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20 **UNITED STATES DISTRICT COURT**
 21 **EASTERN DISTRICT OF CALIFORNIA**
 22 **SACRAMENTO DIVISION**

23 KRISTINA WUEST, individually and on)
 24 behalf of all others similarly situated,)

25 Plaintiff,)

26 v.)

27 SUN WEST MORTGAGE COMPANY,)
 28 INC., a California corporation,)

29 Defendant.)

Case No.:

CLASS ACTION COMPLAINT

Jury Trial Demanded

30 **CLASS ACTION COMPLAINT**

31 Plaintiff Kristina Wuest (“Plaintiff”), on behalf of herself and all persons similarly situated, for her
 32 claims against defendant Sun West Mortgage Company, Inc. (“Sun West”), alleges:

NATURE OF THE ACTION

1
2 1. This case involves Sun West’s unlawful practice of collecting “post-payment” interest
3 on loans insured by the Federal Housing Administration (“FHA”) without first complying with the
4 uniform provisions of the promissory notes and the FHA regulations governing these loans.

5 2. FHA regulations prohibit lenders from collecting interest from a borrower after the
6 borrower has paid off the full amount of the unpaid principal of the loan (i.e., the lender charges
7 interest through the end of the month even when the loan is repaid in full before the end of the month)
8 unless two strict conditions are met: (a) the borrower pays the full unpaid principal on a day “other
9 than an installment due date” and (b) the lender provides certain disclosures to the borrower on “a
10 form approved by the Commissioner [of the FHA].” 24 C.F.R. § 203.558(b) (2014).

11 3. The Department of Housing and Urban Development (“HUD”) requires the use of its
12 approved form to ensure it is clear to borrowers that the lender is seeking to collect post-payment
13 interest, the terms under which the lender can collect post-payment interest, and how a borrower can
14 avoid post-payment interest charges (the “Disclosures”). See HUD Housing Handbook, Administration
15 of Insured Home Mortgages, 4330.1 REV-5 App. 8(C).

16 4. Despite the provisions of the promissory notes and the HUD regulations prohibiting
17 lenders from collecting post-payment interest unless borrowers are provided the Disclosures in an
18 FHA-approved form, Sun West does not use the FHA-approved form. Instead, Sun West fails to
19 provide any disclosures at all to the borrower that post-payment interest will be collected or that post-
20 payment interest can be avoided by paying on the first of the month.

21 5. Because Sun West does not provide any of the required Disclosures, and does not use
22 the FHA-approved form as required by the promissory note and the HUD regulations, Sun West
23 cannot collect post-payment interest from borrowers.

24 6. Nevertheless, Sun West systematically collected post-payment interest from Plaintiff
25 and the Class in breach of their contracts.

26 7. Plaintiff and all Class Members, as defined below, are entitled to recoup the post-
27 payment interest they paid because of Sun West’s unlawful conduct, and Plaintiff brings this action on
28 behalf of herself and all Class Members for breach of contract.

PARTIES

8. Plaintiff Kristina Wuest is a natural person and citizen of California residing in Rancho Cordova, California in Sacramento County.

9. Defendant Sun West Mortgage Company, Inc. is a California corporation with its principal place of business in Cerritos, California. Sun West held FHA-insured loans for Plaintiff and other Class Members that have since been paid off in full. Sun West is a citizen of California. *See* 28 U.S.C. § 1348.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (a) the class has more than 100 members; (b) the amount in controversy exceeds \$5 million, exclusive of interest and costs; and (c) some putative class members are citizens of a different state from Sun West.

11. This Court has personal jurisdiction over Sun West because, among other things, the Plaintiff’s contract was executed in California; Sun West conducts business in California; Sun West is headquartered and incorporated in California; Sun West holds mortgages on real property in California; Sun West breached contracts with people located in California; Sun West caused injuries in California; and Sun West generally engages in substantial activity in California.

12. This Court is a proper venue for this action because Sun West is subject to personal jurisdiction in the Eastern District of California, Sacramento Division, which “[f]or purposes of venue,” means that Sun West resides in this judicial district. 28 U.S.C. § 1391(b)(1), (c).

COMMON FACTUAL ALLEGATIONS

The FHA Supplies Mortgage Insurance to Lenders

13. HUD is a department within the executive branch of the United States government. When HUD was created, Congress re-organized the FHA as an agency within HUD.

14. One of the FHA’s roles is to provide mortgage insurance to FHA-approved lenders for loans on single-family homes. The FHA is the largest insurer of mortgages in the world.

15. Mortgage insurance protects lenders against borrower defaults. Lenders bear less risk on FHA-insured loans because the FHA will pay lenders in the event of borrower default. To receive

1 FHA mortgage insurance, borrowers pay an upfront mortgage insurance premium and make monthly
2 premium payments.

3 16. Lenders must be pre-approved to qualify to receive FHA mortgage insurance. Lenders
4 must comply with HUD regulations contained in Title 24, Subtitle B, Chapter II, Subpart B, Part 203
5 of the Code of Federal Regulations. Among other things, HUD regulations require the lender to
6 include certain uniform provisions in every FHA-insured promissory note. Therefore, each of the
7 approximately 4.8 million FHA-insured loans¹ is documented by a promissory note containing those
8 uniform provisions.

9
10 **The FHA Prohibits Charges of Post-Payment Interest**
Unless Lenders First Provide Disclosures in an FHA-Approved Form

11 17. One such provision provides that borrowers will pay interest on unpaid principal:

12 **BORROWER'S PROMISE TO PAY; INTEREST**

13 In return for a loan received from Lender, Borrower promises to pay the principal sum of
14 _____ Dollars (U.S. \$_____), plus interest, to the order of Lender. **Interest will be**
15 **charged on unpaid principal**, from the date of disbursement of the loan proceeds by
Lender, at the rate of _____ percent (_____%) per year **until the full amount**
of the loan has been paid.

