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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN JOSE DIVISION**

27 FELTON A. SPEARS, JR. and)
28 SIDNEY SCHOLL, JUAN)
BENCOSME and CARMEN)
BENCOSME, on behalf of)
themselves and all others similarly)
situated,)
Plaintiffs,)
v.)
FIRST AMERICAN EAPPRAISEIT)
(a/k/a eAppraiseIT, LLC),)
a Delaware limited liability company ;)
and LENDER'S SERVICE, INC.)
(a/k/a LSI Appraisal, LLC), a)
Delaware limited liability company,)
Defendants.)

CASE NO.: 5:08-CV-00868 (RMW)
CLASS ACTION
SECOND AMENDED COMPLAINT
FOR DAMAGES, EQUITABLE,
DECLARATORY AND INJUNCTIVE
RELIEF
DEMAND FOR JURY TRIAL

1 Plaintiffs, by their attorneys, bring this class action against Defendants First
2 American eAppraiseIT (a/k/a eAppraiseIT, LLC)(“EA”), and Lender’s Service Inc.,
3 (a/k/a LSI Appraisal, LLC)(“LSI”) (collectively “Defendants”) on their own behalf and
4 on behalf of all others similarly situated, and allege as follows based upon the
5 investigation of their counsel:

6 **OVERVIEW**

7 1. This is a class action against Defendants seeking relief on behalf of
8 Plaintiffs and a class of all consumers in California and throughout the United States
9 who, on or after June 1, 2006, received home loans from Washington Mutual Bank, FA
10 (a/k/a Washington Mutual Bank)(hereinafter referred to as “WaMu”), in connection with
11 appraisals that were obtained through either EA or LSI. Plaintiffs and the Class were
12 ultimately responsible for paying for these appraisals, which, as described throughout
13 this Complaint, were not performed in an independent, objective, impartial and unbiased
14 manner, in violation of applicable law and the contractual requirements for the appraisal.

15 2. The vast majority of home purchasers in the United States finance their
16 home purchase through a third party lender. The loan has traditionally been secured by
17 the lender, who retains a security interest in the property until the loan is repaid in full.
18 In the event of default, the lender will be entitled to sell off the security interest (i.e., the
19 property) and recoup the loan amount. Thus, it traditionally has been critical for the
20 lender to make sure the fair market value of the property equals or exceeds the value of
21 the loan.¹ To do so, lenders require that, prior to the loan, the property be professionally
22 appraised to determine its fair market value.

23 3. A real estate appraisal is supposed to be an independent, objective,
24 impartial, unbiased, credible professional estimate of the fair market value of a

25 _____
26 ¹ Fair market value is the price at which a willing buyer would purchase a
27 property and a willing seller would sell the same property, when neither party is under
28 any compulsion to buy or sell, and each party has full knowledge of all pertinent facts
relating to the sale.

1 particular property. It typically consists of a visual inspection of the interior and
2 exterior of a property; inspection of the neighborhood; and a comparison of selling
3 prices of comparable properties on the street or adjacent areas, among other indicia. The
4 lender (in this case, WaMu) typically undertakes to procure the appraisal on behalf of
5 itself and the borrower with the cost of the appraiser's services ultimately borne by the
6 borrower.

7 4. If an appraisal is properly done, the appraisers perform the appraisal, and
8 appraisal reviewers review the appraisal report for accuracy and compliance with
9 applicable standards to create what legal and professional standards term a "credible
10 appraisal." Appraisers and appraisal reviewers follow federally accepted standards, the
11 Uniform Standards of Professional Appraisal Practice ("USPAP"), which govern the
12 ethical and legal aspects of the appraisal undertaking, assessment, reporting and review
13 process, and establish the minimum standards for performing a "credible appraisal."
14 These USPAP standards are also adopted by most, if not all, states, including California.
15 Also they are part of the contractual undertakings expressly stated in the Uniform
16 Residential Appraisal Report, which is the standard form that appraisers use for their
17 appraisal reports and which were used for the WaMu loans that are the subject of this
18 Complaint. These appraisal reports also expressly provide that they are to be provided
19 to and are for borrowers who are identified in the reports as the "clients" and
20 acknowledge that borrowers are permitted to rely on the appraisals as part of any
21 mortgage finance transaction between borrowers and WaMu.

22 5. The USPAP requirements provide that to promote and preserve the public
23 trust inherent in professional appraisal practice, an appraiser and an appraisal reviewer
24 must observe the highest standards of professional ethics to perform and ensure a
25 "credible appraisal." An appraiser and an appraisal reviewer must perform assignments
26 ethically and competently, in accordance with USPAP and any supplemental standards
27 agreed to by the appraiser in accepting the assignment. Under USPAP, an appraiser and
28 an appraisal reviewer must perform assignments with impartiality, objectivity, and

1 independence, and without bias or accommodation of personal interests. In appraisal
2 practice under USPAP, an appraiser and an appraisal reviewer must not perform as an
3 advocate for any party or issue, must not accept an assignment that includes the
4 reporting of predetermined opinions and conclusions or favors the cause of any client,
5 must not communicate assignment results or write a report in a misleading or fraudulent
6 manner, and must not permit an employee or other person to communicate a misleading
7 or fraudulent report.

8 6. In or about June 2006, WaMu entered an agreement, conspiracy or scheme
9 with EA and LSI, two purportedly independent appraisal companies, to handle all of
10 WaMu's home loan appraisals. As part of this arrangement, EA and LSI received
11 appraisal requests from WaMu, procured local appraisers to perform the appraisals,
12 reviewed the appraisal reports, and requested, at the behest of WaMu, that the appraisers
13 make changes before finalizing the reports and providing them to WaMu to transmit to
14 the borrowers. In reality, WaMu, with the full, unfettered cooperation of EA and LSI,
15 controlled the process by which individual appraisers were selected, how home
16 appraisals were performed and, ultimately, the values at which properties were
17 appraised. EA and LSI consulted directly with WaMu and its loan officers to establish
18 the property values they desired before EA and LSI (and its appraisers) finalized the
19 appraisal reports. EA and LSI also utilized a computer program given to it by WaMu
20 or used other means to alter appraisal reports before finalizing them to change property
21 values, remove negative references and/or make other changes so that the final appraisal
22 reports EA and LSI delivered comported with WaMu's wishes. This conspiratorial
23 conduct allowed WaMu to direct appraisers to artificially inflate home values and thus
24 provide false appraisals in order to qualify more people for higher value loans. WaMu
25 would then aggregate and package these home loans and sell them in the financial
26 markets for a substantial profit. Ultimately, the higher the volume and value of these
27 loans, the higher WaMu's profits. In 2006, WaMu made over \$760 million in revenue
28 from sales and servicing of home mortgage loans.

1 7. As part of the scheme, EA and LSI each received millions of dollars in
2 appraisal fees from unsuspecting WaMu borrowers who, despite paying for what should
3 have been credible appraisals (i.e., done in compliance with applicable legal and
4 professional standards so as to provide an independent, unbiased, and objective
5 appraisal of the fair market value of their property), instead unwittingly received biased
6 appraisals that were neither independent, objective or done in compliance with legal and
7 professional standards. Each borrower was charged for a credible, lawful appraisal, but
8 as a result of the arrangement between WaMu, EA and LSI, no credible, lawful appraisal
9 was performed. WaMu borrowers (i.e., Plaintiffs and the Class) were damaged thereby.

10 8. EA has its principal place of business in Poway, California and operates,
11 manages and directs its nationwide appraisal services and business operations from its
12 offices in California. Likewise, LSI has two of its three nationwide operation centers
13 in California, from which LSI operates and directs the majority, or at least a substantial
14 proportion, of its nationwide appraisal services and business operations. A majority of
15 WaMu's home loan portfolio are loans made in California, according to its 2006 Annual
16 Report. It is therefore believed and averred that the agreements, conspiracy and
17 misconduct at issue in this Complaint occurred, were conducted and/or were directed
18 primarily from, or at least a substantial proportion emanated from, California, including,
19 but not limited to: a) the designation and assignment of appraisers for WaMu home
20 loans; b) the review, approval and revision of appraisals for WaMu home loans to meet
21 WaMu's expectations; and c) the management and supervision of appraisal services for
22 WaMu home loans to Plaintiffs and the Class.

23 9. Defendants' conduct violates the Real Estate Settlement Procedures Act,
24 12 U.S.C. section 2607, the unlawful, unfair and fraudulent prongs of California's
25 Business and Professions Code section 17200, *et seq.* (the "UCL") as well as the
26 Consumer Legal Remedies Act ("CLRA"). Defendants' conduct also constitutes an
27 unlawful civil conspiracy. Defendants' conduct further breaches their contracts with
28 Plaintiffs and the Class, either directly or because Plaintiffs and Class members are

1 intended beneficiaries of the contracts, or Defendants' services, or is grounds for
2 restitution on a quasi-contract/unjust enrichment basis.

3 **PARTIES**

4 10. Plaintiff, Sidney Scholl, is an individual who is a citizen of the State of
5 California, residing in Sonoma County, California. In October, 2006, Ms. Scholl
6 entered a mortgage loan through WaMu's offices in Sonoma, California to purchase a
7 property located at 817 NW 194th Terrace, Edmond, Oklahoma. In connection with this
8 loan, WaMu procured for itself and Ms. Scholl an appraisal on the subject property from
9 EA and/or LSI that was performed pursuant to the scheme alleged in this Complaint.
10 Ms. Scholl was charged for this appraisal.

11 11. Plaintiff, Felton A. Spears, Jr., is an individual who is a citizen of the State
12 of California, residing in San Jose, California. In March, 2007, Mr. Spears entered a
13 mortgage loan with WaMu on a property located in San Jose, California. In connection
14 with this loan, WaMu procured for itself and Mr. Spears an appraisal of the subject
15 property from EA that was performed pursuant to the scheme alleged in this Complaint.
16 Mr. Spears was charged for this appraisal.

17 12. Plaintiffs, Juan Bencosme and Carmen Bencosme, are married individuals
18 who are citizens of the State of New York, residing in Brentwood, New York. In
19 November, 2007, the Bencosmes entered a mortgage loan with WaMu on a property
20 located in Brentwood, New York. In connection with this loan, WaMu procured for
21 itself and the Bencosmes an appraisal of the subject property from LSI that was
22 performed pursuant to the scheme alleged in this Complaint. The Bencosmes were
23 charged for this appraisal.

24 13. Washington Mutual Bank, FA (a/k/a Washington Mutual Bank)(herein after
25 referred to as "WaMu") operated as a consumer and small business banking company
26 in the United States with assets totaling \$346 billion. WaMu operated in four segments:
27 Retail Banking, Card Services, Commercial, and Home Loans. The Home Loans
28 segment originated and serviced home loans, managed capital market operations,

1 fulfilled and serviced a portfolio of home equity loans and lines of credit, originated and
2 purchased mortgage loans to higher risk borrowers, provided financing and other
3 banking services to mortgage bankers for the origination of mortgage loans, and offered
4 insurance-related products and reinsurance services. This segment offered various real
5 estate secured residential loan products and services primarily consisting of fixed-rate
6 home loans, adjustable-rate home loans, hybrid home loans, option ARM loans, and
7 mortgage loans to higher risk borrowers. As of December 31, 2006, the company
8 operated 2,225 retail banking stores and 472 lending stores and centers in 36 states,
9 including California. According to the company's 2006 Annual Report, the majority of
10 WaMu's home loan portfolio are loans made in California. On September 25, 2009, the
11 Office of Thrift Supervision ("OTS") closed WaMu. The OTS appointed the Federal
12 Deposit Insurance Corporation ("FDIC") as Receiver for WaMu. This Court entered an
13 Order on November 19, 2008 substituting the FDIC-Receiver for WaMu as a defendant
14 in this action. On February 4, 2009, Plaintiffs entered a stipulation with the FDIC-
15 Receiver voluntarily dismissing it as a defendant in this action. Neither the FDIC-
16 Receiver nor WaMu are named as party defendants in this Second Amended Complaint.

