

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

COUNTRYWIDE HOME LOANS, INC., a California Corporation; GMAC MORTGAGE, LLC, a limited liability company; CATALIST HOMES, INC., a California Corporation; DOVEBID, INC., a California Corporation; REAL ESTATE DISPOSITION CORPORATION, a California Corporation; LANDAUCTION.COM, INC., a California Corporation;

"Additional Parties Attachment Form is Attached"

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JUAN M. TORRES; LAURA TORRES; and PETER TERRACIANO; suing individually and on behalf of the general public and all others similiary situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

JUN 12 2008

John A. Clarke, Executive Officer/Clerk

BY MARY GARCIA, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court Of The State Of California
111 North Hill Street.

CASE NUMBER:
(Número del Caso): **BC392576**

Los Angeles, CA. 90012
Stanley Mosk Courthouse

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kevin A. Spainhour, Esq. (SBN 182358) (714) 375-3720 (714) 375-3740

Spainhour Law Group
16541 Gothard St., Suite 111
Huntington Beach, CA 92647

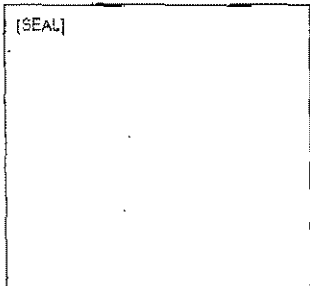
DATE:
(Fecha) **JUN 12 2008**

JOHN A. CLARKE, CLERK

M. GARCIA

Deputy
(Adjunto)

(For proof of service of this summons, use the form Proof of Service of Summons, (POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- by personal delivery on (date):

SHORT TITLE: Torres., et al. v. Countrywide., et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- ▶ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ▶ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

AUCTIONHOUSE REAL ESTATE DISPOSITION SERVICES, INC., a California Corporation; KENNEDY WILSON AUCTION GROUP, INC., a California Corporation; AUCTION SERVICES INT'L FLORIDA 100 REALTY, INC., a business entity form unknown; BENCHMARK ESCROW, INC., a California Corporation; LANDSAFE TITLE OF CALIFORNIA, INC., a California Corporation; FIRST AMERICAN TITLE INSURANCE COMPANY, a California Corporation; and DOES 1 through 300,

Defendants.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Kevin A. Spainhour, Esq. (SBN 182358)
 Shawn M. Olson, Esq. (SBN 245688)
 SPAINHOUR LAW GROUP
 16541 Gothard Street., Suite 111
 Huntington Beach, CA 92647
 TELEPHONE NO.: (714) 375-3720 FAX NO.: (714) 375-3740

ATTORNEY FOR (Name):
 SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
 STREET ADDRESS: 111 North Hill Street.
 MAILING ADDRESS:
 CITY AND ZIP CODE: Los Angeles, CA. 90012
 BRANCH NAME: Stanley Mosk Courthouse

CASE NAME: TORRES., et al v. COUNTRYWIDE., et al

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 Los Angeles Superior Court
 JUN 12 2008
 John A. Clarke, Executive Officer/Clerk
 BY MARY GARCIA, Deputy

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **80392576**
 JUDGE:
 DEPT:

Items 1-11 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input checked="" type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (08)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): (1) Unfair Competition 17200
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 06/12/08
 Kevin A. Spainhour, Esq. (SBN 182358)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SHORT TITLE: TORRES., et al. v. COUNTRYWIDE., et al

CASE NUMBER

BC392576

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 30 HOURS/ DAYS

Item II. Select the correct district and courthouse location (4 steps - If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7130 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.	
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.	
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.	