16 Multistate – FHA Fixed Rate Note, USFHA.NTE at 1 (emphasis added).

17 18. Thus, the borrower must pay interest only on the unpaid principal and once the
18 principal has been paid off, the interest payments should stop as well.

19 19. From August 2, 1985 through January 20, 2015, the FHA allowed lenders, subject to
20 limitations, to collect “post-payment” interest, which is interest collected by a lender even after the
21 borrower has paid the full unpaid principal. It is also considered a “penalty” because the borrower
22 owes the lender nothing at the time post-payment interest is collected. The lender is penalizing the
23 borrower for paying off their loan before the maturity date.

24 20. There are strict limitations on when a lender can collect post-payment interest. The
25 FHA prohibits the collection of post-payment interest unless the lender complies with HUD
26 regulations. In turn, HUD regulations require the lender to provide the borrower with Disclosures in an
27 FHA-approved disclosure form.

28 _____
¹ See https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/fhahistory.

1 21. These limitations are reflected in a uniform provision of the promissory notes that must
2 be included in the promissory note documenting every mortgage:

3 **BORROWER'S RIGHT TO PREPAY**

4 **Borrower has the right to pay the debt** evidenced by this Note, in whole or in part,
5 **without charge or penalty, on the first day of any month.** Lender shall accept
6 prepayment **on other days** provided that **Borrower pays interest** on the amount prepaid
7 **for the remainder of the month to the extent required by Lender and permitted by**
8 **regulations of the Secretary.** If Borrower makes a partial prepayment, there will be no
changes in the due date or in the amount of the monthly payment unless Lender agrees in
writing to those changes.

8 Multistate – FHA Fixed Rate Note, USFHA.NTE at 2 (emphasis added).

9 22. Under this provision of the promissory note, the borrower has the right to prepay the
10 mortgage in full without charge or penalty on the first of any month. The borrower also has the right to
11 prepay the mortgage on days other than the first of the month, but subject to the lender being able to
12 collect post-payment interest “to the extent . . . permitted by regulations of the Secretary.”

13 23. The relevant HUD regulation incorporated into the promissory note is titled “Handling
14 Prepayments:”

15 (b) Handling prepayments for FHA-insured mortgages closed before January 21, 2015.

16 ***

17 (2) **With respect to FHA mortgages insured on or after August 2, 1985, but**
18 **closed before January 21, 2015,** the mortgagee shall not require 30 days' advance
19 notice of prepayment, even if the mortgage instrument purports to require such notice.
20 If the **prepayment is offered on other than an installment due date,** the mortgagee
21 may refuse to accept the prepayment until the next installment due date (the first day
of the month), or **may require payment of interest to that date, but only if the**
22 **mortgagee so advises the mortgagor, in a form approved by the Commissioner,**
in response to the mortgagor's inquiry, request for payoff figures, or tender of
prepayment.

23 (3) **If the mortgagee fails to meet the full disclosure requirements of paragraphs**
24 **(b)(1) and (b)(2) of this section, the mortgagee may be subject to forfeiture of**
25 **that portion of the interest collected for the period beyond the date that**
26 **prepayment in full was received** and to such other actions as are provided in part 25
of this title.

26 24 C.F.R. § 203.558(b) (2014) (emphasis added).

27 24. Here, Sun West did not have the right to collect post-payment interest because it did not
28 provide Plaintiff and the Class with Disclosures in the FHA-approved form.

1 25. The FHA-approved form is Appendix 8 (C) to the HUD Housing Handbook:

2 MORTGAGEE NOTICE TO MORTGAGOR
3 (In response to prepayment inquiry, request
4 for payoff or tender of prepayment in full)

4 Mortgagor: _____ Date: _____
5 Address: _____ Loan #: _____
6 _____ FHA #: _____

6 This is in reply to your ___(date)___ inquiry/request for payoff figures or offer to tender an
7 amount to prepay in full your FHA-insured mortgage which this company is servicing.

8 This notice is to advise you of the procedure which will be followed to accomplish a full
9 prepayment of your mortgage.

9 The _____(mortgagee name)_____ will:

10 (a) accept the full prepayment amount whenever it is paid and collect
11 interest only to the date of that payment; or

12 (b) only accept prepayment on the first day of any month during the
13 mortgage term; or accept the prepayment whenever tendered with interest paid to the
14 first day of the month following the date prepayment is received[.]

13 ***

14 NOTE: It is to your advantage to arrange closings so that the prepayment reaches us on or
15 before (as close to the end of the month as possible) the first work day of the month.

16 If you have any questions regarding this notice, please contact ___(name and/or
17 department)___at___(telephone number)___.

18 _____
19 Mortgagee

20 Attachment (Pay off Statement)

21 HUD Housing Handbook, 4330.1 REV-5 Appendix 8 (C) at 1-2.

22 26. “The basic disclosure language is necessary because it pertains to the [borrower’s]
23 rights under the mortgage.” HUD Housing Handbook, Administration of Insured Home Mortgages,
24 4330.1 REV-5, Chapter 5-1 (C), at 2.

25 27. Further, the lender “must disclose the procedures that must be followed with respect to
26 the payoff and must explain how the amount of the prepayment has been determined. Otherwise, the
27 [lender] must forfeit any interest collected after the date of prepayment.” *Id.* at 6.

28 28. HUD directs lenders that “[n]one of the HUD-required language should be deleted.” *Id.*
at 2.