17 14. Defendant First American eAppraiseIT (a/k/a eAppraiseIT, LLC)("EA")
18 is a Delaware limited liability company with its principal place of business at 12395
19 First American Way, Poway, California. EA is a subsidiary of The First American
20 Corporation and is a California corporation with its principal place of business at 1 First
21 American Way, Santa Ana, California.

22 15. Defendant Lender's Service Inc. (a/k/a LSI Appraisal, LLC)("LSI") is one
23 of the country's largest providers of property valuation, title and closing services to the
24 first mortgage, home equity, and subprime markets, as well as to mortgage servicers and
25 investors. LSI is a subsidiary of Fidelity National Information Services, a corporation
26 incorporated in Georgia and headquartered in Jacksonville, Florida. LSI maintains three
27 operation centers, two of which, Santa Ana and Sacramento, are located in California.

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JURISDICTION AND VENUE

16. Jurisdiction of this Court is proper under 28 U.S.C. §1331(federal question jurisdiction) and §1367(supplemental jurisdiction). Plaintiffs assert a federal claim under RESPA, 12 U.S.C. §2607, and supplemental state law claims.

17. Jurisdiction of this Court is alternatively proper under 28 U.S.C. §1332(d)(2). Plaintiffs, Scholl and Spears, are citizens of the State of California and reside in Sonoma and San Jose, California. Plaintiffs, Mr. and Mrs. Bencosme are citizens of the State of New York and resides in Brentwood, New York. Defendant EA is incorporated in the State of Delaware and has its principal place of business in Poway, California. Defendant LSI has two of its three main operation centers located in Santa Ana, California and Sacramento, California, and generally and regularly does business in the State of California. A substantial portion of the conduct at issue in this lawsuit took place in one or more of Defendants’ California offices.

18. The amount in controversy exceeds \$5,000,000 for Plaintiffs and Class members collectively, exclusive of interest and costs, by virtue of the combined cost of appraisals performed by EA and LSI for WaMu loans, and the revenue and profit reaped by Defendants from their transactions with Plaintiffs and the Class, as a direct and proximate result of the wrongful conduct alleged herein, and by virtue of the statutory, exemplary and/or punitive damages alleged herein.

19. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b), (c) and (d). Defendant EA has agents, transacts business and is otherwise found within this judicial district. Defendant LSI has agents, transacts business, and is otherwise found within this judicial district. A substantial portion of the transactions and events complained of herein, including Plaintiffs’, occurred in this judicial district, a substantial portion of the affected persons and entities are in this judicial district, and Defendants have received substantial compensation from such transactions and business activity in this judicial district, including the transaction Plaintiffs entered with Defendant. Finally, Defendants inhabit and/or may be found in this judicial district, and

1 the interstate trade and commerce described herein is and has been carried out in part
2 within this judicial district.

3 **BASIC FACTUAL ALLEGATIONS**

4 **The Real Estate Mortgage Industry**
5 **Provides Incentives for High Appraisals**

6 20. WaMu is the country's largest savings and loan with assets totaling \$346
7 billion. During the first three quarters of 2007 alone, WaMu originated \$116 billion in
8 residential mortgage loans. WaMu procures more appraisals from EA and LSI than any
9 other single entity.

10 21. Traditionally, a lender such as WaMu would have an interest in ensuring
11 that a borrower is able to repay a home loan, and that the loan is adequately
12 collateralized in case the borrower defaults. Likewise, a consumer borrowing money
13 for a home loan places their trust in the lender to procure a credible appraisal (i.e., one
14 done in compliance with applicable legal and professional standards so as to provide an
15 independent, objective and unbiased appraisal of their home's value) and to lend them
16 money on terms appropriate to that independent, objective and unbiased assessment of
17 that home's fair market value. Traditionally, the borrower and lender shared a common
18 interest in having a property independently and objectively appraised to ensure both that
19 the borrower was not paying too much, and that the property value could support
20 repayment of the loan in the event of a default.

21 22. Because historically banks retained ownership of the loan and mortgage for
22 the life of the loan, the banks' primary interest was to make sure that the borrower paid
23 off the principal and interest without delay or default. Whenever a borrower defaulted
24 on a loan it would have a direct financial impact on the lender, i.e. loss or threatened
25 loss of principal and interest on the loan. If the loan was properly based on the actual
26 fair market value of the property, however, the lender would be able to sell the loan or
27 secured property and recoup the outstanding principal. Accordingly, it was critical that
28 the market value of the property was properly appraised and that the loan amount
reflected that value.

1 23. In recent years the traditional model, whereby banks held a mortgage loan
2 until it was paid off, has changed. Banks such as WaMu no longer hold all, or even
3 most of their mortgage loans, but instead sell them to investment banks or government
4 sponsored enterprises such as the Federal National Mortgage Association (“Fannie
5 Mae”) or the Federal Home Loan Mortgage Corporation (“Freddie Mac”). These loans
6 are then pooled together, securitized, and sold to the general public as mortgage backed
7 securities, allowing lenders such as WaMu to profit from the volume and value of loans
8 it has procured. The larger the aggregate value of the loans, the more profit for the
9 lender.

10 24. The paradigm shift away from retaining a portfolio of loans towards the
11 sale of mortgage backed securities fundamentally altered a lender’s incentive to issue
12 quality loans. By selling the vast majority of their mortgage loan portfolio to other
13 companies, banks no longer assumed the risk of a bad loan. The risk of default was
14 passed on to other companies and eventually the investors who bought mortgage backed
15 securities. More importantly, now bank profit directly correlated to the volume and
16 value of loans generated, not the likelihood that a loan would be repaid. Banks were
17 thus incentivized to offer as many loans at the highest dollar amounts that could be
18 offered with little regard to whether the loan could be paid back.

19 25. In this environment, there remains little incentive for WaMu to obtain a
20 credible appraisal of a property’s real market value and every incentive to offer the
21 highest loan amounts possible, supporting the loans with biased, artificially inflated,
22 false appraisals.

23 **Federal and State Laws Require Appraisal Independence**

24 26. Despite the new economic paradigm fueling the mortgage lending industry,
25 state and federal regulations require that appraisals be “credible” by being independent,
26 objective, unbiased and performed in compliance with the minimum standards set forth
27 in the Uniform Standards of Professional Appraisal Practice (“USPAP”). These USPAP
28 standards are incorporated into federal law, *see* 12 C.F.R. § 34.44, are incorporated into

1 many, if not all, state laws, including California, *see* California Business and Professions
2 Code §11319, and are part of the contractual undertakings expressly stated in the
3 Uniform Residential Appraisal Report, which is the standard form that appraisers use
4 for their appraisal reports and which were used for the WaMu loans that are the subject
5 of this Complaint. These appraisal reports also expressly contemplated that they were
6 prepared for and would be provided to borrowers and acknowledged that borrowers
7 could rely on the appraisals as part of any mortgage finance transaction between
8 borrowers and WaMu.

9 27. USPAP requires appraisers to conduct their appraisals independently: “An
10 appraiser must perform assignments with impartiality, objectivity, and independence,
11 and without accommodation of personal interests. In appraisal practice, an appraiser
12 must not perform as an advocate for any party or issue. An appraiser must not accept
13 an assignment that includes the reporting of predetermined opinions and conclusions.”
14 USPAP Ethics Rules (Conduct).

15 28. USPAP requires appraisers to communicate their appraisals honestly: “An
16 appraiser must not communicate assignment results in a misleading or fraudulent
17 manner. An appraiser must not use or communicate a misleading or fraudulent report
18 or knowingly permit an employee or other person to communicate a misleading or
19 fraudulent report.” USPAP Ethics Rules (Conduct).

20 29. USPAP requires that “[i]n developing a real property appraisal, an appraiser
21 must: (a) be aware of, understand, and correctly employ those recognized methods and
22 techniques that are necessary to produce a credible appraisal...” USPAP Standards Rule
23 1-1.

24 30. USPAP also requires that “[e]ach written real property appraisal report
25 must contain a signed certification that is similar in content to the following form:

26 I certify that, to the best of my knowledge and belief:

27 - the statements of fact contained in this report are true and correct.

28

- 1 - the reported analyses, opinions, and conclusions are limited only by the
2 reported assumptions and limiting conditions and are my personal,
3 impartial, and unbiased professional analyses, opinions, and conclusions.
4
- 5 - I have no (or the specified) present or prospective interest in the property
6 that is the subject of this report and no (or the specified) personal interest
7 with respect to the parties involved.
8
- 9 - I have no bias with respect to the property that is the subject of this report
10 or to the parties involved with this assignment.
11
- 12 - my engagement in this assignment was not contingent upon developing or
13 reporting predetermined results.
14
- 15 - my compensation for completing this assignment is not contingent upon
16 the development or reporting of a predetermined value or direction in value
17 that favors the cause of the client, the amount of the value opinion, the
18 attainment of a stipulated result, or the occurrence of a subsequent event
19 directly related to the intended use of this appraisal.
20
- 21 - my analyses, opinions, and conclusions were developed, and this report has
22 been prepared, in conformity with the *Uniform Standards of Professional*
23 *Appraisal Practice.*”
24

25 The appraisal reports for the WaMu loans that are the subject of this Complaint
26 contained this or a materially identical certification.

27 31. The same or similar USPAP ethics rules, standards and certifications are
28 required for appraisal reviewers (i.e., appraisers who perform a quality review of another

1 appraiser’s report). Such appraisal reviews were performed by EA and LSI appraisal
2 reviewers on the appraisal reports for the WaMu loans that are the subject of this
3 Complaint.

4 32. Federal law mandates that appraisers involved in federally-regulated
5 transactions operate independently. *See* 12 U.S.C. §§ 3331 *et seq.* The Federal
6 Regulations provide that for independent contractors or “fee” appraisers, the appraiser
7 shall “have no direct or indirect interest, financial or otherwise, in the property or the
8 transaction.” 12 C.F.R. 34.45.

9 33. In 2005, federal regulators, including the Office of Thrift Supervision
10 (“OTS”), published “Frequently Asked Questions on the Appraisal Regulations and the
11 Interagency Statement on Independent Appraisal and Evaluation Functions.” With
12 regard to appraisal independence, the statement provides:

13 3. Who should be considered the loan production staff for
14 purpose of achieving appraisal independence? Could
15 loan production staff select an appraiser?
16

17 Answer: The loan production staff consists of those responsible
18 for generating loan volume or approving loans, as well
19 as their subordinates. This would include any
20 employee whose compensation is based on loan
21 volume. Employees responsible for credit
22 administration function or credit risk management are
23 not considered loan production staff. **Loan production
24 staff should not select appraisers.**
25

26 5. When selecting residential appraiser, may loan
27 production staff use a revolving pre-approved appraiser
28 list, provided the list is not under their control?

1 Answer: Yes, loan production staff may use a revolving board-
2 approved list to select a residential appraiser, provided
3 the development and maintenance of the list is not
4 under their control. **Staff responsible for the**
5 **development and maintenance of the list should be**
6 **independent of the loan production process.**
7 **Further, there should be periodic interval review of**
8 **the appraiser selection process to ensure that**
9 **appropriate procedures are being followed and that**
10 **controls exist to ensure independence.** (Emphasis
11 added).

12 **LSI and EA Conspired With WaMu to Provide Artificial Appraisals**

13 34. In 2006, responding to these federal regulations, as well as threats of strict
14 federal enforcement of appraiser independence in the mortgage lending industry, WaMu
15 attempted to insulate itself from criticism and federal oversight by entering into an
16 agreement with two purportedly independent Appraisal Management Companies
17 (“AMCs”), First American eAppraiseIT and Lender’s Services, Inc., whereby WaMu
18 would procure appraisals from these two AMCs on behalf of borrowers for all or nearly
19 all WaMu residential loans nationwide, with the cost of the appraisals being charged to
20 the borrowers at the time of the closing of their loans. These two AMCs were engaged
21 to oversee the appraisal process and provide a barrier of independence between WaMu
22 (the lender) and those hired to appraise properties on which it would provide mortgage
23 loans. In theory, these AMCs were to select appraisers independent of WaMu, serve as
24 the sole contact with the appraiser, review the appraiser’s report, and communicate the
25 unbiased results and report to WaMu. WaMu would in turn communicate the appraisal
26 results and reports to WaMu borrowers so both the borrower and lender could rely on
27 them in entering the mortgage loans. Under this arrangement, WaMu would
28 theoretically not be able to improperly influence the appraiser or the ultimate value

1 placed on a property.

