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and SANDRA COLLINS-PEMBERTON  
9 and all others similarly situated

10  
11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
13

14 MICHAEL PEMBERTON and  
15 SANDRA COLLINS-PEMBERTON,  
16 individually, and on behalf of the class  
of all others similarly situated,

17 Plaintiffs,

18 vs.

19  
20 NATIONSTAR MORTGAGE LLC, a  
21 Federal Savings Bank,

22 Defendant.  
23

Case No.: 14CV1024-BAS-WVG

**SECOND AMENDED CLASS  
ACTION COMPLAINT FOR:**

- 1. **VIOLATION OF UNFAIR  
COMPETITION LAW**
- 2. **DECLARATORY RELIEF**
- 3. **NEGLIGENCE**

**DEMAND FOR JURY TRIAL**

24 NOW COME Plaintiffs Michael Pemberton and Sandra Collins-Pemberton  
25 (“Plaintiffs”), who, on behalf of themselves and all others similarly situated  
26 (collectively “Class Members”), complain as follows against Defendant Nationstar  
27 Mortgage LLC (“Nationstar” or “Defendant”).  
28

I.

**SUMMARY OF THE ACTION**

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2  
3 1. For almost all owners of real property, the mortgage interest deduction is  
4 their largest single tax deduction and can amount to hundreds, thousands, or even tens  
5 of thousands of dollars per year in tax savings. The Internal Revenue Service (“IRS”),  
6 tax-payer-borrowers, and accounting professionals all rely on lender-issued IRS Forms  
7 1098 to determine the amount of mortgage interest the tax-payer-borrower(s) have paid  
8 during a given year so as to know how much can be deducted from his/her/their gross  
9 income pursuant to 26 U.S.C. Section 163(a). The statute that requires lenders to issue  
10 Forms 1098 is 26 U.S.C. § 6050H. It states that lenders must report on Forms 1098 the  
11 amount of mortgage interest they “receive” if the amount is over \$600.

12 2. This case arises from Nationstar’s systematic violation of 26 U.S.C.  
13 § 6050H. More specifically, Plaintiffs contend that Nationstar has been failing to report  
14 millions of dollars in mortgage interest that it has actually received from consumers  
15 holding negative amortization “Option Arm” loans.<sup>1</sup> Nationstar’s intentional  
16 concealment of its improper and illegal reporting practice has not only caused tens of  
17 thousands of tax-payers to unknowingly file erroneous tax returns -- which will have to  
18 be unwound at substantial cost -- but may have also caused some Class Members the  
19 damage of *permanently* losing valuable tax deductions by virtue of the passage of the  
20 3-year statute of limitations for amending tax returns imposed by 26 U.S.C. § 6511.

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23 <sup>1</sup> An “Option Arm” loan provides borrowers with four (4) different payment “options” in any  
24 given month. The first “option” is to make a full payment of the principal and interest due  
25 under the note. The second “option” is to pay “Interest Only.” A third “option” is to pay the  
26 “Minimum Payment,” which may be, and often is, less than the interest then due on the note.  
27 A fourth “option” is to make accelerated payments on a 15-year amortization schedule. The  
28 marketing objective of the “Option ARM loan” was to allow consumers to minimize their  
monthly payment so that they could “afford” to purchase a home based upon their available  
cash flow. Thus, consumers with these loans overwhelmingly chose the “Minimum Payment”  
option.

1 **II.**

2 **HOW NEGATIVE AMORTIZATION LOANS WORK**

3 3. Nationstar is one of the nation’s leading mortgage servicing companies.  
4 As part of its business, it has originated and/or acquired thousands of “negative  
5 amortization” loans, both in California and nationally. Negative amortization loans  
6 generally provide the borrower the option in any given month to pay a “Minimum  
7 Payment,” which is generally, but not always, less than the interest due for the month.  
8 This is why loans with negative amortization features are often referred to as “Option  
9 ARM” loans. In Plaintiffs’ case, Nationstar acquired Plaintiffs’ loan from Bank of  
10 America, N.A. (“BANA”) pursuant to an agreement with Nationstar which Plaintiffs  
11 allege on information and belief became effective January 31st, 2013. BANA had in  
12 turn acquired Plaintiffs’ loan from Countrywide Financial Corporation  
13 (“Countrywide”) in or about 2008. Plaintiffs allege on information and belief that  
14 Countrywide acquired Plaintiffs’ loan from First Magnus Financial Corporation  
15 (“Magnus”), the originating lender, sometime in 2005-2006.