Banks Have Collected Millions of Dollars in Post-Payment Interest from FHA- Insured Loans

1
2 29. From August 2, 1985 through January 20, 2015, banks have collected hundreds of
3 millions of dollars in post-payment interest.

4 30. The National Association of Realtors (“NAR”), estimates that “more than 40 percent of
5 FHA borrowers close during the first 10 days of the month, exposing them to at least 20 days of
6 interest payments after the termination of the mortgage.” Kenneth R. Harney, Interest Costs Don’t End
7 With Payoff of FHA Loan, Chicago Tribune, April 11, 2004, http://articles.chicagotribune.com/2004-04-11/business/0404110057_1_fha-loan-ginnie-mae-fha-borrowers. The NAR further “estimates[s]
8 that during 2003, . . . FHA customers who terminated their loans paid an average of \$528 in ‘excess
9 interest fees,’ a cumulative ‘prepayment penalty’ to those borrowers of \$587 million.” *Id.*

10 31. “HUD doesn’t get the interest, lenders do. In effect, lenders are getting interest for
11 money that isn’t outstanding. This may not sound like a big deal, but according to HUD, such post-
12 payment interest charges cost borrowers \$449 million in 2012.” Peter Miller, The Very New Deal:
13 How FHA Mortgages Are Changing For 2015, The Simple Dollar, Jan. 9, 2015.

14 32. “This practice . . . has cost consumers staggering amounts, with estimates ranging into
15 the hundreds of millions of dollars a year during periods when mortgage rates were high.” Kenneth R.
16 Harney, FHA Will Stop Lenders From Charging Extra Interest When Homeowners Sell or Refinance,
17 Washington Post, Sept. 5, 2014, [https://www.washingtonpost.com/realestate/fha-will-stop-lenders-
18 from-charging-extra-interest-when-homeowners-sell-or-refinance/2014/09/04/478a2a04-32a6-11e4-
19 8f02-03c644b2d7d0_story.html](https://www.washingtonpost.com/realestate/fha-will-stop-lenders-from-charging-extra-interest-when-homeowners-sell-or-refinance/2014/09/04/478a2a04-32a6-11e4-8f02-03c644b2d7d0_story.html).

20 33. “Hundreds of thousands of home sellers have had their pockets picked at closings
21 during the past decade: They’ve been charged interest on their mortgages after their principal debts
22 had been fully paid off.” Harney, Washington Post, Sept. 5, 2014.

23 34. “[T]he true beneficiaries of the long-standing practice were [lenders], who could earn
24 interest on the ‘float’ – the money they collected from borrowers and had free use of until the end of
25 the month, when they had to disburse final interest payments to bond investors.” Harney, Controversial
26 FHA Payoff Rule to End, Los Angeles Times, Mar. 30, 2014,
27 <http://articles.latimes.com/2014/mar/30/business/la-fi-harney-20140330>.

1 35. Today, all relevant government agencies agree that collecting post-payment interest is
2 an unfair prepayment penalty and is against public policy.

3 36. On August 26, 2009, the Board of Governors of the Federal Reserve System proposed a
4 rule “to amend Regulation Z, which implemented the Truth in Lending Act (TILA),” which regulates
5 prepayment penalties. 74 Fed. Reg. 43232, 43232 (Aug. 26, 2009). The Board stated that, “[o]ne such
6 example [of a prepayment penalty] is ‘interest charges for any period after prepayment in full is made.’
7 When the loan is prepaid in full, there is no balance to which the creditor may apply the interest rate.”
8 *Id.* at 43257.

9 37. On January 30, 2013, the Consumer Financial Protection Bureau (“CFPB”) issued a
10 final rule titled “Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act
11 (Regulation Z).” See Fed. Reg. 6408, 6408 (Jan. 30, 2013). Regulation Z defines “prepayment
12 penalty” as the “charge imposed for paying all or part of the transaction’s principal balance before the
13 date on which the principal is due.” *Id.* at 6444.

14 38. This definition includes “charges resulting from FHA’s monthly interest accrual
15 authorization method.” 79 Fed. Reg. 50835, 50835 (Aug. 26, 2014). As CFPB explains:

16 [I]t is appropriate to designate higher interest charges for consumers based on accrual methods
17 that treat a loan balance as outstanding for a period of time after prepayment in full as
18 prepayment penalties.... In such instances, **the consumer submits a payment before it is due,**
19 **but the creditor nonetheless charges interest on the portion of the principal that the**
creditor has already received. The Bureau believes that charging a consumer interest after the
consumer has repaid the principal is the functional equivalent of a prepayment penalty.

20 78 Fed. Reg. 6408, 6445 (Jan. 30, 2013) (emphasis added). Based on Regulation Z’s definition,
21 charges for post-payment interest are now subject to the Truth in Lending Act. See 79 Fed. Reg.
22 50835, 50835 (Aug. 26, 2014); 75 Fed. Reg. 58539, 58586 (Sept. 24, 2010) (“[T]he Board believes
23 that the charging of interest for the remainder of the month in which prepayment in full is made should
24 be treated as a prepayment penalty for TILA purposes, even when done pursuant to the monthly
25 interest accrual amortization method.”).

26 39. In response to those changes by FRB and CFPB, on August 26, 2014, HUD published a
27 final rule titled “Federal Housing Administration (FHA): Handling Prepayments: Eliminating Post-
28 Payment Interest Charges” in the Federal Register to eliminate post-payment interest charges to

1 borrowers “resulting from FHA’s monthly interest accrual amortization method.” 79 Fed. Reg. 50835,
2 50835.