2 35. Both EA and LSI tout themselves as unbiased appraisers who abide by
3 USPAP requirements. As reported on its website, EA assures consumers that it uses
4 “only the services of appraisers licensed or certified by the state in which a subject
5 property is located” and “customers can be assured that Uniform Standards of
6 Professional Appraisal Practice and Financial Institutions Reform Recovery and
7 Enforcement Act (“FIRREA”) guidelines are followed and that each appraisal is audited
8 for compliance.” Likewise, LSI assures consumers that its appraisals “conform to
9 USPAP requirements.”

10 36. In or about June 2006, WaMu retained EA and LSI to administer WaMu’s
11 appraisal program. Since this time, EA and LSI have performed nearly all of WaMu’s
12 appraisals. WaMu borrowers quickly became both EA’s and LSI’s largest source of
13 revenue. Since June 2006, EA alone has received over \$50 million in fees from
14 borrowers who received loans through WaMu.

15 37. Prior to being retained by WaMu, EA and LSI used a combination of
16 internal staff and third party appraisers to service WaMu borrowers. Although the
17 independence of the appraiser is critical to the appraisal process, soon after retaining EA
18 and LSI to administer the WaMu appraisal program, WaMu identified certain appraisers
19 (“Preferred Appraisers”) that WaMu requested conduct residential property appraisals
20 for its loans. At first these preferred appraisers were simply added to the list of possible
21 appraisers to conduct appraisals for WaMu loans, but eventually WaMu demanded that
22 all of its appraisals be done by the Preferred Appraisers. Despite USPAP and FIRREA
23 requirements that appraisers be independent, EA and LSI acquiesced to WaMu’s demand
24 to staff appraisals with Preferred Appraisers.

25 38. Additionally, WaMu encouraged EA and LSI to hire former WaMu
26 employees as staff appraisers and appraisal business managers, the latter of which had
27 authority to override and/or revise the values reached by third party appraisers. Both
28 LSI and EA agreed to WaMu’s request and took on new employees who formerly

1 worked for WaMu as its appraisers and regional managers.

2 39. Moreover, pursuant to contractual agreements between WaMu and the
3 AMCs, WaMu had the right to challenge an appraiser’s conclusions by requesting a
4 “reconsideration of value” (also known as a “ROV” or “rebuttal”) when WaMu did not
5 like the appraised value of a home. This rebuttal system gave WaMu a direct way to
6 request that EA or LSI reconsider an appraiser’s report and to raise the value assigned
7 to a given home. WaMu frequently used this “reconsideration of value” technique to get
8 EA and LSI to provide higher appraisal values on homes to enable its loan origination
9 staff to close the loans.

10 40. In addition to WaMu’s contractual ability to request a re-appraisal of
11 property valuation, the AMCs’ Appraisal Business Managers, hired at the request of
12 WaMu, were given unfettered authority to override the values prescribed by third party
13 appraisers. According to a complaint filed by the New York Attorney General
14 (“NYAG”) against EA, a WaMu executive defined the role of EA’s Appraisal Business
15 Managers in terms of value disputes in the following way:

16 ... the four appraisers/reviewers would be directly involved in escalations
17 dealing with: ROVs, Valuation issues where the purchase price and
18 appraised value differ with no reconciliations/justifications by the
19 appraiser, Value cuts which we continue to receive from your third party
20 reviewers (Wholesale), **proactively making a decision to override and**
21 **correct the third party appraiser’s value or reviewer’s value cut**, when
22 considered appropriate and supported...

23 Through these Appraisal Business Managers, WaMu sought to, and did, ensure that
24 home valuations would be sufficient to support the loan WaMu wanted to provide.

25 **Guaranteed High Appraisals Were Facilitated Through**
26 **Instituting WaMu’s Preferred Appraiser List**

27 41. Soon after entering its arrangement with EA and LSI, WaMu’s loan
28 origination staff began complaining about the appraisals performed by these AMCs

1 having property values too low for the proposed loans. WaMu's loan origination staff
2 received commissions based on the value and volume of loans generated. Their
3 dissatisfaction was based on a desire to close loans at amounts higher than the appraisals
4 justified.

5 42. For example, according to the NYAG's complaint, as early as August 9,
6 2006, WaMu's internal staff admonished EA for not providing appraisals at the values
7 they wanted. In response to this acknowledged, improper pressure coming from
8 WaMu's loan origination staff who desired the higher appraisals, EA's Executive Vice
9 President capitulated to WaMu's demands by giving its Appraisal Business Managers
10 discretion to raise the value of homes up to \$50,000.

11 43. In order to guarantee WaMu would get the high appraisals it wanted,
12 without having to go through the delay of the rebuttal system, by the winter of 2007,
13 WaMu insisted that EA and LSI use WaMu's "Preferred Appraisers" for all of WaMu's
14 home loan appraisals. These appraisers were individuals whom WaMu was confident
15 would appraise properties at a high inflated value to ensure WaMu could quickly close
16 the loan at a desired amount, and get as much value from the transaction as possible.

17 44. According to the NYAG's complaint, both EA and LSI were complicit with
18 WaMu's demands to exclusively use Preferred Appraisers. In an email dated February
19 22, 2007, EA's President explained to senior executives at EA's parent corporation, First
20 American, that:

21 We had a joint call with Wamu and LSI today. The attached document
22 outlines the new appraiser assigning process. In short, we will now assign
23 all WaMu's work to WaMu's "Proven Appraisers" ... We will pay their
24 appraisers whatever they demand. **Performance ratings to retain position**
25 **as a Wamu Proven Appraiser will be based on how many come in on**
26 **value, negating a need for an ROV.** (Emphasis added).

27
28

1 **WaMu’s “Preferred Appraiser List” Included Only Appraisers**
2 **Selected and Controlled by WaMu’s Loan Origination Staff**

3 45. The individuals on the “Preferred Appraiser List” were hand selected by
4 WaMu’s loan origination staff. Requests sent to WaMu’s AMC’s for the addition of
5 specific appraisers to the approved list were often sent by WaMu’s loan origination staff
6 themselves. WaMu’s Vice President of “Appraisal Oversight” – the division of WaMu
7 that is supposed to be responsible for ensuring that no undue influence is exerted by
8 WaMu’s loan origination staff on appraisers – stated in an email to EA regarding one
9 ROV for a “low value,” that “[t]his is an example of the issue that has caused sales
10 pushing for a ‘proven appraiser’ process.”

11 46. In an email dated March 5, 2007, WaMu confirmed the role of its loan
12 origination staff in choosing specific appraisers for WaMu’s “Proven Appraiser List:”

13 Proven Appraiser List is being created. This will replace the WaMu
14 preferred list. **The initial list of names will be provided by lending** with
15 a minimum of two appraisers per area/county. The list will then be
16 reviewed and approved by the Appraisal Business Oversight Team and will
17 be checked against our most recent ineligible list. Final list will be
18 provided to VMC’s [vendor management companies]. Majority of work
19 must be assigned to the appraisers on the Proven Appraiser List on a
20 Priority Basis. (Emphasis added).

21 47. Any review and approval by WaMu’s Appraisal Business Oversight Team
22 was a facade. If an AMC went to WaMu’s Appraisal Business Oversight team to discuss
23 the pressure being put on it by WaMu’s loan origination staff to provide higher home
24 appraisal values, WaMu responded by telling the AMC to work the issue out directly
25 with the lending staff. WaMu insisted that its loan origination staff have direct contact
26 with appraisers so they could get the appraisals at the value they wanted. Both EA and
27 LSI permitted this direct involvement to occur.

28 48. Appraisers were also aware that the Proven Appraisers were being selected

1 by WaMu's loan origination staff, and that the only way for an appraiser to get onto the
2 list was by giving WaMu's origination staff the appraisals they sought. According to the
3 NYAG's complaint, in an email sent on April 17, 2007 to EA's staff appraisers to
4 explain why staff appraisers were removed from WaMu's Proven Appraiser List, EA's
5 manager acknowledged WaMu's loan origination staff's involvement in the selection of
6 appraisers to perform WaMu's appraisals:

7 I thought I [sic] pass on my thoughts regarding the recent message that we
8 all received for [sic] Peter last weekend. I will be glad to tell you what I
9 know. I have been told that the lending folks at Wamu and [sic] were
10 unhappy with the AMC's and felt they were not receiving a good level of
11 appraisal work. They therefore decided to construct their own appraisal
12 panel, now known as the wamu proven panel, and instructed the AMC's to
13 utilize appraisers from this panel whenever possible. The end result is that
14 if you are not on this proven panel it is very unlikely you will receive wamu
15 work.

16 49. The involvement of WaMu's loan origination staff in selecting appraisers
17 to perform WaMu's home loan appraisals was readily apparent to all parties involved
18 and evidenced by emails sent by WaMu's origination staff to EA and LSI requesting the
19 addition of specific appraisers to the Proven Appraiser List. In an email identified in the
20 NYAG's complaint, EA's Executive Vice President informed EA's President that
21 "currently WAMU is controlling the appraisal panel. They are selecting appraisers and
22 calling them 'proven' appraisers. These appraisers are being chosen by their sales force.
23 First American eAppraiseIT (FA eAppraiseIT) is obligated to use these appraisers." The
24 stated reason WaMu insisted on only using its 'proven' appraisers was because EA's
25 appraisers provided WaMu with "low values."

26 50. In addition to selecting which appraisers were on the Proven Appraiser List,
27 WaMu's loan origination staff was responsible for removing appraisers from the list who
28 did not comply with staff expectations or requests for high appraisals, or who performed

1 desk evaluations of other appraisals and reduced another appraiser's valuation of one of
2 WaMu's customer's properties.

3 **WaMu's Proven Appraiser List is Illegal**

4 51. The Code of Federal Regulations provides that for independent contractors
5 or "fee" appraisers, the appraiser shall "have no direct or indirect interest, financial or
6 otherwise, in the property or the transaction." 12 C.F.R. 34.45. In addition, the Uniform
7 Standards of Professional Appraisal Practice ("USPAP") are incorporated into federal
8 law, *see* 12 C.F.R. § 34.44, are incorporated into many, if not all, states' laws, including
9 California, and are expressly incorporated as part of the Uniform Residential Appraisal
10 Report used as the standard form for the appraisal reports for the WaMu loans that are
11 the subject of this Complaint. USPAP requires appraisers and appraisal reviewers to
12 provide and ensure "credible" appraisals by complying with USPAP and other applicable
13 legal and professional requirements, which include, among other things, the requirement
14 that appraisals and appraisal reviews be conducted independently and without bias: "An
15 appraiser must perform assignments with impartiality, objectivity, and independence,
16 and without accommodation of personal interests. In appraisal practice, an appraiser
17 must not perform as an advocate for any party or issue." USPAP Ethics Rules
18 (Conduct).

19 52. Despite the requirement that appraisers be unbiased, independent, and have
20 no direct or indirect interest in the home mortgage transaction, the agreements between
21 WaMu and EA and LSI establishing WaMu's Proven Appraiser List put in place an
22 appraisal system that was anything but unbiased and independent. Those appraisers
23 willing to provide WaMu with its desired high appraisals for home mortgage
24 transactions were paid an additional 20% WaMu preferred appraisal fee for each
25 appraisal. Those appraisers unwilling to bend to WaMu's, EA's and LSI's desire to
26 provide WaMu with high appraisals were removed from the Proven Appraiser List by
27 WaMu's loan origination staff, and were thereafter prohibited from providing appraisals
28 for WaMu by EA or LSI. Appraisers, therefore, had a stake in each and every appraisal

1 they performed for WaMu. They were rewarded financially for providing high home
2 appraisal values through the 20% premium for each WaMu appraisal performed, and
3 were rewarded by staying on WaMu's "Proven Appraiser List" for future WaMu
4 appraisals.

