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10 Attorneys for Plaintiff
 11 DAVID WEINER, individually, and on
 behalf of other members of the public
 12 similarly situated

13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA

15
 16 DAVID WEINER, individually, and on
 behalf of other members of the public
 17 similarly situated,

18 Plaintiff,

19 vs.

20 OCWEN FINANCIAL CORPORATION,
 a Florida corporation, and OCWEN LOAN
 21 SERVICING, LLC, a Delaware limited
 liability company,

22 Defendants.

Case Number:

CLASS ACTION COMPLAINT FOR:

- (1) Violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (2) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c));
- (3) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(d));
- (4) Violations of the Rosenthal fair Debt Collection Practices Act (Cal. Civ. Code §§ 1788, *et seq.*);
- (5) Unjust Enrichment
- (6) Fraud; and
- (7) Breach of Contract

Jury Trial Demanded

1 For his complaint against Ocwen Financial Corporation (“OFC”) and Ocwen Loan
2 Servicing, LLC (“OLS”) (collectively “Ocwen” or “Defendants”), Plaintiff David
3 Weiner (“Plaintiff”), individually, and on behalf of all other members of the public
4 similarly situated, based on information and belief, alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This case concerns fraudulent practices committed by Ocwen in connection
7 with its home mortgage loan servicing business. Taking advantage of the economic
8 downturn and the increasing number of loans in default, Ocwen devised a scheme to
9 deceive homeowners who are behind on their mortgage payments into paying, or
10 believing they have to pay, hundreds or thousands of dollars in unlawfully marked-up
11 fees.

12 2. Ocwen uses an enterprise of affiliated companies, including Altisource
13 Portfolio Solutions S.A. (“Altisource”) -- a wholly-owned subsidiary of OFC until 2009,
14 when it was spun-off into a separate company -- to engage in its scheme to disguise
15 hidden, marked-up fees so that it could earn additional, undisclosed profits. Through this
16 unlawful enterprise, Ocwen assesses homeowners fees for services performed by vendors,
17 which are unlawfully marked up, often by 100% or more.

18 3. More specifically, when home mortgage borrowers get behind on their
19 payments and go into “default,” Ocwen obtains a number of default-related services
20 which purportedly are designed to protect the lender’s interest in the property. To obtain
21 these services, Ocwen funnels the work through its affiliated company, Altisource, who
22 then orders these services using a network of third-party vendors. As a matter of practice,
23 Altisource marks up the third-party vendors’ actual cost for their services, and then,
24 passes along the marked-up charge to Ocwen. Without disclosing the mark-up, Ocwen, in
25 turn, assesses the marked-up fees for these default-related service on homeowners’
26 accounts.

27 4. Ocwen is well-aware that its marked-up fees violate the disclosures made in
28 homeowners’ mortgage contracts because the fees exceed the actual cost of the default-

1 related services, so when Ocwen collects, or attempts to collect, such fees, it is not merely
2 being “paid back,” or collecting “amounts disbursed,” nor are such fees “reasonable and
3 appropriate” to protect the note holder’s interest in the property and rights under the deed
4 of trust. Nevertheless, through this fraudulent scheme, Ocwen is able to quietly profit
5 from default-related service fees at the expense of distressed homeowners -- a particularly
6 vulnerable class of consumers who are struggling to keep their homes.

7 5. Ocwen’s fraudulent loan servicing practices are designed to avoid detection,
8 even when examined in bankruptcy proceedings. As one court has explained, “[l]enders
9 have apparently been operating under the assumption that the fees and costs in their
10 proofs of claim are invulnerable to challenge because debtors lack the sophistication, the
11 debtors’ bar lacks the financial motivation, and bankruptcy courts lack the time. . . . [T]he
12 Court believes that certain members of the mortgage industry are *intentionally* attempting
13 to game the system by requesting undocumented and potentially excessive fees.”¹

14 6. This type of rampant abuse by mortgage servicers like Ocwen has led federal
15 regulators to enter into numerous consent orders, but according to Mark Pearce, Director,
16 Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation:²

22 ¹ *In re: Prevo*, 394 B.R. 847, 848, 851 (Bankr. S.D. Tex. 2008) (emphasis added).

23 ² See Mark Pearce, Director, Division of Depositor and Consumer Protection, Federal
24 Deposit Insurance Corporation, *Mortgage Servicing: An Examination of the Role of*
25 *Federal Regulators in Settlement Negotiations and the Future of Mortgage Servicing*
26 *Standards*, before the Subcommittees on Financial Institutions and Consumer Credit, and
27 Oversight and Investigations Committee on Financial Services, U.S. House of
28 Representatives, July 7, 2011, available at
<http://financialservices.house.gov/UploadedFiles/070711pearce.pdf> (last visited, Feb. 1,
2012).

1 these consent orders do not fully identify and remedy past errors
2 in mortgage-servicing operations of large institutions; in fact,
3 the scope of the interagency review did not include a review of
4 . . . the fees charged in the servicing process. Much work
5 remains to identify and correct past errors and to ensure that the
6 servicing process functions effectively, efficiently, and fairly
7 going forward.

8 7. In addition to marking up fees for default-related services, Ocwen also has a
9 policy, practice, and procedure of misapplying homeowners' payments, which, in turn,
10 generates fee income and larger profits for Ocwen and its affiliates.

11 8. Plaintiff brings this action, seeking injunctive relief and damages on behalf of
12 himself and the thousands of other homeowners who have been victimized by Ocwen's
13 uniform scheme.

14 JURISDICTION AND VENUE

15 9. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(d)(2). The matter
16 in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000
17 and is a class action in which members of the class of plaintiffs are citizens of states
18 different from Defendants. Further, greater than two-thirds of the members of the Class
19 reside in states other than the states in which Defendants are citizens.

20 10. This Court also has jurisdiction over this matter under 28 U.S.C. §§ 1331,
21 1961, 1962 and 1964. This Court has personal jurisdiction over Defendants under 18
22 U.S.C. §1965. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental
23 jurisdiction over the state law claims because all of the claims are derived from a common
24 nucleus of operative facts and are such that Plaintiff ordinarily would expect to try them in
25 one judicial proceeding.

26 11. Venue lies within this judicial district under 28 U.S.C. § 1391(b)(1) and
27 (c)(2) because Defendants' contacts are sufficient to subject them to personal jurisdiction
28 in this District, and therefore, Defendants reside in this District for purposes of venue, or
under 28 U.S.C. § 1391(b)(2) because certain acts giving rise to the claims at issue in this
Complaint occurred, among other places, in this District.

PARTIES

12. Plaintiff David Weiner is an individual and a citizen of California.

13. Defendant Ocwen Financial Corporation is a corporation organized under the laws of Florida, with its principal place of business in Atlanta, Georgia.

14. Defendant Ocwen Loan Servicing, LLC is Delaware limited liability company, and an indirect wholly-owned subsidiary of Ocwen Financial Corporation. Ocwen Loan Servicing, LLC maintains operations in this District related to the activities at issue in this case, including operations concerning the management of loans that are in default, which are conducted from offices located in Burbank, California. Ocwen Loan Servicing, LLC's headquarters are located in West Palm Beach, Florida. It is licensed to service mortgage loans in all fifty states, including California, the District of Columbia, and two U.S. territories.

15. Whenever, in this Complaint, reference is made to any act, deed, or conduct of Defendants committed in connection with the enterprise, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of their officers, directors, agents, employees or representatives, each of whom was actively engaged in the management, direction, control or transaction of the ordinary business and affairs of Defendants and the enterprise.

16. Plaintiff is informed and believes, and based thereon, alleges that, at all material times herein, each of the Defendants was the agent, servant, or employee of the other Defendants, and acted within the purpose, scope, and course of said agency, service, or employment, and with the express or implied knowledge, permission, and consent of the other Defendants, and ratified and approved the acts of the other Defendants.

17. Defendants are the ultimate recipient of the ill-gotten gains described herein. The fraudulent scheme at issue in this case was organized by executives working at the highest levels of Defendants' respective companies, and carried out by both executives and subordinate employees working for Defendants.

FACTUAL BACKGROUND

1 **America's Lending Industry Has Divorced itself**
2 **from the Borrowers it Once Served**

3 18. Ocwen's unlawful loan servicing practices exemplify how America's lending
4 industry has run off the rails.

5 19. Traditionally, when people wanted to borrow money, they went to a bank or
6 a "savings and loan." Banks loaned money and homeowners promised to repay the bank,
7 with interest, over a specific period of time. The originating bank kept the loan on its
8 balance sheet, and serviced the loan -- processing payments, and sending out applicable
9 notices and other information -- until the loan was repaid. The originating bank had a
10 financial interest in ensuring that the borrower was able to repay the loan.

11 20. Today, however, the process has changed. Mortgages are now packaged,
12 bundled, and sold to investors on Wall Street through what is referred to in the financial
13 industry as mortgage backed securities or MBS. This process is called securitization.
14 Securitization of mortgage loans provides financial institutions with the benefit of
15 immediately being able to recover the amounts loaned. It also effectively eliminates the
16 financial institution's risk from potential default. But, by eliminating the risk of default,
17 mortgage backed securities have disassociated the lending community from homeowners.

18 21. Numerous unexpected consequences have resulted from the divide between
19 lenders and homeowners. Among other things, securitization has led to the development
20 of an industry of companies which make money primarily through servicing mortgages
21 for the hedge funds and investment houses who own the loans.

22 22. Loan servicers do not profit directly from interest payments made by
23 homeowners. Instead, these companies are paid a set fee for their loan administration
24 services. Servicing fees are usually earned as a percentage of the unpaid principal balance
25 of the mortgages that are being serviced. A typical servicing fee is approximately 0.50%
26 per year.

27 23. Additionally, under pooling and servicing agreements ("PSAs") with
28 investors and noteholders, loan servicers assess fees on borrowers' accounts for default-
related services. These fees include, *inter alia*, Broker's Price Opinion ("BPO") fees,

1 appraisal fees, and title examination fees.