3 40. Under the new regulation, for all “FHA-insured mortgages closed on or after January
4 21, 2015, notwithstanding the terms of the mortgage, the [lender] shall accept a prepayment at any
5 time and in any amount.” 24 C.F.R. § 203.558(a). “Monthly interest on the debt must be calculated on
6 the actual unpaid principal balance of the loan as of the date the prepayment is received, and not as of
7 the next installment due date.” *Id.*

8 41. Thus, the CFPB, FRB, and HUD have all prohibited post-payment interest charges for
9 FHA-insured mortgages closed on or after January 21, 2015 notwithstanding any disclosure form.

10 **Sun West Did Not Provide the FHA-Approved Form**
11 **Before Collecting Post-Payment Interest**

12 42. On March 26, 2012, Plaintiff Kristina Wuest received an FHA-insured loan for the
13 purchase of a home in Rancho Cordova, California. Plaintiff’s loan was subsequently purchased by
14 Sun West.

15 43. Plaintiff’s promissory note contained the uniform provisions found in every FHA-
16 insured loan per HUD regulations. These uniform provisions include, among others:

17 Paragraph 2. “Borrower’s Promise to Pay; Interest”

18 In return for a loan received from Lender, Borrower promises to pay the principal sum of
19 one hundred seventy-three thousand four hundred seventeen and 00/100 dollars (U.S.
20 \$173,417.00), plus interest, to the order of Lender. Interest will be charged on unpaid
21 principal, from the date of disbursement of the loan proceeds by Lender, at the rate of
22 three and 875/1000 percent (3.875%) per year until the full amount of the loan has been
23 paid.

24 and

25 Paragraph 5. “Borrower’s Right to Prepay”

26 Borrower has the right to pay the debt evidenced by this Note, in whole or in part,
27 without charge or penalty, on the first day of any month. Lender shall accept prepayment
28 on other days provided that Borrower pays interest on the amount prepaid for the
remainder of the month to the extent required by Lender and permitted by regulations of
the Secretary. If Borrower makes a partial prepayment, there will be no changes in the
due date or in the amount of the monthly payment unless Lender agrees in writing to
those changes.

(Exhibit A).

1 44. On February 20, 2014, Plaintiff requested and received a payoff statement from Sun
2 West. (Exhibit B).

3 45. On information and belief, the payoff statement is a form document in which Sun West
4 fills in the borrower-specific contact information and loan-related amounts.

5 46. The payoff statement did not contain any of the Disclosures required by HUD.

6 47. The payoff statement did not inform Plaintiff that she was not required to pay interest
7 for the month of February if they paid off the mortgage on the first of the month.

8 48. The payoff statement did not inform Plaintiff that she would pay post-payment interest
9 if paying off the mortgage on any day other than the first of the month.

10 49. The payoff statement did not disclose the procedure that must be followed with respect
11 to the payoff and did not explain how the amount of the prepayment had been determined.

12 50. Instead, the payoff statement only provided the total amount owed, and included
13 interest for the entire month of February:

14 ***** **Mortgage Information** *****

15	Principal Balance:	\$167,601.76
16	Interest Due	\$541.21
17	FHA Insurance	\$153.22
18	Reconveyance Fee	<u>\$45.00</u>
	Total Required for Payoff	\$168,341.19

19 (*Id.*)

20 51. Plaintiff's payoff statement explicitly states her monthly interest payment was \$541.21
21 for one month.

22 52. On February 26, 2014, Plaintiff paid off her loan and received a Settlement Statement,
23 which included a payoff to Sun West in the amount of \$168,341.19. (Exhibit C).

24 53. Plaintiff paid Sun West \$168,341.19, which included the \$541.21 in interest Sun West
25 represented it was owed. Because Sun West required Plaintiff to pay interest for the entire month of
26 February 2014, even though Plaintiff paid the full unpaid principal on February 26, 2014, Sun West
27 collected post-payment interest in breach of its contract with Plaintiff.

28

CLASS ALLEGATIONS

54. Plaintiff brings this action under Fed. R. Civ. P. 23 on behalf of herself and all persons similarly situated, defined as (each person to be termed a “Class Member” and, collectively, all such persons to be termed the “Class Members” or the “Class”):

Any person who had an FHA-insured loan for which (i) the loan was closed on or before January 20, 2015; (ii) Sun West, as of the date the total amount due on the loan was brought to zero, was the lender, mortgagee, or otherwise held legal title to the note; (iii) Sun West collected interest for any period after the total amount due on the loan was brought to zero; and (iv) Sun West collected post-payment interest during the applicable statute of limitations period.

55. Plaintiff reserves the right to amend the foregoing class definition or to define subclasses before this Court determines whether certification is appropriate.

56. Numerosity. The Class is so numerous that joinder of all Class Members is impracticable. On information and belief, there are at least tens of thousands of Class Members. Plaintiff believes that Sun West’s records, maintained in the ordinary course, will readily reveal the exact number of Class Members.

57. Commonality. This action presents material questions of law and fact common to the Class, including, but are not limited to:

- a. Whether, before collecting post-payment interest on an FHA-insured loan, Sun West complied with the HUD regulation, incorporated into the Plaintiff’s and Class Members’ contract(s), requiring that it provide the borrower with Disclosures in “a form approved by the Commissioner, in response to the [borrower’s] inquiry, request for payoff figures, or tender of prepayment.” 24 C.F.R. § 203.558(c) (2014).
- b. Whether Sun West is liable in breach of contract for not providing borrowers with the Disclosures in an FHA-approved form before charging post-payment interest on FHA-insured loans held by Sun West.
- c. Whether Sun West violated California’s Unfair Competition Law by not providing borrowers with the Disclosures in an FHA-approved form before charging post-payment interest on FHA-insured loans held by Sun West.

