Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
Nikoll Nikci, Esq.
Nevada Bar No. 10699
Schwartz Law Firm, Inc.
626 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 385-5544
Facsimile: (702) 385-2741
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**

| | |
|---|---|
| Nicole Kuter,<br><br>Plaintiff,<br><br>vs.<br><br>Lehman Brothers Bank, FSB and Aurora Loan Services, LLC,<br><br>Defendants. | CASE NO.:<br><br>JURY TRIAL REQUESTED |

**COMPLAINT**

Plaintiff, by and through her undersigned counsel, The Schwartz Law Firm, Inc., for her Complaint against the Defendants, Lehman Brothers Bank, FSB and Aurora Loan Services, LLC, states as follows:

## I.
## PARTIES

1. Plaintiff, Nicole Kuter ("**Kuter**" or, the "**Plaintiff**"), is of majority age and is a resident of Nevada, and her residential property is the subject of this lawsuit, at 7774 West Rosada Way, Las Vegas, Nevada 89149 (the "**Property**").

2. Defendants, Lehman Brothers Bank, FSB ("**Lehman**") and Aurora Loan Services, LLC ("**Aurora**")(collectively, the "**Defendants**"), are National Associations and are doing business in the State of Nevada. At all times relevant hereto Defendants serviced the Plaintiff's home mortgage loan. Defendants' principal place of business is located at 327 Inverness Drive South, Englewood, Colorado 80112-6012.

3. At all times relevant hereto, Defendants regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and are the persons to whom the transactions, which are the subject of this action, are payable, making Defendants a creditor within the meaning of 15 U.S.C. §§ 1601, 1602(f) and Regulation Z § 226.2(a)(17).

## II.
## JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and subject matter herein, because the subject property is located in the State of Nevada.

5. This Court has jurisdiction over the claims pursuant to (a) the Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* (the "**TILA**"), and (b) the Real Estate Settlement Procedures Act 12 U.S.C. §§ 2601, et seq. ("**RESPA**").

6. This Court has Jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1337.

7. Supplemental jurisdiction is proper as to the state law claims set forth herein under 28 U.S.C. § 1367(a).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 in that the Defendants conduct business in this District.

## III.
## FACTS

9. The Plaintiff is a homeowner in the State of Nevada, residing in her home at 7774 West Rosada Way, Las Vegas, Nevada 89149.

10. On or about February 26, 2007, Plaintiff entered into a home loan (the "**First Loan**") with the Defendants for an amount of $549,900.00.

11. The First Loan was designated by Defendants as loan number 0045628625.

12. On or about February 26, 2007, Plaintiff obtained a home equity line of credit (the "**Second Loan**") with the Defendants for an amount not to exceed $109,980.00.

13. As part of the consumer credit transaction, Defendants obtained two security interests in the Property.

14. The First Loan and the Second Loan (collectively, the "**Transactions**") complained of herein contained a number of disclosure violations.

15. Prior to retaining counsel, the Plaintiff contacted the Defendants to negotiate a modification of her home loans.

16. Despite her good credit, the Plaintiff was told by the Defendants' representatives that absent her falling into default for 90 days, the Defendants would be unable to consider the Plaintiff's request for a loan modification.

17. The Plaintiff's attempts to modify were in good faith.

18. The Defendants' refusal to discuss a modification with the Plaintiff was contrary to their public stance to aid distressed homeowners.

19. The Defendants have refused to address any of Plaintiff's claims beyond offering blanket denials.

20. As a consequence, the Plaintiff was forced to retain counsel.

21. Before the settlement date, Defendants did not provide the Plaintiff with the correct and timely preliminary disclosures required by TILA at 12 CFR §§ 226.4, 17, 18, and 12 CFR §§ 226.5 and 226.5(b), or any other correct preliminary disclosures as required by RESPA at 12 U.S.C. § 2604(c).