2 24. Under this arrangement, a loan servicer's primary concern is *not* ensuring
3 that homeowners stay current on their loans. Instead, they are focused on minimizing any
4 costs that would reduce profit from the set servicing fee, and generating as much revenue
5 as possible from fees assessed against the mortgage accounts they service. As such, their
6 "business model . . . encourages them to cut costs wherever possible, even if [that]
7 involves cutting corners on legal requirements, and to lard on junk fees and in-sourced
8 expenses at inflated prices."³

9 25. As one Member of the Board of Governors of the Federal Reserve System
10 has explained:

11 While an investor's financial interests are tied more or less
12 directly to the performance of a loan, the interests of a third-
13 party servicer are tied to it only indirectly, at best. The servicer
14 makes money, to oversimplify it a bit, by maximizing fees
15 earned and minimizing expenses while performing the actions
16 spelled out in its contract with the investor. . . . The broad grant
of delegated authority that servicers enjoy under pooling and
servicing agreements (PSAs), combined with an effective lack
of choice on the part of consumers, creates an environment ripe
for abuse.⁴

17 **Ocwen's Subprime Mortgage Servicing Business Grows Rapidly, and**
18 **Draws the Attention of Regulators**

19 26. Seeking to capitalize on these circumstances, Ocwen has positioned itself as
20 a major player in the residential mortgage servicing industry. In fact, "Ocwen was the

21 _____
22 ³ See Adam J. Levitin, *Robo-Singing, Chain of Title, Loss Mitigation, and Other Issues in*
23 *Mortgage Servicing*, before the House Financial Services Committee, Subcommittee on
24 Housing and Community Opportunity, Nov. 18, 2010, available at
25 <http://financialservices.house.gov/Media/file/hearings/111/Levitin111810.pdf> (last visited
Feb. 1, 2012).

26 ⁴ See Sarah Bloom Raskin, Member Board of Governors of the Federal Reserve System,
27 *Remarks at the National Consumer Law Center's Consumer Rights Litigation Conference*,
28 Boston Massachusetts, Nov. 12, 2010, available at
www.federalreserve.gov/newsevents/speech/raskin20101112a.htm (last visited Jan. 23,
2012).

1 fourth largest mortgage servicer in the United States in 2013, collecting payments on
2 nearly one out of every twenty home loans.”⁵

3 27. As larger banks have shifted their attention to servicing the mortgage loans of
4 their core customers -- *i.e.*, prime loan borrowers who use their lending banks’ other
5 services -- Ocwen has focused on servicing loans obtained by non-prime, or credit
6 impaired, borrowers.

7 28. Elaborating on the tremendous growth in its servicing business in recent
8 years, Ocwen states:

9 Our residential servicing portfolio has grown from 351,595
10 residential loans with an aggregate [unpaid principal balance
11 (“UPB”)] of \$50.0 billion at December 31, 2009, to 2,861,918
12 residential loans with an aggregate UPB of \$464.7 billion at
13 December 31, 2013. Through acquisitions, we have substantially
14 increased the share of our servicing portfolio that is made up of
15 conventional (loans conforming to the underwriting standards of
16 the government sponsored entities, the Federal National
17 Mortgage Association (Fannie Mae) or the Federal Home Loan
18 Mortgage Corporation (Freddie Mac) (collectively, the GSEs
19 and Agency), government insured (loans insured by the Federal
20 Housing Authority (FHA) of the Department of Housing and
21 Urban Development (HUD) or Department of Veterans Affairs
22 (VA) (collectively, government insured)) and prime non-Agency
23 loans (loans generally conforming to the underwriting standards
24 of the GSEs whose UPB exceeds the GSE loan limits,
25 commonly referred to as jumbo loans). At December 31, 2013,
26 these loans comprise 56.8% of the UPB of our servicing
27 portfolio, up from 24.4% at December 31, 2012.⁶

28 29. Ocwen goes on to explain that “[t]he mortgaged properties securing the
residential loans that [they] service are geographically dispersed throughout all 50 states,

24 ⁵ See Karen Freifeld, Peter Rudegeair, and Andrew Hay, *NY regulator suspects Ocwen*
25 *Financial of possible ‘self-dealing’*, Reuters, Apr. 21, 2014, available at
26 [http://www.reuters.com/article/2014/04/21/ocwen-financial-letter-](http://www.reuters.com/article/2014/04/21/ocwen-financial-letter-idUSL2N0ND0R120140421)
[idUSL2N0ND0R120140421](http://www.reuters.com/article/2014/04/21/ocwen-financial-letter-idUSL2N0ND0R120140421) (last visited, Nov. 5, 2014).

27 ⁶ Ocwen Financial Corp, SEC FORM 10-K (Period Ending Dec. 31, 2013), available at
28 <http://www.sec.gov/Archives/edgar/data/873860/000144530514000799/a2013123110k.htm>
(last visited April 1, 2014).

1 the District of Columbia and two U.S. territories.”⁷ The five largest concentrations of
2 properties, comprising approximately 39% of the loans serviced by Ocwen as of
3 December 31, 2013, are located in California, Florida, New York, Texas and New
4 Jersey.⁸ California has the largest concentration with 436,374 loans, approximately 15%
5 of the total number of loans serviced.⁹

6 30. Fueled by these increases in its residential servicing portfolio, Ocwen’s
7 revenue has jumped from \$360 million in 2010 to a staggering \$2 billion in 2013.¹⁰

8 31. Ocwen’s rapid growth and business practices have not gone unnoticed by
9 state regulators, including Benjamin Lawsky, Superintendent of New York’s Department
10 of Financial Services (the “Department”). As a result of a consent order entered into by
11 Lawsky’s office and Ocwen in late 2012, a compliance monitor was installed at Ocwen in
12 2013.¹¹ Additionally, on or around February 6, 2014, Lawsky halted indefinitely Wells
13 Fargo’s transfer of approximately \$39 billion in servicing rights to Ocwen.¹²

14 32. Speaking at the annual meeting of the New York Bankers Association in
15 February 2014, Lawsky cautioned that Ocwen’s explosive growth “raises red flags,” that
16 he sees “corners being cut” by non-bank servicers like Ocwen, and that Ocwen’s use of
17
18

19 ⁷ *Id.*

20 ⁸ *Id.*

21 ⁹ *Id.*

22 ¹⁰ James Sterngold and Saabira Chaudhuri, *Ocwen to Restate Results After Accounting*
23 *Change*, The Wall Street Journal, August 12, 2014, available at
24 <http://online.wsj.com/articles/ocwen-financial-to-estate-some-results-1407852143> (last
visited, Nov. 5, 2014).

25 ¹¹ Michael Corkery, *State Regulator Halts Deal Between Wells Fargo and Loan Servicer*,
26 N.Y. Times, February 6, 2014, available at [http://dealbook.nytimes.com/2014/02/06/new-](http://dealbook.nytimes.com/2014/02/06/new-york-regulator-halts-mortgage-servicing-rights-deal/?_php=true&_type=blogs&_r=0)
27 [york-regulator-halts-mortgage-servicing-rights-deal/?_php=true&_type=blogs&_r=0](http://dealbook.nytimes.com/2014/02/06/new-york-regulator-halts-mortgage-servicing-rights-deal/?_php=true&_type=blogs&_r=0) (last
visited, Nov. 5, 2014).

28 ¹² *Id.*

1 technology to handle distressed loans is “too good to be true.”¹³

2 33. Such concerns about Ocwen’s loan servicing practices are well-founded. For
3 companies like Ocwen, who are determined to maximize the money they earn from
4 servicing loans, the right to charge default-related service fees has opened the door to a
5 world of exploitation.

6 34. Taking full advantage of this opportunity for such exploitation, Ocwen
7 formed an unlawful enterprise of affiliated companies, including Altisource, in order to
8 increase mortgage servicing revenues by fraudulently concealing marked-up fees for
9 default-related services on homeowners’ accounts.

10 **Ocwen’s “Tangled Web Of Conflicts” and Self-Dealing**
11 **with Affiliated Company Altisource**

12 35. To maximize profits, Ocwen assigns the complex task of administering the
13 millions of loans it services to computer software programs. The software programs are
14 designed to manage homeowners’ loan accounts and assess fees, according to protocols
15 and policies designed by the executives at Ocwen.

16 36. Prior to August 2009, Ocwen’s technology platforms were provided by the
17 Ocwen Solutions line of businesses, which consisted primarily of Ocwen’s former
18 unsecured collections and its residential fee-based loan processing businesses. These
19 businesses provided technological services across the full spectrum of the mortgage
20 lifecycle, from due diligence and underwriting to default processing and property
21 preservation, all the way up to collections and customer relationship management. OFC
22 developed this technology platform over a period of more than 20 years at a cost of more
23
24

25 _____
26 ¹³ Kate Berry, *Lawsky Bashes Ocwen, Says Servicer’s Growth ‘Raises Red Flags,’*
27 National Mortgage News, February 12, 2014, available at
28 <http://www.nationalmortgagenews.com/mortgage-servicing/lawsky-bashes-ocwen-says-servicers-growth-raises-red-flags-1041092-1.html?zkPrintable=true> (last visited, Nov. 5, 2014).

1 than \$150 million.¹⁴

2 37. In order to allow Ocwen to focus on growing its core servicing business, on
3 August 10, 2009, Ocwen completed the distribution of the Ocwen Solutions line of
4 businesses via the spin-off of Altisource.¹⁵ As part of the separation, William C. Erbey --
5 Ocwen's Chairman of the Board and the owner of 13% of Ocwen's common stock -- also
6 became the Chairman of the Board for Altisource.¹⁶

7 38. As of June 30, 2014, Mr. Erbey owns approximately 27% of the common
8 stock of Altisource.¹⁷ He also has taken a very active role in the company. As Altisource
9 explains in its Form 10-K Statement, its success is "dependent" upon Mr. Erbey's
10 services, and the loss of his services "could have a material adverse effect upon business,
11 operating results and financial conditions."¹⁸

12 39. In fact, Ocwen and Altisource are so interconnected, that Altisource points to
13 its relationship with Ocwen as a potential "risk factor" to its business:

14 Given this close and continuing relationship with Ocwen, we
15 may encounter difficulties in obtaining and retaining other
16 customers who compete with Ocwen. Should these and other

17 ¹⁴ Ocwen Financial Corp, SEC FORM 10-K (Period Ending Dec. 31, 2012), available at
18 http://www.sec.gov/Archives/edgar/data/873860/000101905613000314/ocn_10k12a.htm
(last visited Sept. 9, 2013).