58. Sun West uses a form document in response to a borrower’s request for a payoff statement. Thus, whether the form complies with HUD regulations is a question applicable to all Class Members.

59. Typicality. Plaintiff’s claims are typical of the Class’s claims. Plaintiff’s promissory note contains the same relevant provisions as the rest of the Class. Further, because Sun West uses

1 form payoff statements, Plaintiff has been subject to conduct that is typical of the Class. Sun West has
2 sought to collect post-payment interest from Plaintiff in the same manner that it has sought to collect
3 post-payment interest from the Class.

4 60. Adequacy. Plaintiff and her counsel are adequate to represent the class. Plaintiff stands
5 ready to protect the rights of all borrowers who paid off their FHA-insured loans and from whom Sun
6 West improperly collected post-payment interest. Plaintiff's interests are aligned with the Class
7 Members. Plaintiff's counsel are well-versed in class action litigation, having collectively served as
8 class counsel in more than 100 class actions. Moreover, a large portion of Plaintiff's counsel previous
9 work has been in the banking industry and routinely involves complex legal issues. Plaintiff's counsel
10 have the time and resources necessary to prosecute this litigation.

11 61. Predominance. The questions of law or fact common to the Class Members
12 predominate over any questions affecting only individual Class Members. Sun West's course of
13 conduct will be discovered without any need for participation by individual Class Members. The
14 Class's claims present no issues of causation or reliance unique to individual Class Members.

15 62. Superiority. A class action is superior to all other available methods for the fair and
16 efficient adjudication of this controversy.

17 **Count I: Breach of Contract**

18 63. Plaintiff incorporates all previous paragraphs as if set forth herein.

19 64. Plaintiff and each Class Member had a contract with Sun West. As to each, the terms of
20 the contract are set forth in the promissory note. The note is a form contract containing certain
21 provisions that are identical to provisions found in the notes for every FHA-insured loan.

22 65. In section 2 of the note, "BORROWER'S PROMISE TO PAY; INTEREST," Sun West
23 agreed that "[i]nterest will be charged on unpaid principal" and only "until the full amount of the
24 principal has been paid." Multistate – FHA Fixed Rate Note, USFHA.NTE at 1.

25 66. In section 5 of the note, "BORROWER'S RIGHT TO PREPAY," Sun West agreed that
26 it would charge "interest on the amount prepaid for the remainder of the month" only "to the extent . . .
27 permitted by regulations of the Secretary." *Id.* at 2.

28

1 67. The relevant FHA regulation incorporated into the note is titled "Handling
2 Prepayments." It provides that, "If the prepayment is offered on other than an installment due date, the
3 [lender] ... may require payment of interest to that date, but only if [the lender] so advises the
4 [borrower], in a form approved by the Commissioner, in response to the [borrower's] inquiry, request
5 for payoff figures, or tender of prepayment." 24 C.F.R. § 203.558(b)(2) (2014).

6 68. The regulation also provides that "if the [lender] fails to meet the full disclosure
7 requirements of paragraphs (b)(1) and (b)(2) of this section, the [lender] may be subject to forfeiture of
8 that portion of the interest collected for the period beyond the date that prepayment in full was
9 received and to such other actions as are provided in part 25 of this title." 24. C.F.R. § 203.558(b)(3).

10 69. In addition to the express terms of the promissory note, the law implies a duty of good
11 faith and fair dealing, and Sun West is subject to this duty as well.

12 70. Sun West breached the contract by collecting post-payment interest from Plaintiff and
13 Class Members after the loan was paid in full.

14 71. Sun West breached the contract by collecting post-payment interest without first
15 providing the mandatory disclosures and/or to the extent any disclosures were made, they were
16 inadequate.

17 72. Sun West further breached the contract by collecting post-payment interest from
18 Plaintiff and Class Members without first providing those disclosures in the FHA-approved form.

19 73. Plaintiff and the other Class Members were injured by Sun West's breach and seek
20 damages for Sun West's unlawful collection of post-payment interest. They seek damages for interest
21 collected for the period beyond payment of the full unpaid principal.

22 **Count II: Violation of California's Unfair Business Practices Act**

23 74. Plaintiff incorporates all previous paragraphs as if set forth herein.

24 75. Defendant's acts or practices in connection with the collection of post-payment interest
25 as described herein constitutes an unfair, unlawful or deceptive business practice within the meaning
26 of California Business & Professions Code sections 17200, et seq. (the "UCL").

27 76. Defendant's conduct as alleged herein was an unfair business practice because it is
28 immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers. Additionally,

1 the utility of Defendant's conduct is significantly outweighed by the gravity of the harm imposed on
2 Plaintiff and other members of the Class.

3 77. Defendant's conduct as alleged herein was unlawful as its collection of post-payment
4 interest without the required disclosures violates 24 C.F.R. § 203.558(b) (2014).

5 78. Defendant's conduct as described herein was fraudulent because prior to collecting
6 post-payment interest, the defendant had a duty to disclose to consumers that the collection of such
7 interest would occur and could be avoided. At all times, Plaintiff and the Class relied on the fact that
8 Defendant would comply with the terms of its contract as well as all Federal Regulations and would
9 make all material disclosures impacting their loan. Defendant breached this duty by failing to provide
10 the appropriate disclosures to Plaintiff and Class Members and/or to the extent any disclosures were
11 made, they were inadequate. Had Plaintiff and the Class been notified of the post-payment interest
12 terms in the manner proscribed by law, they would have taken steps to avoid the payment of such
13 interest.