5 53. EA and LSI likewise had a financial incentive to provide WaMu with the
6 specific appraisers WaMu wanted. If either EA or LSI did not agree to provide WaMu
7 with appraisers from WaMu's Proven Appraiser List, they faced losing millions of
8 dollars of business on WaMu's loans.

9 54. EA recognized that WaMu's Proven Appraiser List was unlawful, but chose
10 to go along with WaMu and continued providing illegal appraisal services in order to
11 reap millions of dollars from unsuspecting borrowers. According to the NYAG's
12 complaint, in an email from EA's president to senior executives of First American dated
13 April 17, 2007, EA described the relationship with WaMu as follows: "In short, the
14 issuers are using their designated appraisers as mandated by the WaMu production force
15 at 20% gross margin and bypassing our panel. **We view this as a violation of the OCC,**
16 **OTS, FDIC and USPAP influencing regulation.**" (Emphasis added). In support of
17 EA's conclusion that its agreement with WaMu was illegal, EA's Executive Vice
18 President prepared a summary of the guidelines regarding appraiser independence and,
19 compared to WaMu's Proven Appraiser List, concluded the following:

20 Based on our conversations we have had with the WAMU oversight as well
21 as the questions and answers initiated by our competitor LSI, **it is our**
22 **interpretation that the loan production staff has a great deal to do with**
23 **selecting appraisers. The PAL [Proven Appraiser List] has been**
24 **selected by the loan production staff and the continued use of these**
25 **appraisers is being monitored by the loan production staff.** For
26 example, on the LSI question #1 "Does WAMU want to be updated
27 transactionally on every order we can not assign to a PAL?", WAMU's
28 answer is "Yes, we need a short sentence in the message log so that we can

1 monitor, – AND most important – lending can see why you didn’t assign
2 to a PAL service provider. Not using a PAL appraiser will be an issue so
3 we need to ensure we’ve covered our bases as to why they’re not utilized.”

4 **This appears to be directly in contradiction to the interagency**
5 **guidelines unless you have a different interpretation.** (Emphasis added).

6 55. Both EA and LSI knew that what WaMu was doing, by having its loan
7 origination staff personally select appraisers, was illegal, and that by agreeing to provide
8 WaMu with its “Proven Appraisers” EA and LSI were acting as co-conspirators in this
9 scheme. According to the NYAG’s complaint, in an email dated April 17, 2007, EA’s
10 Executive Vice President wrote to EA’s President and Chief Operating Officer regarding
11 EA’s liability on this:

12 OTS and OCC only control lenders. However, there is the legal concern
13 about collusion. For example, let’s say it is discovered that a lender (loan
14 officer at a lender) is being collusive with an appraiser that is on OUR
15 (WAMU) panel. That is, our reps and warrants apply. Then we are liable
16 I would say because we have gone along with it.... In addition, I think it
17 will tarnish our reputation in the appraisal community because we are
18 allowing WAMU to pick appraisers based on their loan officers. It makes
19 us look complicit. So [it] may not be actionable
20 legally but would hurt our reputation. So those are two bad things
21 off the cuff. There may be more if we think about it and use creative
22 paranoia.

23 56. Despite increasing regulatory scrutiny, rather than abandon the Proven
24 Appraiser List, WaMu sought to obfuscate its misfeasance by changing the name of its
25 Proven Appraiser List to the “WaMu Select” panel. WaMu stated that the, “Name
26 change from ‘proven appraiser’ and/or use of the moniker “PAL” list is discontinued,
27 under direction of the WaMu legal department. We are utilizing a more generic term
28 acceptable w/in regulatory guidelines and industry standards.”

1 filing this action, the appraisal for the property that was the subject of her WaMu loan
2 was created pursuant to the scheme described in this Complaint and therefore Ms. Scholl
3 did not receive the independent, objective, unbiased and credible appraisal done in
4 compliance with applicable law for which she paid, since no such appraisal was
5 performed by WaMu, EA, LSI or their agents. Ms. Scholl has been damaged thereby.

6 **PLAINTIFF FELTON A. SPEARS JR.**

7 63. Plaintiff, Felton A. Spears, Jr., is an individual who is a citizen of the State
8 of California, residing in San Jose, California.

9 64. In March, 2007, Mr. Spears entered a mortgage loan with WaMu on a
10 property located in San Jose, California. See Exhibit 3 (Settlement Statement (HUD-1)).

11 65. In connection with this loan, WaMu acted for itself and as Mr. Spears'
12 agent to procure for itself and Mr. Spears an appraisal on the subject property from EA,
13 as further described in Count Six of this Complaint. See Exhibit 4 (appraisal report).
14 The appraisal report, utilizing the Uniform Residential Appraisal form, certifies that it
15 was completed for Mr. Spears listing him as the "Borrower/Client" in compliance with
16 the USPAP standards, including being performed in an independent, objective and
17 unbiased manner. *Id.* It also acknowledges that the appraisal was performed for WaMu
18 and EA and provided to them, and was contemplated to be disclosed to and could be
19 relied upon by the borrower, Mr. Spears, in his mortgage loan transaction with WaMu.
20 *Id.* Mr. Spears was charged approximately \$361.00 for this appraisal. See Exhibit 3
21 (Spears' Settlement Statement (HUD-1), Line 803).

22 66. Mr. Spears understood he was purchasing a credible, lawful appraisal and
23 had no reason to doubt the certification in the appraisal report and therefore believed that
24 the appraisal done on his property was performed independently, objectively, without
25 undue influence or bias to affect the value of the home, and was otherwise a credible,
26 lawful appraisal done in compliance with applicable law.

27 67. Contrary to Mr. Spears' belief and unbeknownst to him until shortly before
28 filing this action, the appraisal for the property that was the subject of his WaMu loan

1 was created pursuant to the scheme described in this Complaint and therefore Mr. Spears
2 did not receive the independent, objective, unbiased and credible appraisal done in
3 compliance with applicable law for which he paid, since no such appraisal was
4 performed by WaMu, EA, LSI or their agents. Mr. Spears has been damaged thereby.

5 **PLAINTIFFS JUAN AND CARMEN BENCOSME**

6 68. Plaintiffs, Juan Bencosme and Carmen Bencosme, are married individuals
7 who are citizens of the State of New York, residing in Brentwood, New York.

8 69. In November, 2007, the Bencosmes entered a mortgage loan through WaMu
9 to purchase a property located at 17 Pennsylvania Avenue, Brentwood, New York. See
10 Exhibit 5 (Settlement Statement (HUD-1)).

11 70. In connection with this loan, WaMu acted for itself and as the Bencosmes'
12 agent to procure for itself and the Bencosmes an appraisal on the subject property from
13 LSI, as further described in Count Seven of this Complaint. See Exhibit 6 (appraisal
14 report). The appraisal report, utilizing the Uniform Residential Appraisal form, certifies
15 that it was completed for the Bencosmes listing them as the "Borrower/Client" in
16 compliance with the USPAP standards, including being performed in an independent,
17 objective and unbiased manner. *Id.* It also acknowledges that the appraisal was
18 performed for WaMu and LSI, was provided to them, and was contemplated to be
19 disclosed to and could be relied upon by the borrower, the Bencosmes, in their mortgage
20 loan transaction with WaMu. *Id.* The Bencosmes were charged \$328.00 for this
21 appraisal. *See* Exhibit 5 (Bencosmes' Settlement Statement (HUD-1), Line 803).

22 71. The Bencosmes understood they were purchasing a credible, lawful
23 appraisal and had no reason to doubt the certification in the appraisal report and
24 therefore believed that the appraisal done on her property was performed independently,
25 objectively, without undue influence or bias to affect the value of the home, and was
26 otherwise a credible, lawful appraisal done in compliance with her contract and
27 applicable law. It was upon this appraisal that the Bencosmes and WaMu entered their
28 loan.

1 72. Contrary to the Bencosmes' belief and unbeknownst to them until shortly
2 before filing this action, the appraisal for the property that was the subject of their
3 WaMu loan was created pursuant to the scheme described in this Complaint and
4 therefore the Bencosmes did not receive the independent, objective, unbiased and
5 credible appraisal done in compliance with applicable law for which they paid, since no
6 such appraisal was performed by WaMu, EA, LSI or their agents. The Bencosmes have
7 been damaged thereby.

8 **DEFENDANTS' CONCEALMENT OF THEIR SCHEME**

9 73. WaMu's, EA's and LSI's scheme to conduct and charge Plaintiffs and the
10 Class for appraisals for WaMu home loans that were neither independent, objective,
11 impartial, unbiased, credible or in compliance with USPAP and applicable law was
12 never disclosed to Plaintiffs or any Class member by Defendants.

13 74. Nor did Defendants give Plaintiffs or the Class any reason to suspect that
14 there were any problems with their appraisals. Indeed, EA and LSI were recognized,
15 experienced appraisal companies who retained certified appraisers who prepared reports
16 that on the surface appeared to have all of the earmarks of legitimate, independent,
17 objective, unbiased, credible and lawful appraisals. The appraisal reports even included
18 the appraiser's certification that the report was done independently, objectively,
19 impartially and in compliance with USPAP standards and applicable law.

20 75. Moreover, it was traditional that lenders, like WaMu, would obtain
21 appraisals of properties in connection with the home loans and would provide the
22 appraisal reports to borrowers and would charge the borrowers for the reports. In other
23 words, without disclosure of Defendants' arrangement, Plaintiffs and the Class could not
24 have reasonably suspected that there was anything wrong with the appraisal for which
25 they were each charged.

26 76. The first time Defendants' scheme was publically revealed was in the Fall
27 of 2007 when the New York Attorney General announced its investigation and
28 complaint against EA for conspiring with WaMu to create false appraisals for WaMu

1 home loans. It was only upon and after the New York Attorney General’s announcement
2 in the Fall of 2007 that Plaintiffs became aware of Defendants’ scheme, and that Class
3 members could have become aware of Defendants’ scheme.

4 **CLASS ACTION ALLEGATIONS**

5 77. Plaintiffs bring this action on behalf of themselves and on behalf of all other
6 members of the Class (“Class”), defined as all persons in the United States who received
7 a home loan with WaMu and received an appraisal performed by EA or LSI. Excluded
8 from the Class are WaMu’s, EA’s, and LSI’s officers, directors and managerial
9 employees, and any of WaMu’s, EA’s, or LSI’s subsidiary or affiliated entities and any
10 of the judges of the Court before which this case is pending.

11 78. There are thousands of class members who are geographically dispersed
12 throughout the United States, including California. Therefore, individual joinder of all
13 members of the Class would be impracticable.

14 79. Common questions of law or fact exist as to all members of the Class.
15 These questions predominate over the questions affecting only individual class members.
16 These common legal or factual questions include:

17 a. Whether WaMu entered into an agreement with EA and/or LSI to
18 procure appraisal services that were not performed by independent, unbiased appraisers
19 as required by law;

20 b. Whether WaMu acted as the agent of Plaintiffs and the Class to enter
21 into appraisal contracts for them with EA and/or LSI as specified in Counts Six and
22 Seven of this Complaint;

23 c. Whether Defendants had and have policies, practices, or procedures
24 that undermine the possibility that Plaintiffs and the Class received credible appraisals
25 done in compliance with USPAP and applicable law;

26 d. Whether WaMu, through its agreement with EA and/or LSI, was able
27 to control the appraisal process, by its loan origination personnel or otherwise, by having
28 either EA or LSI provide higher appraised values for homes than EA’s or LSI’s appraiser

1 had initially concluded or than was the actual fair market value of the home;

2 e. Whether EA and/or LSI agreed with WaMu to provide WaMu with
3 appraisers who were selected by WaMu to be on WaMu's Proven Appraiser List (or the
4 WaMu Select panel);

5 f. Whether WaMu controlled and/or manipulated the pool of appraisers
6 on WaMu's Proven Appraiser List;

7 g. Whether the agreements between WaMu, EA and LSI constitute a
8 civil conspiracy;

9 h. Whether Defendants' actions described herein violate the Real Estate
10 Settlement Procedures Act, 12 U.S.C. §2607;

11 i. Whether Defendants' actions described herein violate California's
12 Business and Professions Code, sections 17200 *et seq.*;

13 j. Whether Defendants' actions violate California's Consumer Legal
14 Remedies Act, California Civil Code sections 1750 *et seq.*;

15 k. Whether Defendants breached their contracts with Plaintiffs and the
16 Class as specified in Counts Six and Seven of this Complaint;

17 l. The appropriate measure of damages and/or restitution.