SUPERIOR COURT OF CALIFORNIA
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE
 Case Number _____

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

BC392576

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. Mary H. Strobel	32	406
Hon. Conrad Aragon	49	509	Hon. Ernest M. Hiroshige	54	512
Hon. Helen I. Bendix	18	308	Hon. Jane L. Johnson	56	514
Hon. Elihu M. Berle	42	416	Hon. Ann I. Jones	40	414
Hon. Tricia Ann Bigelow	23	315	Hon. Ruth Ann Kwan	72	731
Hon. Kevin C. Brazile	20	310	Hon. Charles C. Lee	33	409
Hon. Soussan G. Bruguera	71	729	Hon. Malcolm H. Mackey	55	515
Hon. Susan Bryant-Deason	52	510	Hon. Rita Miller	16	306
Hon. Luis A. Lavin	13	630	Hon. David L. Minping	61	632
<u>Hon. Victoria Chaney*</u>	<u>324</u>	<u>CCW</u>	Hon. Aurelio Munoz	47	507
Hon. Judith C. Chirlin	19	311	Hon. Mary Ann Murphy	25	317
Hon. Ralph W. Dau	57	517	Hon. Joanne O'Donnell	37	413
Hon. Maureen Duffy-Lewis	38	412	Hon. Yvette M. Palazuelos	28	318
Hon. James R. Dunn	26	316	Hon. Mel Red Recana	45	529
Hon. Mark Mooney	68	617	Hon. Alan S. Rosenfield	31	407
Hon. William F. Fahey	78	730	Hon. Teresa Sanchez-Gordon	74	735
Hon. Irving S. Feffer	51	511	Hon. John P. Shook	53	513
Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417
Hon. Kenneth R. Freeman	64	601	Hon. Michael C. Solner	39	415
Hon. Richard Fruin	15	307	Hon. Michael L. Stern	62	600
Hon. Terry A. Green	14	300	Hon. Rolf M. Treu	58	516
Hon. Elizabeth A. Grimes	30	400	Hon. Elizabeth Allen White	48	506
Hon. Paul Gutman	34	408	Hon. John Shepard Wiley Jr.	50	508
Hon. Robert L. Hess	24	314	Hon. Mary Thomson-House	17	309
			Other		

*Class Actions

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk
 By _____, Deputy Clerk

Kevin A. Spainhour, Esq. (SBN 182358)
Shawn M. Olson, Esq. (SBN 245688)

SPAINHOUR LAW GROUP
16541 Gothard Street Suite 111
Huntington Beach, CA 92647

(714) 375-3720 Voice
(714) 375-3740 Fax

Attorneys for Plaintiffs

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 12 2008

John A. Clarke, Executive Officer/Clerk
M. Garcia
BY MARY GARCIA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

BC392576

JUAN M. TORRES; LAULA TORRES; and)
PETER TERRACIANO; suing individually and)
on behalf of the general public and all others)
similarly situated,)

Plaintiffs,)

v.)

COUNTRYWIDE HOME LOANS, INC., a)
California Corporation; GMAC MORTGAGE,)
LLC, a limited liability company; CATALIST)
HOMES, INC., a California Corporation;)
DOVEBID, INC., a California Corporation;)
REAL ESTATE DISPOSITION)
CORPORATION, a California Corporation;)
LANDAUCTION.COM, INC., a California)
Corporation; AUCTIONHOUSE REAL)
ESTATE DISPOSITION SERVICES, INC., a)
California Corporation; KENNEDY WILSON)
AUCTION GROUP, INC., a California)
Corporation; AUCTION SERVICES INT'L)
FLORIDA 100 REALTY, INC., a business entity)
form unknown; BENCHMARK ESCROW,)
INC., a California Corporation, LANDSAFE)
TITLE OF CALIFORNIA, INC., a California)
Corporation; FIRST AMERICAN TITLE)
INSURANCE COMPANY, a California)
Corporation; and DOES 1 through 300,)

Defendants.)

CASE NO.:

CLASS ACTION

COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF, DAMAGES, AND
RESTITUTION UNDER BUSINESS
AND PROFESSIONS CODE
§ 17500 AND §17200

DEMAND FOR JURY TRIAL

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, DAMAGES AND
RESTITUTION UNDER BUSINESS AND PROFESSIONS CODE §17500 AND §17200

1 Plaintiffs, JUAN M. TORRES, LAURA TORRES, and PETER TERRACIANO, by and
2 through counsel, on behalf of themselves, on behalf of the general public and all others similarly
3 situated, allege as follows:

4 **I.**

5 **NATURE OF THE CASE**

6 1. This is a class action lawsuit to stop the deceptive, unfair, and illegal business practices
7 recently infused in the 20 Billion dollar per year real estate auction industry. Plaintiffs are
8 seeking injunctive relief, damages, and restitution.