14 79. Plaintiff is informed and believes that, at all relevant times, Defendants' operations,
15 including its headquarters, regulatory compliance department, customer service department, loan pay-
16 off department, and accounting department were located in Cerritos, California. Plaintiff is also
17 informed and believes that all the unlawful, fraudulent, and unfair business practices described herein,
18 including the decision to not provide the required post-payment disclosures, emanated from the
19 Defendants' California headquarters.

20 80. The above-described unlawful, unfair and fraudulent business practices conducted by
21 Defendant present a threat and likelihood of harm to members of the Class. Defendant has obtained ill-
22 gotten gains, in the form of unearned post-payment interest, which should be rightfully restored to
23 Plaintiff and the Class.

24 81. Pursuant to California Business and Professions Code sections 17200 and 17203,
25 Plaintiff, on behalf of herself and Class Members, seeks an order for restitution of all amounts
26 wrongfully obtained by Defendant, and awarding Plaintiff's attorneys' fees and costs.

27 **Prayer for Relief**

28 WHEREFORE, Plaintiff, on behalf of herself and the Class, request:

- a. Certification of this action as a class action, including appointing Plaintiff as class representative and undersigned counsel as class counsel;
- b. Judgment in favor of Plaintiff and the Class and against Sun West in an amount that is fair and reasonable as determined by the jury trial;
- c. Forfeiture and refund of all post-payment interest collected in connection with Plaintiff's and the Class's payoff or refinance of their respective FHA-insured mortgages;
- d. Pre-judgment interest at the maximum rate permitted by the law;
- e. All costs incurred in connection with this action;
- f. Reasonable attorneys' fees; and
- g. Such other and further relief, at law or in equity, as this Court deems just and proper.

DATED: August 21, 2017

Respectfully submitted,

KERSHAW, COOK, & TALLEY

/s/ Stuart Talley

Stuart Talley, SBN 180374
401 Watt Avenue
Sacramento, CA 95864
Telephone: (916) 779-7000
Facsimile: (916) 721-2501
stuart@kctlegal.com

PAUL LLP

Richard M. Paul III
(*Pro hac vice* forthcoming)
Ashlea G. Schwarz
(*Pro hac vice* forthcoming)
601 Walnut, Suite 300
Kansas City, Missouri 64106
Telephone: (816) 984-8100
Facsimile: (816) 984-8101
Rick@PaulLLP.com
Ashlea@PaulLLP.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

MIN: 1003763-0001428796-3

NOTE

Loan Number: 0001428796

FHA CASE NO.

043-8788380-703

MARCH 26, 2012
[Date]

IRVINE
[City]

CALIFORNIA
[State]

11851 RUBILITE WAY, RANCHO CORDOVA, CALIFORNIA 95742
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns.
"Lender" means **BROKER SOLUTIONS, INC. DBA NEW AMERICAN FUNDING, A CALIFORNIA CORPORATION (CFL # 603A957)** and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of **ONE HUNDRED SEVENTY-THREE THOUSAND FOUR HUNDRED SEVENTEEN AND 00/100** Dollars (U.S.\$ **173,417.00**), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of **THREE AND 875/1000** percent (**3.875%**) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on **MAY 1, 2012**. Any principal and interest remaining on the first day of **APRIL, 2042**, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at **16808 ARMSTRONG AVENUE, SUITE 215, IRVINE, CALIFORNIA 92606**

or at such other place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ **815.47**. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for Payment Adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. (Check applicable box.)

- Growing Equity Allonge
- Other [specify]

- Graduated Payment Allonge



5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

6. BORROWER'S FAILURE TO PAY**(A) Late Charge for Overdue Payments**

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR AND 000/1000 percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. GROUNDS FOR ACCELERATION OF DEBT**(A) Default**

Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by the Security Instrument and due under this Note if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Note and the Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in the Security Instrument securing this Note.

(B) Sale Without Credit Approval

Lender shall, if permitted by applicable law (including section 341 (d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j - 3(d)) and with the prior approval of the Secretary, require immediate payment in full of all the sums due under this Note and secured by the Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(C) No Waiver

If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(D) Regulations of HUD Secretary

In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Note and the Security Instrument do not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.



(E) Mortgage Not Insured

Borrower agrees that if the Security Instrument and this Note are not determined to be eligible for insurance under the National Housing Act within **60 DAYS** from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by the Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to **60 DAYS** from the date hereof, declining to insure the Security Instrument and this Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

8. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

9. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

10. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.



BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 4 of this Note.

RICHARD WUEST (Seal)
-Borrower

KRISTINA WUEST (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]



EXHIBIT B

SUN WEST MORTGAGE

02/20/14
ZXS

18303 GRIDLEY ROAD
CERRITOS
562-924-7884

CA 90703-
800-345-7884

***** P A Y O F F L E T T E R *****

WUEST, RICHARD
WUEST, KRISTINA
11851 RUBILITE WAY
RANCHO CORDOVA CA 95742

Loan No. 1120890064
Loan Type 10-FFF
Inv Code 332 208365078
TIN XXXXXX7194
***** Property Address *****
WUEST, RICHARD
WUEST, KRISTINA
11851 RUBILITE WAY
RANCHO CORDOVA CA 95742

***** NEXT PAYMENT *****
Principal & Interest 815.47
Escrow Payment 565.53
AH/Life Insurance .00

Total Payment 1,381.00

***** MORTGAGE INFORMATION *****
Principal Balance 167,601.76
Interest Rate 3.8750
Paid to Date 02-01-14
YTD Interest 1,085.08
Escrow Balance 2,522.22

Escrow Accrual Items Due: 11-01-14 2,164.43
03-01-14 2,114.78
01-28-15 716.00
03-01-14 1,838.64

County Tax Freq 12 Months
County Tax Freq 12 Months
Hazard Insurance Freq 12 Months
FHA Insurance Freq 01 Months