19 ¹⁵ Altisource was originally incorporated on November 4, 1999 in Luxembourg as Ocwen
20 Luxembourg S.à r.l. See Altisource Portfolio Solutions S.A., SEC FORM 10-K (Period
21 Ending Dec. 31, 2012), available at [http://www.sec.gov/Archives/edgar/data/1462418/
000110465913009969/a13-2839_110k.htm](http://www.sec.gov/Archives/edgar/data/1462418/000110465913009969/a13-2839_110k.htm) (last visited Sept. 9, 2013). The entity was
22 renamed Altisource Portfolio Solutions S.à r.l. on May 12, 2009, and converted into
23 Altisource on June 5, 2009. *Id.* Prior to August 10, 2009, Altisource was a wholly-owned
24 subsidiary of Ocwen. *Id.*

¹⁶ *Id.*

25 ¹⁷ Ocwen Financial Corp., SEC Form 10-Q (Period Ending June 30, 2014), available at
26 [http://www.housingwire.com/ext/resources/files/Editorial/Documents/SEC-ABEA-
6F4AAO-873860-14-16.pdf](http://www.housingwire.com/ext/resources/files/Editorial/Documents/SEC-ABEA-6F4AAO-873860-14-16.pdf) (last visited October 23, 2014).

27 ¹⁸ See Altisource Portfolio Solutions S.A., SEC FORM 10-K (Period Ending Dec. 31,
28 2012), available at [http://www.sec.gov/Archives/edgar/data/1462418/
000110465913009969/a13-2839_110k.htm](http://www.sec.gov/Archives/edgar/data/1462418/000110465913009969/a13-2839_110k.htm) (last visited Sept. 9, 2013).

1 potential customers continue to view Altisource as part of
2 Ocwen or as too closely related to or dependent upon Ocwen,
3 they may be unwilling to utilize [Altisource's] services, and
4 [Altisource's] growth could be inhibited as a result.¹⁹

5 40. This “close and continuing relationship” between Ocwen and Altisource was
6 the subject of a letter Benjamin Lawsky, New York’s top bank regulator, sent to Ocwen
7 on February 26, 2014. In the letter, Lawsky addressed potential conflicts of interest
8 between Ocwen and Altisource:

9 The Department’s ongoing review of Ocwen’s mortgage
10 servicing practices has uncovered a number of potential
11 conflicts of interest between Ocwen and other public companies
12 with which Ocwen is closely affiliated. Indeed, the facts our
13 review has uncovered to date cast serious doubts on recent
14 public statements made by the company that Ocwen has a
15 “strictly arms-length business relationship” with those
16 companies. We are also concerned that this tangled web of
17 conflicts could create incentives that harm borrowers and push
18 homeowners unduly into foreclosure.

19 . . .

20 Pursuant to the December 4, 2012 Consent Order between
21 Ocwen and the Department, we have engaged an independent
22 on-site compliance monitor at Ocwen to conduct a
23 comprehensive review of Ocwen’s servicing operations. It is in
24 the course of the monitorship that we uncovered these potential
25 conflicts between and among Ocwen, Altisource Portfolio
26 Solutions, S.A. (“Altisource Portfolio”), Altisource Residential
27 Corporation, Altisource Asset Management Corporation, and
28 Home Loan Servicing Solutions Ltd. (together, the “affiliated
companies”), all of which are chaired by William C. Erbey, who
is also the largest shareholder of each and the Executive
Chairman of Ocwen.²⁰

25 ¹⁹ *Id.*

26 ²⁰ Letter from Benjamin M. Lawsky, Superintendent of Financial Services, New York
27 State Department of Financial Services, to Timothy Hayes, General Counsel, Ocwen
28 Financial Corporation (Feb. 26, 2014), available at
<http://www.dfs.ny.gov/about/press2014/pr140226-letter.pdf> (last visited, Nov. 5, 2014).

1 41. Lawsky’s letter noted that “Ocwen’s management owns stock or stock
2 options in the affiliated companies,” which “raises the possibility that management has the
3 opportunity and incentive to make decisions concerning Ocwen that are intended to
4 benefit the share price of the affiliated companies, resulting in harm to borrowers,
5 mortgage investors, or Ocwen shareholders as a result.”²¹

6 42. Lawsky’s review of Ocwen’s operations revealed that the company’s Chief
7 Risk Officer served in the same role for Altisource, and “reported directly to Mr. Erbey in
8 both capacities.”²² As Lawsky explained, Ocwen and Altisource’s joint Chief Risk
9 Officer “seemed not to appreciate the potential conflicts of interest posed by this dual role,
10 which was particularly alarming given his role as Chief Risk Officer.”²³ Lawsky’s letter
11 further explains that the Chief Risk Officer told the on-site compliance monitor that
12 Ocwen “paid his entire salary, but he did not know and apparently never asked which
13 company paid his risk management staff.”²⁴ Lawsky concluded that, while the Chief Risk
14 Officer has since been removed from his role at Altisource, “his and Ocwen’s failure to
15 affirmatively recognize this conflict demonstrates that the relationship between Ocwen
16 and the affiliated companies warrants further examination.”²⁵

17 43. According to Lawsky, the Department’s “review of Ocwen’s mortgage
18 servicing practices . . . also found that Ocwen relies extensively on affiliated companies
19 for its information management system (from the programming of comment codes to
20 functioning as Ocwen’s IT help desk), as well as procurement of third party services,”
21 which “further demonstrates the interconnected nature of Ocwen’s relationship with the
22 affiliated companies.”²⁶

23 ²¹ *Id.*

24 ²² *Id.*

25 ²³ *Id.*

26 ²⁴ *Id.*

27 ²⁵ *Id.*

28 ²⁶ *Id.*

1 44. Indeed, following the separation in 2009, Ocwen is contractually obligated to
2 purchase mortgage and technology services from Altisource under service agreements that
3 extend through 2020.²⁷ Ocwen is now Altisource’s largest customer, accounting for 60%
4 of Altisource’s total revenue in 2012.²⁸

5 45. As part of the Department’s ongoing examination of Ocwen’s mortgage
6 servicing practices, in April 2014 Lawsky sent Ocwen another letter addressing
7 “conflicted business relationships” and “self-dealing” between Ocwen and Altisource.²⁹
8 More specifically, Lawsky stated that:

9 One particularly troubling issue is the relationship between
10 Ocwen and Altisource Portfolio’s subsidiary, Hubzu, which
11 Ocwen uses as its principal online auction site for the sale of its
12 borrowers’ homes facing foreclosure, as well as investor-owned
13 properties following foreclosure. Hubzu appears to be charging
14 auction fees on Ocwen-serviced properties that are up to three
15 time times the fees charged to non-Ocwen customers

16 . . .

17 The relationship between Ocwen, Altisource Portfolio, and
18 Hubzu raises significant concerns regarding self-dealing. In
19 particular, it creates questions about whether those companies
20 are charging inflated fees through conflicted business
21 relationships, and thereby negatively impacting homeowners
22 and mortgage investors. Alternatively, if the lower fees are
23 necessary to attract non-Ocwen business on the open market, it
24 raises concerns about whether Ocwen-serviced properties are

22 ²⁷ Altisource Portfolio Solutions S.A., SEC FORM 10-K (Period Ending Dec. 31, 2012),
23 available at [http://www.sec.gov/Archives/edgar/data/1462418/
24 000110465913009969/a13-2839_110k.htm](http://www.sec.gov/Archives/edgar/data/1462418/000110465913009969/a13-2839_110k.htm) (last visited Sept. 9 2012).

25 ²⁸ *Id.*

26 ²⁹ Letter from Benjamin M. Lawsky, Superintendent of Financial Services, New York
27 State Department of Financial Services, to Timothy Hayes, General Counsel, Ocwen
28 Financial Corporation (April 21, 2014), available at
[http://www.housingwire.com/ext/resources/files/Editorial/Lawsky-Letter-to-Ocwen-RE-
Altisource-Hubzu.pdf](http://www.housingwire.com/ext/resources/files/Editorial/Lawsky-Letter-to-Ocwen-RE-Altisource-Hubzu.pdf) (last visited, Nov. 5, 2014).

1 being funneled into an uncompetitive platform at inflated
2 costs.³⁰

3 46. On August 4, 2014, Lawsky sent yet another letter raising concerns about
4 Ocwen's use of related companies to provide fee based services.³¹ As Lawsky explained,
5 "[b]ecause mortgage servicing presents the extraordinary circumstance where there is
6 effectively no customer to select a vendor for ancillary services, Ocwen's use of related
7 companies to provide such services raises concerns about whether such transactions are
8 priced fairly and conducted at arms-length."³²

9 47. Once again, Lawsky's August 2014 letter was particularly concerned with
10 transactions between Ocwen and "related" company Altisource:

11 [T]he Department has serious concerns about the apparently
12 conflicted role played by Ocwen Executive Chairman William
13 Erbey and potentially other Ocwen officers and directors in
14 directing profits to Altisource, which is "related" to Ocwen but
15 is formally a separate, publicly traded company. As you know,
16 Mr. Erbey is Ocwen's largest shareholder and is also the
17 Chairman of and largest shareholder in Altisource. In fact, Mr.
18 Erbey's stake in Altisource is nearly double his stake in Ocwen:
19 29 percent versus 15 percent. Thus, for every dollar Ocwen
20 makes, Mr. Erbey's share is 15 cents, but for every dollar
21 Altisource makes, his share is 29 cents.

18 The Department and its Monitor have uncovered a growing
19 body of evidence that Mr. Erbey has approved a number of
20 transactions with related companies, despite Ocwen's and
21 Altisource's public claims -- including in SEC filings -- that he
22 recuses himself from decisions involving related companies.