16 4. Because negative amortization loans were primarily marketed to  
17 consumers who wanted to minimize their monthly payment so they could “afford” a  
18 home that would otherwise be too expensive for them based upon their available cash  
19 flow, borrowers with negative amortization loans, including Plaintiffs, overwhelmingly  
20 chose the “Minimum Payment” option when selecting which “option” to pay in any  
21 given month. This way, they could lower their monthly payment to an amount they  
22 could manage by “deferring” (for months or even years) some interest that would  
23 otherwise have been due in the month of their payment. The interest that was “deferred”  
24 would then be added to the loan balance to be paid back later, (with additional interest  
25 at the same rate as the principal). Many people thus took these loans with the express  
26 idea that they would be deferring tax deductible interest until a later time, when the  
27 deduction would be available to them.

28 5. Choosing the “Minimum Payment” option would usually, but not always,

1 result in negative amortization, meaning that as interest was deferred, the overall loan  
2 balance would increase rather than decrease. (However, in or about 2009, interest rates  
3 and the mortgage indexes plummeted and this caused a situation where the interest rate  
4 on some consumers' loans may have "adjusted" to a rate where the monthly interest  
5 obligation fell below the level of the "Minimum Payment." If this happened, the  
6 positive difference between the "Minimum Payment" and the monthly interest due  
7 would be allocated first to paying back any previously deferred interest, and then to  
8 principal).

9 6. Generally, a limit of 115% of the original principal amount was placed on  
10 the amount of negative amortization consumers were allowed to incur. It is not known  
11 exactly in which tax-year Nationstar first began offering or servicing negative  
12 amortization loans, but such loans first began to flood the consumer market in or about  
13 2004.

### 14 III.

#### 15 **PLAINTIFFS' INDIVIDUAL FACTUAL ALLEGATIONS**

##### 16 **A. Plaintiffs' Negative Amortization Note**

17 7. Plaintiffs together own a single family home located at 13152 Ooti Ct.,  
18 Grass Valley, California, which was their primary residence. On or about November  
19 30, 2005, Plaintiffs obtained a negative amortization loan from Magnus in the amount  
20 of \$461,500. That note was subsequently sold to Countrywide Financial Corporation,  
21 and then to BANA, and then in or about July 1, 2013 to Nationstar. The original note  
22 for Plaintiffs' loan is attached hereto as Exhibit "A" hereto and incorporated in full by  
23 this reference.

24 8. Plaintiffs' 40-year negative amortization adjustable rate mortgage ("ARM")  
25 loan with Magnus provided Plaintiffs with a "Minimum Payment" option previously  
26 described. Plaintiffs took advantage of the "Minimum Payment" option which resulted  
27 in negative amortization during the loan's pendency with Magnus, Countrywide and/or  
28 BANA.

1           9.     At the time Nationstar took over Plaintiffs’ loan, and because of the  
2 negative amortization from earlier years, Plaintiffs’ loan-balance was \$469,075.41, or  
3 approximately \$7,575.41 *above* the original principal amount of the loan. *The entirety*  
4 *of this \$7,575.41 was charged as interest for the use of the original principal.* This  
5 interest was incurred, but not paid, by the Plaintiffs in earlier years of their loan.

6           10.    Since Nationstar took over Plaintiffs’ loan, Plaintiffs have made all  
7 payments required under their note to Nationstar. During tax year 2013, Plaintiffs’  
8 payments to Nationstar totaled \$14,390.46. This amount included \$2,292.66 in taxes  
9 owed separately from the interest and principal due under the note.

10           11.    In or about February 2014, Plaintiffs received a Form 1098 from  
11 Nationstar supposedly reflecting the amount of mortgage interest that it had received  
12 from Plaintiffs during tax-year 2013. But even though Plaintiffs had paid \$12,097.80  
13 (excluding the \$2,292.66 paid to Nationstar in taxes) on their note during 2013, the  
14 Form 1098 they received reflected only \$7,302.06 in mortgage interest paid. The Form  
15 1098 also reflected that Plaintiffs had paid \$4,197.66 in supposed “principal.”

