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ENDORSED FILED
SAN MATEO COUNTY

OCT 14 2010

Clerk of the Superior Court
By T. Judd
DEPUTY CLERK

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**

10 **MERCEDES J. ERAZO AND**
ORLANDO J. ERAZO,

11 Plaintiffs,

12 vs.

13 **NOGALES LAW CENTER,**
FRANCISCO SALAZAR NOGALES;
14 **and DOES 1-50.**

15 Defendants.

Case No. **CIV 499729**

COMPLAINT FOR VIOLATIONS OF:

1. Fraud, Deceit and Concealment
2. Negligent Misrepresentation
3. Breach of Fiduciary Duty
4. Professional Negligence
5. Constructive Fraud
6. Unjust Enrichment
7. Breach of Contract
8. Breach of Implied Covenant of Good Faith and Fair Dealing
9. Violations of Business & Professions Code Section 17200 *et seq.*

JURY TRIAL DEMANDED

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EIGHTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing) 19

NINTH CAUSE OF ACTION
(Violations of Business and Professions Code Section 17200 *et seq.*) 19

PRAYER FOR RELIEF 21

JURY DEMAND 21

1 Plaintiffs Mercedes Julia Erazo and Orlando J. Erazo (hereinafter referred to collectively
2 as “Erazos” or “Plaintiffs”) hereby bring this action for damages and relief against the Nogales
3 Law Center and Francisco Salazar Nogales, personally (collectively referred to as “Nogales” or
4 “Defendants”). Plaintiffs complain and allege upon information and belief based, *inter alia*,
5 upon investigation conducted by Plaintiffs and their counsel, except as to those allegations
6 pertaining to Plaintiffs personally, which are alleged upon knowledge:

7 **I.**

8 **INTRODUCTION**

9 1. Until recently, the Erazos resided at 930 Swan Street, Foster City, CA. Through
10 decades of hard work, saving, and discipline the Erazos obtained a primary residence, two
11 income producing properties and a home for Orlando Erazo’s elderly mother.

12 2. Beginning in 2008, due to the downturn in the economy, the Erazos sought
13 mortgage relief through a number of measures including refinancing and modification.

14 3. This case arises from a deceptive marketing scheme that promised homeowners,
15 especially Hispanic homeowners, modifications through “forensic loan audits.”

16 4. These defendants represented to the Hispanic community, including Plaintiffs
17 that a “forensic loan audit” was a sure-fire remedy for the mortgage problems of homeowners.
18 Here, the Nogales Law Center and Francisco Salazar Nogales personally operated a fraudulent
19 mortgage audit scheme that preyed on various homeowners including the Erazos.

20 5. Ultimately, the Erazos lost two homes and paid Defendants \$33,500 for a dubious
21 review of their mortgages and a “forensic loan audit.” The audits purport to show violations of
22 law by lenders, which Nogales and his sales agents cite to convince homeowners, like the Erazos,
23 that they have a strong legal case. Nogales and his team use these findings to encourage
24 homeowners, like the Erazos to either stop making mortgage payments or to continue missing
25 payments and instead pay additional fees to bring “predatory lending” lawsuits against their
26 lenders.

27 6. Additionally, Nogales deceived the Erazos by representing that filing a lawsuit
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1 would give them “legal leverage” to obtain a loan modification and prevent lenders from
2 foreclosing or collecting monthly mortgage payments. As a consequence of placing their trust
3 and money with the Nogales Law Center, the Erazos lost tens of thousands of dollars, two
4 homes, and put themselves in greater danger of losing their last rental property and the property
5 which houses Orlando’s elderly mother.

6 7. In return for the \$33,500, Nogales dodged their phone calls and strung them along
7 with false assurances that a modification or settlement was in progress.

8 8. According to the California Attorney General, the California State Bar, and the
9 California Department of Real Estate, there is no evidence or statistical data to support claims
10 that forensic loan audits of a lenders’ mortgage practices – even if performed by a licensed
11 mortgage professional or lawyer – help homeowners obtain loan modifications or any other
12 foreclosure relief.¹ Nonetheless, Nogales represented that a forensic loan audit would result in a
13 loan modification for the Erazos.