18 80. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs
19 took out home mortgage loans with Defendant WaMu and their home appraisals were
20 procured for them by WaMu through EA and/or LSI. Plaintiffs, therefore, are no
21 different in any relevant respect from any other Class member, and the relief sought is
22 common to the Class.

23 81. Plaintiffs are adequate representatives of the Class because their interests
24 do not conflict with the interests of the class members they seek to represent, and they
25 have retained counsel competent and experienced in conducting complex class action
26 litigation. Plaintiffs and their counsel will adequately protect the interests of the Class.

27 82. A class action is superior to other available means for the fair and efficient
28 adjudication of this dispute. The damages suffered by each individual class member

1 likely will be relatively small, especially given the burden and expense of individual
2 prosecution of the complex litigation necessitated by Defendants' conduct. Thus, it
3 would be virtually impossible for the class members individually to effectively redress
4 the wrongs done to them. Moreover, even if the class members could afford individual
5 actions, it would still not be preferable to class wide litigation. Individualized actions
6 present the potential for inconsistent or contradictory judgments. By contrast, a class
7 action presents far fewer management difficulties and provides the benefits of single
8 adjudication, economies of scale, and comprehensive supervision by a single court.

9 83. In the alternative, the Class may be certified because Defendants have acted
10 or refused to act on grounds generally applicable to the Class, thereby making
11 appropriate preliminary and final equitable relief with respect to the Class as a whole.

12 **FIRST CLAIM FOR RELIEF**

13 **(Against Defendants' for Violation of RESPA, 12 U.S.C. §2607)**

14 **[In its March 9, 2009 Order, this Court sustained Plaintiffs' claim under 12 U.S.C.**
15 **§2607(a) of RESPA, and dismissed Plaintiffs' claim under 12 U.S.C. §2607(b) of**
16 **RESPA. Plaintiffs include in this Second Amended Complaint their claim under**
12 U.S.C. §2607(b) of RESPA solely to preserve their right to appeal the dismissal
of that claim.]

17 84. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint
18 and restate them as if they were fully written herein.

19 85. Under 12 U.S.C. §2607(b) of RESPA, "[n]o person shall give and no person
20 shall accept any portion, split, or percentage of any charge made or received for the
21 rendering of a real estate service in connection with a transaction involving a federally
22 related mortgage loan other than for services actually performed."

23 86. Plaintiffs and the Class entered federally related mortgage loans with
24 WaMu on or after June 1, 2006.

25 87. In connection with these WaMu loans, Plaintiffs and the Class were charged
26 for appraisals WaMu procured for them through EA and LSI that were certified in the
27 appraisal report to be credible, independent, objective, unbiased, and performed in
28 compliance with USPAP and applicable law. As described throughout this Complaint,

1 no such appraisals were performed by Defendants and the appraisals for which Plaintiffs
2 and the Class were charged by Defendants were neither independent, objective, unbiased
3 or performed in compliance with USPAP or applicable law, in violation of 12 U.S.C.
4 §2607(b) of RESPA. As such, the appraisals Plaintiffs and the Class received from
5 WaMu, EA and LSI were not appraisals at all in that they could not be relied upon at all
6 since they had not been performed in compliance with the applicable legal and
7 professional standards. In other words, the appraisals Plaintiffs and the Class received
8 were not worth the paper on which they were printed and were otherwise valueless.

9 88. Plaintiffs and the Class never received the appraisal service for which they
10 were charged by Defendants and have been damaged thereby.

11 89. Under 12 U.S.C. §2607(a) of RESPA, “[n]o person shall give and no person
12 shall accept any fee, kickback, or thing of value pursuant to any agreement or
13 understanding, oral or otherwise, that business incident to or part of a real estate
14 settlement service involving a federally related mortgage loan shall be referred to any
15 person.”

16 90. As described throughout this Complaint, WaMu entered into an agreement
17 or understanding with EA and LSI specifying that in exchange for WaMu steering to EA
18 and LSI all, or most, of the appraisal business for WaMu residential loans, EA and LSI
19 would cooperate with WaMu to ensure that the appraisals established property values
20 sufficient to support the WaMu residential loan amounts regardless of the true market
21 value of the properties that were the subject of the WaMu home loans.

22 91. To facilitate WaMu’s, EA’s and LSI’s agreement or understanding, EA and
23 LSI agreed to use (for WaMu home loans) appraisers that WaMu’s loan origination staff
24 selected to be on its Proven Appraiser List based on these individuals providing WaMu
25 with sufficiently high appraisals to financially benefit both WaMu and its loan
26 origination staff. In return, WaMu demanded that EA and LSI pay appraisers on its
27 Proven Appraiser List a 20% premium over what EA’s and LSI’s staff or third party
28 appraisers were paid. Those appraisers who did not provide WaMu with the desired

1 high appraisal values were removed from WaMu’s Proven Appraiser List by WaMu’s
2 loan origination staff, and were thereafter prohibited from providing appraisals for
3 WaMu, and could not get the 20% appraisal premium. Appraisers on WaMu’s Proven
4 Appraiser List have a financial interest in each and every WaMu home loan mortgage
5 transaction that they perform appraisal services for, both for the immediate 20%
6 additional fee, as well as future appraisals for WaMu at the additional 20% fee.

7 92. WaMu benefitted from this arrangement by securing more high value home
8 mortgages that it could bundle and securitize for substantial profits, and EA and LSI
9 benefitted from this arrangement by securing a steady stream of appraisal work on
10 WaMu home loans. Appraisers on WaMu’s Proven Appraiser List who were retained
11 by EA and LSI to perform appraisals for WaMu home loans benefitted from this
12 arrangement by receiving a 20% premium in return for their participation in this
13 unlawful arrangement with WaMu, EA and LSI.

14 93. Plaintiffs and the Class were damaged by Defendants’ arrangement in that
15 they never received the appraisal service for which they were charged by Defendants and
16 instead unwittingly received unreliable, biased appraisals that were the basis of the
17 mortgage transactions they entered with WaMu.

18 **SECOND CLAIM FOR RELIEF**

19 **(Against Defendants for Unfair Business Practices in Violation of**
20 **Business & Professions Code §§17200, et seq.)**

21 **[This Count was dismissed by this Court’s Order of May 9, 2009 and is included in**
22 **this Second Amended Complaint solely to preserve Plaintiffs’ right to appeal its**
23 **dismissal.]**

24 94. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint
25 and restate them as if they were fully written herein.

26 95. The UCL defines unfair business competition to include any “unlawful,
27 unfair or fraudulent” act or practice. Cal. Bus. & Prof. Code §17200.

28 96. A business practice is “unlawful” under the Unfair Competition Law if it
is forbidden by law, including state or federal laws or regulations.

97. The Code of Federal Regulations provides that for independent contractors

1 or “fee” appraisers, the appraiser shall “have no direct or indirect interest, financial or
2 otherwise, in the property or the transaction.” 12 C.F.R. 34.45. In addition, the Uniform
3 Standards of Professional Appraisal Practice (“USPAP”), which are incorporated into
4 federal law by 12 C.F.R. § 34.44, and into the state law of many, if not all states,
5 including California (*see* California Business and Professions Code §11319) requires
6 appraisers to perform a credible appraisal done in compliance with USPAP standards,
7 which includes requiring that their appraisals be conducted independently: “An appraiser
8 must perform assignments with impartiality, objectivity, and independence, and without
9 accommodation of personal interests. In appraisal practice, an appraiser must not
10 perform as an advocate for any party or issue.” USPAP Ethics Rules (Conduct).

11 98. USPAP also requires that “[e]ach written real property appraisal report must
12 contain a signed certification that is similar in content to the following form:

13 I certify that, to the best of my knowledge and belief:

- 14 - the statements of fact contained in this report are true and correct.
- 15 - the reported analyses, opinions, and conclusions are limited only by the
16 reported assumptions and limiting conditions and are my personal,
17 impartial, and unbiased professional analyses, opinions, and conclusions.
- 18
- 19 - I have no (or the specified) present or prospective interest in the property
20 that is the subject of this report and no (or the specified) personal interest
21 with respect to the parties involved.
- 22
- 23 - I have no bias with respect to the property that is the subject of this report
24 or to the parties involved with this assignment.
- 25
- 26 - my engagement in this assignment was not contingent upon developing or
27 reporting predetermined results.
- 28

1 - my compensation for completing this assignment is not contingent upon the
2 development or reporting of a predetermined value or direction in value
3 that favors the cause of the client, the amount of the value opinion, the
4 attainment of a stipulated result, or the occurrence of a subsequent event
5 directly related to the intended use of this appraisal.

6
7 - my analyses, opinions, and conclusions were developed, and this report has
8 been prepared, in conformity with the *Uniform Standards of Professional*
9 *Appraisal Practice.*”

10
11 The appraisal reports for the WaMu loans that are the subject of this Complaint
12 contained this or a materially identical certification.

13 99. The same or similar USPAP ethics rules, standards and certifications are
14 required for appraisal reviewers (i.e., appraisers who perform a quality review of another
15 appraiser’s report). Such appraisal reviews were performed by EA and LSI appraisal
16 reviewers on the appraisal reports for the WaMu loans that are the subject of this
17 Complaint.

18 100. WaMu, EA, and LSI have and continue to violate the “unlawful” prong of
19 the UCL through the creation and use of WaMu’s Proven Appraiser List because
20 appraisers on this list clearly have an interest in each WaMu home appraisal transaction,
21 and are not unbiased and independent. WaMu’s loan origination staff selects appraisers
22 to be on its Proven Appraiser List based on these individuals providing WaMu with
23 sufficiently high appraisals to financially benefit both WaMu and its loan origination
24 staff. In return, WaMu demands that EA and LSI pay appraisers on its Proven Appraiser
25 List a 20% premium over what EA’s and LSI’s staff or third party appraisers are paid.
26 Those appraisers who do not provide WaMu with the desired high appraisal values are
27 removed from WaMu’s Proven Appraiser List by WaMu’s loan origination staff, and are
28 thereafter prohibited from providing appraisals for WaMu, and can not get the 20%

1 appraisal premium. Appraisers on WaMu's Proven Appraiser List clearly have a
2 financial interest in each and every WaMu home loan mortgage transaction that they
3 perform appraisal services for, both for the immediate 20% additional fee, as well as
4 future appraisals for WaMu at the additional 20% fee.

5 101. WaMu, EA and LSI conspired to allow WaMu's loan origination staff to
6 select individuals to be on WaMu's Proven Appraiser List even though federal and state
7 law prohibits loan producers from having a direct influence on appraisers. *See* Office
8 of Thrift Supervision ("OTS"), published "Frequently Asked Questions on the Appraisal
9 Regulations and the Interagency Statement on Independent Appraisal and Evaluation
10 Functions." WaMu, EA, and LSI also agreed that WaMu's loan origination staff would
11 have control over deciding which individuals would stay on the list in violation of
12 federal laws which prohibit loan producers from having a direct influence on appraisers.