22. The Defendants did not provide the Plaintiff with a Good Faith Estimate ("**GFE**") of the anticipated costs associated with the Transactions, as required by RESPA, 12 U.S.C. § 2603; 12 C.F.R. § 3500.7.

23. The Defendants did not disclose the yield spread premium (the "**YSP**") to the Plaintiff as required by 2604(c) and 3500.7(b)(c). [1]

24. Defendants failed, either before, during and/or after the closing of the Transactions to provide the Plaintiff with true and accurate copies of important documents, including but not limited to, copies of the HUD-1 Settlement Statements ("**HUD-1**"), proper TILA disclosures, or the loan documents.

25. The following are certain of the specific discrepancies and irregularities, among others, within the Plaintiff's loan documents, including:

[1] Federal Reserve Chairman Ben S. Bernake has questioned the use of YSPs because "many consumers use mortgage brokers to guide them through a complex process and shop for the best deal. Unfortunately, consumers may believe that the broker has a responsibility to get them that best deal, which is not necessarily the case. In fact, the design of YSPs may provide the broker a financial incentive to offer a loan with a higher rate. Consumers who do not understand this point may not shop to their best advantage. Therefore, we would prohibit a lender, for both prime and subprime loans, from paying a broker an amount greater than the consumer agrees to in advance. Brokers would also have to disclose their potential conflict of interest." See Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System, Address at the National Community Reinvestment Coalition Annual Meeting: Fostering Sustainable Homeownership (March 14, 2008)(transcript available at the Board of Governors of the Federal Reserve System website).

a. The Plaintiff paid an undisclosed yield spread premium of $7,698.60, which amount is reflected as an increase in the interest rate paid by the Plaintiff;

b. As a result of the yield spread premium, the Plaintiff incurred daily excess interest charges in the amount of $21.09, and as of the date hereof, the Plaintiff has paid approximately $10,397.37 in excess interest;

c. The Defendant charged the Plaintiff duplicative fees in violation of RESPA, including a loan origination fee of $4,399.20, a processing fee of $995.00, and an administrative fee of $615.00, among others;

d. Fees listed on the Truth In Lending Itemization of Amount Financed ("**TIL**") do not match the fees listed on the HUD-1. For example, the TIL lists charges such as "handling" and "document preparation fee" that do not appear on the HUD-1 dated February 27, 2007 (the "**First HUD-1**"). Also, the "settlement," "loan tie-in," and "prepaid interest" charges vary between the TIL and the First HUD-1 for a total difference of $231.42. A copy of the TIL is attached hereto as Exhibit A and a copy of the First HUD-1 is attached hereto as Exhibit B.

e. The seller of the Property paid $7,000.00 in undisclosed fees, which may have impacted the cost of the Plaintiff's loans.

26. The charges identified above are each violations of TILA, RESPA and Nevada statutes in that they resulted in the Plaintiff paying excess fees and interest for services that were either never performed, improperly disclosed or excessive.

27. At no time did the Defendant provide the Plaintiff with a contract or agreement setting forth the improper charges. A copy of the Plaintiff's loan application is attached hereto as Exhibit C.

28. Nothing in the loan application discloses or authorizes the improper charges, including the YSP.

29. The Defendants gave the Plaintiff two HUD-1 Settlement Statements, dated February 27, 2007 and March 6, 2007 (the "**Second HUD-1**"), each with conflicting settlement charge amounts. A copy of the Second HUD-1 is attached hereto as Exhibit D.

30. The Second HUD-1 was delivered to the Plaintiff 8 days after the closing of the Transactions, with fees totaling $452.05 less than the First HUD-1 and with a refund of $3,047.87.

31. This made it impossible for Plaintiff to be fully informed of the true cost of the loans, or understand the fees and charges.

32. The Defendants were under a legal obligation as fiduciary because they had the responsibility of overseeing the purported loan consummation to ensure that the Transactions were performed correctly and that the Plaintiff received all accurate mandated documentation and material disclosures under TILA and RESPA, before and after the Transactions.