14 9. While Defendants portray themselves as “experts” in “predatory lending”
15 litigation and loan modification relief, in fact Defendants have little or no litigation experience of
16 any kind nor any basis to represent that they have any ability to obtain loan modification relief.

17 10. State law governs the provision of “foreclosure consultant” services. (Civil Code,
18 § 2945 et seq.). Foreclosure consultants must have a license from the California Department of
19 Real Estate (DRE), must register with the California Department of Justice, and, in order to
20 charge advance fees, must get prior approval from DRE. Due to numerous California consumers
21 falling prey to phony foreclosure rescue scams, especially “loan modification” services that
22 charged consumers thousands of dollars in advance fees without providing any actual relief, the
23 Legislature enacted Senate Bill 94 (SB 94), which was signed into law on October 11, 2009. SB
24 94 strengthened and closed loopholes in existing law by prohibiting any person or business from
25 charging advance fees for assisting a homeowner with obtaining a loan modification or other
26 form of mortgage forbearance.

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28 ¹ <http://ag.ca.gov/newsalerts/release.php?id=1862&>

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III.

PARTIES

A. Plaintiffs

18. At all relevant time periods, Plaintiffs **Orlando J. Erazo** and **Mercedes J. Erazo** were residents of San Mateo County.

B. Defendants

19. Defendant **The Nogales Law Center** (“Law Center”) is a California professional corporation with its principal place of business is at 22777 Lyons Ave., Santa Clarita, CA 91321. The Law Center also has the following offices listed on their website: 311 F Street, Suite 208, Chula Vista, CA 91910 and Biltmore Hotel, 2151 Laurelwood Road Conference Room, Santa Clara, CA 95054. It represents that it specializes in real estate law, foreclosure relief, bankruptcy law, immigration and tax relief. Defendants have never submitted an advance fee agreement application to the DRE or received approval from DRE to charge advance fees for foreclosure consultant services. Defendant Nogales Law Center has never been registered with the California Department of Justice as a foreclosure consultant. At all relevant times, the Law Center has transacted and continues to transact business throughout California, including San Mateo County.

20. Defendant **Francisco Nogales** is a licensed California attorney. Nogales is the Director of the Law Center and the President of Advantage Tax Resolution, Inc. which carries an “F” rating by the Better Business Bureau. Defendant Nogales resides at 26614 Gavilan Dr., Santa Clarita, CA 91350. Defendant Nogales, acting alone or in concert with others, has formulated, directed, controlled, authorized, or participated in the acts and practices set forth in this complaint. Defendant Nogales has never submitted an advance fee agreement application to the DRE, and has never received approval from DRE to charge advance fees for foreclosure consultant services. Defendant Nogales has never been registered with the California Department of Justice as a foreclosure consultant. Defendant Nogales, acting alone or in concert with others, has formulated, directed, controlled, authorized, participated in, or ratified the acts

1 and practices set forth in this Complaint. At all relevant times, Nogales transacted and continues
2 to transact business throughout California, including San Mateo County.

3 **C. Doe Defendants**

4 21. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants Doe 1 through Doe 50, inclusive, are unknown to Plaintiffs, who
6 therefore sue said Defendants by such fictitious names pursuant to Section 474 of the California
7 Code of Civil Procedure. Plaintiffs are informed and believe, and on that basis allege, that each
8 of said fictitious Doe Defendants is in some manner responsible for the acts, conduct, and
9 occurrences alleged herein, as either actual perpetrators or co-conspirators, aiders and abettors, or
10 primary officers and/or managers with knowledge and control of the perpetrators' activities.
11 Plaintiffs will seek leave of the Court to amend this Complaint to allege the true names and
12 capacities of the Doe Defendants when the same are ascertained, as well as the manner in which
13 each fictitious Defendant is responsible for the damages sustained by Plaintiff.