16           12.    Nationstar’s method for calculating mortgage interest is wrong because it  
17 assumes that the entire loan balance constitutes principal and fails to recognize that  
18 interest that was previously deferred does not lose its character as interest simply  
19 because it is paid back at a later time. Thus, because Plaintiffs still owed previously  
20 deferred interest on their note as of the date that Nationstar took over their loan,  
21 Nationstar should have credited all of Plaintiffs’ payment – except for that which was  
22 impounded to pay taxes – toward retiring Plaintiffs’ deferred interest balance before  
23 crediting any payments to principal. In short, until all of the Plaintiffs’ previously  
24 deferred interest was paid off, none of Plaintiffs’ payments should have been credited  
25 to repayment of principal. For tax year 2013 described above, and others as well,  
26 Plaintiffs relied upon the incorrect information contained in the Form 1098 that was  
27 sent to them by Nationstar, and as a result they both: (1) filed an erroneous tax return in  
28 at least that year, and perhaps others (insofar as their return claimed only the amount of

1 mortgage interest that had been stated on their Form 1098 for 2013) and (2) received a  
2 smaller tax deduction in that year and perhaps others than they would have received had  
3 the proper information been provided to them on their Form 1098 issued to them by  
4 Nationstar.

5 **B. Borrowers, Tax Professionals And The IRS Rely Upon The**  
6 **Mortgage Interest Stated In Lender Form 1098s.**

7 13. Plaintiffs allege that reliance on 1098 forms by consumers and their tax-  
8 preparers without cross-checking is the norm among consumers and their tax preparers  
9 since: (1) mortgage lenders/servicers like Nationstar have the legal duty under 26 U.S.C.  
10 § 6050H to calculate and report those amounts accurately; (2) the IRS relies exclusively  
11 on the amounts contained in the 1098 forms it receives from lenders; and (3) the IRS  
12 maintains a policy whereby it will reject any attempt by tax-payers to claim different  
13 amounts of interest from those appearing on the tax-payer's Form 1098 issued by their  
14 lender.

15 14. Examples of the IRS's policy are evidenced by Exhibits "B" and "C"  
16 hereto, which are redacted IRS letters sent to tax-payers other than plaintiffs who, like  
17 Plaintiffs, had negative amortization mortgages and who tried to independently  
18 calculate and submit to the IRS the correct amount of deferred interest that they had  
19 paid. The IRS rejected those tax-payers' returns stating, for instance, in Exhibit "B"  
20 that "we [the IRS] cannot adjust the amount claimed on schedule A for mortgage  
21 interest, without a corrected Form 1098..."

22 15. Plaintiffs, however, did notice the discrepancy in their interest reporting  
23 and complained to Nationstar in February and March 2014. In or about March 11,  
24 Nationstar wrote to the Pembertons acknowledging the Pembertons' complaint and  
25 explaining that their complaint had been referred to Nationstar's "Research  
26 Department" for review. A true and correct copy of this letter is attached hereto as  
27 Exhibit "D" and incorporated herein by this reference.

28 16. On March 27, 2014, Nationstar wrote again to the Pembertons formally

1 rejecting their claim stating:

2 “Thank you for contacting Nationstar Mortgage. This is in response to  
3 your request received March 3, 2014 regarding the 2013 Mortgage  
4 Interest Statement (Form 1098).

5 There was no deferred amounts (sic) or negative amortization on your  
6 loan for the period of time that Nationstar has been the servicer. we  
7 (sic) were not provided with any previously deferred interest amounts  
8 from the prior servicer nor is there any way for us to calculate amounts  
9 prior to when we acquired your loan.”

10 A true and correct copy of Nationstar’s March 27 correspondence is attached hereto as  
11 Exhibit “E” and incorporated herein by this reference.

12 17. This response by Nationstar -- that it somehow impossible for Nationstar  
13 to calculate amounts paid by Plaintiffs prior to the date Nationstar acquired their loan  
14 from BANA -- is absurd. Plaintiffs contacted BANA and were easily able to obtain  
15 their payment history from that entity.