33. Pursuant to TILA and RESPA, Defendants had an obligation to Plaintiff to disclose all material facts concerning the Transactions that might affect the Plaintiff's decision whether to accept the First Loan or the Second Loan.

34. Defendants established a pattern and practice of harming the Plaintiff in that, during the entire life of the loans, Defendants have not correctly credited payments or calculated interest on the account due to the inaccurate disclosures.

35. Defendants knew that the account was not accurate and that the Plaintiff would make further payments based on the account.

36. The Plaintiff did make payments based on the account and paid too much as a result.

37. On February 20, 2008, the Plaintiff sent a rescission letter, rescinding the Transactions pursuant to 15 U.S.C. § 1635.

38. On or about February 23, 2008, the Defendants received the rescission letter.

39. The Defendants failed to comply with the rescission process as set forth in 15 U.S.C. § 1635(b).

40. The Defendants provided the Plaintiff with a home loan with monthly payment amounts that caused the Plaintiff's debt-to-income ratio to exceed fifty percent (50%).

41. The Defendants knew or should have known that providing the Plaintiff with a loan that exceeded a debt-to-income ratio of fifty percent (50%) would greatly increase the likelihood of the Plaintiff failing to make her monthly payments.

42. The Defendants provided the Plaintiff with one hundred percent (100%) financing for the Property, leaving no cushion for declining home prices and greatly limiting the ability of the Plaintiff to refinance.

43. The Defendants placed a one year prepayment penalty into the First Loan, making it impossible for the Plaintiff to refinance, because even if home prices did not fall, but remained steady, the cost to refinance, plus the prepayment penalty, exceeded one hundred percent (100%) of the value of the home.

44. As a result of the Defendants providing the Plaintiff with two home loans that had excessive debt-to-income ratios, one hundred percent financing and a prepayment penalty, the Transactions were unfair, insomuch as the success of the loans relied upon the fair market value of the Property increasing or the income of the Plaintiff increasing during the life of the Transactions, not the Plaintiff's ability to repay the loans when they closed.

45. The Defendants knew or should have known that the Transactions would fail if the housing market declined, making the loans unfair under Nevada law and insufficiently explained under TILA.

46. Upon information and belief, the Defendants are selling their bank owned real estate for approximately half of the Plaintiff's current loan amount.

47. As a result of the Defendants' dumping of their real estate into the market, the Defendants have eroded the value of the Plaintiff's home.

48. Despite the Defendants' actions which are eroding the value of homes in the real estate market generally, the Defendants are unwilling to negotiate an appropriate loan modification with the Plaintiff.

49. As a result of the Plaintiff's inability to negotiate a reasonable loan modification, the Plaintiff stopped making payments under the Transactions and asserted her claims.

50. A creditor is prohibited from making negative reports to consumer reporting agencies regarding a borrower who is disputing the accuracy of payments made to the lender, as required by the Fair Credit Reporting Act (the "**FCRA**") 15 U.S.C. §§ 1681, *et seq*. and RESPA, 12 U.S.C. 2605 (e)(3).

51. The Defendants have been making negative reports to the Plaintiff's credit, causing her financial harm, and in violation of FCRA and RESPA.

## IV.
## BREACH OF CONTRACT AND FAILURE TO ACT IN GOOD FAITH

48. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

49. NRS § 104, *et seq.*, requires that Defendants act in good faith when dealing with the Plaintiff.

50. NRS § 104.9625 provides remedies for a secured party's failure to comply with the Nevada Revised Statute and states:

> 1. If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.
>
> 2. Subject to subsections 3, 4 and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this article...
>
> ***
>
> 3. Except as otherwise provided in NRS 104.9628

> (a) A person that, at the time of the failure, was a debtor, was an obligor or held a security interest in or other lien on the collateral may recover damages under subsection 2 for its loss; and
>
> (b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

51. Defendants' failure to disclose and provide Plaintiff with a market loan has caused the Plaintiff harm.

52. Defendants' unwillingness to negotiate the Plaintiff's home loans in good faith has caused the Plaintiff harm.

53. Defendants' dumping of real estate onto the market has eroded the Plaintiff's home value such that she can no longer sell or refinance the home, all while simultaneously refusing to renegotiate her loan in good faith, causing the Plaintiff harm.