9 2. Many modern real estate auctions are nothing more than a bait and switch scheme to lure
10 hopeful buyers to submit offers that can later be accepted or rejected by the lenders/sellers,
11 despite the general public's perception that once the auctioneer declares, "SOLD," the property
12 is in fact sold. The Defendants do not sell real estate at the auction; they solicit offers and
13 collect deposits that may result in a sale at a later date.

14 3. After the gavel slams and the auctioneer (often times unlicensed) proclaims "SOLD", the
15 winning bidders are scurried to the signing room. The lenders/sellers representatives are not
16 found in the signing room to sign the contracts; rather they are just there sell loans and other
17 settlement services. In the signing room, the Defendants direct and require the use of their
18 settlement service providers and shift the costs of sales, including commissions, from the
19 settlement service providers and shift the costs of sales, including commissions, from the
20 lenders/sellers, to the consumers. This is a scheme that no one from the public expects or can
21 gather from the advertisements that drew them in.

22 **II.**

23 **INTRODUCTION/BACKGROUND**

24 4. Lenders went from sub-prime mortgages to this: "GOING ONCE, GOING TWICE,
25 SOLD." Conceptually, auctions should be a fair and equitable method of selling any property,
26 including real estate. Recently, however, there has been a boom of lender-controlled post-
27 foreclosure properties entering the private real estate auction industry which has led to the
28

1 morphing of what was generally perceived as being a live public auction where property is sold
2 to the highest bidder on-site, to what is now known as the "Auction Marketing Method" (defined
3 below).

4 5. The quick evolution of real estate auctions appears to have started with the desire to
5 satisfy the lender's need of disposing the inventory of foreclosed homes, after these same
6 lenders/Defendants sub-prime debacle forced tens of thousands of families to lose their homes.
7 Once Defendants adopted this new Auction Marketing Method it has become a common practice
8 for the auction industry and Defendants to commit misleading, unfair, illegal, and fraudulent
9 business practices contained herein solely for profit at the expense of the unsuspecting public.

10 6. When confronted with some of these business practices, one of the Defendants'
11 responded by asserting a defense that the law does not even allow the enforceability of a sale of
12 real estate at a live auction because the auction process is a verbal process; this is after the same
13 Defendant participated in advertising to sell homes at a live auction and the same Defendants
14 held an Auction Event in front of thousands of people at the Los Angeles County Fairgrounds,
15 all while secretly believing that their advertised process was not legally enforceable. When this
16 Defendant was told that Plaintiff wanted to complete the sale at the winning bid price, the
17 Defendant responded that this issue was a "dead-end legal matter". (See Exhibit "A" for a letter
18 from the President of Defendant CATALIST).

19
20 **III.**

21 **PARTIES**

22 7. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 6 of the
23 foregoing paragraphs as though fully set forth and alleged below.

24 8. Plaintiff JUAN M. TORRES ("J. TORRES" or "CLASS REPRESENTATIVE #1")
25 is a competent adult, who, during the class period, attended an Auction Event held by one or
26 more Defendants herein in the County of Los Angeles, California.
27
28

1 9. Plaintiff LAURA TORRES (“L. TORRES” or “CLASS REPRESENTATIVE #2”)
2 is a competent adult, who, during the class period, attended an Auction Event held by one or
3 more Defendants herein in the County of Los Angeles, California. Plaintiff L. TORRES
4 was the winning bidder at an Auction Event, signed all the required documents, paid a
5 deposit, believed to have opened escrow, paid for inspections and appraisals, and was
6 subsequently denied the purchase several weeks later because Defendants wanted
7 approximately \$50,000 more money than her winning bid price.

8 10. PETER TERRACIANO (“P. TERRACIANO” or “CLASS REPRESENTATIVE
9 #3”) is competent adult, who, during the class period, attended an Auction Event in Los
10 Angeles County, California, held by one or more Defendants herein, was the winning bidder
11 at an auction, signed all required documents at an auction, paid a deposit, opened escrow on
12 the property and purchased the property.