16 18. Plaintiff alleges on information and belief that the reason Nationstar is  
17 wrongfully reporting plaintiffs’ interest payments and those of other class members is  
18 for its own financial benefit. It is alleged that Nationstar knowingly started to purchase  
19 Option Arm Mortgages that had a separately reportable income component to the seller  
20 (i.e. the unpaid deferred interest) which would be reportable by the seller (in the case of  
21 plaintiffs’ loan BANA) as income, with the intent to convert it into an asset note only  
22 such that there was no separately reportable income component.

23 19. Through its purchase Nationstar effectively transformed interest to  
24 principal without notice to borrowers, in direct violation of IRS regulations, and for its  
25 own pecuniary benefit to the direct harm and detriment of the borrowers.

26 20. Because Nationstar only took over Plaintiffs’ loan in 2013, Plaintiffs are  
27 currently unaware of how long (how many tax-years) Nationstar has been misreporting  
28 mortgage interest. Plaintiffs are also unaware of how many individual Forms 1098



1 issued by Nationstar have been issued using this incorrect method of calculation.  
2 Plaintiffs, however, allege on information and belief that the number of class members  
3 in the same situation as Plaintiffs is well over 10,000 and may be more than 100,000.  
4 This estimate is based on an article from the Los Angeles Times dated May 14, 2013,  
5 that Nationstar's January 2013 purchase from BANA constituted over 2 million  
6 individual loans. (It is not known what percentage of these loans had a negative  
7 amortization feature or carried balances of deferred interest at the time of the purchase.)  
8 Plaintiffs also allege on information and belief that Nationstar earlier acquired the  
9 portfolio of Greenlight Financial Services which underwrites approximately \$7 billion  
10 in loans annually, and which, at least in the years 2005 to 2009, originated a substantial  
11 number of negative amortization loans.

12 **C. Plaintiffs Have Been Harmed By Nationstar's Wrongful Conduct**

13 21. Plaintiffs have been damaged by Nationstar's wrongful 1098 reporting in  
14 several ways. First, as shown above, the amount of interest that Plaintiffs actually paid  
15 in 2013 is greater than the amount of interest that was reported by Nationstar. As a  
16 result, Plaintiffs have not been able to correctly state their taxes or obtain the full  
17 mortgage interest deduction they are entitled to under 26 U.S.C. Section 163.

18 22. And, since Nationstar refused to provide a correct Form 1098 to Plaintiffs  
19 for tax-year 2013, they have no other recourse -- other than through this action -- to  
20 force Nationstar to provide Plaintiff and similarly situated individuals with  
21 supplemental information regarding deferred interest payments, and to provide similar  
22 information to the IRS, for tax year 2013 such that the deductibility of these deferred  
23 interest payments can be determined between the borrower taxpayer and the IRS, and,  
24 in the future, provide such information each year thereafter when Nationstar receives  
25 payments of deferred interest.

26 23. Plaintiffs and Class Members have also suffered damages consisting of, at  
27 least: (1) the accountancy fees that will be necessary to prepare and file amended tax  
28 returns (where such returns can still be filed) after Nationstar either provides



1 supplemental information or, chooses to voluntarily issue corrected Forms 1098,  
2 accurately accounting for the amounts of mortgage interest paid during those years, (2)  
3 for all years in which the statute of limitations for amending tax returns may have  
4 expired, the differential between the value of the Class Members' mortgage interest  
5 deductions (both state and federal) when taken and what the value of the deduction  
6 would have been if the correct amount of mortgage interest had been reported timely  
7 by Nationstar to Plaintiff, Class Members and the IRS (plus interest); (3) for all years  
8 in which the statute of limitations for amending tax returns may have expired, the  
9 accountancy fees necessary to determine the difference in value of the deduction when  
10 taken and what it should have been if Nationstar had timely reported the correct amount  
11 of deferred interest. (All of this relief can properly be awarded on equitable grounds as  
12 well.)