23 ...

24 ³⁰ *Id.*

25 ³¹ Letter from Benjamin M. Lawsky, Superintendent of Financial Services, New York
26 State Department of Financial Services, to Timothy Hayes, General Counsel, Ocwen
27 Financial Corporation (Aug. 4, 2014), available at
<http://www.dfs.ny.gov/about/press2014/pr140804-ocwen-letter.pdf> (last visited, Nov. 5,
28 2014).

³² *Id.*

1 Finally, Ocwen and Altisource state in their public filings that
2 rates charged under agreements with related companies are
3 market rate, but Ocwen has not been able to provide the Monitor
4 with any analysis to support this assertion.³³

5 48. Lawsky is not the only regulator raising questions about Ocwen's business
6 dealings. According to OFC's most recent filing with the Securities and Exchange
7 Commission ("SEC"), on June 12, 2014 it received an SEC subpoena, in which the SEC
8 requested "production of various documents relating to [OFC's] business dealings with
9 Altisource, HLSS, [Altisource Asset Management Corp], and Altisource Residential and
10 the interests of [OFC's] directors and executive officers in these companies."³⁴

11 49. Despite the fact that Lawsky, the SEC, and other financial regulators have
12 raised significant concerns about the "tangled web of conflicts" between the entities,
13 Ocwen continuously, and systematically, engages in "self-dealing" transactions with
14 Altisource.

15 50. Accordingly, although Ocwen and Altisource technically are separate
16 entities, they are effectively joined together, as affiliated companies, operating as a
17 continuing unit with a common purpose.

18 **Ocwen's Scheme to Mark Up Fees for Default-Related Services**

19 51. In its loan servicing operations, Ocwen follows a strategy to generate
20 fraudulently concealed default-related fee income. Rather than simply obtain default-
21 related services directly from independent third-party vendors, and charge homeowners
22 for the actual cost of these services, Ocwen has a policy, practice, and procedure of
23 marking up fees for default-related services on homeowners' loan accounts. As a result,
24 even though the mortgage market has collapsed, and more and more borrowers are falling
25 into delinquency, Ocwen continues to earn substantial profits.

26 ³³ *Id.* (internal citations omitted).

27 ³⁴ Ocwen Financial Corp., SEC Form 10-Q (Period Ending June 30, 2014), available at
28 <http://www.housingwire.com/ext/resources/files/Editorial/Documents/SEC-ABEA-6F4AAO-873860-14-16.pdf> (last visited October 23, 2014).

1 52. Ocwen’s scheme works as follows: Ocwen directs Altisource to order and
2 coordinate default-related services, and, in turn, Altisource places orders for such services
3 with third-party vendors. The third-party vendors charge Altisource for the performance
4 of the default-related services, Altisource then marks up the price of the vendors’ services,
5 in numerous instances by 100% or more, before “charging” the services to Ocwen. In
6 turn, Ocwen bills the marked-up fees to homeowners.

7 53. Through this complex arrangement with Altisource, which is intended to
8 disguise the marked-up fees for default-related services, Ocwen effectively side-steps the
9 borrower protections in the mortgage contract.

10 54. The mortgage contract between a lender and a homeowner generally consists
11 of two documents: (i) the promissory note (the “Note”); and (ii) the mortgage/security
12 instrument/deed of trust (the “Deed of Trust”). The mortgage contracts serviced by Ocwen
13 are substantially similar because they conform to the standard Fannie Mae form contract.
14 The contract contains certain disclosures describing what is supposed to happen if
15 borrowers default on their loans.

16 55. The Deed of Trust discloses to homeowners that, in the event of default, the
17 loan servicer will:

18 pay for whatever is reasonable or appropriate to protect the note
19 holder’s interest in the property and rights under the security
20 instrument, including protecting and/or assessing the value of
21 the property, and securing and/or repairing the property.

(emphasis added.)

22 56. The Deed of Trust further discloses that any such “amounts disbursed” by the
23 servicer to a third party shall become additional debt of the homeowner secured by the
24 Deed of Trust and shall bear interest at the Note rate from the date of “disbursement.”

(emphasis added.)

26 57. Additionally, the Note discloses to homeowners that with respect to
27 “Payment of the Note Holder’s Costs and Expenses,” if there is a default, the homeowner
28 will have to “pay back” costs and expenses incurred in enforcing the Note to the extent

1 not prohibited by applicable law.

2 58. Thus, the mortgage contract discloses to homeowners that the servicer will
3 pay for default-related services when reasonably necessary, and will be reimbursed or
4 “paid back” by the homeowner for amounts “disbursed.” Nowhere is it disclosed to
5 borrowers that the servicer may engage in self-dealing to mark up the actual cost of those
6 services to make a profit. Nevertheless, that is exactly what Ocwen does.

7 59. BPOs are a significant category of third party default-related services for
8 which, in furtherance of Ocwen’s unlawful enterprise, fees are assessed on homeowners’
9 loan accounts with substantial, undisclosed mark-ups, fraudulently generating revenue in
10 the loan servicing business.

11 60. As discussed above, by charging marked-up fees for BPOs, Ocwen violates
12 the disclosures made to borrowers. Furthermore, the wrongful nature of the marked-up
13 fees is demonstrated by the fact that Ocwen conceals the marked-up profits assessed on
14 homeowners’ loan accounts.

15 61. Although Ocwen assesses fees for BPOs on borrowers’ accounts in the range
16 of \$100 to \$109, as of December 2010, under Fannie Mae guidelines, the maximum
17 reimbursable rate for an exterior BPO was \$80,³⁵ and in practice, the actual cost was much
18 less. According to the National Association of BPO Professionals, the actual cost of a
19 BPO may be as little as \$30.³⁶

20 62. Ocwen indisputably is aware that the actual cost of a BPO is significantly
21 less than the marked-up fee it assesses to borrowers.

22 63. In fact, Ocwen has a significant amount of experience in the BPO
23 marketplace. Beginning in mid-2000, Ocwen Federal Bank FSB (“Ocwen Bank”), a

24 _____
25 ³⁵ See Fannie Mae, *Broker Price Opinion Providers and Pricing Structure*, available at
26 <https://efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce121710a.pdf> (last visited Feb.
1, 2012).

27 ³⁶ See National Association of BPO Professionals (NABPOP), *Broker Price Opinion –*
28 *BPO Brief*, available at <http://www.nabpop.org/Advocacy-BPOBrief-2.php> (last visited
Feb. 2, 2012).

1 former wholly-owned subsidiary of OFC, began “selling” marked-up BPOs to Wall Street
2 firms acquiring large pools of underperforming loans.

3 64. Ocwen Bank’s in-house BPO shop was the subject of the litigation styled
4 *Cartel Asset Management v. Ocwen Financial Corp.*, Case No. 1:01-cv-01644-REB-CBS
5 (D. Colo.) (“*Cartel*”). In *Cartel*, Cartel Asset Management, Inc. (“CAM”), a large
6 national BPO vendor, sued OFC, Ocwen Technology XChange, Inc., and Ocwen Bank for
7 theft of CAM’s trade secret -- a confidential list of experienced, responsive and competent
8 realtors who produced high-quality BPOs.³⁷ Ocwen Bank facilitated this theft by secretly
9 copying the names and contact information of realtors identified on BPOs that it
10 purchased from CAM, and then embedding the stolen information into its own incomplete
11 database of BPO providers.³⁸

12 65. In 2004, a jury awarded CAM compensatory and punitive damages.³⁹ While
13 the judgment was on appeal, OFC dissolved Ocwen Bank and transferred the database
14 containing the stolen names and contact information to OLS, who continued to use and
15 profit from CAM’s trade secret. OLS was added as a defendant in *Cartel* after the Tenth
16 Circuit remanded for a new trial on damages. In September 2010, a jury returned a
17 verdict in CAM’s favor for more than \$13.7 million in compensatory and punitive
18 damages based on the theft of the trade secret.⁴⁰ This jury verdict covered the period up
19 through August 10, 2009, the date when OFC transferred the BPO product line and the
20 database to its affiliated company Altisource. As with OLS before it, Altisource has
21 continued to use and generate profits from CAM’s trade secret.

22 66. Notably, in *Cartel*, William C. Erbey, OFC’s Executive Chairman, offered
23 the following testimony, under penalty of perjury, concerning Ocwen Bank’s BPO
24

25 ³⁷ See *Cartel*, Case No. 1:01-cv-01644-REB-CBS, Dkt. 438 at 1-4 (D. Colo. Sept. 18,
2007).

26 ³⁸ *Id.* at 13-17.

27 ³⁹ *Id.* at 17-18.

28 ⁴⁰ *Id.*, Dkt. 825.

1 business:

2 [A]s of 2004, *[Ocwen] Bank would pay an agent or broker*
3 *approximately \$45 to \$50 to provide a BPO and then sell the*
4 *BPO for a profit.* A reviewed BPO would be sold for
5 approximately \$150 and an unreviewed BPO for approximately
6 \$70.⁴¹

7 67. Despite knowing the actual cost of a BPO is approximately \$50, Ocwen
8 routinely and repeatedly assesses borrowers BPO fees of \$100 or more, representing a
9 100% mark-up, in clear violation of the mortgage contract.

10 68. Ocwen also assesses fees for services related to the examination of the title to
11 the property securing the loan, all of which are ordered through Altisource. These fees
12 typically appear as a “Title Search” fee, a “Title Report Fee,” or fees for “FC Thru Title
13 Searches” on homeowners’ monthly statements.

14 69. Upon information and belief, the title examination fees assessed by Ocwen
15 are significantly marked-up. For example, a title search fee typically ranges between
16 \$150 and \$450. Nevertheless, Ocwen routinely charges homeowners \$829 for a “Title
17 Search.”

