMS was acting as the authorized agent of DBNTC in its capacity as the Indenture Trustee for New Century Home Equity Loan Trust 2005-4.

Summary of the Wrongful Conduct of Defendants

2. This case arises from fraudulent, unlawful, and unfair business practices of Defendants in the servicing and collection of the home mortgage loan of the Luceros and members of the plaintiff class (the "Class"). Defendants victimized the Luceros and other borrowers like them, that is, those in financial difficulty and facing home foreclosure, by offering them a workout alternative to foreclosure, such as a "repayment plan" ("RP"). A RP, like that offered to the Luceros in this case, typically is offered for a period of less than one year, and promises the borrower that if he or she makes a specified number of timely payments under the RP, the borrower can be offered a loan modification which will result in a monthly payment that is less than the current monthly payment on the existing mortgage, thus enabling the borrower to save his or her home from being foreclosed upon by the Defendants. Such a plan

routinely is offered to a distressed borrower after foreclosure proceedings already have been commenced. In this way, Defendants "dual track" the RP with foreclosure proceedings which Defendants stall off while the borrower makes payments under the repayment plan.

3. That is precisely what happened with the Luceros here. Defendants instituted and left pending foreclosure proceedings on the Lucero's home, while contemporaneously offering them a RP. The RP, arranged with the Luceros in October 2010, provided for the Luceros to make a series of monthly payments to CMS and included a promise by CMS that, so long as the Luceros made these payments, CMS would offer them a loan modification.

4. The Luceros honored their obligations under the RP by making the payments called for under it in a diligent and timely manner. CMS, on the other hand, reneged on the agreement. Thus, after sucking precious limited housing resources of the Luceros, CMS repudiated the RP, failed to provide – or even consider or offer – the Luceros the promised loan modification, permitted foreclosure proceedings to advance, and ultimately caused the Lucero's property to be sold in foreclosure.

5. Moreover, CMS, despite its promises to the contrary, had no intention of offering or providing the Luceros the promised loan modification. Rather, it was content to accept additional monthly payments under the RP (and receive associated fees and costs), so that it could capture as much additional income as it possibly could from the struggling consumers.

6. Indeed, CMS, as a matter of policy, routinely entered into workout arrangements with financially-challenged homeowners like the Luceros and members of the Class for the ulterior motives of continuing the flow of payments from distressed consumers and to avoid losses from sales of underwater properties.

7. Loan servicers like CMS have a significant economic incentive to enter into repayment plans – like that to which it agreed with the Luceros here – only to repudiate the workout and the promise to modify the mortgage and to proceed with

foreclosure. To servicers, the larger the principal amount of the loans in a mortgage pool which the servicer services, the more money they make. This is true because the servicer typically receives a fee based on the size of the principal amount of the mortgages in the mortgage pool, regardless of the performance of the loans in the pool. Furthermore, for loans that are in default, past due, and/or on the brink of foreclosure, a servicer like CMS may make additional money with charges for late fees and/or default management services (e.g. property inspections, appraisal services, insurance, title services and legal services). As a result, it is in the servicer's interest to have loans in default and arrears for a modest period of time prior to foreclosure, which enables them to maximize the opportunity to harvest such fees, and then to foreclose. And, when foreclosure does occur, the servicer typically recoups all of the fees that it generated in the interim period between the default in payment and the foreclosure before the mortgage pool that owns the mortgages receives any repayment.

8. The financial and emotional distress suffered by a borrower as a result of having a mortgage loan in default is exacerbated by a servicer's use of "dual tracking," whereby a servicer keeps pending or advances foreclosure proceedings on a homeowner's home while simultaneously pursuing a workout with the consumer (such as a RP) and/or considering the homeowner for a loan modification. For instance, CMS simultaneously promised to offer the Luceros a loan modification to lower their monthly payment, while contemporaneously keeping foreclosure proceedings alive. The lure of a lower monthly payment was the proverbial "carrot" dangled in front of them to extract more money from them, and the "stick" of foreclosure was used to prod them into making those payments.

9. The Court of Appeal recently upheld claims arising from such "dual-tracking," construing dual-tracking as an unfair business practice and explaining the unlawful stratagem this way:

> "Dual tracking refers to a common bank tactic. When a borrower in default seeks a loan modification, the institution often continues to pursue foreclosure at the same time." (Alejandro Lazo, *Banks Are Foreclosing While Homeowners Pursue Loan Modifications*, Los Angeles Times, (Apr. 14, 2011); *see also* Sen. Floor Analysis of Assem. Bill No. 278 at p. 3.) The result is that the borrower does not know where he or she stands, and by the time foreclosure becomes the lender's clear choice, it is too late for the borrower to find options to avoid it. 'Mortgage lenders call it 'dual tracking,' but for homeowners struggling to avoid foreclosure, it might go by another name: the 'double-cross.' (Lazo, *Banks Are Foreclosing.*)"

See Jolley v. Chase Home Fin., LLC, 213 Cal. App. 4th 872, 904 (2013), *review denied* (May 22, 2013).