13         24. Thus, Plaintiffs, on behalf of themselves and the Class Members, seek  
14 injunctive and equitable relief and damages as alleged above from Nationstar for  
15 intentionally and/or negligently under-reporting to them and to the IRS the "mortgage  
16 interest" payments they have made. They also seek declaratory relief asking the Court  
17 to declare that Nationstar's investigation of the Pemberton's complaint regarding  
18 deferred interest payments and subsequent refusal to provide supplemental information  
19 was negligent, and further seek an Order from the Court requiring Nationstar to provide  
20 supplemental information to Plaintiff and Class members regarding deferred interest  
21 payments, as well as providing to the IRS supplemental information regarding receipt  
22 of deferred interest payments from Plaintiff and Class members. Nationstar should be  
23 required to provide this supplemental information to Plaintiff, Class Members and the  
24 IRS for all tax years where Nationstar did not report receipt of deferred mortgage  
25 interest payments.

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**IV.**

**THE PARTIES**

25. Plaintiffs are individuals who, during all times relevant herein, resided in Grass Valley, Nevada County, California. Plaintiffs had a mortgage loan owned and/or serviced by Nationstar. Plaintiffs paid Nationstar more than \$600 in mortgage interest in tax-year 2013. They did not receive an IRS Form 1098 from Nationstar for that tax-year correctly reporting all of the interest, including deferred interest, they paid because of Nationstar's did not include deferred interest in its calculation of reportable interest on Form 1098.

26. Class Members reside in and are located throughout the United States and in foreign jurisdictions. Each Class Member either owns a main home, second home, residential rental home, or combinations thereof in the United States, or in one of its possessions or territories, with a Nationstar negative amortization loan and paid previously deferred interest to Nationstar which Nationstar failed to include in the Class Member's Form 1098 for the year when the payment was made.

27. Nationstar is, and at all times mentioned herein was, a limited liability corporation and one of the nation's leading mortgage servicers. It is headquartered in Lewisville, Texas.

**V.**

**JURISDICTION AND VENUE**

28. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 2201, 2202. Subject matter jurisdiction also exists under the Class Action Fairness Act of 2005 -- 28 U.S.C. §§ 1332(a) and 1332(d) -- because the matter in controversy exceeds \$5.0 million exclusive of interest and costs and the Named Plaintiffs are citizens of California and Nationstar is not. Further, Class Members reside, on information and belief, in every state in America. There is therefore minimal diversity between the Class Members and the Defendant. Further, more than two-thirds of the members of the putative Class Members are citizens of states different from that of the

1 Defendant and this case does not present a local controversy.

2 29. This Court has personal jurisdiction over Nationstar because, among other  
3 things, Nationstar does business in the State of California and in this Judicial District,  
4 and because Nationstar has established minimum contacts with California such that the  
5 exercise of jurisdiction over it will not offend traditional notions of fair play and  
6 substantial justice. Indeed, Nationstar has voluntarily conducted business and solicited  
7 customers in the State of California for its loans, including in this judicial district and  
8 continues to commit the wrongful acts alleged herein against California residents within  
9 this judicial district.

10 30. Venue is proper in this judicial district under 18 U.S.C. §1391 and 1965.  
11 Nationstar can be found in, has one or more agents in, and/or transacts or has transacted  
12 business in this judicial district.

13 **VI.**

14 **CLASS ALLEGATIONS**

15 31. Paragraphs 1 through 30 above are incorporated herein by reference.

16 32. Plaintiffs bring this action on their own behalf and on behalf of the classes  
17 of persons similarly situated to them pursuant to Rule 23(a) and 23(b)(2) and (b)(3) of  
18 the Federal Rules of Civil Procedure.

19 33. Plaintiffs seek to represent a damage class of:

20 All Option Arm mortgagors of Nationstar, or any of its predecessors-  
21 in-interest, holding loans secured by real property in the United States  
22 (or in its territories and protectorates) who made mortgage interest  
23 payments to Nationstar that included a payment of deferred interest,  
24 and received a Form 1098 for the year in which deferred interest was  
25 paid and the amount of interest stated on the Form 1098 did not include  
26 the deferred interest paid to Nationstar and Nationstar provided no  
27 supplemental information to the mortgagor or the IRS identifying its  
28 receipt of the deferred interest payment.