14 **D. Agents and Co-Actors**

15 22. **Frank De Saracho** ("De Saracho"), an individual, is employed at the Law Center
16 and assists in its loan modification programs. De Saracho resides at 211 E Oxford St., Chula
17 Vista, California, 91911. De Saracho has never submitted an advance fee agreement application
18 to the DRE, and has never received approval from DRE to charge advance fees for foreclosure
19 consultant services. De Saracho has never been registered with the California Department of
20 Justice as a foreclosure consultant. De Saracho, acting alone or in concert with others, has
21 formulated, directed, controlled, authorized, participated in, or ratified the acts and practices set
22 forth in this Complaint. At all relevant times, De Saracho has transacted and continues to transact
23 business throughout California, including San Mateo County.

24 23. De Saracho previously ran a corporation named Alta California Alliance, which is
25 now suspended with the California Secretary of State and, based upon information and belief, is
26 the subject of an ongoing investigation by the California Attorney General related to its online
27 advertising claims regarding loan modifications. Its principal place of business was at 311 F St.,
28 Chula Vista, California, 91910. This address is the same as one of the offices for Defendant

1 Nogales Law Center. Additionally, the homepage of its website – website www.acasave.com –
2 lists a telephone number (619) 422-2333, which is answered by a receptionist at the Nogales Law
3 Center.

4 24. At all relevant times, each Defendant was and is the agent of each of the
5 remaining Defendants, and in doing the acts alleged herein, was acting within the course and
6 scope of such agency. Each Defendant ratified and/or authorized the wrongful acts of each of the
7 Defendants and engaged in a common course of conduct.

8 25. Defendants, and each of them, have participated in the fraud or acted in
9 furtherance of it, or aided or assisted in carrying out its purposes alleged in this Complaint, and
10 have performed acts and made statements in furtherance of the alleged violations.

11 26. At all relevant times, each Defendant knew that the other Defendants were
12 engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing
13 that other Defendants were engaging in such unlawful conduct, each Defendant nevertheless
14 facilitated the commission of those unlawful acts. Each Defendant intended to and did
15 encourage, facilitate, or assist in the commission of the unlawful acts alleged in this Complaint,
16 and thereby aided and abetted the other Defendants in the unlawful conduct.

17 27. At all relevant times, Defendants have engaged in a conspiracy, common
18 enterprise, and common course of conduct, the purpose of which is and was to engage in the
19 violations of law alleged in this Complaint. The conspiracy, common enterprise, and common
20 course of conduct continue to the present.

21 28. The violations of law alleged in this Complaint occurred in San Mateo County
22 and elsewhere throughout California.

23 IV.

24 FACTUAL BACKGROUND

25 A. Nogales' Relevant Professional History

26 29. Francisco Nogales founded the Advantage Tax Resolution, in 2006. The
27 company advertised itself on both tv and radio commercials as a legal service for those in dire
28 need of assistance with tax relief. The company charged its prospective clients several thousand

1 dollars in up front fees in defending them against tax debt and outstanding IRS issues. The
2 company has since been reported in nearly 100 filed complaints with the Better Business Bureau
3 and currently holds the lowest possible grade, F.

4 30. The Nogales Law Center, the successor company to Francisco Nogales'
5 Advantage Tax Resolution, offered mortgage loan debtor relief services through the promise of
6 loan modification services and foreclosure defense. On information and belief, The Nogales Law
7 Center and Advantage Tax Resolution companies are one in the same. They are both owned and
8 operated by Francisco Nogales. Documents faxed to Plaintiffs as recent as March 9, 2010 from
9 the Nogales Law Center bear the facsimile originator name "Advantage Tax."

10 31. Nogales solicits homeowners in a number of ways, including advertising on the
11 internet and radio. Through these advertisements, homeowners are told that they may be victims
12 of predatory lending and that Nogales can help them stay in their homes and/or modify their
13 mortgage.