18 70. Using its enterprise -- comprised of affiliated companies, like Altisource, and
19 third party “property preservation” vendors -- and its automated mortgage loan
20 management system, Ocwen engaged in a scheme to fraudulently conceal and assess
21 unlawfully marked-up fees for default-related services on homeowners’ loan accounts,
22 cheating hundreds of thousands of borrowers out of hundreds of millions dollars.
23 Furthermore, to conceal its activities and mislead homeowners about the true nature of its
24 actions, Ocwen employed a corporate practice that omits the true nature of the fees that
25 are being assessed on homeowners’ loan accounts. These practices are common to all of
26 Ocwen’s files.

27 71. As a result of the practices of Ocwen’s unlawful enterprise, hundreds of
28 thousands of unsuspecting borrowers are cheated out of millions of dollars.

⁴¹ *Id.*, Dkt. 438 at 25 (emphasis added).

Ocwen Misapplies Borrowers' Payments

1
2 72. For subprime servicers such as Ocwen, late fees alone constitute a significant
3 fraction of its total income and profit. As a result, Ocwen has an incentive to push
4 homeowners into default and keep them there.

5 73. Ocwen accomplishes this objective by, *inter alia*, misapplying homeowners'
6 payments, and then cascading their loan accounts with illicit late fees.

7 74. These unlawful late fees have forced many homeowners into default, opening
8 the flood gates for additional late fees and significant charges for defaulted-related
9 services. Over time, these egregious late fees and fees for default-related services can
10 total up to thousands of dollars, making it nearly impossible for homeowners to become
11 current on their loan.

12 75. Ocwen's method of misapplying payments in order to charge innocent
13 borrowers thousands of dollars in fees and charges is a widespread practice.

14 76. Under the terms of Paragraph 2, "Application of Payments or Proceeds," of
15 the Deed of Trust in the Fannie Mae a standard form mortgage contract, there is a
16 hierarchy in which funds from customer payments are to be applied. Specifically, funds
17 are to be applied in the following order: (1) interest due under the promissory note; (2)
18 principal due under the promissory note; (3) amounts due for any "escrow items"; (4) late
19 charges; and (5) fees for default-related services and other amounts. Escrow items are
20 generally defined as taxes or assessments which may take priority over the lender's
21 interest in the property and premiums for insurance a homeowner is required to have
22 under the terms of the mortgage contract.

23 77. One way Ocwen misapplies payments is to divert a portion of the interest and
24 principal payments made by homeowners who pay their own property taxes and maintain
25 proper insurance to "escrow accounts."

26 78. An escrow account is an account set up and controlled by a lender on behalf
27 of a homeowner to pay these "escrow items." As mentioned above, a homeowners'
28 monthly payment cannot be diverted to an escrow account until that payment covers, in

1 full, the borrowers interest and principal payment due in that given month.

2 79. Ocwen routinely violates the payment hierarchy contained in homeowners'
3 mortgage contracts and diverts customer payments away from principal and interest on
4 the loan.

5 80. As a result of this violation, homeowners who timely pay their own real
6 estate taxes and insurance premiums are denied the proper interest and principal credits
7 under the loan agreement. Ocwen instead diverts a portion of the funds (which end up not
8 being needed to pay escrow items) to an escrow account or flat out rejects the payment.

9 81. Ocwen's failure to accept or properly credit homeowners' payments to cover,
10 in full, their monthly interest and principal obligations forces homeowners into default.
11 Once in default, Ocwen then makes demands that these homeowners make significant
12 payments, which are riddled with unjust late and default-related service fees.

13 82. Additionally, when Ocwen forces homeowners who pay their own property
14 taxes and maintain their own insurance into default by misapplying their payments to an
15 escrow account, these homeowners are denied the ability to access the surplus in their
16 escrow account.

17 83. Under the terms of the loan agreement, Ocwen will refund homeowners their
18 surplus escrow funds only when their loan is paid in full.

19 84. Ocwen, in essence, is using the escrow account as one way to justify the late
20 and default-related fees it charges homeowners.

21 **Homeowners Suffer Harm as a Result of Ocwen's Practices**

22 85. In addition to the direct monetary damages caused to homeowners, in the
23 form of the difference between the actual cost of the services provided and the marked-up
24 fees assessed on homeowners' loan accounts, homeowners suffer other, less obvious
25 injuries as a result of the practices described herein.

26 86. The assessment of these marked-up fees can make it impossible for
27 homeowners to become current on their loan. Charges for such default-related services
28 can add hundreds or thousands of dollars to homeowners' loans over time, driving them

1 further into default.

2 87. When homeowners get behind on their mortgage, and fees for these default-
3 related services are stacked on to the past-due principal and interest payments, Ocwen's
4 practices make it increasingly difficult for homeowners to ever bring their loan current.
5 Even if homeowners pay the delinquent principal and interest payments, the late and
6 default-related service fees ensure that homeowners stay in default. Although the next
7 payment comes in on time, often through automatic payment deductions from
8 homeowners' bank accounts, part of the payment is applied to the fees first, so there is not
9 enough to cover the entire monthly payment. This makes that payment late, creating a
10 cascade of more fees, and more arrears, that keeps homeowners in delinquency. By the
11 time homeowners are aware, Ocwen is threatening to foreclose unless a huge payment is
12 made, and the weight of these marked-up fees drops homeowners into a financial abyss.

13 88. Additionally, as a result of Ocwen's practices, which force homeowners to
14 move deeper into default, homeowners are driven into foreclosure.

15 **Plaintiff's Claims Against Ocwen**

16 89. Plaintiff Weiner is a resident of Amador County, California.

17 90. Plaintiff Weiner originated his loan with Mylor Financial on December 10,
18 2003, for \$322,700 at 6.5000%. His monthly interest and principal payment was
19 \$2,039.68.

20 91. Prior to late 2012 or early 2013, GMAC serviced Plaintiff Weiner's
21 mortgage. However, on or around late 2012 or early 2013, Ocwen took over the servicing
22 of Plaintiff Weiner's mortgage.

23 92. Ocwen misapplied Plaintiff Weiner's principal and interest payment to an
24 escrow account established after GMAC paid Plaintiff Weiner's property taxes in 2010.

25 93. Plaintiff Weiner fully reimbursed GMAC in early 2011 for the property taxes
26 it paid. He also paid a \$400 escrow fee. Following this incident, Plaintiff Weiner had
27 telephone conversations with GMAC staff where he arranged that he would pay his own
28 property taxes going forward. Plaintiff Weiner promised to provide timely proof of said

1 payments.

2 94. Since making this arrangement, Plaintiff Weiner has paid in full all property
3 taxes associated with his property and has maintained the proper insurance required by his
4 mortgage contract. Plaintiff Weiner also has always provided Ocwen with timely notice
5 of his property tax payments.

6 95. Notwithstanding Plaintiff Weiner's timely property tax and insurance
7 premium payments, Ocwen charges Plaintiff Weiner a fee of \$600 per year for
8 maintaining an escrow account, and it has failed to properly apply his interest and
9 principal payments to his loan. Instead, Ocwen has diverted funds to his escrow account.
10 Although Ocwen has never once used it to pay property taxes or insurance, and Plaintiff
11 Weiner's escrow account has a positive balance of more than \$10,000. More recently,
12 Ocwen has flat out rejected Plaintiff Weiner's interest and principal payments on the basis
13 that they are not sufficient to satisfy the defaulted amount on the loan, *i.e.*, interest and
14 principal *plus* escrow fees.

15 96. By diverting a portion of Plaintiff Weiner's interest and principal payments
16 to an escrow account, Ocwen has failed to properly credit Plaintiff Weiner's account.

17 97. Ocwen's failure to properly credit Plaintiff Weiner's interest and principal
18 payments has burdened his account with unscrupulous fees and has forced his loan into
19 default.

20 98. Plaintiff Weiner not only has been denied the right to have his payments
21 applied correctly to his loan account, but he has also been unable to claim interest
22 deductions on his federal and state tax returns, refinance his loan, has been subjected to
23 harassing telephone calls, and has been under the constant fear of imminent foreclosure.

24 99. Because Ocwen has forced his loan into default, Plaintiff Weiner has been
25 denied access to the surplus in his escrow account.

26 100. Ocwen also continually assessed marked-up fees for default-related services
27 on the mortgage account of Plaintiff Weiner, thereby subjecting him to an invalid debt.

28 101. Ocwen assessed BPO fees of \$109 and \$100 on the mortgage account of

1 Plaintiff Weiner on September 4, 2013 and February 27, 2014, respectively.

2 102. Ocwen also charged Plaintiff Weiner a series of title report, title search, and
3 other default-related service fees that are either not legally due under the mortgage
4 contract and applicable law, or that are in excess of amounts legally due.

5 103. Ocwen assessed a “Title Search” fee in the amount of \$829 on the mortgage
6 account of Plaintiff Weiner on June 9, 2014.

7 104. Ocwen alone maintains a complete accounting of all fees assessed and paid,
8 and the details of each and every fee assessed and paid cannot be alleged with complete
9 precision without access to Ocwen’s records. Nevertheless, Plaintiff Weiner is informed
10 and believes, and on that basis alleges, that he paid some or all of the unlawful fees
11 assessed on his account.

12 **STATUTE OF LIMITATIONS**

13 105. Any applicable statutes of limitations have been tolled by Ocwen’s knowing
14 and active concealment, denial, and misleading actions, as alleged herein. Plaintiff and
15 members of the Class, as defined below, were kept ignorant of critical information
16 required for the prosecution of their claims, without any fault or lack of diligence on their
17 part. Plaintiff and members of the Class could not reasonably have discovered the true
18 nature of the Ocwen’s scheme.

19 106. Ocwen is under a continuous duty to disclose to Plaintiff and members of the
20 classes the true character, quality, and nature of the default-related service fees they assess
21 on borrowers’ accounts. Ocwen knowingly, affirmatively, and actively concealed, and
22 continues to conceal, the true character, quality, and nature of its assessment of marked-up
23 fees on homeowners’ loan accounts. Plaintiff and members of the Class reasonably relied
24 upon Ocwen’s knowing, affirmative, and active concealment. Based on the foregoing,
25 Ocwen is estopped from relying on any statutes of limitation as a defense in this action.