FOR PAYOFF :
167,601.76 Principal Balance
541.21 Interest Due
153.22 FHA Insurance
.00 Late Charges
.00 Outstanding Assessments
.00 Escrow Overdrawn
45.00 Reconveyance Fee
Interest Valid Through: 02-28-14 168,341.19 Total Required for Payoff

1 Months Interest 541.21

SUN WEST MORTGAGE

WIRING INSTRUCTIONS

Bank: Farmers and Merchants Bank of Long Beach
Bank Address: 3140 E. Anaheim Street, Long Beach, CA 90804
ABA: 122 201 198 Account: 2073013
Title: Sun West Mortgage Company, Inc. - Collection Clearing Account
PLEASE NOTE CERTIFIED FUNDS ARE REQUIRED FOR PAYOFF*

PAYOFF CHECKS WILL BE PROCESSED THE SAME DAY IF RECVD BEFORE 2PM PST

The within instrument has been read
and approved by the undersigned

X

EXHIBIT C

ESTIMATED A. SETTLEMENT STATEMENT (HUD-1)	B. TYPE OF LOAN 1. <input checked="" type="checkbox"/> FHA 2. <input type="checkbox"/> RHS 3. <input type="checkbox"/> CONV. UNINS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. FILE NUMBER: 7. LOAN NUMBER 16798-BN 110014025333 8. MORTGAGE INS. CASE NO.: 043-9332507-703
---	---

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME & ADDRESS OF BORROWER: Richard Wuest and Kristina Wuest
11851 Rubilite Way, Rancho Cordova, CA 95742

E. NAME & ADDRESS OF SELLER:

F. NAME & ADDRESS OF LENDER: Broker Solutions, Inc., DBA New American Funding
14511 Myford Road, Suite 100, Tustin, CA 92780

G. PROPERTY LOCATION: 11851 Rubilite Way, Rancho Cordova, CA 95742

H. SETTLEMENT AGENT: Banker Direct Escrow
PLACE OF SETTLEMENT: 14511 Myford Road, Suite 240, Tustin, CA 92780 (877) 891-7620

I. SETTLEMENT DATE: 2/26/2014

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower:		400. Gross Amount Due To Seller:	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower: (line 1400)	21,483.65	403.	
104. Payoff To Sun West Mortgage	168,341.19	404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance:		Adjustments For Items Paid By Seller In Advance:	
106. City/town taxes	to	406. City/town taxes	to
107. County taxes	to	407. County taxes	to
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower:	189,824.84	420. Gross Amount Due To Seller:	
200. Amounts Paid By Or In Behalf Of Borrower:		500. Reductions In Amount Due To Seller:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	203,500.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. MIP Refund	618.12	504. Payoff 1st Mtg. Ln.	
205.		505. Payoff 2nd Mtg. Ln.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller:		Adjustments For Items Unpaid By Seller:	
210. City/town taxes	to	510. City/town taxes	to
211. County taxes	to	511. County taxes	to
212. Assessments	to	512. Assessments	to
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower:	204,118.12	520. Total Reductions In Amount Due Seller:	
300. Cash At Settlement From/To Borrower:		600. Cash At Settlement From/To Seller:	
301. Gross amount due from borrower (line 120)	189,824.84	601. Gross amount due to seller (line 420)	
302. Less amount paid by/for borrower (line 220)	204,118.12	602. Less reductions in amount due seller (line 520)	
303. Cash (<input type="checkbox"/>FROM) (<input checked="" type="checkbox"/>TO) Borrower:	14,293.28	603. Cash (<input type="checkbox"/>TO) (<input type="checkbox"/>FROM) Seller:	0.00