13 11. [Plaintiffs J. TORRES, L. TORRES, and P TERRACIANO will be collectively
14 referred to as “Plaintiffs”].

15 12. Plaintiffs are informed and believe and thereupon allege that Defendant
16 COUNTRYWIDE HOME LOANS, INC. (“COUNTRYWIDE”) is a California Corporation
17 whose performance was due in the County of Los Angeles, California. Plaintiffs are
18 informed and believe and thereon allege that COUNTRYWIDE is an affiliate of
19 LANDSAFE.
20

21 13. Plaintiffs are informed and believe and thereupon allege that Defendant GMAC
22 MORTGAGE, LLC (“GMAC”), is a limited liability company that conducts substantial
23 business transactions in the County of Los Angeles, California.

24 14. Plaintiffs are informed and believe and thereupon allege that Defendant CATALIST
25 HOMES, INC. (“CATALIST”) is a California Corporation, with its principal place of
26 business and its performance due in the County of Los Angeles, California. CATALIST
27 holds a corporate brokers license issued by the California Department of Real Estate
28

1 (“DRE”). Plaintiff is informed and believes that CATALIST is an affiliate of
2 BENCHMARK and in a joint-venture with DOVEBID.

3 15. Plaintiffs are informed and believe and thereupon allege that DOVEBID, INC.
4 (“DOVEBID”) is a California Corporation that conducts substantial business within the
5 County of Los Angeles, California. DOVEBID does not hold a valid corporate real estate
6 broker’s license issued by the DRE, although it does solicit offers for real estate and
7 receives a commission if the property is subsequently sold. Plaintiffs are informed and
8 believe and thereupon allege DOVEBID is in a joint-venture with CATALIST.

9 16. Plaintiffs are informed and believe and thereupon allege that REAL ESTATE
10 DISPOSITION CORPORATION (“REDC”) is a California Corporation that conducts
11 substantial business in the County of Los Angeles, California. REDC holds a corporate
12 brokers license issued by the DRE.

13 17. Plaintiffs are informed and believe and thereupon allege LANDAUCTION.COM,
14 INC. (“LANDAUCTION”) is a California Corporation that conducts substantial business in
15 the County of Los Angeles, California. LANDAUCTION does not hold a valid corporate
16 real estate broker’s license issued by the DRE, although it does solicit offers for real estate
17 and receives a commission if the property is subsequently sold. Plaintiffs are informed and
18 believe and thereupon allege LANDAUCTION is in a joint-venture with REDC.

19 20 18. Plaintiffs are informed and believe and thereupon allege AUCTIONHOUSE REAL
21 ESTATE DISPOSITION SERVICES, INC. (“AREDC”) is a California Corporation that
22 conducts substantial business in the County of Los Angeles, California. AREDC holds a
23 corporate brokers license issued by the DRE.

24 19. Plaintiffs are informed and believe and thereupon allege that KENNEDY WILSON
25 AUCTION GROUP, INC. (“KENNEDY”) is a California Corporation that conducts
26 substantial business in the County of Los Angeles, California. KENNEDY holds a
27 corporate brokers license issued by the DRE.
28

1 20. Plaintiffs are informed and believe and thereupon allege that Defendant AUCTION
2 SERVICES INT'L FLORIDA 100 REALTY, INC., ("ASIF") is a business entity form
3 unknown, which conducts substantial business in the County of Los Angeles, California.
4 ASIF does not hold a valid corporate real estate broker's license issued by the DRE,
5 although it does solicit offers for real estate and receives a commission if the property is
6 subsequently sold.

7 21. Plaintiffs are informed and believe and thereupon allege that BENCHMARK
8 ESCROW, INC. ("BENCHMARK") is a California Corporation with its principal place of
9 business within the County of Los Angeles, California. BENCHMARK holds an escrow
10 agents license issued by the California Department of Corporations ("DOC"). Plaintiff is
11 informed and believes and thereupon alleges BENCHMARK is an affiliate of CATALIST.

12 22. Plaintiffs are informed and believe and thereupon allege that LANDSAFE TITLE
13 OF CALIFORNIA, INC. ("LANDSAFE") is a California Corporation which conducts
14 substantial business within the County of Los Angeles, California. LANDSAFE hold an
15 Underwritten Title Company license issued by the California Department of Insurance
16 ("DOI").