1 Plaintiffs also seek to represent an injunctive class consisting of:

2 All current Option Arm mortgagors of Nationstar, or any of its  
3 predecessors-in-interest, holding loans secured by real property in the  
4 United States (or in its territories and protectorates) who presently make  
5 or prospectively will make mortgage interest payments to Nationstar  
6 that include a payment of deferred interest, and will receive a Form  
7 1098 for the year in which deferred interest is paid and the amount of  
8 interest stated on the Form 1098 will not include the deferred interest  
9 paid to Nationstar and Nationstar will not provide to the mortgagor or  
10 the IRS any supplemental information, separate and apart from Form  
11 1098, that identifies the amount of deferred interest paid to Nationstar  
12 in any given tax year.

13  
14 Plaintiffs reserve the right to amend the definition of these classes, or to amend this  
15 second amended complaint to state appropriate sub-classes following discovery.

16 34. Plaintiffs do not know the exact size of the classes or the identities of the  
17 Class Members since such information is in the exclusive control of Nationstar. They  
18 believe, however, that the classes encompass tens of thousands of individuals who are  
19 geographically dispersed throughout the United States and in foreign nations. The  
20 number of members in the classes are so numerous that joinder of all Class Members is  
21 impracticable.

22 35. There are numerous questions of law and fact common to the classes that  
23 will predominate over any questions affecting only individuals. Among these common  
24 questions are:

- 25 a. If Nationstar chose, by contract, to call the payment of deferred  
26 interest “Principal” for purposes of its contract with its borrowers,  
27 and not report the receipt of deferred interest for tax purposes on  
28 Form 1098, should Nationstar provide supplemental information to

- 1 its mortgagors and the IRS, identifying the amount of deferred  
2 interest it received in any tax year?;
- 3 b. Does calling deferred interest “Principal” for contract purposes,  
4 change the nature of deferred interest for tax reporting purposes such  
5 that Nationstar does not have to give the IRS or the mortgagor notice  
6 of its receipt of the deferred interest payments and allow the IRS and  
7 the mortgagor/taxpayer to determine the deductibility of the  
8 deferred interest paid?;
- 9 c. Whether Nationstar had the right to unilaterally, and without notice  
10 to its borrowers, (or to the IRS) fail to report deferred mortgage  
11 interest, in any form, to anybody, in the year in which it is paid,  
12 thereby precluding the IRS and the taxpayer from independently  
13 determining the deductibility of the home mortgage interest  
14 deduction
- 15 d. Whether Nationstar maintains written and/or unwritten policies,  
16 procedures and/or practices concerning the accounting and reporting  
17 of mortgage interest payments received by Nationstar from Class  
18 Members, and whether those policies have changed over time;
- 19 e. Whether Nationstar acted intentionally in committing its wrongs  
20 against the Class Members;
- 21 f. Whether Nationstar’s disclosures to consumers were adequate as to  
22 how it would treat payments of deferred mortgage interest;
- 23 g. What injunctive relief would be appropriate to prevent further  
24 wrongful conduct by Nationstar;
- 25 h. What remedial measures would be appropriate to remedy the  
26 wrongs that have been done by Nationstar to the Class; and

27 36. The claims of the Plaintiffs are typical of the claims of the classes and do  
28 not conflict with the interests of any other Class Members in that both the Plaintiffs and

1 the other Class Members were subjected to the same wrongful policies, practices and  
2 procedures of Nationstar and all have an interest (and legal duty) to assure that their  
3 taxes are properly stated.

4 37. The Plaintiffs will fairly and adequately represent the interests of the other  
5 Class Members. The Plaintiffs have retained skilled and experienced counsel to  
6 represent the classes in this class action litigation.

7 38. Prosecution of separate actions will create the risk of adjudications with  
8 respect to individual Class Members which would, as a practical matter, be dispositive  
9 of the interests of Class Members who are not parties to those adjudications and  
10 would/could substantially impair or impede their ability to protect their interests.

11 39. In adopting and implementing the policies, practices and procedures  
12 hereinafter alleged, Nationstar has acted, failed, or refused to act on grounds generally  
13 applicable to the class, thereby making appropriate final injunctive relief or declaratory  
14 relief with respect to the class as a whole.