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

700. Total Real Estate Broker Fees		Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
Division of Commission (line 700) As Follows:			
701. \$	to		
702. \$	to		
703. Commission paid at settlement			
704.			
800. Items Payable In Connection With Loan:			
801. Our origination charge Broker Solutions, Inc., DBANew American Funding	\$1,629.00 (from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen	\$-500.00 (from GFE #2)		
803. Your adjusted origination charges Broker Solutions, Inc., DBANew American Funding	(from GFE A)	1,129.00	
804. Appraisal fee to AMC - Paid by Borrower POCB	\$500.00 (from GFE #3)		
805. Credit report to Advantus	(from GFE #3)	36.00	
806. Tax service to	(from GFE #3)		
807. Flood certification LPS National Flood	(from GFE #3)	7.50	
808. Loan Processing Fee To: Broker Solutions, Inc., DBANew American Funding	\$595.00		
809. Underwriting Fee To: Broker Solutions, Inc., DBANew American Funding	\$595.00		
810. Document Preparation To: Broker Solutions, Inc., DBANew American Funding	\$370.00		
811. Re-Verification Fee To: Broker Solutions, Inc., DBANew American Funding	\$69.00		
812.			
813.			
814.			
815.			
816.			
817.			
818.			
819.			
900. Items Required By Lender To Be Paid In Advance:			
901. Daily interest charges from 2/26/2014 to 3/01/2014 @ \$ 21.6045 /day (3 days)	(from GFE #10)	64.81	
902. Mortgage insurance premium for mo. to HUD	(from GFE #3)	3,500.00	
903. Homeowner's insurance for yrs. to	(from GFE #11)		
904. Flood insurance premium for yrs. to			
905. Property Tax to Sacramento County Treasurer-Tax Collector-Second Half 2013/14		2,164.43	
906.			
1000. Reserves Deposited With Lender:			
1001. Initial deposit for your escrow account	(from GFE #9)	422.91	
1002. Homeowner's insurance 4 months @ \$ 62.17 per month	\$248.68		
1003. Mortgage insurance 0 months @ \$ 0.00 per month			
1004. City property taxes 0 months @ \$ 0.00 per month			
1005. County property taxes 2 months @ \$ 360.74 per month	\$721.48		
1006. Annual assessments 0 months @ \$ 0.00 per month			
1007. Flood insurance 0 months @ \$ 0.00 per month			
1008. 0 months @ \$ 0.00 per month			
1009. Aggregate Adjustment \$(547.25)			
1010.			
1100. Title Charges			
1101. Title services and lender's title insurance	(from GFE #4)	975.00	
1102. Settlement or closing fee to Banker Direct Escrow	\$450.00		
1103. Owner's title insurance	(from GFE #5)		
1104. Lender's title insurance SERVICELINKFNF	\$320.00		
1105. Lender's title policy limit \$ 203,500.00			
1106. Owner's title policy limit \$			
1107. Agent's portion of the total title insurance premium	\$0.00		
SERVICELINKFNF			
1108. Underwriter's portion of the total title insurance premium	\$0.00		
1109. Subescrow Fee to SERVICELINKFNF	\$45.00		
1110. Messenger Fee to SERVICELINKFNF	\$0.00	0.00	
1111. Endorsement to SERVICELINKFNF	\$0.00	0.00	
1112. Messenger Fee to Banker Direct Escrow	\$25.00	0.00	
1113. Document Preparation Fee to Banker Direct Escrow	\$0.00	0.00	
1114. Notary Fee to Loan-Closers.com	\$135.00		
1200. Government Recording and Transfer Charges:			
1201. Government recording charges	(from GFE #7)	115.00	
1202. Deed \$ 0.00 Mortgage \$ 115.00 Releases \$ 0.00			
1203. Transfer taxes	(from GFE #8)		
1204. City/County tax/stamps Deed \$ 0.00 Mortgage \$ 0.00			
1205. State tax/stamps Deed \$ 0.00 Mortgage \$ 0.00			
1206.			
1207.			
1300. Additional Settlement Charges:			
1301. Required services that you can shop for	(from GFE #6)		
1302. Creditor Payment to Golden 1 Credit Union		4,734.00	
1303. Creditor Payment to Golden 1 Credit Union		4,220.00	
1304. Creditor Payment to Capital One Bank		2,485.00	
1305. Creditor Payment to Capital One Bank		1,630.00	
1306.			
1307.			
1400. Total Settlement Charge (Enter on line 103, Section J - and - line 502, Section K)		21,483.65	

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges	HUD-1 Line Number	Good Faith Estimate	HUD-1
Charges That Cannot Increase			
Our origination charge	# 801	1,629.00	1,629.00
Your credit or charge (points) for the specific interest rate chosen	# 802	(500.00)	(500.00)
Your adjusted origination charges	# 803	1,129.00	1,129.00
Transfer taxes	#1203		

Charges That in Total Cannot Increase More Than 10%	HUD-1 Line Number	Good Faith Estimate	HUD-1
Government recording charges	#1201	115.00	115.00
Mortgage Insurance	# 902	3,500.00	3,500.00
Appraisal	# 804	500.00	500.00
Credit Report	# 805	36.00	36.00
Flood Certification	# 807	7.50	7.50
Title Services and lender's title insurance	#1101	975.00	975.00
	#		
	#		
	#		
	#		
	#		
	#		
Total		5,133.50	5,133.50
Increase between GFE and HUD-1 Charges		\$ 0.00	or 0.0000 %

Charges That Can Change	HUD-1 Line Number	Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001	422.91	422.91
Daily interest charges	# 901 \$ 21.6045 /day	64.81	64.81
Homeowner's insurance	# 903		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	\$ 203,500.00
Your loan term is	30 years
Your initial interest rate is	3.875000 %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ 1,095.65 includes <input checked="" type="checkbox"/> Principal <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of % . The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by % . Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than % .
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$.
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$.
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on .
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$ 422.91 that results in a total initial monthly amount owed of \$ 1,518.56 . This includes principal, interest, any mortgage insurance and any items checked below: <input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood Insurance <input type="checkbox"/> <input type="checkbox"/>

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrowers/Purchasers

Sellers

Richard Wuest

Kristina Wuest

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent: Bill Nelson, Banker Direct Escrow Date:

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

ATTACHMENT TO HUD 1

Escrow No.: 16798-BN

Settlement Date:

Title No.: 113991714

Page: 1

EXHIBIT A: (HUD Section 100)

Buyer Amount

Gross Amount Due From Borrower - Loan Payoff Breakdown:

Sun West Mortgage

Principal Balance To: Sun West Mortgage

167,601.76

Interest From 2/01/2014 to 3/01/2014 To: Sun West Mortgage

541.21

Mortgage Insurance Premium To: Sun West Mortgage

153.22

Reconveyance Fee To: Sun West Mortgage

45.00

Total:

168,341.19

CIVIL COVER SHEET

Case 2:17-cv-01735-KJM-CKD Document 1-1 Filed 08/21/17 Page 1 of 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KRISTINA WUEST, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Sacramento County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Stuart C. Talley, Kershaw Cook & Talley PC 916-779-7000 401 Watt Ave., Sacramento, CA 95864

DEFENDANTS

SUN WEST MORTGAGE COMPANY, INC., a California corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act of 2005 and 28 U.S.C. § 1332(d)

Brief description of cause: Unlawful practice of collecting interest on FHA insured loans without complying with uniform provisions/regulations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Exceeds \$5 million CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/21/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Stuart C. Talley

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Sun West Mortgage Discreetly Charged Post-Payment Interest on Mortgage](#)