17 23. Plaintiffs are informed and believe and thereupon allege that FIRST AMERICAN
18 TITLE INSURANCE COMPANY ("FATIC") is a California Corporation that conducts
19 substantial business in the County of Los Angeles, California. FATIC is a licensed title
20 insurance company by the DOI.

21 24. Plaintiffs are informed and believe and, on that basis allege that DOES 1 through
22 300, are legally responsible for the acts alleged herein and are sued by such fictitious names
23 because Plaintiff has yet been able to ascertain their true identities. Upon ascertainment
24 thereof, Plaintiff will amend this Complaint to specifically identify DOES 1 through 300, by
25 their real names.
26
27
28

1 25. [All Defendants in paragraphs 12 through 24, including DOES 1 through 300 will
2 collectively be referred to as "Defendants"].

3 26. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
4 herein, Defendants, and each of them, were the agents, servants, representatives, or
5 employees of the remaining Defendants, and were acting at all times within the course and
6 scope of such relationship and with the knowledge, consent, or ratification of the other
7 Defendants, and that each of the acts or omissions alleged herein were performed within the
8 course and scope of that relationship as well as their respective individual capacities.
9

10 **IV.**

11 **CLASS ACTION ALLEGATIONS**

12 27. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 26 of
13 the foregoing paragraphs as though fully set forth and alleged below.

14 Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a
15 class action pursuant to section 382 of the California Code of Civil Procedure. The class
16 which Plaintiffs seek to represent is composed of and defined as follows:

- 17 a. All persons or entities who attended a live auction and/or the Auction Event held
18 by one or more of the Defendants ("CLASS #1");
19
20 b. All persons or entities who attended a live auction and/or the Auction Event held
21 by one or more of Defendants and was the winning bidder on real property, but
22 who subsequently did not purchase the property ("CLASS #2"); and
23
24 c. All persons or entities who attended a live auction and/or the Auction Event held
25 by one or more of Defendants and was the winning bidder on real property and
26 who purchased the property ("CLASS #3").

27 [Class #1-3 will collectively be referred to as "Plaintiffs' Class"].

28 28. This action has been brought and may be properly be maintained as a class action,

1 pursuant to CCP § 382 because there is a well-defined community of interest in the
2 litigation and the proposed classes are easily ascertainable by using discovery to obtain
3 business records from all Defendants.

4 a. Numerosity: The Plaintiffs' Class are so numerous that the individual
5 joinder of all class members is impracticable under the circumstances of this case. While
6 the exact number of class members is unknown to Plaintiffs at this time, based upon
7 representations made by Defendants' using media outlets, and based upon the number of
8 homes that Defendants have listed in the past and or currently have listed as being, "For
9 Sale," Plaintiffs are informed and believe that tens of thousands of plaintiffs have been
10 harmed by Defendants, and each of their conduct stated herein this Complaint. Joinder of
11 all members of the Plaintiffs' Class is thus, not practicable.

12 b. Common Questions Predominate: Common questions of law and fact
13 exist as to all members of Plaintiffs' Class and predominate over any questions which affect
14 only individual members of the class. These common questions of law and fact include,
15 without limitation:
16

- 17 i. whether Defendants violated Unfair Competition Laws by using false
18 advertising using the Auction Marketing Method;
- 19 ii. whether Defendants violated the Unfair Competition Laws by
20 utilizing unlawful, unfair, and fraudulent business practices by
21 violating California Real Estate Laws;
- 22 iii. whether Defendants violated the Unfair Competition Laws by
23 utilizing unlawful, unfair, and fraudulent business practices by
24 violating RESPA Laws;
- 25 iv. the effect upon and the extent of injuries sustained by Plaintiffs and
26 members of Plaintiffs' Class and the appropriate type and/or measure
27
28

1 of damages;

2 v. the amount of additional revenues and profits obtained by Defendants
3 that is attributable to their violations of the Unfair Competition Laws;
4 and