13 102. Through these agreements, the appraisers on WaMu's Proven Appraiser
14 List retained by EA and LSI for WaMu home loans are not acting independently,
15 objectively and in compliance with USPAP standards as federal and state law mandates.
16 Rather, WaMu, EA and LSI permit and have agreed to permit WaMu's loan origination
17 staff direct contact with appraisers to influence their ultimate appraisal decision, instead
18 of allowing them to act in an unbiased, independent fashion. Moreover, the appraisal
19 reports that these appraisers create for WaMu home loans, which are approved by EA
20 and LSI in their review process, are not independent, objective, unbiased, credible or
21 performed in compliance with USPAP standards as required by federal and state law.

22 103. Additionally, as the violation of any law may serve as the predicate for a
23 violation of the unlawful prong of the Unfair Competition Law, Plaintiffs further allege
24 that Defendants, in violating the Real Estate Settlement Procedures Act, the Consumers
25 Legal Remedies Act, and the common law of contract, violated the Unfair Competition
26 Law.

27 104. Because of Defendants' unlawful acts and practices, Defendants injured
28 Plaintiffs and members of the Class and obtained, and continue to unfairly obtain, money

1 and property from Plaintiffs and members of the Class. Thus, Plaintiffs request that this
2 Court cause Defendants to restore this money to Plaintiffs and all Class members, and
3 to enjoin Defendants from continuing to violate the Unfair Competition Law as
4 discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an
5 effective and complete remedy if such an order is not granted.

6 **THIRD CLAIM FOR RELIEF**

7 **(Against Defendants for Unfair Business Practices in Violation of**
8 **Business & Professions Code §§17200, et seq.)**

9 **[This Count was dismissed by this Court's Order of May 9, 2009 and is included in**
10 **this Second Amended Complaint solely to preserve Plaintiffs' right to appeal its**
11 **dismissal.]**

12 105. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint
13 and restate them as if they were fully written herein.

14 106. The UCL defines unfair business competition to include any "unlawful,
15 unfair or fraudulent" act or practice. Cal. Bus. & Prof. Code §17200.

16 107. A business act or practice is "unfair" under the Unfair Competition Law if
17 the reasons, justifications and motives of the alleged wrongdoer are outweighed by the
18 gravity of the harm to the alleged victims.

19 108. Defendants have violated, and continue to violate, the "unfair" prong of the
20 UCL in the following ways:

21 a. Agreeing to allow and allowing WaMu to create its Proven Appraiser
22 List which is constituted of appraisers WaMu hand selected as being ones that would
23 provide WaMu with high home appraisal values;

24 b. Agreeing to allow and allowing WaMu to limit its Proven Appraiser
25 List to only those appraisers WaMu knew would provide it with high home appraisal
26 values;

27 c. Agreeing to allow and allowing all of WaMu's home appraisals to
28 be performed by only appraisers on WaMu's Proven Appraiser List;

d. Agreeing to allow and allowing WaMu control over the Proven

1 Appraiser List by allowing WaMu, or members of WaMu’s loan origination staff, to
2 choose appraisers to be added to the list, or to choose appraiser to be taken off the list;

3 e. Agreeing to allow and allowing WaMu to dictate a financial incentive
4 for appraisers on WaMu’s Proven Appraiser List to inflate appraisals;

5 f. Agreeing to provide and providing appraisers on WaMu’s Proven
6 Appraiser List a financial interest in each appraisal performed for WaMu;

7 g. Agreeing to provide and providing appraisers on WaMu’s Proven
8 Appraiser List a financial interest in remaining on WaMu’s Proven Appraiser List by
9 paying these appraisers a higher per-appraisal fee, and by informing them that if they did
10 not provide appraisals at a high enough value for WaMu, they would be removed from
11 the Proven Appraiser List;

12 h. Agreeing to allow and allowing WaMu the ability to overrule home
13 appraisal values WaMu believed to be too low through the “rebuttal” or
14 “Reconsideration of Value” system;

15 i. Agreeing to allow and allowing WaMu’s loan origination staff to
16 have direct contact with LSI, EA, and their appraisers, with regard to appraisals
17 performed for home loans for WaMu; and,

18 j. Failing to provide home loan borrowers with unbiased, independent
19 and credible home appraisals performed in compliance with USPAP standards.

20 109. The gravity of the harm to members of the Class resulting from such unfair
21 acts and practices outweighs any conceivable reasons, justifications and/or motives of
22 Defendants for engaging in such deceptive acts and practices. By committing the acts
23 and practices alleged above, Defendants have engaged, and continue to be engaged, in
24 unfair business practices within the meaning of California Business and Professions
25 Code §§17200 *et seq.*

26 110. Through their unfair acts and practices, Defendants have obtained, and
27 continue to unfairly obtain, money from members of the Class. As such, Plaintiffs
28 request that this Court cause Defendants to restore this money to Plaintiffs and all Class

1 members, and to enjoin Defendants from continuing to violate the Unfair Competition
2 Law as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied
3 an effective and complete remedy if such an order is not granted.

4 **FOURTH CLAIM FOR RELIEF**

5 **(Against Defendants for Unfair Business Practices in Violation of**
6 **Business & Professions Code §§17200, *et seq.*)**

7 **[This Count was dismissed by this Court’s Order of May 9, 2009 and is included in**
8 **this Second Amended Complaint solely to preserve Plaintiffs’ right to appeal its**
9 **dismissal.]**

10 111. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint
11 and restate them as if they were fully written herein.

12 112. The UCL defines unfair business competition to include any “unlawful,
13 unfair or fraudulent” act or practice. Cal. Bus. & Prof. Code §17200.

14 113. A business act or practice is “fraudulent” under the Unfair Competition Law
15 if it actually deceives or is likely to deceive members of the consuming public.

16 114. Defendants’ acts and practices as described herein have deceived and/or are
17 likely to deceive members of the consuming public, including Plaintiffs and the Class.
18 Specifically, Defendants offered to provide Plaintiffs and members of the Class with
19 independent, unbiased and credible home appraisals performed in compliance with
20 USPAP standards, and, in fact, certified such in the appraisal reports prepared for and
21 disseminated to Plaintiffs and the Class by Defendants. Yet, despite this offer and
22 promise, Defendants’ failed to provide independent, unbiased and credible home
23 appraisals in the following ways:

24 a. Agreeing to allow and allowing WaMu to create its Proven Appraiser
25 List which is constituted of appraisers WaMu hand selected as being ones that would
26 provide WaMu with high home appraisal values;

27 b. Agreeing to allow and allowing WaMu to limit its Proven Appraiser
28 List to only those appraisers WaMu knew would provide it with high home appraisal
values;

1 c. Agreeing to allow and allowing all of WaMu’s home appraisals to
2 be performed by only appraisers on WaMu’s Proven Appraiser List;

3 d. Agreeing to allow and allowing WaMu control over the Proven
4 Appraiser List by allowing WaMu, or members of WaMu’s loan origination staff, to
5 choose appraisers to be added to the list, or to choose appraiser to be taken off of the list;

6 e. Agreeing to allow and allowing WaMu to dictate a financial incentive
7 for appraisers on WaMu’s Proven Appraiser List;

8 f. Agreeing to provide and providing appraisers on WaMu’s Proven
9 Appraiser List a financial interest in each appraisal performed for WaMu;

10 g. Agreeing to provide and providing appraisers on WaMu’s Proven
11 Appraiser List a financial interest in remaining on WaMu’s Proven Appraiser List by
12 paying these appraisers a higher per-appraisal fee, and by informing them that if they did
13 not provide appraisals at a high enough value for WaMu, they would be removed from
14 the Proven Appraiser List;

15 h. Agreeing to allow and allowing WaMu the ability to overrule home
16 appraisal values WaMu believed to be too low through the “rebuttal” or
17 “Reconsideration of Value” system;

18 i. Agreeing to allow and allowing WaMu’s loan origination staff to
19 have direct contact with LSI, EA, and/or their appraisers, regarding appraisals performed
20 for WaMu home loans; and,

21 j. Failing to provide home loan borrowers with unbiased, independent
22 and credible home appraisals performed in compliance with USPAP standards.

23 115. As a result of the conduct described above, Defendants have been, and will
24 continue to be, unjustly enriched at the expense of Plaintiffs and members of the
25 proposed Class. Specifically, Defendants have been unjustly enriched by the profits and
26 revenue it has obtained from Plaintiffs and the Class from the home appraisals charged
27 to them when taking out WaMu loans.

28 116. Because of Defendants’ unlawful acts and practices, Defendants injured

1 Plaintiffs and members of the class and obtained, and continue to unfairly obtain, money
2 and property from Plaintiffs and members of the Class. Thus, Plaintiffs request that this
3 Court cause Defendants to restore this money to Plaintiffs and all Class members, and
4 to enjoin Defendants from continuing to violate the Unfair Competition Law as
5 discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an
6 effective and complete remedy if such an order is not granted.

7 **FIFTH CLAIM FOR RELIEF**

8 **(Against Defendants for Violation of the Consumers Legal Remedies Act,
9 California Civil Code §1750, et seq.)**

10 **[This Count was dismissed by this Court’s Order of May 9, 2009 and is included in
11 this Second Amended Complaint solely to preserve Plaintiffs’ right to appeal its
dismissal.]**

12 117. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint
13 and restate them as if they were fully written herein.

14 118. This claim for relief is brought pursuant to the Consumers Legal Remedies
15 Act, California Civil Code §1750, et seq. (the “CLRA”).

16 119. Plaintiffs and each member of the proposed Class who took out WaMu
17 home loans, and had appraisals performed by EA and/or LSI are “consumers” within the
18 meaning of *Civil Code* §1761(d).

19 120. The home appraisals sold by Defendants to Plaintiffs and Class members
20 are “services” within the meaning of *Civil Code* §1761(b).

21 121. Defendants have violated, and continue to violate, the CLRA in at least the
22 following respects:

23 a. in violation of *Civil Code* §1770(a)(7), Defendants represented their
24 home appraisal services to be of a particular standard or quality, (i.e., being credible,
25 independent, unbiased and performed in compliance with USPAP standards), which they
26 were not.

27 122. Plaintiffs and the members of the Class request that this Court enjoin
28 Defendants from continuing to engage in the unlawful and deceptive methods, acts and

1 practices alleged above, pursuant to *California Civil Code* §1780(a)(2). Unless
2 Defendants are permanently enjoined from continuing to engage in such violations of
3 the CLRA, future consumers taking out WaMu home loans will be damaged by their acts
4 and practices in the same way as have Plaintiffs and the members of the proposed Class.

5 123. Pursuant to *Civil Code* §1782, Plaintiffs notified Defendants in writing of
6 the particular violations of *Civil Code* §1770 and demanded that Defendants rectify the
7 problems associated with its illegal behavior detailed above, which actions are in
8 violation of *Civil Code* §1770.

9 124. Defendants failed within 30 days of receipt of Plaintiffs notice of demand
10 to give, or agree to give within a reasonable time to the Class, including Plaintiffs, the
11 requested remedies. Pursuant to *Civil Code* §1782(b)and (d), Plaintiffs file this
12 Amended Complaint and seek the following damages as provided for in *Civil Code*
13 §1780:

- 14 a. actual damages in excess of the jurisdictional limits of this Court;
- 15 b. an order enjoining methods, acts and/or practices, as outlined above,
16 which are in violation of *Civil Code* §1770;
- 17 c. punitive damages;
- 18 d. any other relief which the Court deems proper, and;
- 19 e. court costs and attorneys' fees.

20 **SIXTH CLAIM FOR RELIEF**

21 **(Against Defendant, EA for Breach of Express Contract)**

22 125. Plaintiffs Spears and Scholl hereby incorporate the foregoing paragraphs
23 of this Complaint and restate them as if they were fully written herein. This Count for
24 breach of contract against EA is brought only by Plaintiffs Spears and Scholl and on
25 behalf of all other members of the Class for which appraisals on their homes that are the
26 subject of their WaMu loans were procured from EA. Hence, the references to
27 "Plaintiffs," the "Class" or "Class members" in Count Six only are limited to those
28 Plaintiffs and Class members for whom Count Six is brought.