26 107. The causes of action alleged herein did or will only accrue upon discovery of
27 the true nature of the charges assessed against borrowers’ accounts, as a result of Ocwen’s
28 continuing fraudulent concealment of material facts. Plaintiff and members of the Class

1 did not discover, and could not have discovered, through the exercise of reasonable
2 diligence, the true nature of the unlawful fees assessed against their accounts.

3 108. Legal scholars have explained that, as a result of these deceptive practices, it
4 is impossible for borrowers to determine that they are victims of these violations, because
5 “without a true itemization that identifies the nature of each fee, parties cannot verify that
6 a mortgage claim is correctly calculated . . . the servicer could be overreaching and
7 charging fees that are not permitted by law or by the terms of the contract. . . . By
8 obscuring the information needed to determine the alleged basis for the charges, servicers
9 thwart effective review of mortgage claims. The system can only function as intended if
10 complete and appropriate disclosures are made.”⁴²

11 109. Additionally, judges examining similar conduct have found that, “[a]t the
12 heart of the problem is [the loan servicer’s] failure to disclose to its borrowers/debtors, the
13 trustee, or the Court, the nature or amount of fees and charges assessed . . . [l]ack of
14 disclosure facilitates the injury. Naive borrowers/debtors, trustees and creditors rightly
15 assume that [the loan servicer] is complying with the plain meaning of its notes,
16 mortgages, court orders and confirmed plans. Why would anyone assume otherwise? . . .
17 How are they to challenge a practice or demand correction of an error they do not know
18 exists.”⁴³

19 **CLASS ACTION ALLEGATIONS**

20 110. Plaintiff brings this action, on behalf of himself and all others similarly
21 situated, as a class action under Rule 23 of the Federal Rules of Civil Procedure.

22 111. The classes Plaintiff seeks to represent (collectively, the “Class”) are defined
23 as follows:
24
25

26 _____
27 ⁴² See Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87
28 Tex. L. Rev. 121, 155 (2008).

⁴³ See *In re: Jones*, 418 B.R. 687, 699 (E.D. La. 2009).

1 All residents of the United States of America who had a loan
2 serviced by Ocwen, continuing through the date of final
3 disposition of this action (the “Class”).

4 All residents of the State of California who had a loan serviced
5 by Ocwen, continuing through the date of final disposition of
6 this action (the “California Subclass”).

7 112. Plaintiff reserves the right to amend the Class definitions if discovery and
8 further investigation reveals that the Class should be expanded or otherwise modified.

9 113. Plaintiff reserves the right to establish sub-classes as appropriate.

10 114. This action is brought and properly may be maintained as a class action
11 under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2)
12 or (b)(3), and satisfies the requirements thereof. As used herein, the term “Class
13 Members” shall mean and refer to the members of the Class.

14 115. Numerosity: While the exact number of members of the Class is unknown to
15 Plaintiff at this time and can only be determined by appropriate discovery, membership in
16 the Class is ascertainable based upon the records maintained by Ocwen. At this time,
17 Plaintiff is informed and believe that the Class includes hundreds of thousands of
18 members. Therefore, the Class is sufficiently numerous that joinder of all members of the
19 Class in a single action is impracticable under Federal Rule of Civil Procedure Rule
20 23(a)(1), and the resolution of their claims through the procedure of a class action will be
21 of benefit to the parties and the Court.

22 116. Ascertainability: Names and addresses of members of the Class are available
23 from Ocwen. Notice can be provided to the members of the Class through direct mailing,
24 publication, or otherwise using techniques and a form of notice similar to those
25 customarily used in consumer class actions arising under California state law and federal
26 law.

27 117. Typicality: Plaintiff’s claims are typical of the claims of the other members
28 of the Class which they seek to represent under Federal Rule of Civil Procedure 23(a)(3)
because each Plaintiff and each member of the Class has been subjected to the same

1 deceptive and improper practices and has been damaged in the same manner thereby.

2 118. Adequacy: Plaintiff will fairly and adequately represent and protect the
3 interests of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4).

4 Plaintiff is an adequate representative of the Class, because he has no interests which are
5 adverse to the interests of the members of the Class. Plaintiff is committed to the
6 vigorous prosecution of this action and, to that end, Plaintiff has retained counsel who are
7 competent and experienced in handling class action litigation on behalf of consumers.

8 119. Superiority: A class action is superior to all other available methods of the
9 fair and efficient adjudication of the claims asserted in this action under Federal Rule of
10 Civil Procedure 23(b)(3) because:

- 11 (a) the expense and burden of individual litigation make it economically
12 unfeasible for members of the Class to seek to redress their claims
13 other than through the procedure of a class action;
- 14 (b) if separate actions were brought by individual members of the Class,
15 the resulting duplicity of lawsuits would cause members to seek to
16 redress their claims other than through the procedure of a class action;
17 and
- 18 (c) absent a class action, Ocwen likely would retain the benefits of their
19 wrongdoing, and there would be a failure of justice.

20 120. Common questions of law and fact exist as to the members of the Class, as
21 required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any questions
22 which affect individual members of the Class within the meaning of Federal Rule of Civil
23 Procedure 23(b)(3).

24 121. The common questions of fact include, but are not limited to, the following:

- 25 (a) Whether Ocwen engaged in unlawful, unfair, misleading, or deceptive
26 business acts or practices in violation of California Business &
27 Professions Code sections 17200 *et seq.*;

- 1 (b) Whether Ocwen's practice of charging marked-up fees to borrowers,
2 as alleged herein, is illegal;
- 3 (c) Whether Ocwen's practice of misapplying borrowers' payments, as
4 alleged herein, is illegal;
- 5 (d) Whether Ocwen was a member of, or participant in, the conspiracy
6 alleged herein;
- 7 (e) Whether Ocwen engaged in a pattern or practice of racketeering, as
8 alleged herein;
- 9 (f) Whether documents and statements provided to Plaintiff and members
10 of the Class concealed material facts;
- 11 (g) Whether Plaintiff and members of the class sustained damages, and if
12 so, the appropriate measure of damages; and
- 13 (h) Whether Plaintiff and members of the Class are entitled to an award of
14 reasonable attorneys' fees, pre-judgment interest, and costs of this suit.

15 122. In the alternative, this action is certifiable under the provisions of Federal
16 Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- 17 (a) The prosecution of separate actions by individual members of the
18 Class would create a risk of inconsistent or varying adjudications with
19 respect to individual members of the Class which would establish
20 incompatible standards of conduct for Ocwen;
- 21 (b) The prosecution of separate actions by individual members of the
22 Class would create a risk of adjudications as to them which would, as a
23 practical matter, be dispositive of the interests of the other members of
24 the Class not parties to the adjudications, or substantially impair or
25 impede their ability to protect their interests; and
- 26 (c) Ocwen has acted or refused to act on grounds generally applicable to
27 the Class, thereby making appropriate final injunctive relief or
28 corresponding declaratory relief with respect to the Class as a whole

1 and necessitating that any such relief be extended to members of the
2 Class on a mandatory, class-wide basis.

3 123. Plaintiff is not aware of any difficulty which will be encountered in the
4 management of this litigation which should preclude its maintenance as a class action

5 **FIRST CAUSE OF ACTION**

6 **BROUGHT ON BEHALF OF THE CALIFORNIA SUBCLASS**

7 **Violation of California's Unfair Competition Law**
8 **(California Business & Professions Code §§ 17200 *et seq.*)**

9 124. Plaintiff incorporates by reference in this cause of action each and every
10 allegation of the preceding paragraphs, with the same force and effect as though fully set
11 forth herein.

12 125. Plaintiff Weiner brings this cause of action on behalf of himself and the
13 members of the California Subclass.

14 126. California Business and Professions Code section 17200 prohibits “any
15 unlawful, unfair or fraudulent business act or practice.” For the reasons described above,
16 Ocwen has engaged in unfair, or fraudulent business acts or practices in violation of
17 California Business and Professions Code sections 17200 *et seq.*

18 127. In the course and conduct of their loan servicing and collection, Ocwen
19 knowingly, affirmatively, and actively concealed the true character, quality, and nature of
20 their assessment of marked-up default-related service fees against borrowers' accounts.
21 Relying on Ocwen, Plaintiff Weiner, and members of the California Subclass believe they
22 are obligated to pay the amounts specified in Ocwen's communications.

23 128. In truth and in fact, borrowers are not obligated to pay the amounts that have
24 been specified in Ocwen's communications concerning default-related services, including
25 BPOs and title searches. Ocwen disguises the fact that the amounts they represent as
26 being owed have been marked-up beyond the actual cost of the services, violating the
27 disclosures in the mortgage contract. Contrary to Ocwen's communications, they are not
28 legally authorized to assess and collect these marked-up fees.

129. Ocwen's knowing, affirmative, and active concealment, as set forth herein,

1 constitutes an “unlawful” practice because it violates Title 18 United States Code sections
2 1341, 1343, and 1962, as well as California Civil Code sections 1572, 1573, 1709, 1710,
3 and 1711, California’s Rosenthal Fair Debt Collection Practices Act, and the common
4 law.

5 130. Ocwen’s practice of misapplying borrowers payment, thereby breaching
6 borrowers’ mortgage contracts, also constitutes an “unlawful” practice in violation of
7 California Business and Professions Code sections 17200 *et seq.*

8 131. Ocwen’s knowing, affirmative, and active concealment, as set forth herein,
9 also constitute “unfair” business acts and practices within the meaning of California
10 Business and Professions Code sections 17200 *et seq.*, in that Ocwen’s conduct was
11 injurious to consumers, offended public policy, and was unethical and unscrupulous.
12 Plaintiff Weiner also asserts a violation of public policy by concealing material facts from
13 consumers. Ocwen’s violation of California’s consumer protection and unfair
14 competition laws in California resulted in harm to consumers.

15 132. There were reasonable alternatives available to Ocwen to further their
16 legitimate business interests, other than the conduct described herein.