54. As a result of the Defendants' failure to act in good faith and give proper disclosures as outlined above, Defendants breached the agreements among the parties. As a result, Plaintiff has suffered injury including damages for pain and suffering and emotional distress. The injuries are continuing in nature.

55. Upon information and belief, the amounts of Plaintiff's damages are currently unknown and will be established at the time of trial, but are approximately One Hundred Seventy Three Thousand, Nine Hundred Thirteen Dollars and Thirty Three Cents ($173,913.33).

56. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

**V.**
**VIOLATIONS OF THE TRUTH IN LENDING ACT**

57. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

58. TILA, 15 U.S.C. § 1638(b)(1) mandates timely written disclosures of financing terms.

59. Federal Reserve Board of Governors Official Staff Commentary to Regulation Z, § 226.17(a) – (b), Supp. I. paras. 17(a) and 17(b), interpreting TILA, state in relevant part:

> *17(a) Form of Disclosures*
>
> *Paragraph 17(a)(1)*
>
> 1. *Clear and conspicuous*. This standard requires that disclosures be in a reasonably understandable form. For example … the disclosures must be presented in a way that does not obscure the relationship of the terms to each other.
>
> ***
>
> *Paragraph 17(a)(2)*
>
> 3. *Disclosures provided on credit contracts*. Creditors must give the required disclosures to the consumer in writing, in form that the consumer may keep, before consummation of the transaction.
>
> ***

*17(b) Time of disclosures*

1. *Consummation*. As a general rule, disclosures must be made before consummation of the transaction.

***

*226.19 (a)(1)*

1. *Time of Disclosures.* In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) the creditor shall make good faith estimates of the disclosures required by section 226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

60. The execution of the Transactions on or about February 26, 2007, constituted the consummation of a consumer credit sale under TILA. 15 U.S.C. § 1602(g) and (h).

61. The Plaintiff never received the required TILA disclosures in a form she could review.

62. Defendants violated well established Federal Law by failing to properly deliver all disclosures as required by TILA, RESPA and Regulation Z. 15 U.S.C. § 1638(b)(1); 12 U.S.C. § 2604; Reg. Z §§ 226.17, and 226.18.

63. The Plaintiff suffered actual damages as a result of the Defendants' failure to provide her with copies of her loan documents and TILA disclosures.

64. The Plaintiff was deprived of important financial information and was unable to make an informed decision about the credit provided her. As a result of failing to provide the Plaintiff with a copy of the retail installment contract prior to consummation, the Plaintiff was misled as to the true cost of her financing.

65. Upon information and belief, Plaintiff has suffered damages in an amount in excess of One Hundred Seven Thousand, Three Hundred Ninety Three Dollars and Eighty Six Cents ($107,393.86).

66. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

**VI.**
**VIOLATION OF RESCISSION UNDER THE TRUTH IN LENDING ACT**

67. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

68. The Defendants sold a consumer loan product to the Plaintiff.

69. The Defendants engaged in a pattern of unfair practices in violation of TILA, RESPA, and Regulation Z, by providing inaccurate or insufficient disclosures.

70. Material disclosures were missing as required by Regulation Z at 12 C.F.R. §§ 226.17, 18, and 12 C.F.R. § 226.5, entitling Plaintiff to remedies under 15 U.S.C. § 1640(a), of actual damages, twice the finance charge, rescission and reasonable attorney fees and costs.

71. The Defendants' refusal to recognize the Plaintiff's rescission of the loan underlying the Transactions, entitles Mrs. Kuter to a second cause of action under TILA and under Nevada Law. 15 U.S.C. § 1635(g); and see Ford v. Wertheimer, 79 Nev. 447, 448-49 (Nev. 1963).