10. Defendants' agreement to the RP accompanied by the promise of a loan modification offer, followed by repudiation of the RP and failure to offer or even consider a loan modification for the Luceros, and their subsequent foreclosure on the Lucero's home, was part of a pattern of bad faith conduct perpetrated by Defendants on the Luceros and the Class.

11. The net result of the Defendants' fraudulent, unlawful, and unfair tactics was a situation where desperate borrowers in financial distress were stripped of vitally needed funds to deal with the housing crisis, while Defendants, especially loan servicers like CMS, lined their pockets with additional fees paid out of the proceeds from a foreclosure sale.

PARTIES

12. Plaintiff Benito Lucero is an individual, and, at times material hereto, a

resident of the County of Los Angeles in the State of California. He and Margarita Lucero are siblings, and neither of them can read or understand English. They are both monolingual Spanish speakers.

13. Defendant Carrington Mortgage Services, LLC ("CMS") is a limited liability company organized and existing under the laws of the State of California and has its principal place of business in Santa Ana, California. CMS was the loan servicer used by Deutsche Bank Trust Company Delaware to service the Luceros' home loan.

14. Defendant Deutsche Bank Trust Company ("DBNTC") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in Wilmington, Delaware.

15. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does 1 through 100, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs allege on information and belief that each of the fictitiously-named defendants is responsible in some manner for the occurrences alleged in this complaint, and that Plaintiffs' damages were proximately caused by their conduct. Plaintiffs further are informed and believe and thereon allege that at all relevant times, each of the defendants, including DOES 1 through 100, inclusive, was the agent, partner, servant, employee, representative, subsidiary, member, alter ego, aider and abettor, and/or co-conspirator of the other, and in connection with the acts hereinafter mentioned, was acting within the course and scope of such relationship, and with the knowing assistance and active participation of each other, and/or that each Defendant ratified each act, omission, or activity done by each of the other Defendants.

COMMON ALLEGATIONS

The Luceros' Mortgage

16. The Luceros sought a mortgage loan from Chase Manhattan Bank ("Chase") in order to purchase a modest home for their large family. They received such mortgage from Chase in 1998 in the amount of approximately $172,000.00. They used the loan proceeds to purchase property located at 4748-4750 Hammel Street, Los Angeles, California, 90022 (the "Property"). Their original mortgage payments on the Chase loan were approximately $1,539.00 per month, and they made all of those payments until this loan was paid off in a refinance that occurred in 2005.

17. In 2005, the Luceros' home loan with Chase was paid off as part of a refinance by New Century. As a part of this transaction, the Luceros signed a Promissory Note in favor of New Century. The Luceros' monthly mortgage payment under the new loan agreement with New Century was approximately $2,230.77. This Promissory Note was then assigned by New Century to Deutsche Bank Trust Company. When Deutsche Bank Trust Company acquired the Luceros' loan and associated Promissory Note in 2005, the servicing responsibility for the Luceros' loan was assigned to Defendant CMS. The Luceros made monthly payments to CMS on their New Century mortgage at the rate of $2,230.77 per month.

18. In or about December 2008, the Luceros contacted CMS to inquire about the possibility of obtaining a mortgage modification. In response to the Luceros' request, CMS reduced the Luceros' monthly mortgage payment to approximately $2,011.97. However, CMS never sent the Luceros a modification agreement to sign. Instead, CMS simply began billing the Luceros for a lower monthly payment, and the Luceros paid their mortgage at that lowered monthly rate through late 2009.

19. Like tens of thousands of families across the United States, the Luceros experienced tremendous financial stress in late 2009. Benito Lucero lost his job as a janitor, and Margarita Lucero found only irregular work selling small goods at swap

meets. The Luceros realized that they would not be able to continue making their monthly mortgage payments at the rate contained in their Promissory Note with New Century (that was now owned by DBNTC), even at the lowered rate that CMS had instituted.

20. Defendants commenced a foreclosure proceeding on the Property in August 2009. It recorded a "Notice of Default and Election to Sell Under Deed of Trust" on August 4, 2009.

21. Subsequently, the Luceros contacted CMS to explain their hardship and to seek a formal mortgage modification that would help them save their home.

22. CMS responded to the Luceros' request for a modification by agreeing in 2010 to forebear from foreclosing on the Luceros' home so long as they made certain monthly payments. In May 2010, the Luceros made the last of their required monthly payments to CMS under the then-existing arrangement; however, in July 2010, CMS denied the Luceros' application for a modification and pursued foreclosure proceedings.