17 133. California Business and Professions Code section 17200 also prohibits any
18 “fraudulent business act or practice.” Ocwen’s concealment of material facts, as set forth
19 above, was false, misleading, or likely to deceive the public within the meaning of
20 California Business and Professions Code section 17200. Ocwen’s concealment was
21 made with knowledge of its effect, and was done to induce Plaintiff Weiner and members
22 of the California Subclass to pay the marked-up default related service fees.

23 134. Plaintiff Weiner and members of the California Subclass relied on their
24 reasonable expectation that Ocwen would comply with the disclosures set forth in the
25 mortgage agreement, Notes, and Deeds of Trust, and as a result, Plaintiff Weiner and
26 members of the California Subclass relied on Ocwen’s disclosures about the fees on their
27 statements, reasonably believing the default-related service fees to be valid charges that
28 were not marked-up. Indeed, to lull borrowers into a sense of trust and dissuade them

1 from challenging Ocwen's unlawful fee assessment, Ocwen concealed their scheme from
2 borrowers by telling them, in statements and other documents, that such fees are in
3 accordance with the terms of their mortgage. Had the true nature of the fees been
4 disclosed to Plaintiff Weiner and the members of the California Subclass, they would
5 have been aware of the mark-ups and Plaintiff Weiner and the members of the California
6 Subclass would have disputed the charges and not paid them.

7 135. Plaintiff Weiner and the members of the California Subclass have been
8 injured in fact and suffered a loss of money or property as a result of Ocwen's fraudulent,
9 unlawful, and unfair business practices. Plaintiff Weiner and the members of the
10 California Subclass would not have paid Ocwen's unlawful fees or they would have
11 challenged the assessment of such fees on their accounts had it not been for Ocwen's
12 concealment of material facts.

13 136. Ocwen has thus engaged in unlawful, unfair, and fraudulent business acts
14 entitling Plaintiff Weiner and the members of the California Subclass to judgment and
15 equitable relief against Ocwen, as set forth in the Prayer for Relief.

16 137. Additionally, under Business and Professions Code section 17203, Plaintiff
17 Weiner and members of the California Subclass seek an order requiring Ocwen to
18 immediately cease such acts of unlawful, unfair, and fraudulent business practices, and
19 requiring Ocwen to correct its actions.

20 **SECOND CAUSE OF ACTION**

21 **Violations of the Racketeer Influenced and Corrupt Organizations Act** 22 **(18 U.S.C. § 1962(c))**

23 138. Plaintiff incorporates by reference in this cause of action each and every
24 allegation of the preceding paragraphs, with the same force and effect as though fully set
25 forth herein.

26 139. Plaintiff brings this cause of action on behalf of himself and the members of
27 the Class.
28

THE ENTERPRISE

1
2 140. Defendants OFC and OLS are “persons” within the meaning of Title 18
3 United States Code section 1961(3).

4 141. At all relevant times, in violation of Title 18 United States Code section
5 1962(c), Ocwen, including their directors, employees, and agents, along with Altisource
6 and Ocwen’s property preservation vendors conducted the affairs of an associated-in-fact
7 enterprise, as that term is defined in Title 18 United States Code section 1961(4) (the
8 “Ocwen Enterprise”). The affairs of the Ocwen Enterprise affected interstate commerce
9 through a pattern of racketeering activity.

10 142. The Ocwen Enterprise is an ongoing, continuing group or unit of persons and
11 entities associated together for the common purpose of limiting costs and maximizing
12 profits by fraudulently concealing assessments for unlawfully marked-up fees for default-
13 related services on homeowners’ loan accounts.

14 143. While the members of the Ocwen Enterprise participate in and are part of the
15 enterprise, they also have an existence separate and distinct from the enterprise. The
16 Ocwen Enterprise has a systematic linkage because there are contractual relationships,
17 agreements, financial ties, and coordination of activities between Ocwen, Altisource, and
18 the vendors that perform the default-related services.

19 144. Operating the Ocwen Enterprise according to policies and procedures
20 developed and established by its executives, Ocwen controls and directs the affairs of the
21 Ocwen Enterprise and uses the other members of the Ocwen Enterprise as
22 instrumentalities to carry out Ocwen’s fraudulent scheme.

23 145. These policies and procedures established by Ocwen’s executives include:
24 funneling default-related services through its affiliated company, Altisource, to disguise
25 unlawful mark-ups of services provided by third parties; providing statements that conceal
26 the true nature of the marked-up default related service fees; using mortgage loan
27 management software designed to assess undisclosed marked-up fees on borrowers
28 accounts; and failing to provide borrowers with accurate documentation to support

1 assessments of fees for BPOs.

2 146. By developing and implementing policies and procedures leading to the
3 repeated, and unlawful, assessment of marked-up fees for default-related services, Ocwen
4 engaged in the conduct of the Ocwen Enterprise distinct from Ocwen's own affairs as a
5 loan servicer.

6 **THE PREDICATE ACTS**

7 147. The Ocwen Enterprise's systematic scheme to fraudulently conceal
8 unlawfully marked-up third party fees on the mortgage accounts of homeowners who
9 have mortgage loans administered by Ocwen, as described above, was facilitated by the
10 use of the United States Mail and wire. The Ocwen Enterprise's scheme constitutes
11 "racketeering activity" within the meaning of Title 18 United States Code section 1961(1),
12 as acts of mail and wire fraud, under Title 18 United States Code sections 1341 and 1343.

13 148. In violation of Title 18 United States Code sections 1341 and 1343, the
14 Ocwen Enterprise utilized the mail and wire in furtherance of their scheme to defraud
15 borrowers whose loans are serviced by Ocwen by obtaining money from borrowers using
16 false or fraudulent pretenses.

17 149. Through the mail and wire, the Ocwen Enterprise provided mortgage
18 invoices, loan statements, payoff demands, or proofs of claims to homeowners,
19 affirmatively demanding that homeowners pay marked-up fees for default-related
20 services. Defendants also accepted payments and engaged in other correspondence in
21 furtherance of their scheme through the mail and wire.

22 150. The Ocwen Enterprise fraudulently and unlawfully assessed marked-up
23 default-related service fees in violation of the disclosures made in homeowners' mortgage
24 agreements.

25 151. Furthermore, to lull homeowners into a sense of trust and dissuade them from
26 challenging Ocwen's unlawful fee assessment, Ocwen concealed their scheme from
27 borrowers by telling them, in statements and other documents, that such fees are in
28 accordance with the terms of their mortgage.

1 152. The mortgage invoices, loan statements, or proofs of claims provided to
2 borrowers disguised the fact that the default-related service fees assessed on homeowners'
3 accounts were marked-up. By disguising the true nature of amounts purportedly owed in
4 communications to borrowers, the Ocwen Enterprise made false statements using the
5 Internet, telephone, facsimile, United States mail, and other interstate commercial carriers.

6 153. This fraudulent concealment was material to Plaintiff and the members of the
7 Class. Had the Ocwen Enterprise disclosed the true nature of the fees for default-related
8 services, Plaintiff would have been aware of the mark-up, and would have challenged
9 Ocwen's unlawful fee assessments or would not have paid them.

10 154. Each of these acts constituted an act of mail fraud for purposes of Title 18
11 United States Code section 1341.

12 155. Additionally, using the Internet, telephone, and facsimile transmissions to
13 fraudulently communicate false information about these fees to borrowers, to pursue and
14 achieve their fraudulent scheme, the Ocwen Enterprise engaged in repeated acts of wire
15 fraud in violation of Title 18 United States Code section 1343.

16 156. The Ocwen Enterprise's knowledge that its activities were fraudulent and
17 unlawful is evidenced by, among other things, the fact that they concealed the marked-up
18 nature of the default-related service fees in their communications to borrowers.

19 157. The predicate acts specified above constitute a "pattern of racketeering
20 activity" within the meaning of Title 18 United States Code section 1961(5) in which the
21 Ocwen Enterprise have engaged under Title 18 United States Code section 1962(c).

22 158. All of the predicate acts of racketeering activity described herein are part of
23 the nexus of the affairs and functions of the Ocwen Enterprise racketeering enterprise.
24 The racketeering acts committed by the Ocwen Enterprise employed a similar method,
25 were related, with a similar purpose, and they involved similar participants, with a similar
26 impact on the members of the Class. Because this case is brought on behalf of a class of
27 similarly situated borrowers and there are numerous acts of mail and wire fraud that were
28 used to carry out the scheme, it would be impracticable for Plaintiff to plead all of the

1 details of the scheme with particularity. Plaintiff cannot plead the precise dates of all of
2 the Ocwen Enterprise's uses of the mail and wire because this information cannot be
3 alleged without access to the Ocwen Enterprise's records.

4 159. The pattern of racketeering activity is currently ongoing and open-ended, and
5 threatens to continue indefinitely unless this Court enjoins the racketeering activity.

6 160. Numerous schemes have been completed involving repeated unlawful
7 conduct that by its nature, projects into the future with a threat of repetition.

8 161. As a direct and proximate result of these violations of Title 18 United States
9 Code sections 1962(c) and (d), Plaintiff and members of the class have suffered
10 substantial damages. Members of the Ocwen Enterprise are liable to Plaintiff and
11 members of the Class for treble damages, together with all costs of this action, plus
12 reasonable attorney's fees, as provided under Title 18 United States Code section 1964(c).

13 **THIRD CAUSE OF ACTION**

14 **Violation of the Racketeer Influenced and Corrupt Organizations Act,
15 Conspiracy to Violate Title 18 United States Code section 1962(c)
16 (18 U.S.C. § 1962(d))**

17 162. Plaintiff incorporates by reference in this cause of action each and every
18 allegation of the preceding paragraphs, with the same force and effect as though fully set
19 forth herein.

20 163. Plaintiff brings this cause of action on behalf of himself and the members of
21 the Nationwide Class.

22 164. As set forth above, in violation of Title 18 United States Code section
23 1962(d), Defendants conspired to violate the provisions of Title 18 United States Code
24 section 1962(c).

25 165. As set forth above, Ocwen, having directed and controlled the affairs of the
26 the Ocwen Enterprise, was aware of the nature and scope of the enterprise's unlawful
27 scheme, and they agreed to participate in it.