72. Upon information and belief, Plaintiff has suffered damages in an amount in excess of One Hundred Seven Thousand, Three Hundred Ninety Three Dollars, and Eighty Six Cents ($107,393.86).

73. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

## VII.
## VIOLATION OF THE FAIR CREDIT REPORTING ACT

74. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

75. At all relevant times in this lawsuit, Defendants qualified as a provider of information to credit reporting agencies under the FCRA and reported negative marks against the Plaintiff.

76. The Defendants knew the Plaintiff was disputing the Transactions, yet the Defendants made negative reports on the Plaintiff's credit report.

77. Plaintiff is entitled to maintain a separate cause of action against Defendants for an award of damages in an amount to be proven at the time of trial for all violations of FCRA which caused actual damage to the Plaintiff, including emotional distress and humiliation, under 15 U.S.C. § 1681s-2(b).

78. Plaintiff is entitled to recover damages from Defendants for negligent noncompliance under 15 U.S.C. § 1681o.

79. Plaintiff is entitled to recover damages from Defendants for making negative reports under FCRA and RESPA.

80. Plaintiff is entitled to an award of punitive damages against Defendants for willful non-compliance under 15 U.S.C. § 1681n(a)(2) in an amount to be proven at the time of trial.

81. Plaintiff has suffered damages in an amount of not less than Two Thousand Dollars ($2,000.00).

82. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

## VIII.
## DECEPTIVE TRADE PRACTICES

83. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

84. The Defendants' violations of the Nevada Deceptive Trade Practices Act include misrepresenting the quality, characteristics, benefits and rights of the services involved in the Transactions.

85. At all times relevant hereto, the Defendants controlled the documents underlying the Transactions, as well as the fees, charges and expenses related thereto.

86. The Defendants, in violating various TILA, RESPA and Regulation Z provisions, knowingly violated, among other provisions, federal statutes and regulations relating to the sale or lease of goods or services, in violation of NRS 598.0923(3).

87. But for the misrepresentations of Defendants' services in the consumer lending Transactions with Plaintiff, the Plaintiff would not have sustained any related damages and would not have entered into the Transactions.

88. Defendants stand responsible for those misrepresentations and the related damages by virtue of its claim of owning and holding the note and related lien(s) under the Transactions.

89. Plaintiff has suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

90. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendant, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys'

fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

## IX.
## SECOND DECEPTIVE TRADE PRACTICES

91. The Defendants provided the Plaintiff with (a) home loans with monthly payment amounts that caused the Plaintiff's debt-to-income ratio to exceed fifty percent (50%), (b) one hundred percent (100%) financing for the Property, leaving no cushion for declining home prices, and (c) a one year prepayment penalty, causing the cost to refinance the Property to exceed one hundred percent (100%) of the value of the home.

92. As a result of the Defendants providing the Plaintiff with two home loans that had excessive debt-to-income ratios, one hundred percent financing and a prepayment penalty, the Transactions were unfair, insomuch as the success of the loans relied upon the fair market value of the Property increasing or the income of the Plaintiff increasing during the life of the Transactions, not the Plaintiff's ability to repay the loans when they closed.

93. The Defendants knew or should have known that the Transactions would fail if the housing market declined, making the loans unfair under Nevada law and insufficiently explained under TILA.

94. But for the misrepresentations of terms and bases for issuing the loans, Plaintiff would not have sustained any related damages and would not have entered into the Transactions.

95. The Defendants are responsible for the damages caused by their unfair lending practices that they knew, or should have known, would lead to the Plaintiff's inability to repay or refinance the Transactions.

96. Plaintiff has suffered damages in an amount in excess of Twenty Six Thousand, Eight Hundred Twenty Nine Dollars, and Ninety Nine Cents ($26,829.99).

97. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

**X.**

**DEFENDANTS MAY NOT BE THE OWNERS OF THE NOTE AND MORTGAGE**

98. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

99. Plaintiff believes that Defendants may not be in possession of the note and mortgage underlying the Transactions.

100. Defendants may not have standing to collect any moneys owed under the Transactions. *See* In re Foreclosure Cases, Case No. 1:07-cv-02282-CAB (N.D.OH dated Oct. 31, 2007) (finding that without legal title to the residence, the lenders did not have standing to pursue their claims). A copy of the order is attached hereto as Exhibit E.

101. Plaintiff has suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

102. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

**XI.**

**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

103. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

104. There exists in law and all contracts a covenant of good faith and fair dealing.

105. The Defendants breached their covenant of good faith and fair dealing as relating to the Loan Agreements by engaging in conduct described in this Complaint.

106. As a direct and proximate result of the Defendants' misconduct, Plaintiff has suffered actual, special, and consequential damages in excess of $10,000.00.

107. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

## XII.
## UNJUST ENRICHMENT

108. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

109. The Defendants charged the Plaintiff an undisclosed yield spread premium, and as a result, the Plaintiff has paid $10,397.37 in excess interest.

110. The Defendants are therefore in possession of money that belongs to the Plaintiff and have deprived Plaintiff of its possession, use, and enjoyment.

111. As a direct and proximate result of the Defendants' misconduct, Plaintiff has sustained actual, special, and consequential damages in excess of $10,000.00.

112. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

## XIII.
## DECLARATORY RELIEF

113. Plaintiff repeats and re-alleges all prior paragraphs as though set forth fully herein.

114. The Loan Agreements between the parties sets forth the respective rights and obligations of the various parties.

115. Plaintiff is entitled to a declaration from this Court that she was given an unfair loan or loans; therefore, the Transactions should be rescinded and declared null and void. The Court should declare that the Defendants are liable for all damages inflicted by their actionable conduct in providing the Plaintiff with unfair and deceptive Loans.

116. As a result of Defendants' breaches, Plaintiff has retained the legal services of attorneys and is entitled to recover reasonable attorneys' fees and costs of this litigation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendants, awarding Plaintiff damages in the amount proscribed by law, awarding attorneys' fees and costs, including the fees and costs associated with litigating this claim, and granting such further relief as the Court deems just and proper.

## XXI.
## RELIEF SOUGHT

Wherefore, having set forth various causes of action against Defendants, Plaintiff prays for the following relief:

1. That the Plaintiff be awarded all costs they incurred as a result of Defendants' breach of contract and failure to act in good faith;

2. That the actions of the Defendants be determined in violation of the Truth in Lending Act, for the non-compliance of 12 CFR §§ 226.4, 17 and 18 and 12 CFR §§ 226.5 and 226.5b;

3. That the Plaintiff be awarded the right to rescind the Transactions because of Defendants' TILA violations and unfair or deceptive practices under Nevada law;

4. That the Transactions be deemed void as result of the Defendants' many breaches of TILA, RESPA, FCRA and the Nevada statutes;

5. That damages are awarded as provided by 15 USCA § 1640(a);

6. That the Court award Plaintiff all relief to which she is entitled under the Fair Credit Reporting Act, including an award of punitive damages against the Defendants, for willful violations of the FCRA;

7. That the court declare that Defendants must prove they are the record owner of the note and mortgage underlying the Transactions, otherwise they have no enforceable claims against the property;

8. That the actions of the Defendants be determined to be unfair and deceptive business practices in violation of Nevada law and that this Court award all such relief to Plaintiff as she may be entitled to, including treble damages and an award of costs and attorney's fees; and

9. That the Court award such other relief as it deems just and proper.

## XXII.
## RIGHT TO AMEND

Plaintiff reserves the right to amend this Complaint, asserting other facts and causes of action after further investigation and discovery.

Dated this 3rd day of July, 2008.

Respectfully Submitted,

/s/_____

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
Nikoll Nikci, Esq.
Nevada Bar No. 10699
Schwartz Law Firm, Inc.
626 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 385-5544
Facsimile: (702) 385-2741
Attorneys for Plaintiff