23. Thereafter, the Luceros maintained contact with CMS, whose representatives assured them that they might still be considered for another mortgage loan modification and avoid foreclosure.

24. On October 20, 2010, the Luceros contacted CMS to discuss the status of their mortgage modification. They were directed to a CMS representative named Ginna Suarez ("Suarez"), who spoke to the Luceros in Spanish. Suarez told the Luceros that they qualified for CMS's in-house mortgage modification program. She also told them that she would send them a document that day outlining the steps they would need to take to obtain a new loan modification, including the payments they would have to make, which would reflect their monthly payments under the new modification.

25. The Luceros thereafter received an Agreement dated October 20, 2010 reflecting the modification (hereinafter the "Agreement"). One portion of the

Agreement was written in Spanish, was signed by Suarez and, translated into English, stated in pertinent part:

> "As you were unable to qualify for a modification at this time we offer you a repayment plan for the next 6 months at the [monthly] payment amount of **$1500.00** beginning on **10/25/2010**.
>
> Your acceptance of this repayment plan will put the foreclosure of your home on **HOLD**. In the event that your payments under this agreement are not received the foreclosure of your home will continue.
>
> ***After you make the six payments on time, we can offer you a modification with a similar payment.***
>
> Please notify me when you make the first payment and it has to be on time [sic] if you make the payments late the plan can be cancelled with no further opportunity for a new repayment Plan." (Emphasis added).

Another portion of the Agreement was entitled "Forbearance Agreement." This portion of the Agreement provided, in the part material hereto, that:

(a) the Luceros would make six equal monthly payments of $1,500 to CMS, starting in October 2010 and concluding in March 2011;

(b) the foreclosure proceedings, which had been commenced by no later than August 2009, would be suspended so long as there was no default under the Forbearance Agreement;

(c) the monies paid to CMS under the Agreement may be retained by CMS and CMS would have no obligation to refund any such funds to the Luceros.

(d) all payments were required to be made in "CERTIFIED FUNDS, or sent via Western Union";

(e) in the event of a breach of the Agreement, "Borrower(s) waive(s) all defenses to resumption of the foreclosure action without further notice by Carrington;" and

(f) Borrowers generally released Carrington from all claims arising out of or relating to the loan, the Note and Mortgage/Deed of Trust, which included the loan, the loan documents, notices, servicing of the loan, this Agreement and any foreclosure proceedings.

26. The Agreement was a binding written commitment by CMS, executed by CMS, to offer the Luceros a loan modification with payments approximating $1,500 upon their making six timely payments of $1,500 commencing on October 25, 2010. There is no dispute that the Luceros timely made the first payment called for under the Agreement.

27. The Luceros diligently and timely made each of the first four payments called for in the Agreement, and Defendants accepted and cashed the payments. They made payments of $1,500 in October and November 2010, payments of $1,000 and $1,500 in December 2010, and a payment of $1,500 in January 2011.

28. On about February 25, 2011, the Luceros attempted to timely make the fifth payment called for in their agreements with CMS, but CMS refused to accept and returned their payment.

29. The Luceros desperately tried to contact Suarez, the representative at CMS who had promised them a mortgage modification both over the phone and in writing, to no avail. The Luceros subsequently learned that Suarez no longer worked for the company.

30. The Luceros asked the CMS representative they spoke with why their attempted fifth payment had been returned. The representative informed them that:

(i) a payment of $39,925.27 had come due, (ii) their $1,500 payment had therefore been insufficient, and (iii) they were now in default of their Agreement with CMS.

31. In addition, CMS, in violation of its October 2010 written promise to the Luceros in the Agreement, claimed that it would not offer a loan modification to the Luceros. While it used a discrepancy with Benito Lucero's social security number as the basis for reneging on the Agreement, in fact, CMS was fully aware of any discrepancy with Benito Lucero's social security number by no later than July 2010 – many months ***before*** it made the Luceros the loan modification and RP promises in the Agreement, and ***before*** it accepted multiple RP payments from the Luceros in 2010 and 2011.

32. On April 8, 2011, CMS recorded a Notice of Trustee's Sale for the Luceros' Property. This action violated the express terms of the Agreement, whereby foreclosure proceedings on the Property were to be suspended so long as the Luceros complied with their obligations under the Agreement, which they had done.