14 **B. Nogales' False Marketing Efforts**

15 32. In 2008, the Erazos held title to four properties, three of which were in San Mateo
16 County. Two properties were maintained as rental properties while the other two served as
17 primary residential properties. The income producing rental properties were located at 1000 -
18 1006 Tilton Ave, San Mateo, CA ("San Mateo") and 2802 - 2804 Devonshire Avenue in
19 Redwood City, CA ("Redwood City"). The San Mateo property was cash flow positive
20 throughout the Erazo's ownership. Redwood City is currently cash flow positive. The Erazos
21 primary residence was located at 930 Swan St., Foster City, CA ("Foster City") and they
22 maintained another residence at 1998 North Capital Avenue, San Jose, CA ("San Jose") which
23 housed and currently houses Orlando's elderly mother. As of the fall of 2008, the combined
24 market value of the four (4) properties was just over \$3 million.

25 33. In December 2009, after more than a year of loan modification attempts, the
26 Erazos received notice that their repeated requests for loan modifications had been denied. In
27 this same month, the Erazos heard Spanish-speaking commercials broadcasted on a local FM

1 station 100.3 that a legal services company, Nogales Law Center, provided legal aid towards a
2 mortgage loan modification through a forensic audit.

3 34. The Erazos first called the Nogales Law Center on January 3, 2010. The Nogales
4 Law Center then sent a representative to their home in Foster City to offer their services. The
5 Erazos described to Defendants their loan mortgage situation, including the imminent trustee sale
6 of their San Mateo property. The Erazos were repeatedly by the Defendants not to worry about
7 their home foreclosure proceedings and that Francisco Nogales would fight for them. At this
8 meeting, the Defendants required the Erazos to pay \$13,500 in advance fees for a forensic audit
9 and mortgage loan document review. Defendants represented that a forensic audit would insure
10 loan modifications for Plaintiffs' properties. The Erazos, at this meeting and at all times,
11 conveyed to Defendants and their representatives that they were prepared to pay any existing
12 delinquencies to avoid losing their homes.

13 35. On numerous occasions, the Erazos conveyed that their chief desire was
14 avoidance of foreclosure and sale of their properties first, and modification second. Defendants
15 represented that they understood this and would perform services to meet these desires.

16 **C. Nogales Performs No Services and the Erazos' Properties Are Sold**

17 36. On February 24, 2010, the San Mateo property was sold in a trustee sale
18 for \$581,298.00. Based upon a contemporaneous market value analysis, the value of this
19 property was approximately \$875,000. Notwithstanding the loan balance and delinquencies, the
20 Erazos maintained equity in the property at the time of the sale. The Erazos conveyed to
21 Defendants that they had the means to pay the outstanding balance and did not want to lose their
22 house. Nogales told them not to pay down their delinquency and that he would take care of
23 them. At no point did Nogales perform any services to delay, prevent, or impede the trustee sale
24 of the San Mateo property.

25 37. After the sale, the Erazos immediately contacted the Nogales Law Center to
26 meet and determine what had happened and what they could do to ensure that their primary
27 residence would not be likewise sold from underneath them. Despite having paid tens of
28 thousands of dollars, the Erazos had yet to meet Francisco Nogales personally. At Plaintiffs'

1 request, they scheduled a meeting in San Jose, CA on or about March 8, 2010. When the Erazos
2 arrived at the meeting, there were more than twenty five prospective or current clients also
3 scheduled to meet with Nogales. After a lengthy wait, the Erazos finally met Nogales and
4 Desaracho for the first time.

5 38. At this initial face-to-face meeting, Nogales told Plaintiffs "I'm fighting for you"
6 but the only way to recover their lost property and obtain modifications on the remaining
7 properties was not by a forensic audit but through litigation. At this point, Desaracho, who is in
8 excess of six feet four inches tall and two hundred and seventy five pounds, took Plaintiffs into
9 another room and demanded \$5,000 per property to commence with the litigation. Despite
10 protesting that they had seen no work to justify the money they already paid and feeling
11 physically intimidated, the Erazos felt they had no alternative and agreed to pay for litigation
12 services.