1 126. Plaintiffs and the other Class members on or after June 1, 2006 took out a
2 home loan with WaMu. In connection with these WaMu home loans, WaMu undertook
3 and agreed to act as Plaintiffs' and Class members' agents to enter contracts on their
4 behalf with appraisers or appraisal service companies, such as EA, to provide appraisals
5 for Plaintiffs and Class members on the homes that were the subject of their WaMu loans
6 to be completed prior to closing on and deciding to enter those loans.

7 127. In furtherance of this agency, WaMu, on behalf of Plaintiffs and the Class
8 and by making them an express contracting party to the appraisal contracts with EA,
9 entered contracts with EA for appraisals on the homes that were the subject of Plaintiffs'
10 and Class members' WaMu loans. Under these appraisal contracts, EA undertook and
11 agreed: a) to perform these appraisals for Plaintiffs and the Class credibly,
12 independently, impartially, objectively, and without bias or predetermined results in
13 compliance with USPAP standards; and b) to provide Plaintiffs and the Class with
14 appraisal reports comporting with these standards directly and/or by delivery to them
15 through WaMu so that Plaintiffs and the Class could rely upon them in entering their
16 loans with WaMu.

17 128. These contracts for appraisals between Plaintiffs and the Class and EA are
18 evidenced by standard form documents entitled "Residential Appraisal Report" that were
19 completed by EA for Plaintiffs and each Class member. *See, e.g.*, Exh. 2 (Scholl
20 Report); Exh. 4 (Spears Report). Plaintiffs and Class members are explicitly identified
21 as the "Borrower/Client" of EA on each respective standard form "Residential Appraisal
22 Report" completed by EA for their home. *See, e.g.*, Exh. 2 (Scholl Report, pp. 15-16);
23 Exh. 4 (Spears Report, pp. 9-18). Moreover, these "Residential Appraisal Reports"
24 specifically acknowledge that borrowers (i.e., Plaintiffs and the Class) would receive the
25 appraisal report and may rely upon them in their mortgage financing transaction with the
26 lender (i.e., WaMu). *See, e.g.*, Exh. 2 (Scholl Report, pp. 14, ¶23); Exh. 4 (Spears
27
28

1 Report, pp. 8, ¶23).²

2 129. These standard form “Residential Appraisal Reports” also confirm that EA
3 was to provide Plaintiffs and the Class with a home appraisal which, pursuant to
4 applicable laws and standards as certified in the appraisal reports, would be performed
5 by an impartial, independent, objective, and unbiased appraiser in compliance with
6 USPAP standards, and the appraisal reports would be impartial, independent, objective,
7 unbiased, without predetermined values and done in compliance with USPAP standards.
8 *See, e.g.*, Exh. 2 (Scholl Report, pp. 13-14, ¶¶ 3,16, 18, 22, 25); Exh. 4 (Spears Report,
9 pp. 7-8, ¶¶ 3, 16,18, 22, 25).

10 130. Indeed, the “Residential Appraisal Reports” expressly provide that the
11 appraisal: a) was “performed in accordance with the Uniform Standards of Professional
12 Practice that were adopted and promulgated by the Appraisal Standards Board of The
13 Appraisal Foundation and that were in place at the time this appraisal report was
14 prepared” (*see, e.g.*, Exh. 2 (Scholl Report, p. 13, ¶ 3); Exh. 4 (Spears Report, p. 7, ¶3));
15 b) was “unbiased” (*see, e.g., id.*, ¶ 16); and c) “was not conditioned on any agreement
16 or understanding, written or otherwise, that [the appraiser] would report (or present
17 analysis supporting) a predetermined specific value, a predetermined minimum value,
18 a range or direction in value, a value that favors the cause of any party, or the attainment
19 of a specific result or occurrence of a specific subsequent event (such as approval of a
20 pending mortgage loan application).” *See, e.g., Id.*, ¶ 18.

21 131. USPAP itself, among other things, specifically requires that: a) “[a]n
22 appraiser must perform assignments with impartiality, objectivity, and independence, and
23 without accommodation of personal interests” (USPAP, Conduct (Ethics Rule)); b) “[a]n

24

25 _____
26 ² EA’s appraisal reports at issue also lists WaMu as the “Lender/Client.” EA
27 has conceded in this action that they had contracts with WaMu for the appraisals
28 performed on the homes that are the subject of Plaintiffs’ and the Class’ WaMu home
loans. The allegations of Count Six specifically and this Complaint generally show that
Plaintiffs and the Class were also contracting parties with EA to those appraisals.

1 appraiser must not accept an assignment that includes the reporting of predetermined
2 opinions and conclusions” (*id.*); c) “[t]he payment of ... things of value in connection
3 with the procurement of an assignment is unethical” (*id.*, Management (Ethics Rule); d)
4 each appraisal report must “clearly and accurately set forth the appraisal in a manner that
5 is not misleading” (*id.*, Standard Rule 2-1); and e) “an appraiser must ... employ those
6 methods and techniques that are necessary to produce a credible appraisal” (*id.*, Standard
7 Rule 1-1(a)). These USPAP requirements, together with all the other requirements stated
8 in USPAP, were expressly incorporated into the “Residential Appraisal Reports” as
9 described in the preceding paragraph and therefore became material terms and conditions
10 of the appraisal contracts between EA and Plaintiffs and the Class.

11 132. These contracts for appraisals between Plaintiffs and the Class and EA are
12 also evidenced by the Settlement Statements (HUD-1) for each of Plaintiffs’ and Class
13 members’ WaMu home loans, which confirm Plaintiffs and the Class were charged for
14 appraisals completed by EA. *See, e.g.*, Exhibit 1 (Scholl HUD-1, Line 803); Exh. 3
15 (Spears HUD-1, Line 803). It is believed and therefore averred that WaMu in its
16 capacity as Plaintiffs’ and Class members’ agent either directly forwarded to EA the
17 appraisal charges it collected from Plaintiffs and the Class as reflected in the HUD-1s,
18 or advanced those charges to EA on Plaintiffs’ and Class members’ behalf as their agent,
19 which charges were then reimbursed to WaMu by Plaintiffs and the Class as reflected
20 in the HUD-1s.

21 133. Plaintiffs and the Class performed all conditions of the contracts to be
22 performed by them, except to the extent they were lawfully excused from such
23 performance.

24 134. EA breached these contracts with Plaintiffs and each Class member by not
25 providing a home appraisal which was performed by an impartial, independent, objective
26 and unbiased appraiser, and by not providing appraisal reports that were credible,
27 objective, unbiased, impartial, independent, without predetermined values and done in
28 compliance with USPAP standards. In other words, Plaintiffs and the Class contracted

1 with EA for and were charged for impartial, USPAP complaint appraisals which were
2 never performed by EA or delivered to Plaintiffs and the Class.

3 135. Specifically, as described throughout this Complaint, EA had an agreement
4 or understanding with WaMu specifying that in exchange for WaMu steering to EA all,
5 or most, of the appraisal business for WaMu residential loans, EA would cooperate with
6 WaMu to ensure that the appraisals established property values sufficient to support the
7 WaMu residential loan amounts regardless of the true market value of the properties that
8 were the subject of the WaMu home loans. As a result, EA breached the express
9 requirements of their appraisal contracts with Plaintiffs and the Class since the appraisals
10 and appraisal reports completed by EA for them were biased, were based on
11 predetermined values, were not independent or impartial, were not credible and/or
12 otherwise violated USPAP, including, but not limited to, exchanging a thing of value
13 with WaMu for the referral of Plaintiffs' and the Class' appraisal business (*see, e.g.*,
14 USPAP Management (Ethics Rule) ("The payment of ... things of value in connection
15 with the procurement of an assignment is unethical").

16 136. EA also breached its appraisal contracts with Plaintiffs and the Class by
17 failing to provide them with a properly certified appraisal report in violation of USPAP.
18 Standard Rule 2-3 of USPAP requires that "[e]ach written property appraisal report must
19 contain a signed certification" attesting that the report is unbiased, independent, has no
20 predetermined values and otherwise complies with USPAP." USPAP also requires that
21 such certifications be truthful and accurate. *See, e.g.*, USPAP, Conduct (Ethics Rule).
22 Here, EA had individual appraisers: a) prepare appraisal reports on EA's behalf ensuring
23 that the property values were sufficient to support the WaMu residential loan amounts
24 regardless of the true market value of the properties; b) include in those reports a
25 certification similar in content to that required by Standard Rule 2-3 of USPAP; and c)
26 deliver those reports to EA for EA to in turn deliver to Plaintiffs and the Class directly
27 and/or through their agent, WaMu. These certifications violated USPAP because they
28 were not truthful and accurate since contrary to the certifications the appraisal reports

1 were biased, not independent, had predetermined values and/or otherwise failed to
2 comply with USPAP.

3 137. EA added to their breaches of Plaintiffs' and Class members' appraisal
4 contracts, in Plaintiffs and in most if not all other cases, by utilizing a computer program
5 given to them by WaMu or other means to alter the appraisal reports they received from
6 their appraisers by changing property values, removing or changing negative references,
7 and/or otherwise altering the report from that certified by the individual appraiser
8 employed by EA while leaving the appraiser's certification on the report. In these cases,
9 EA delivered to Plaintiffs and the Class directly and/or through WaMu only the altered
10 report. This conduct also violated USPAP and hence breached EA's contract with
11 Plaintiffs and the Class.

12 138. EA's conduct described herein rendered each of the appraisals performed
13 by them for Plaintiffs and the Class biased, incredible, unreliable and USPAP non-
14 compliant. Plaintiffs and the Class therefore never received the appraisals for which they
15 expressly contracted with and paid EA to provide.

16 139. As a direct and proximate result of the foregoing conduct, Plaintiffs and the
17 Class members have suffered damages, including economic losses, warranting
18 compensatory damages as well as injunctive relief, declaratory relief and other equitable
19 relief deemed just and proper by the Court.

20 140. For this Count, Plaintiffs and the Class assert only a breach of an express
21 contract claim, and do not assert any claim for a breach of an implied contractual term
22 such as the implied duty of good faith and fair dealing, and do not assert any tort or
23 statutory tort based claim.

24 **SEVENTH CLAIM FOR RELIEF**

25 **(Against Defendant, LSI for Breach of Express Contract)**

26 141. Plaintiffs Juan Bencosme and Carmen Bencosme hereby incorporate the
27 foregoing paragraphs of this Complaint and restate them as if they were fully written
28 herein. This Count for breach of contract against LSI is brought only by Plaintiffs Juan

1 and Carmen Bencosme and on behalf of all other members of the Class for which
2 appraisals on their homes that are the subject of their WaMu loans were procured from
3 LSI. Hence, the references to “Plaintiffs,” the “Class” or “Class members” in Count
4 Seven only are limited to the Plaintiffs and those Class members for whom Count Seven
5 is brought.

6 142. Plaintiffs and the other Class members on or after June 1, 2006 took out a
7 home loan with WaMu. In connection with these WaMu home loans, WaMu undertook
8 and agreed to act as Plaintiffs’ and Class members’ agents to enter contracts on their
9 behalf with appraisers or appraisal service companies, such as LSI, to provide appraisals
10 for Plaintiffs and Class members on the homes that were the subject of their WaMu loans
11 to be completed prior to closing on and deciding to enter those loans.

12 143. In furtherance of this agency, WaMu, on behalf of Plaintiffs and the Class
13 and by making them an express contracting party to the appraisal contracts with LSI,
14 entered contracts with LSI for appraisals on the homes that were the subject of Plaintiffs’
15 and Class members’ WaMu loans. Under these appraisal contracts, LSI undertook and
16 agreed: a) to perform these appraisals for Plaintiffs and the Class credibly,
17 independently, impartially, objectively, and without bias or predetermined results in
18 compliance with USPAP standards; and b) to provide Plaintiffs and the Class with
19 appraisal reports comporting with these standards directly and/or by delivery to them
20 through WaMu so that Plaintiffs and the Class could rely upon them in entering their
21 loans with WaMu.