33. In early April 2011, the Luceros lodged a complaint with the County of Los Angeles protesting CMS' failure to honor their repayment plan and failure to offer them a loan modification. On April 26, 2011, the Community and Senior Services department of Los Angeles County sent a formal complaint to CMS contesting CMS' actions in connection with the Luceros, stating, in part:

> "Since the last adjustment from October 2010 and March 2011, Mr. Benito Lucero and Ms. Margarita Lucero [have] always [sent]...in their payments [in]...a timely manner. Your office cannot tell the client that they don't have to [provide a loan] modification because his social security number is bad [because] you always [knew]...that and now you're changing the rules you have told them to [get them to pay] $42,871.88 and pay the monthly payments."

34. After receiving this complaint, CMS escalated the matter to its internal

consumer affairs department for investigation. CMS "consumer advocate" employee Debra Reno handled the investigation. After completing her investigation, she reported to CMS Senior Vice President, Kirk Gerling, that:

> "[i]t is my opinion that **[the Luceros repayment]... plan should not have [been] cancelled [sic] [by CMS] as the borrower was performing according to the plan she [i.e., Margarita Lucero]** was" given. (Bold added).

35. CMS, despite the findings of Ms. Reno, its own internal investigator, refused to reinstate the repayment plan or to offer the Luceros a loan modification, or to even consider them for one. The Luceros were never offered a loan modification of any type by the Defendants, let alone one with a monthly payment of approximately $1,500, which Defendants had promised the Luceros would be offered.

36. CMS has admitted that its policies in dealing with loan modifications and repayment plans like those set out in the Agreement became more restrictive beginning in January 2011, generally coinciding with its reneging on its agreement with the Luceros.

37. Neither Ginna Suarez nor Debra Reno is currently employed with CMS. Ms. Suarez had extensive dealings with the Luceros in connection their workout arrangements, including in October 2010.

38. On April 8, 2011, CMS recorded a Notice of Trustee's Sale, with a sale date of May 2, 2011. Subsequently, in about January 2012, the Luceros received a Notice of Trustee's Sale. The sale was scheduled for February 14, 2012.

39. On March 19, 2012, the Luceros' home was sold at auction to DBNTC.

40. On about September 26, 2012, DBNTC was granted a judgment in an unlawful detainer action against the Luceros for possession of the Luceros' home.

41. On February 20, 2013, DBNTC sold the home to Valencia Investments, LLC ("Valencia").

42. On October 4, 2013 and January 27, 2014, Valencia was granted two

separate writs of possession for the two units on the property located at 4748-4750 Hammel Street. The writs were issued pursuant to an application to enforce DBNTC's judgment in the 2012 unlawful detainer action against the Luceros.

43. On February 18, 2014, the Luceros received an eviction notice in light of the writ of possession.

44. On or about February 25, 2014, the Luceros were forcibly evicted from their home by the Los Angeles County Sheriff's Office at around 3:00 a.m. All of their possessions were thrown on the sidewalk in front of their home. For the next two weeks, they slept in turns in their car, at friends' homes, and on the street. The Luceros currently are homeless.

CLASS ALLEGATIONS

45. Plaintiffs bring this action as a class action under California Code of Civil Procedure § 382. This action is brought on behalf of two sub-classes. The first sub-class is brought on behalf of all persons and entities who had a residential mortgage loan on real property in the State of California with a lien or claim of lien against that property by Defendant DBTCA, as indenture trustee for NEW CENTURY HOME EQUITY LOAN TRUST 2005-4 where CMS was the mortgage servicer on or owner of that loan. The second sub-class is brought on behalf of all persons and entities who had a residential mortgage loan on real property in all states outside of California with a lien or claim of lien against that property by Defendant DBTCA, as indenture trustee for NEW CENTURY HOME EQUITY LOAN TRUST 2005-4 where CMS was the mortgage servicer on or owner of that loan. The class period for both sub-classes is September 12, 2010 to the present (the "Class Period"). Both the first and second sub-class are brought on behalf of all persons and entities who:

(a) Received a workout of their loan, such as, without limitation, that set forth in the Agreement, and those set forth in CMS' Home Retention Policy manual

(including, but not limited to, repayment plans, forbearance plans or agreements, loan modifications, pre-foreclosure sales by borrower, short refinances, deed-in-lieu of foreclosure, and/or mortgage assumptions), and where

(b) Defendants failed to honor obligations under the workout arrangement and/or permitted foreclosure proceedings to proceed during the time such workout arrangements were in effect, and which

(c) Resulted in injury to the borrower, including monetary damages.

46. The class is ascertainable from the files and records of Defendants and is so numerous that joinder of all members is impracticable. Plaintiff does not know the exact number of class members, but believes that the proposed Class includes thousands of members.