13 39. On April 14, 2010, the Erazos received a notice of trustee sale on their permanent
14 residence – the Foster City property. The Erazos repeatedly called Nogales to ensure that he was
15 working on their behalf to avoid losing another property. He constantly placated their concerns
16 and assuaged their doubts by assuring them that he was fighting for them.

17 40. Despite his assurances, Nogales did nothing and on May 17, 2010 the Foster City
18 property was sold in a trustee sale for \$84,000. The next day, Plaintiffs were given a three (3)
19 day notice to quit and vacate their home.

20 41. Based upon a contemporaneous market value analysis, the value of the Foster City
21 property was approximately \$930,000. This market value was far greater than the Erazos
22 outstanding debt. The Erazos conveyed to Defendants that they had the means to pay the
23 outstanding balance and did not want to lose their house. Nogales told them not to. At no point
24 did Nogales perform any services to delay, prevent, or impede the trustee sale of the Foster City
25 property.

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1 42. Despite being paid tens of thousands of dollars in fees and being contractually
2 obligated to aid in foreclosure defense, Defendants did nothing and instead placed legal
3 administrative burdens upon the Erazos. For example, on June 9, 2010, Plaintiffs had to file their
4 own answer to an unlawful detainer in San Mateo Superior Court.

5 43. Nogales' documents and records demonstrate that little work towards foreclosure
6 defense, if any, was done and if performed was performed too late to have any effect. In fact,
7 despite contracting to perform four "forensic audits" only one "audit" was completed. It is dated
8 July 15, 2010 and purports to audit the Foster City property. This was nearly six months after the
9 Erazos paid for this service, and after the home was already foreclosed upon and sold in a trustee
10 sale.

11 44. On June 19, 2010, desperate for assistance to save their remaining properties, and
12 at the demand of De Saracho on behalf of Nogales, Plaintiffs paid an additional \$9,000 to
13 Nogales to represent them in the unlawful detainer proceeding as well as foreclosure defense.
14 Nogales responded by failing to appear in Court despite being paid to do so.

15 45. In late July, Defendants requested \$6,000 a month to perform "additional"
16 litigation services. Plaintiffs, having already been bilked for tens of thousands of dollars and
17 having lost two properties, demanded detailed record of billing and services completed to date.
18 This request was never responded to and Plaintiffs ended their relationship with Defendants at
19 the end of the month.

20 46. Despite assurances to the contrary, Defendants failed to perform any substantive
21 foreclosure prevention services, made practically no effort to prosecute a predatory lending
22 lawsuit or negotiate a settlement with lenders, dodged the Erazos' phone calls, refused to provide
23 the Erazos any accounting of how their money was being spent, and strung them along with false
24 assurances that a settlement was in progress, or that litigation takes time.

25 47. Defendants improperly collected thousands of dollars in advance fees from the
26 Erazos, even after the Erazos had already defaulted on their mortgage obligations, the lenders
27 and/or note holders had recorded notices of default against their properties, and issued a notice of
28 trustee sale on their properties.

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V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(For Fraud, Deceit and Concealment)

48. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though fully set forth herein.

49. Defendants represented to the Erazos, that their work would halt foreclosure proceedings.

50. Defendants induced Plaintiff to pay tens of thousands of dollars for forensic loan auditing, loan modification, and foreclosure defense services. Defendants concealed material terms and facts known to them, but not to Plaintiffs, about the transactions the parties entered into. Defendants presented an initial strategy of forensically auditing Plaintiffs' mortgage loans which would lead to a modification. At the time, Defendants were fully aware of the imminent foreclosure on properties and consistently told Plaintiffs to not worry and to not pay down their delinquencies. Defendants falsely represented that a forensic audit was a sure-fire means of obtaining a modification. Defendants then stated that litigation services were necessary, but all the while Defendants never intended to materially assist Plaintiffs in their efforts at foreclosure avoidance or modification.