15 40. The class action is superior to other available methods for fairly and  
16 efficiently adjudicating the issues concerning whether Nationstar's policies, practices  
17 and procedures in accounting for and reporting the payment of "deferred mortgage  
18 interest" received by Nationstar have class-wide impact and effect are in violation of  
19 IRS requirements.

20 **COUNT I**

21 **UNFAIR/DECEPTIVE BUSINESS PRACTICES**

22 41. Plaintiffs re-allege and hereby incorporate each and every allegation  
23 contained in Paragraphs 1 through 40 of this Complaint as though fully set forth herein.

24 42. California Business & Professions Code § 17200 et seq. ("UCL") prohibits  
25 acts of unfair competition, including any "unlawful, unfair or fraudulent business act or  
26 practice."

27 43. As alleged above, Nationstar has been violating the terms of 26 U.S.C.  
28 § 6050H by failing to include payments of mortgage interest that were actually made



1 by Plaintiffs and Class Members. Nationstar’s practice constitutes an unlawful, unfair  
2 and fraudulent business practices under the UCL and would also constitute violations  
3 of similar consumer protection laws in applicable in the several United states.

4 However, in the event that the Court determines that the UCL either cannot be applied  
5 in these circumstances outside of California, or that the differences between the laws of  
6 the several states and California’s UCL as so substantial as to make the administration  
7 of a class action unmanageable, then Plaintiffs assert that a separate subclass of  
8 California borrowers should be certified for all of Plaintiffs’ claims, including  
9 Plaintiffs’ UCL claim. This sub-class would be defined in the same manner as the main  
10 class, but would be limited to Class Members with loans secured by real property in  
11 California.

12 44. Plaintiffs have suffered losses of money or property as a result of  
13 Defendants' unlawful, deceptive and unfair business practices and will incur future  
14 losses as a result of having to amend their tax return. As a result of Defendant’s  
15 violations of the UCL, Plaintiffs and Class Members are entitled to bring this claim for  
16 injunctive and other equitable relief. And, as a part of that relief, Plaintiffs request the  
17 Court act in equity to order Nationstar to issue corrected Forms 1098 and payment of  
18 accountancy fees Plaintiffs and the members of the class will have to incur to correct  
19 Nationstar’s wrongful prior reporting.

20 **COUNT II**

21 **DECLARATORY RELIEF**

22 45. Plaintiffs re-allege and hereby incorporate each and every allegation  
23 contained in Paragraphs 1 through 45 of this Complaint as though fully set forth herein.

24 46. An actual controversy has arisen and now exists between Plaintiffs and  
25 Nationstar regarding the manner in which Nationstar accounts for payments of  
26 “deferred interest” as alleged above.

27 47. Plaintiffs and Class Members contend that Nationstar acted negligently in  
28 the investigation of Plaintiff’s complaint regarding deferred interest payments made by

1 Plaintiff and Nationstar’s refusal to provide supplemental information to Plaintiff when  
2 requested. SPS denies this contention. Accordingly, Plaintiff asks this Court to declare  
3 said conduct to be negligent and to order SPS to provide to Plaintiff, and others similarly  
4 situated, supplemental information, if it chooses not to include payments of deferred  
5 interest on Form 1098, that identifies the payment of deferred interest, previously paid  
6 and in each future calendar year thereafter.

7 48. Inasmuch as the IRS depends on information received from lenders about  
8 a lenders receipt of all mortgage interest in determining the propriety of a mortgage  
9 interest deduction, Plaintiff also seeks an Order from this Court that to the extent SPS  
10 does not report deferred interest payments on Form 1098, SPS is to provide to the IRS  
11 information that identifies its receipt of *deferred interest*. By Ordering SPS to provide  
12 this to both Plaintiff, others similarly situated and the IRS, the IRS and the taxpayer will  
13 each have information to evaluate and assess any claimed mortgage interest deduction.

14 49. A declaratory judgment is necessary to immediately resolve the alleged  
15 failure of SPS to provide information, in some form to both the IRS and the Plaintiff  
16 and other similarly situated, regarding SPS’ receipt of deferred mortgage interest.  
17 Without such a declaratory judgment, Plaintiffs and the Class Members will have no  
18 way of complying with their legal obligation of properly reporting their payments of all  
19 mortgage interest to the IRS in their tax returns, receiving the full benefit of a mortgage  
20 interest tax deduction, and cannot correct previous errors caused by Nationstar.