47. There are questions of law and fact that are common to the claims of all class members. These questions are substantially similar and predominate over the questions affecting the individual members of the class. These common questions include, but are not limited to, the following:

(a) Whether Defendants had a practice of making workout arrangements with consumer borrowers and then repudiating such workout arrangements (e.g., repayment plans) with the borrowers;

(b) Whether Defendants had a practice of offering workout arrangements such as a repayment plans with the promise of a loan modification without any intention of actually honoring the workout arrangement;

(c) Whether Defendants engaged in illegal "dual tracking";

(d) Whether "dual tracking" is an "unlawful, unfair, or fraudulent business act or practice" within the meaning of California Business & Professions Code §§ 17200 et seq.;

(e) Whether Defendants changed its policies to be more restrictive with regard to its workout agreements;

(f) Whether any such change of policies resulted in more illegal dual tracking and/or violations of pending workout arrangements with borrowers like the Luceros; and

(g) Whether Defendants' practices in handling workout arrangements such as the repayment plan at issue with the Luceros constitute "unlawful, unfair, or fraudulent business acts or practices" within the meaning of California Business & Professions Code §§ 17200 et seq.

48. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff, like all other members of the Class, has sustained damages arising from Defendants' violations of the laws, as alleged herein. The representative Plaintiff and the members of the Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair and unconscionable practices engaged in by Defendants.

49. Plaintiff will fairly and adequately represent and protect the interests of the Class members and has retained as counsel trial lawyers who are experienced and competent in complex and class action litigation. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

50. This suit may be maintained as a class action because the questions of law and fact common to the Class predominate over the questions affecting only individual members of the Class and a class action is superior to other available

means for the fair and efficient adjudication of this dispute. The damages suffered by individual class members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and very expensive litigation needed to address Defendants' conduct. Even if class members themselves could afford such individual litigation, the court system would be overwhelmed by the individual lawsuits. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

(Breach Of Contract By Plaintiff Against All Defendants)

51. Plaintiff hereby incorporates by reference herein Paragraphs 1-50 of this First Amended Complaint.

52. The Luceros and members of the Plaintiff Class entered into agreements for the workout of their loan serviced by CMS during the Class Period.

53. More specifically, CMS, acting as DBNTC's loan servicer agent and on behalf of the Defendants, sent the Luceros a written agreement dated October 20, 2010 promising them a RP and an offer to modify their loan. This Agreement, quoted in pertinent part in paragraph 25, above, was signed by CMS via its agent within the scope of its agent's CMS employment. CMS' Suarez told the Luceros that, although they were unable to qualify for a loan modification at that time, CMS would provide them a repayment plan beginning on October 25, 2010 that would continue on for the next six months. Under that plan, the Luceros would pay $1,500 per month, starting

on October 25, 2010, and the foreclosure proceeding on their home would not proceed so long as they made the required payments. CMS told the Luceros that after they made the six monthly loan payments on time, it would offer them a modification with a similar payment. Plaintiff reasonably understood that the term "similar payment" meant a monthly payment similar in amount to the payment of $1,500 per month under the Agreement, i.e., approximately $1,500 per month.

54. The legal effect of the Agreement was that, in consideration for the Luceros timely paying CMS $1,500 per month for six months from October 2010 through March 2011, CMS would honor the full scope of the Agreement and offer the Luceros a loan modification with payments of approximately $1,500 per month. An additional legal effect of the Agreement was that, in consideration for the Luceros timely paying CMS $1,500 per month for six months from October 2010 through March 2011, CMS would act to suspend foreclosure proceedings on the Property.

55. The Luceros agreed to and accepted the Agreement. They timely made the payments called for in it. The consideration for the Agreement included the items identified above, including in Paragraph 25, *supra*. Among other things, they agreed to make their payments in amounts and on dates different than they were otherwise obligated to make under the terms of their loan. They made the Agreement in the belief that Defendants would honor the promises which Defendants made to the Luceros in the Agreement.

56. The Luceros timely made the payments proposed by Defendants instead of keeping the much-needed funds for other essential purposes, including pursuing other means of curing their housing problem, such as filing bankruptcy proceedings, seeking to arrange a short sale of their house, or seeking financing from a different source. They chose not to pursue such alternative avenues because they believed that Defendants would comply with their promises to modify the monthly payment on their existing loan and suspend foreclosure proceedings.

57. Plaintiff performed all of his obligations, and, on information belief, the

other members of the Class performed their obligations, under the aforementioned agreements except those that were excused by Defendants' conduct and breaches.

58. Defendants breached workout agreements made with the Luceros and, Plaintiff is informed and believe, with other members of the Class. Regarding the Luceros, among other things, they:

(a) Repudiated the Agreement, by rejecting the Luceros' attempt to make the fifth payment, and by refusing to accept any subsequent payments;

(b) Failed to consider a loan modification for Plaintiff and/or to offer one to the Plaintiff;

(c) Failed to negotiate a loan modification with the Plaintiff;

(d) Failed to modify the Plaintiff's home loan within a reasonable time to change their monthly payment obligation, such that their new monthly payment would be similar to the payment they were making under the RP;

(e) Proceeded with foreclosure proceedings during the time when the Luceros were in compliance with the Agreement;

(f) Engaged in "dual-tracking"; and

(g) Foreclosed on the Plaintiff's home and sold it at auction in March 2012 without granting them the promised mortgage modification.