51. Defendants, and each of them, had actual knowledge of the true facts and legal repercussions concerning Plaintiffs' foreclosure proceedings and/or acted with deliberate disregard of the true facts as set forth in the above complaint, including the misrepresentation of the benefits of a forensic audit and the benefits of a predatory lending lawsuit to obtain modifications and avoid foreclosure. Defendants' material misrepresentations of their abilities to forestall foreclosure proceedings and obtain loan modifications were done knowingly and deliberately, and for the financial benefit of Defendants. Plaintiffs relied on these representations and would never have paid Defendants or entered in to any agreement if all material facts had been disclosed to them.

52. Defendants intentionally concealed and/or suppressed the facts concerning the

1 foreclosure proceedings with the intent to defraud Plaintiffs.

2 53. As a direct result of Defendants' fraudulent misrepresentations, Plaintiffs have
3 been damaged in an amount according to proof at trial.

4 54. Said fraud and misrepresentations were done maliciously, oppressively,
5 deliberately, with intent to defraud, in reckless disregard of Plaintiffs' rights and well-being and
6 were done to enrich Defendants. Defendants' conduct warrants an assessment of punitive
7 damages in an amount sufficient to deter such conduct in the future, which amount is to be
8 determined according to proof at trial.

9 WHEREFORE, Plaintiffs pray for relief as set forth below.

10 **SECOND CAUSE OF ACTION**

11 (Negligent Misrepresentation)

12 55. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though fully
13 set forth herein.

14 56. Defendants and each of them made material misrepresentations to Plaintiffs
15 and/or deliberately failed to provide Plaintiffs with the true facts which were known at all
16 relevant times by the Defendants, and each of them. At the time the Defendants made material
17 misrepresentations and/or omissions of material information, Defendants did not have a
18 reasonable basis to believe those statements to be true.

19 57. Defendants knew or should have known that charging advance fees for loan
20 modification services was unlawful and that they were unable to provide any of the services that
21 they promised to their customers.

22 58. At the time these material misrepresentations were made and the material facts not
23 disclosed, and at the time that Plaintiffs took the actions herein alleged, and at the time Plaintiffs'
24 money was taken by Defendants, Plaintiffs were ignorant of the true facts. If Plaintiffs had
25 known the true facts, they would not have engaged or paid Defendants any money.

26 59. Defendants intentionally concealed and/or suppressed the facts surrounding their
27 ability to forestall or prevent foreclosure proceedings and actual legal services provided with the
28 intent to defraud Plaintiff.

1 at Court hearings, failing to file any legal or administrative motions on the Plaintiffs' behalf, and
2 not responding to trustee notices concerning the foreclosure proceedings.

3 75. After paying fees, Plaintiffs received little to no further contact from Defendants
4 except on a few occasions, usually after extended delays. Plaintiffs received no substantive
5 information about their pending foreclosures. On one such occasion after receiving a bank
6 notice, Plaintiffs contacted Defendants immediately. A response from Defendants took three
7 weeks.

8 76. Plaintiffs' actions were based on the advice of Defendants and they would not
9 have so acted without such advice.

10 77. Defendants had a duty to act with care and professionalism toward Plaintiffs in
11 carrying out their respective professional obligations to and for Plaintiffs. Defendants breached
12 this duty of care, and failed to provide Plaintiffs services to which they were entitled.

13 78. As a direct and proximate result of Defendants' conduct as herein alleged,
14 Plaintiffs have suffered and continue to suffer economic losses, emotional distress, and other
15 non-economic damages in an amount according to proof at the time of trial.

16 WHEREFORE, Plaintiffs pray for relief as set forth below.

17 **FIFTH CAUSE OF ACTION**

18 (Constructive Fraud)

19 79. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though
20 fully set forth herein.

21 80. Plaintiffs reposed trust and confidence in Defendants. The Defendants assumed a
22 position of trust in that they agreed to represent Plaintiffs. Defendants engaged in self-dealing or
23 similar misconduct by placing their own financial interest above the interests of the client. In
24 requiring Plaintiffs to pay exorbitant advance fees, Defendants satisfied their financial interests
25 alone without following through and performing the work promised to Plaintiffs.