22 144. These contracts for appraisals between Plaintiffs and the Class and LSI are
23 evidenced by standard form documents entitled “Residential Appraisal Report” that were
24 completed by LSI and/or LSI for Plaintiffs and each Class member. *See, e.g.*, Exh. 6
25 (Bencosme Report). Plaintiffs and Class members are explicitly identified as the
26 “Borrower/Client” of LSI on each respective standard form “Residential Appraisal
27 Report” completed by LSI for their home. *See, e.g.*, Exhibit 6 (Bencosme Report, at last
28 3 pages thereof). Moreover, these “Residential Appraisal Reports” specifically

1 acknowledge that borrowers (i.e., Plaintiffs and the Class) would receive the appraisal
2 report and may rely upon them in their mortgage financing transaction with the lender
3 (i.e., WaMu). *See, e.g.*, Exh. 6 (Bencosme Report, p. 6, ¶23).³

4 145. These standard form “Residential Appraisal Reports” also confirm that LSI
5 was to provide Plaintiffs and the Class with a home appraisal which, pursuant to
6 applicable laws and standards as certified in the appraisal reports, would be performed
7 by an impartial, independent, objective, and unbiased appraiser in compliance with
8 USPAP standards, and the appraisal reports would be impartial, independent, objective,
9 unbiased, without predetermined values and done in compliance with USPAP standards.
10 *See, e.g.*, Exh. 6 (Bencosme Report, pp. 5-6, ¶¶ 3,16, 18, 22, 25).

11 146. Indeed, the “Residential Appraisal Reports” expressly provide that the
12 appraisal: a) was “performed in accordance with the Uniform Standards of Professional
13 Practice that were adopted and promulgated by the Appraisal Standards Board of The
14 Appraisal Foundation and that were in place at the time this appraisal report was
15 prepared” (*see, e.g.*, Exh. 6 (Bencosme Report, p. 5, ¶ 3)); b) was “unbiased” (*see, e.g.*,
16 *id.*, ¶ 16); and c) “was not conditioned on any agreement or understanding, written or
17 otherwise, that [the appraiser] would report (or present analysis supporting) a
18 predetermined specific value, a predetermined minimum value, a range or direction in
19 value, a value that favors the cause of any party, or the attainment of a specific result or
20 occurrence of a specific subsequent event (such as approval of a pending mortgage loan
21 application).” *See, e.g., Id.*, ¶ 18.

22 147. USPAP itself, among other things, specifically requires that: a) “[a]n
23 appraiser must perform assignments with impartiality, objectivity, and independence, and

24
25 ³ LSI’s appraisal reports at issue also lists WaMu as the “Lender/Client.” LSI
26 has conceded in this action that they had contracts with WaMu for the appraisals
27 performed on the homes that are the subject of Plaintiffs’ and the Class’ WaMu home
28 loans. The allegations of Count Seven specifically and this Complaint generally show
that Plaintiffs and the Class were also contracting parties with LSI to those appraisals.

1 without accommodation of personal interests” (USPAP, Conduct (Ethics Rule)); b) “[a]n
2 appraiser must not accept an assignment that includes the reporting of predetermined
3 opinions and conclusions” (*id.*); c) “[t]he payment of ... things of value in connection
4 with the procurement of an assignment is unethical” (*id.*, Management (Ethics Rule)); d)
5 each appraisal report must “clearly and accurately set forth the appraisal in a manner that
6 is not misleading” (*id.*, Standard Rule 2-1); and e) “an appraiser must ... employ those
7 methods and techniques that are necessary to produce a credible appraisal” (*id.*, Standard
8 Rule 1-1(a)). These USPAP requirements, together with all the other requirements stated
9 in USPAP, were expressly incorporated into the “Residential Appraisal Reports” as
10 described in the preceding paragraph and therefore became material terms and conditions
11 of the appraisal contracts between LSI and/or LSI and Plaintiffs and the Class.

12 148. These contracts for appraisals between Plaintiffs and the Class and LSI are
13 also evidenced by the Settlement Statements (HUD-1) for each of Plaintiffs’ and Class
14 members’ WaMu home loans, which confirm Plaintiffs and the Class were charged for
15 appraisals completed by LSI. *See, e.g.*, Exhibit 5 (Bencosme HUD-1, Line 803). It is
16 believed and therefore averred that WaMu in its capacity as Plaintiffs’ and Class
17 members’ agent either directly forwarded to LSI the appraisal charges it collected from
18 Plaintiffs and the Class as reflected in the HUD-1s, or advanced those charges to LSI on
19 Plaintiffs’ and Class members’ behalf as their agent, which charges were then reimbursed
20 to WaMu by Plaintiffs and the Class as reflected in the HUD-1s.

21 149. Plaintiffs and the Class performed all conditions of the contracts to be
22 performed by them, except to the extent they were lawfully excused from such
23 performance.

24 150. LSI breached these contracts with Plaintiffs and each Class member by not
25 providing a home appraisal which was performed by an impartial, independent, objective
26 and unbiased appraiser, and by not providing appraisal reports that were credible,
27 objective, unbiased, impartial, independent, without predetermined values and done in
28 compliance with USPAP standards. In other words, Plaintiffs and the Class contracted

1 with LSI and/or LSI for and were charged for impartial, USPAP complaint appraisals
2 which were never performed by LSI or delivered to Plaintiffs and the Class.

3 151. Specifically, as described throughout this Complaint, LSI had an agreement
4 or understanding with WaMu specifying that in exchange for WaMu steering to LSI all,
5 or most, of the appraisal business for WaMu residential loans, LSI would cooperate with
6 WaMu to ensure that the appraisals established property values sufficient to support the
7 WaMu residential loan amounts regardless of the true market value of the properties that
8 were the subject of the WaMu home loans. As a result, LSI breached the express
9 requirements of their appraisal contracts with Plaintiffs and the Class since the appraisals
10 and appraisal reports completed by LSI for them were biased, were based on
11 predetermined values, were not independent or impartial, were not credible and/or
12 otherwise violated USPAP, including, but not limited to, exchanging a thing of value
13 with WaMu for the referral of Plaintiffs' and the Class' appraisal business (*see, e.g.*,
14 USPAP Management (Ethics Rule)(“The payment of ... things of value in connection
15 with the procurement of an assignment is unethical”).

16 152. LSI also breached its appraisal contracts with Plaintiffs and the Class by
17 failing to provide them with a properly certified appraisal report in violation of USPAP.
18 Standard Rule 2-3 of USPAP requires that “[e]ach written property appraisal report must
19 contain a signed certification” attesting that the report is unbiased, independent, has no
20 predetermined values and otherwise complies with USPAP.” USPAP also requires that
21 such certifications be truthful and accurate. *See, e.g.*, USPAP, Conduct (Ethics Rule).
22 Here, LSI had individual appraisers: a) prepare appraisal reports on LSI’s behalf
23 ensuring that the property values were sufficient to support the WaMu residential loan
24 amounts regardless of the true market value of the properties; b) include in those reports
25 a certification similar in content to that required by Standard Rule 2-3 of USPAP; and
26 c) deliver those reports to LSI for LSI to in turn deliver to Plaintiffs and the Class
27 directly and/or through their agent, WaMu. These certifications violated USPAP because
28 they were not truthful and accurate since contrary to the certifications the appraisal

1 reports were biased, not independent, had predetermined values and/or otherwise failed
2 to comply with USPAP.

3 153. LSI added to their breaches of Plaintiffs' and Class members' appraisal
4 contracts, in Plaintiffs and in most if not all other cases, by utilizing a computer program
5 given to them by WaMu or other means to alter the appraisal reports they received from
6 their appraisers by changing property values, removing or changing negative references,
7 and/or otherwise altering the report from that certified by the individual appraiser
8 employed by LSI while leaving the appraiser's certification on the report. In these cases,
9 LSI delivered to Plaintiffs and the Class directly and/or through WaMu only the altered
10 report. This conduct also violated USPAP and hence breached LSI's contract with
11 Plaintiffs and the Class.

12 154. LSI's conduct described herein rendered each of the appraisals performed
13 by them for Plaintiffs and the Class biased, incredible, unreliable and USPAP non-
14 compliant. Plaintiffs and the Class therefore never received the appraisals for which they
15 expressly contracted with and paid LSI to provide.

16 155. As a direct and proximate result of the foregoing conduct, Plaintiffs and the
17 Class members have suffered damages, including economic losses, warranting
18 compensatory damages as well as injunctive relief, declaratory relief and other equitable
19 relief deemed just and proper by the Court.

20 156. For this Count, Plaintiffs and the Class assert only a breach of an express
21 contract claim, and do not assert any claim for a breach of an implied contractual term
22 such as the implied duty of good faith and fair dealing, and do not assert any tort or
23 statutory tort based claim.

24 **EIGHTH CLAIM FOR RELIEF**

25 **(Against Defendants for Quasi-Contract/Unjust Enrichment)**

26 **[This Count was dismissed by this Court's Order of May 9, 2009 and is included in**
27 **this Second Amended Complaint solely to preserve Plaintiffs' right to appeal its**
28 **dismissal.]**

28 157. Plaintiffs hereby incorporate by reference each and every allegation

1 contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
2 Plaintiffs plead this Count in the alternative.

3 158. Defendants' engaged in unlawful conduct by representing to Plaintiffs and
4 the members of the Class that their home appraisals provided for the purpose of
5 obtaining a home loan would be performed by an independent and unbiased appraiser
6 and that the appraisal report would be credible, objective and done in compliance with
7 USPAP standards, but actually providing home appraisals performed by a biased, non-
8 independent appraiser and providing appraisal reports that were not credible, objective
9 or done in compliance with USPAP standards as described throughout this Complaint,
10 is unlawful

11 159. Defendants took monies from Plaintiffs and Class members in exchange for
12 what were supposed to be independent, objective, unbiased, credible appraisals and
13 appraisal reports done in compliance with USPAP standards, but did not provide such
14 appraisals and appraisal reports. Defendants have been unjustly enriched at the expense
15 of Plaintiffs and the Class members as a result of their unlawful conduct alleged herein,
16 thereby creating a quasi-contractual obligation on Defendants to restore these ill-gotten
17 gains to Plaintiffs and the Class.

18 160. As a direct and proximate result of Defendants' unjust enrichment, Plaintiffs
19 and Class members are entitled to restitution in an amount to be proved at trial.

20 **PRAYER**

21 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other
22 members of the Class, request an award and relief as follows:

23 A. An order certifying that this action is properly brought and may be
24 maintained as a class action, that Plaintiffs be appointed Class Representative and
25 Plaintiffs' counsel be appointed Class Counsel.

26 B. Compensatory damages, except as to Counts Two, Three, Four.

27 C. Treble damages as to Count One.

28 D. Punitive damages as to Count Five.

1 E. Restitution in such amount that Plaintiffs and all Class members paid for
2 their home appraisals, or the profits, charges and fees Defendants obtained from them.

3 F. An order enjoining Defendants from maintaining and utilizing WaMu's
4 Proven Appraiser List, or any other mechanism by which WaMu has control over the
5 appraiser selected to perform WaMu's home appraisals or value the appraiser sets for the
6 subject property.

7 G. An order awarding Plaintiffs their costs of suit, including pre and post-
8 judgment interest.

9 H. An order awarding Plaintiffs' counsel's attorneys' fees.

10 I. An order requiring an accounting for, and imposition of a constructive trust
11 upon, all monies received by Defendants as a result of the unfair, fraudulent and
12 unlawful conduct alleged herein.

13 J. Such other and further relief as may be deemed necessary or appropriate.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs hereby demand a trial by jury on all causes of action and issues so
16 triable.

17 Dated: March 28, 2008

**SPECTER SPECTER EVANS
& MANOGUE, P.C.**

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By: /s/Joseph N. Kravec, Jr.
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(Admitted *Pro Hac Vice*)

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