59. As a proximate result of Defendants' conduct, the Luceros and members of the Plaintiff Class have suffered general and special damages, including, but not limited to, the loss of thousands of dollars they paid to Defendants in reliance on the written agreement, additional fees and costs arising from the foreclosure of their home and their eviction from it, and the loss of their home.

SECOND CAUSE OF ACTION

(Breach Of The Implied Covenant Of Good Faith And Fair Dealing By Plaintiff Against All Defendants)

60. Plaintiffs hereby incorporate by reference herein Paragraphs 1-59 of this First Amended Complaint.

61. In every agreement there is an implied promise of good faith and fair dealing. This means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Here, Defendants violated the duty to act fairly and in good faith in connection with the workout agreements it made with Plaintiff and, Plaintiff is informed and believe, with other members of the Class.

62. During the Class Period, Defendants and the Luceros entered into the Agreement, whereby the Luceros were to make certain set monthly payments to Defendants. Thereafter, Defendants were to consider the Luceros for and offer them a loan modification. Under the Agreement, Defendants were obligated to suspend foreclosure proceedings so long as the Luceros complied with their monthly payment obligations. The Agreement included, by operation of law, an implied promise of good faith and fair dealing under which each party had an obligation to not do anything to unfairly interfere with the right of any other party to receive the benefits of the Agreement. Plaintiff is informed and believe that Defendants made various workout arrangements during the Class Period with other members of the Class.

63. Except for the obligations that were excused by Defendants' breach of agreement and of their obligations of good faith and fair dealing, the Luceros and members of the Plaintiff Class performed their obligations under the Agreement and other similar such workout arrangements.

64. Defendants breached the implied covenant of good faith and fair dealing in the workout agreements between Defendants and the Luceros, and, Plaintiff is informed and believes, between Defendants and the members of the Plaintiff Class.

As for their breach of their workout agreement with the Luceros, among other things, they:

(a) Repudiated the agreement, by rejecting the Luceros' attempt to make the fifth payment, and by refusing to accept any subsequent payments;

(b) Failed to consider a loan modification for Plaintiff and/or to offer one to the Plaintiff;

(c) Failed to negotiate a loan modification with the Plaintiff;

(d) Failed to modify the Plaintiff's home loan within a reasonable time to change their monthly payment obligation, such that their new monthly payment would be similar to the payment they were making under the RP;

(e) Proceeded with foreclosure proceedings during the time when the Luceros were in compliance with the Agreement;

(f) Engaged in "dual-tracking"; and

(g) Foreclosed on the Plaintiff's home and sold it at auction in March 2012 without granting them the promised mortgage modification.

Plaintiff is informed and believes that Defendants similarly breached workout arrangements with other members of the Class.

65. As a proximate result of Defendants' conduct, Plaintiff and members of the Class have suffered general and special damages, including but not limited to the loss of thousands of dollars they paid to Defendants in reliance on the Agreement, additional fees and costs arising from the foreclosure of their home and their eviction from it, and the loss of their home.

THIRD CAUSE OF ACTION

(Promissory Estoppel By Plaintiff Against All Defendants)

66. Plaintiff hereby incorporates by reference herein Paragraphs 1 through

65 of this First Amended Complaint.

67. During the Class Period, Defendants made the promises alleged above to the Luceros. In the Agreement, they promised that, if the Luceros performed on the RP, the Luceros would be offered a modification of their loan including a monthly payment similar to the one they were to make (and did make) under the RP. They also promised in the Agreement that they would suspend foreclosure proceedings so long as Plaintiff complied with the monthly payment schedule contained therein. Plaintiff is informed and believes that similar workout arrangements were made between Defendants and other members of the Class.

68. Defendants knew or should have reasonably expected that the Plaintiff and members of the Class would act and/or forbear from acting in reliance on their promises in the agreed-upon workout arrangements, and they made their promises to induce such action and forbearance.

69. The Luceros and members of the Plaintiff Class in fact detrimentally relied on the promises made by the Defendants. Specifically, as for the Luceros, they believed Defendants would honor the promises made to them, and they timely made the payments called for in the Agreement, instead of keeping the much-needed funds for other essential purposes, including pursuing other means of curing their housing problem, such as filing bankruptcy proceedings, seeking to arrange a short sale of their house, or seeking financing from a different source. They chose not to pursue such avenues because they believed that Defendants would comply with their promise to modify the monthly payment on their existing loan. Also, in reliance on Defendants' promises, they agreed to pay additional fees and costs to Defendants.