26 81. Defendants owed Plaintiffs both a professional and fiduciary duty. Defendants
27 breached this duty by failing to advise Plaintiffs that it was unlawful to obtain advance fees for
28 loan modification services, by failing to advise Plaintiffs that it was unnecessary to pay a third

1 party for loan modification services, by failing to disclose their own personal financial incentive
2 for charging and taking an exorbitantly large amount of Plaintiffs' money, and by the acts
3 described in this complaint. Defendants engaged in self-dealing or similar misconduct by placing
4 their own financial gain above the best interests of their clients.

5 82. As a direct and proximate result of Defendants' constructive fraud, Plaintiffs have
6 suffered, and continue to suffer economic losses, emotional distress and other non-economic
7 damages in an amount to be determined according to proof at trial.

8 83. Defendants' conduct was willful, malicious, oppressive, deliberate, with intent to
9 defraud, in reckless disregard of Plaintiff's rights and, done for their own financial gain at the
10 expense of Plaintiffs. Defendants' conduct warrants an assessment of punitive damages in an
11 amount sufficient to deter such conduct in the future which amount is to be determined according
12 to proof at trial.

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 **SIXTH CAUSE OF ACTION**

15 (Unjust Enrichment)

16 84. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though
17 fully set forth herein.

18 85. By their wrongful acts and omissions, Defendants, and each of them, were
19 unjustly enriched at the expense of and to the detriment of Plaintiffs.

20 86. Plaintiffs seek restitution from Defendants, and each of them, and seek an order
21 disgorging all profits, professional fees, litigation expenses, retainer fees, benefits, and other
22 compensation obtained by Defendants, and each of them, from their wrongful conduct.

23 WHEREFORE, Plaintiffs pray for relief as set forth below.

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1 **SEVENTH CAUSE OF ACTION**

2 (Breach of Contract)

3 87. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though
4 fully set forth herein.

5 88. In January 2010 Defendants entered into an agreement with Plaintiffs to provide
6 mortgage loan document review and forensic audit services on all four of Plaintiffs' properties.
7 Only one review was done on the Foster City property. The review took over six months to
8 complete and was completed after the Foster City home was already sold in a trustee sale.

9 89. Plaintiffs entered into an additional contract with the Nogales Law Center on
10 March 29, 2010. The Litigation Retainer specified litigation services for the "defense of judicial
11 foreclosure against [the Erazos] and the filing of a civil complaint for damages." Shortly after
12 the Retainer Agreement was signed, the Erazos faced foreclosure proceedings. Defendants failed
13 to fulfill or perform any substantial work towards fulfilling their primary obligation to defend the
14 foreclosure proceedings or file any civil action. Nogales' inaction resulted in two properties
15 being sold in a trustee sale as well as \$33,500 paid to Nogales for services not performed and in
16 violation of Civil Code §§ 2944.7 and 2945.4.

17 90. Additionally, Defendants failed to provide any update of Plaintiff's case or
18 evidence of their work to Plaintiffs, including the promised issuance of "monthly statements
19 showing the expenses incurred and the time spent on [the Erazos] behalf."

20 91. Defendants failed to perform each of the acts required under the terms of the
21 contract.

22 92. As a direct and proximate result of Defendants wrongful conduct Plaintiff was
23 harmed.

24 WHEREFORE, Plaintiffs pray for relief as set forth below.

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1 **EIGHTH CAUSE OF ACTION**

2 (Breach of Implied Covenant of Good Faith and Fair Dealing)

3 93. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though
4 fully set forth herein.

5 94. The Defendants were paid a substantial amount of fees to serve as counsel for
6 Plaintiffs in their modification efforts and foreclosure defense. As a result of this ongoing
7 relationship, Defendants owed Plaintiff a duty of good faith and fair dealing. The Defendants
8 violated that covenant of good faith and fair dealing by, among other things, misrepresenting the
9 benefits of a forensic audit, charging illegal advance fees, failing to perform any substantive
10 work to obtain a modification, and failing to defend Plaintiffs in their foreclosure defense. If the
11 Defendants had disclosed the nature of their wrongful conduct, Plaintiffs would not have paid for
12 Defendants' services but instead put those monies toward payment of the delinquent balance of
13 their mortgage loan to avoid foreclosure.