21 50. Wherefore, declaratory relief is necessary and proper in this matter.

22 **COUNT III**

23 **NEGLIGENCE**

24 51. Plaintiffs re-allege and hereby incorporate each and every allegation  
25 contained in Paragraphs 1 through 51 of this Complaint as though fully set forth herein.

26 52. As alleged previously, Nationstar was under a legal duty pursuant to 26  
27 U.S.C. §6050H to report accurately only the interest Nationstar “received” during each  
28 calendar year and it was further under a duty to correct any mistakes on Forms 1098 as

1 soon as possible after determining that a wrong amount had been reported.

2 53. Assuming that Nationstar did not intentionally report incorrect amounts of  
3 mortgage interest on the Forms 1098 that it sent to plaintiffs and Class Members, it  
4 negligently breached its legal duty to Plaintiffs and the Class Members to accurately  
5 report the amounts of mortgage interest to Plaintiffs and the Class Members.

6 54. As a result of Nationstar's negligence, Plaintiffs and the Class Members  
7 have been damaged in an amount according to proof. Plaintiffs and Class Members did  
8 not know about Nationstar's improper and illegal reporting, and, even if some tiny  
9 percentage may have figured it out, they were still powerless to avoid being damaged  
10 by Nationstar's negligence because of the IRS' aforementioned policy of rejecting any  
11 returns where the amount of interest claimed did not match the amount of the lender-  
12 issued Form 1098.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs on behalf of themselves and all Class Members, pray  
15 for judgment and injunctive and equitable relief against Nationstar as follows:

- 16 (a) Certification of the classes pursuant to Rule 23(b)(2) and (b)(3) of the  
17 Federal Rules of Civil Procedure, certifying Plaintiffs as the  
18 representatives of the classes (and for the California sub-class (if  
19 necessary)), and designating Plaintiffs' counsel as counsel for the class  
20 (and subclass if necessary);
- 21 (b) An Order requiring Nationstar to issue supplemental information to  
22 Plaintiff, Class members and the IRS stating the amount of deferred  
23 interest Plaintiff and Class Members paid during the Class Period;
- 24 (d) For general and special damages in an amount to be proven at time of trial,  
25 including, but not limited to, accountancy fees necessary to amend Class  
26 Member tax returns and/or to determine the value of any lost deductions,  
27 and the value of those lost deductions;
- 28 (e) An order in equity (if no damages are awarded) requiring Defendant to pay

1 any accountancy expenses necessary to determining if Class Members lost  
2 money as a result of Nationstar’s failure to identify and report to Plaintiff  
3 mis-reporting of mortgage interest on their Forms 1098;

- 4 (f) An Order requiring Nationstar, on a prospective basis, to issue  
5 supplemental information to Plaintiff, Class members and the IRS stating  
6 the amount of deferred interest Plaintiff and Class Members pay and  
7 Nationstar receives in every calendar year;
- 8 (g) Prejudgment interest at the legal rate on any sum of damages awarded;
- 9 (j) Attorney’s fees pursuant to Civil Code §1021.5 of the California Civil  
10 Code;
- 11 (k) Costs of suit, including expert witness fees and costs, herein incurred;
- 12 (l) For such other and further relief as this Court may deem proper and just;  
13 and

14 **JURY TRIAL DEMAND**

15 Plaintiffs and all those similarly situated hereby demand a trial by jury for all  
16 issues so triable and if any arbitration clause is asserted by Defendant, on the issue of  
17 whether a valid arbitration agreement exists.

18 Date: July 17, 2018

MICHAEL R. BROWN, APC

19  
20 By:                   s/ Michael R. Brown                    
21 Michael R. Brown

22 LAW OFFICE OF DAVID J. VENDLER

23  
24  
25 By:                   s/ David J. Vandler                    
26 David J. Vandler

27 Attorneys for Plaintiffs MICHAEL  
28 PEMBERTON and SANDRA COLLINS-  
PEMBERTON and all others similarly situated