70. Injustice can be avoided only by enforcement of Defendants' promises. Specifically, as to the Luceros, they made additional payments to Defendants, paid them additional fees and costs, and reasonably expected to have their home loan modified as Defendants had promised. The Luceros faithfully made payments on their home loan for years, and fully expected that their loan would be modified so that they

could stay in it for many more years. Instead, Defendants enticed them into paying additional fees and costs and making further payment, and then sold their home and had them evicted. Plaintiff is informed and believes that similar injustice has been brought upon other members of the Class during the Class Period.

FOURTH CAUSE OF ACTION

(Violation of Rosenthal Fair Debt Collection Practices Act Against All Defendants)

71. Plaintiff hereby incorporates by reference herein Paragraphs 1 through 70 of this First Amended Complaint.

72. Defendants are "debt collectors" within the meaning of *California Civil Code* § 1788.2(c), because, among other things, they regularly seek to collect and do collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another arising from promissory notes secured by deeds of trust or mortgages on homes owned by consumers and for debts arising from other financial instruments and obligations.

73. The monies allegedly owed by the Plaintiff are "debts" within the meaning of *Civil Code* § 1788.2 (d). The monies Defendants seek to collect and do collect from consumers who pay promissory notes secured by deeds of trust on homes are debts because, among other things, they are monies that Defendants claim are due and owing from natural persons who executed the promissory notes secured by the aforementioned deeds of trust or mortgages.

74. California's *Rosenthal Fair Debt Collection Practices Act*, Cal. Civ. Code §§ 1788, *et seq.* ("Rosenthal Act"), incorporates by reference, and requires compliance with, the provisions of the federal *Fair Debt Collection Practices Act*, 15 U.S.C. §§ 1692, *et. seq.*, *Civil Code* § 1788.17.

75. During the Class Period, by acts and practices including those described above, Defendants have violated these laws, as follows, without limitation:

(a) Making false, deceptive, or misleading representations in connection with the collection of any debt, 15 U.S.C. § 1692e;

(b) Making false representations or using deceptive means to collect or attempt to collect on any debt, 15 U.S.C. § 1692e (10); and/or

(c) Using unfair or unconscionable means to collect or attempt to collect any debt, 15 U.S.C. § 1692f.

76. Pursuant to *California Civil Code* §§ 1788.30 and 1788.17, Plaintiff and members of the class are entitled to recover actual damages sustained as a result of Defendants' violations of the Rosenthal Act. Such damages include, without limitation, monetary losses and damages, suffered, which damages are in an amount to be proven at trial. In addition, pursuant to *California Civil Code* §§ 1788.30 and 1788.17, because Defendants' violations of the Rosenthal Act were committed willingly and knowingly, Plaintiff is entitled to recover penalties of at least $1,000 per violation as provided for in the Act.

FIFTH CAUSE OF ACTION

(Unfair Business Practices Against All Defendants)

77. Plaintiffs hereby incorporate by reference herein Paragraphs 1 through 76 of this First Amended Complaint.

78. *Business Practice*: Defendants' conduct constituted a "business practice" under *Business & Professions Code* § 17200. Specifically, the Defendants' conduct, including that alleged above, as well as the claims alleged in each cause of action herein, constitute at least the one single act required to constitute a "business practice" under this section of the *Business & Professions Code*.

79. *Unlawful Conduct*: During the Class Period, Defendants have engaged in unlawful conduct including that alleged in this First Amended Complaint. In particular, Plaintiffs have alleged causes of action for Breach of Contract, Breach of The Implied Covenant of Good Faith and Fair Dealing, Promissory Estoppel, and

Violation of the Rosenthal Fair Debt Collection Practices Act. Each such cause of action is a separate and independent instance of unlawful conduct, inasmuch as the "unlawful" practices prohibited by section 17200 are "any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." *Saunders v. Superior Court,* 27 Cal. App. 4th 832, 838-839 (1994) .