14 95. The illegal and unlawful acts alleged herein have directly caused the losses
15 suffered by Plaintiff when two properties were foreclosed and sold at a trustee sale.

16 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
17 forth below.

18 **NINTH CAUSE OF ACTION**

19 (Violations of Business and Professions Code Section 17200 *et seq.*)

20 96. Plaintiffs incorporate and re-allege all of the foregoing paragraphs, as though
21 fully set forth herein.

22 97. Defendants have engaged in unfair competition within the meaning of California
23 Business & Professions Code § 17200 *et seq.* because Defendants' conduct is fraudulent, unfair,
24 and illegal as alleged herein. Defendants' conduct was substantially injurious to Plaintiffs by
25 virtue of losses suffered herein by Plaintiffs, all proximately caused by Defendants' misconduct
26 as itemized herein above.

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28 ///

1 98. Defendants' business acts and practices, as alleged herein, constituted and
2 constitute a continuous and continuing course of conduct of unfair competition by means of
3 unfair, unlawful and/or fraudulent business acts or practices within the meaning of the foregoing
4 statute, including but in no way limited to, the following:

- 5 a. violating Civil Code § 2944.7, by collecting advance fees from Plaintiffs
6 (consumers) for loan modification services or other forms of mortgage
7 loan forbearance services;
- 8 b. violating Civil Code § 2945.4, subdivision (a) by collecting advance fees
9 before performing loan modification services for Plaintiffs who had
10 already defaulted on their mortgage obligations and whose lenders had
11 recorded notices of default against the consumers' properties;
- 12 c. violating Civil Code § 2945.45 by failing to register and obtain a
13 certificate of registration as foreclosure consultants from the California
14 Department of Justice; and
- 15 d. making untrue representations of material facts and/or omitting material
16 facts, regarding that: 1) forensic audits would lead to modifications; 2)
17 litigation would result in modifications and or the prevention of
18 foreclosures; and 3) that Defendants were equipped and capable of
19 performing loan modification, foreclosure defense, and litigation services
20 as represented.

21 99. Defendants' business acts and practices, as alleged herein, caused Plaintiffs to pay
22 Defendants \$33,500 and lose two homes to foreclosure for far less than their market value.

23 100. Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all
24 fees obtained by Defendants as a result of such business, acts or practices, and enjoining
25 Defendants to cease and desist from engaging in the practices described herein.
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs prays for judgment against Defendants, and each of them,
3 jointly and severally, as follows:

- 4 1. For compensatory damages in an amount according to proof at trial;
5 2. For restitution of all amounts paid to Defendants by Plaintiffs, in an amount
6 according to proof at trial;
7 3. For disgorgement, in an amount according to proof at trial, of all money earned by
8 Defendants using Plaintiffs' monies;
9 4. For special and general damages in an amount according to proof;
10 5. For exemplary and punitive damages according to proof;
11 6. For treble damages;
12 7. For costs of suit herein incurred;
13 8. For prejudgment interest at the maximum legal rate;
14 9. For attorneys' fees; and
15 10. For such other and further relief as the Court may deem just and proper.

16
17 DATED: October 14, 2010

COTCHETT, PITRE, & McCARTHY

18 By 

19 MATTHEW K. EDLING

20 *Attorney for Plaintiffs Mercedes J. Erazo and
Orlando J. Erazo*

21 **JURY DEMAND**

22 Plaintiffs demand a jury trial on all issues to triable.

23
24 DATED: October 14, 2010

COTCHETT, PITRE, & McCARTHY

25 By 

26 MATTHEW K. EDLING

27 *Attorney for Plaintiffs Mercedes J. Erazo and
Orlando J. Erazo*