28 166. As a direct and proximate result, Plaintiff and the members of the Class have
been injured in their business or property by the predicate acts which make up the Ocwen

1 Enterprise's patterns of racketeering activity in that marked-up fees for default-related
2 services were assessed on their mortgage accounts.

3 **FOURTH CAUSE OF ACTION**

4 **BROUGHT ON BEHALF OF THE CALIFORNIA SUBCLASS**
5 **Violations of the Rosenthal Fair Debt Collection Practices Act**
6 **(California Civil Code §§ 1788, *et seq.*)**

7 167. Plaintiff incorporates by reference in this cause of action each and every
8 allegation of the preceding paragraphs, with the same force and effect as though fully set
9 forth herein.

10 168. Defendants are "debt collectors" within the meaning of California Civil Code
11 section 1788.2(c), because Defendants sent mortgage bills to Plaintiff and members of the
12 California Subclass, Plaintiff and members of the California Subclass made their
13 mortgage payments to Defendants, Defendants accepted those payments, and Defendants
14 made demands for payment, including the payment of marked-up fees for default-related
15 services, by sending letters, making telephone calls, and other attempts to collect
16 mortgage payments and fees.

17 169. The marked-up fees for default-related services purportedly owed by Plaintiff
18 and members of the California Subclass are a "debt" within the meaning of California
19 Civil Code section 1788.2(d), because they are "money, property or their equivalent
20 which [are] due or owing or alleged to be due or owing from a natural person to another
21 person."

22 170. As alleged herein, and as set forth in detail above, Defendants have
23 committed violations of the Rosenthal Fair Debt Collection Practices Act, California Civil
24 Code section 1788, *et seq.* ("RFDCPA"), which incorporates by reference, and requires
25 compliance with, the provisions of the federal Fair Debt Collection Practices Act
26 ("FDCPA), 15 U.S.C. § 1692

27 171. The FDCPA and, therefore, the RFDCPA, prohibits a debt collector from
28 using "any false, deceptive, or misleading representation or means in connection with the

1 collection of any debt.” 15 U.S.C. § 1692e

2 172. Defendants knowingly, affirmatively, and actively concealed and suppressed
3 material facts, namely the fact that Defendants assessed borrowers’ accounts for marked-
4 up default-related services. Contrary to Ocwen’s communications, they are not legally
5 authorized to assess and collect these marked-up fees.

6 173. Pursuant to California Civil Code sections 1788.17 and 1788.30, Plaintiff and
7 members of the California Subclass are entitled to recover actual damages sustained as a
8 result of Defendants’ violations of the RFDCPA. Such damages include, without
9 limitation, monetary losses and damages. Additionally, because Defendants’ violations of
10 the RFDCPA were committed willingly and knowingly, Plaintiff and members of the
11 California Subclass are entitled to recover penalties of up to \$1,000 per violation as
12 provided for in the RFDCPA.

13 174. Pursuant to California Civil Code sections 1788.17 and 1788.30, Plaintiff and
14 the California Subclass are entitled to recover all attorneys’ fees, costs, and expenses
15 incurred in the bringing of this action.

16 **FIFTH CAUSE OF ACTION**

17 **Unjust Enrichment**

18 175. Plaintiff incorporates by reference in this cause of action each and every
19 allegation of the preceding paragraphs, with the same force and effect as though fully set
20 forth herein.

21 176. Plaintiff brings this cause of action on behalf of himself and the members of
22 the Class.

23 177. By their wrongful acts and omissions of material facts, Ocwen was unjustly
24 enriched at the expense of Plaintiff and members of the Class.

25 178. The mortgage contract with borrowers like Plaintiff and the members of the
26 Class discloses that Ocwen will pay for default-related services when necessary, and they
27 will be reimbursed by the homeowner. Nowhere in the mortgage contract is it disclosed
28 that Ocwen may mark-up the actual cost of those services to make a profit.

1 179. Nevertheless, Ocwen marks-up the prices charged by vendors, often by 100%
2 or more, and then, assesses borrowers' accounts for the higher, marked-up fee so that
3 Ocwen can earn a profit.

4 180. Furthermore, to lull homeowners into a sense of trust and dissuade them from
5 challenging Ocwen's unlawful fee assessment, Ocwen further conceals their scheme from
6 borrowers by telling them, in statements and other documents, that such fees are in
7 accordance with the terms of their mortgage.

8 181. Thus, Plaintiff and members of the Class were unjustly deprived.

9 182. It would be inequitable and unconscionable for Ocwen to retain the profit,
10 benefit and other compensation they obtained from their fraudulent, deceptive, and
11 misleading conduct alleged herein.

12 183. Plaintiff and members of the Class seek restitution from Ocwen, and seek an
13 order of this Court disgorging all profits, benefits, and other compensation obtained by
14 Ocwen from their wrongful conduct.

15 SIXTH CAUSE OF ACTION

16 **Fraud**

17 184. Plaintiff incorporates by reference in this cause of action each and every
18 allegation of the preceding paragraphs, with the same force and effect as though fully set
19 forth herein.

20 185. Plaintiff brings this cause of action on behalf of himself and the members of
21 the Nationwide Class.

22 186. Plaintiff reasonably expected that Ocwen would comply with the disclosures
23 set forth in the mortgage agreement, Notes, Deeds of Trust, and as a result, Plaintiff relied
24 on Ocwen's disclosures about the fees on their statements, reasonably believing the
25 default-related service fees to be valid charges that were not marked-up.

26 187. To lull homeowners into a sense of trust and dissuade them from challenging
27 Ocwen's unlawful fee assessment, Ocwen concealed their scheme from borrowers by
28 telling them, in statements and other documents, that such fees are in accordance with the

1 terms of their mortgage.

2 188. Had the true nature of the fees been disclosed to Plaintiff and members of the
3 Class, they would have been aware of the mark-up, and Plaintiff would have disputed the
4 charges and not paid them.

5 189. As a result of Ocwen's fraudulent concealment, Plaintiff and members of the
6 Class have been injured in fact and suffered a loss of money or property. Plaintiff and
7 members of the Nationwide Class would have challenged the assessment of such fees on
8 their accounts had it not been for Ocwen's concealment of material facts.

9 190. Ocwen concealed material facts, as discussed above, with knowledge of the
10 effect of concealing of these material facts. Ocwen knew that by misleading consumers,
11 they would generate higher profits.

12 191. Plaintiff and members of the Nationwide Class justifiably relied upon
13 Ocwen's knowing, affirmative, and active concealment. By concealing material
14 information about their scheme to assess marked-up default-related service fees on
15 borrowers' accounts, Ocwen intended to induce Plaintiff and members of the Nationwide
16 Class into believing that they owed Ocwen money that it was not actually entitled to.

17 192. Ocwen acted with malice, oppression, or fraud.

18 193. As a direct and proximate result of Ocwen's omissions and active
19 concealment of material facts, Plaintiff and each member of the Nationwide Class has
20 been damaged in an amount according to proof at trial.

21 **SIXTH CAUSE OF ACTION**

22 **Breach of Contract**

23 194. Plaintiff incorporates by reference in this cause of action each and every
24 allegation of the preceding paragraphs, with the same force and effect as though fully set
25 forth herein.

26 195. Plaintiff brings this cause of action on behalf of himself and the members of
27 the Nationwide Class.

28 196. Ocwen assumed the obligations of Plaintiff's mortgage agreement, and the

1 mortgage agreement of all Class members, when it took over the servicing of their loans.

2 197. Plaintiff satisfied his obligations under the mortgage agreement by making
3 timely payments of principal and interest.

4 198. Ocwen is in breach of contract by misapplying payments submitted by
5 Plaintiff and members of the Class, placing such payments in suspense accounts without
6 authorization by the mortgage agreements, and assessing late fees not authorized under
7 the mortgage agreement.

8 199. Ocwen knew or should have known that misapplying timely payments was
9 and continues to be a material breach of homeowners' mortgage agreements.

10 200. Ocwen is in further breach of contract by treating Plaintiff and members of
11 the Class as if they were in default due to the misapplied payments, when, in fact, Plaintiff
12 and members of the Class are not delinquent under the mortgage agreement.

13 201. As a proximate result of Ocwen's breaches, Plaintiff and members of the
14 Class have suffered compensatory damages in an amount to be proven at trial.

15 **PRAYER FOR RELIEF**

16 Plaintiff, and on behalf of himself and the Class of all others similarly situated,
17 requests that the Court to enter judgment against Ocwen, as follows:

- 18 1. Certifying the Class, as requested herein, certifying Plaintiff as the
19 representative of the Class, and appointing Plaintiff's counsel as counsel for the Class;
- 20 2. Ordering that Ocwen is financially responsible for notifying all members of
21 the Class of the alleged fraudulent concealment discussed herein;
- 22 3. Awarding Plaintiff and the members of the Class compensatory damages in
23 an amount according to proof at trial;
- 24 4. Awarding restitution and disgorgement of Ocwen's revenues or profits to
25 Plaintiff and members of the Class;
- 26 5. Awarding Plaintiff and the members of the Class treble damages in an
27 amount according to proof at trial;
- 28 6. Awarding declaratory and injunctive relief as permitted by law or equity,

1 including: enjoining Ocwen from continuing the unlawful practices as set forth herein,
2 and directing Ocwen to identify, with Court supervision, victims of its conduct and pay
3 them restitution and disgorgement of all monies acquired by Ocwen by means of any act
4 or practice declared by this Court to be wrongful;

5 7. Ordering Ocwen to engage in corrective advertising;

6 8. Awarding interest on the monies wrongfully obtained from the date of
7 collection through the date of entry of judgment in this action;

8 9. Awarding attorneys' fees, expenses, and recoverable costs reasonably
9 incurred in connection with the commencement and prosecution of this action; and

10 10. For such other and further relief as the Court deems just and proper.

11 Dated: November 5, 2014 BARON & BUDD, P.C.

12 By: /s/ Mark Pifko
13 Mark Pifko

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similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: November 5, 2014 BARON & BUDD, P.C.

By: /s/ Mark Pifko
Mark Pifko

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