80. *Unfair Conduct*: During the Class Period, Defendants have engaged in "unfair" business practices because their conduct was immoral, unethical, oppressive, unscrupulous or substantially injurious to Plaintiff. Specifically, the conduct of Defendants, including that alleged above, constitutes such conduct. Without limitation, the particular offensive conduct includes:

(a) Promising the Luceros that they would be offered a loan modification that lowered their monthly payment if they made payments under the RP, and then repudiating the agreement by rejecting Plaintiffs' fifth payment under the RP;

(b) Failing to consider and/or offer the Luceros a loan modification;

(c) Failing to negotiate any loan modification with the Luceros;

(d) Failing to modify the Lucero's home loan within a reasonable time to change their monthly payment obligation, such that their new monthly payment would be similar to the payment they were making under the RP;

(e) Engaging in a "dual tracking" loan modification and foreclosure stratagem to suck fees and payments out of Plaintiff and members of the Class;

(f) Failing to honor their promise in the Agreement to suspend foreclosure proceedings;

(g) Foreclosing on the Luceros' home and selling it at auction in March 2012 without granting them the promised mortgage modification; and

(h) Entering into various workout arrangements with members of the Plaintiff Class, reneging on the arrangements, dual tracking the arrangements with foreclosure processes, and misappropriating consideration from members of the Class as a result of making the workout arrangements with the Class.

81. *Fraudulent Conduct*: During the Class Period, Defendants have engaged in "fraudulent" business practices because members of the public are likely to be deceived as a result of their conduct. The conduct of Defendants, including that alleged above, constitutes such conduct. Without limitation, particularly offensive conduct includes the false written promise by CMS in the Agreement, whereby CMS told the Luceros that they would be offered a loan modification so long as they made six timely $1,500-per-month payments to Defendants under the RP, and that their monthly payment under the modification would be similar to the payment called for under the RP. It also includes Defendants' false promise to suspend foreclosure proceedings so long as the Luceros complied with the payment schedule in the Agreement. The Luceros believed in Defendants' promises, and acted in reliance on them, by making the payments Defendants requested. Simply put, the Luceros were actually deceived by the Agreement and believed that if they made the required payments, Defendants would, in fact, suspend foreclosure and modify their loan, such that their monthly payment under it was like that which was called for under the Agreement.

82. As a direct and proximate result of Defendants' wrongful acts, Plaintiff suffered damages, including loss of his home and the money he paid to Defendants, in amounts to be proved at trial. Plaintiff and members of the Class therefore seek restitution and disgorgement of all monies collected by Defendants through unfair business practices pursued during the Class period.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each Defendant and all of them as follows:

1. An Order Certifying the Plaintiff Classes;

2. General damages in a sum in excess of the jurisdictional minimum of this Court;

3. All actual, consequential, and incidental financial losses, including but not limited to, loss of funds paid to Defendants in reliance on their misrepresentations and bad faith conduct, together with prejudgment interest pursuant to Civil Code Section 3287 and/or Section 3288 or any other provision of law authorizing prejudgment interest;

4. An award of attorney's fees and expert fees as permitted by law;

5. Rescission, recessionary damages, restitution and restoration to Plaintiffs of all funds to which they are entitled, and disgorgement of Defendants' ill-gotten gains, to be proven at trial;

6. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the statutes alleged herein; and

7. Such other relief as the Court deems just and proper.

DATED: April 8, 2015 **WILSHIRE PALISADES LAW GROUP, P. C.**

By: _____
David I. Lefkowitz
Attorneys for All Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I work in the County of Los Angeles, State of California for Wilshire Palisades Law Group, P.C. ("WPLG"), whose business address is 1337 Ocean Avenue, Suite A, Santa Monica, California 90401-1009. I am over 18 years of age and I am not a party to this action.

On April 8, 2015, I transmitted from Santa Monica, California, the documents identified below:

FIRST AMENDED COMPLAINT

The foregoing document was addressed to the person listed on the "Service List" which is attached hereto and incorporated herein by reference. The address in that list is the most recent office address last given by the parties on whom service made in the most recent document each party has served on WPLG in this action.

The document described above were served by enclosing it in a separate envelope separately addressed to each person identified in the Service List above and then placing them for collection and mailing with the United States Postal Service in accordance with the ordinary business practices of WPLG. I am readily familiar with WPLG's ordinary business practice for collecting and processing envelopes for mailing with the United States Postal Service. That practice is as follows: on the same day an envelope is placed in WPLG's designated location for collection and mailing, all envelopes containing such document(s) are, in the ordinary course of business, collected by WPLG and deposited with the United States Postal Service that same day. Each envelope is sealed, and fully prepaid first class postage is applied to each envelope.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 8, 2015, at Santa Monica, California.

Stephen D. Holz

SERVICE LIST

Margarita Lucero, et al. v. Carrington Mortgage Services, LLC, et al.

Los Angeles Superior Court Case No. BC 557590

Law Offices of Marc J. Schwartz, P.C. Marc J. Schwartz, SBN 185346 Encino Office Park 1 6345 Balboa Boulevard, Suite 300 Encino, CA 91316 Telephone: (818) 804-4691 Facsimile: (818) 530-7757	Attorneys for Defendants Carrington Mortgage Services, LLC and Deutsche Bank National Trust Company, as Indenture Trustee for New Century Home Equity Loan Trust 2005-4