5 vi. the appropriate nature of a class wide equitable relief, including, but
6 not limited to the disgorgement of Defendants' profits, the amount of
7 restitution owed, and the extent and nature of an injunction
8 prohibiting Defendants from engaging in unfair, deceptive and illegal
9 business practices towards Plaintiffs' Class.
10

11 c. Typicality: Plaintiffs' claims are typical of the claims of the members of
12 Plaintiffs' Class. Plaintiff and all members of Plaintiffs' Class sustained injuries and
13 damages arising out of Defendants' and each of their common course of conduct in
14 violation of the laws as complained herein. The injuries and damages of each member of
15 the Plaintiffs' Class were caused directly by Defendants' wrongful conduct in violation of
16 the laws as alleged herein.
17

18 d. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
19 members of Plaintiffs' Class. Plaintiffs reside in California, attended Defendants' auctions
20 and/or attempted to purchase a home at one of Defendants' Auction Events, and they are
21 adequate representatives of Plaintiffs' Class as they have no interests which are adverse to
22 the interests of absent class members. Plaintiffs have retained counsel who has substantial
23 experience and success with real estate laws and regulations, complex litigation, RESPA,
24 and consumer protection litigation.
25

26 e. Superiority: A class action is superior to other available means for the
27 fair and efficient adjudication of this controversy since individual joinder of all members of
28

1 the class is impracticable. Class action treatment will permit a large number of similarly
2 situated persons to prosecute their common claims in a single forum simultaneously,
3 efficiently, and without necessary duplication of effort and expenses and burden that
4 individual actions would engender. Furthermore, as the damages suffered by each
5 individual member of the class may be relatively small, the expenses and burden of
6 individual litigation would make it difficult or impossible for individual members of the
7 class to redress the wrongs done to them, while an important public interest will be served
8 by addressing the matter as a class action. The cost to the court system of adjudication of
9 such individualized litigation would be substantial. Individualized litigation would also
10 present the potential for inconsistent or contradictory judgments.

11
12 29. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this action that would preclude its maintenance as a class action.

14 V.

15 Definitions

16 30. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 29 of
17 the foregoing paragraphs as though fully set forth and alleged below.

18 31. For the purposes of this Complaint, the term "**Auction Marketing Method**" should be
19 construed to include the following characteristics and business practices employed by the
20 Defendants:

- 21
- 22 a. Using knowingly and intentionally misleading advertisements offering to sell
23 real estate to the public at a live auction when a sale may or may not take place
24 at a later date despite the auctioneer stating that the property is, "Sold," in
25 violation of Business and Professions Code Sections 10140 and 10176;
 - 26 b. Advertising deceptive phrases like, "Must sell at the auction," when in reality
27 most of the homes cannot be sold at the auction because the lenders/sellers are
28 not present at the Auction Event, giving them time to decide if they want to

1 accept, reject, or counter the winning bidder's offer weeks after the auctioneer
2 falsely says "SOLD;"

- 3 c. Knowingly using misleading advertisements to trick the public into believing
4 that once the gavel hits and the auctioneer announces "Sold," that the buyer is
5 in an enforceable contract to purchase real estate;"
- 6 d. Using fine print and covert documents at the Auction Event that state, "subject
7 to lender confirmation," instead of truthfully saying, "no sale is final today
8 because the lender/sellers are not on-site at the live auction;"
- 9 e. Intentionally placing misleading and deceptive advertisements in many
10 different forums of media indicating "minimum bid" prices on homes when the
11 absentee lenders/sellers did not authorize those homes to be sold at the fake
12 'minimum bid' prices nor will the homes be sold at those prices;
- 13 f. Unfairly baiting the public to attend live auctions by advertising "low auction
14 prices" and "below market prices," then switching to a much higher purchase
15 price with increased settlement service provider costs to the buyers;
- 16 g. Unlawfully publishing, circulating, and distributing misleading advertisements
17 to the general public relating to the sale of real estate without designating or
18 disclosing that the sale requires a real estate license, in violation of Business
19 and Professions Code Section 10140.6;
- 20 h. Unlawfully requiring members of the general public to sign a non-negotiable,
21 pre-printed agreement to pay the compensation of the auctioneers using pre-set
22 pre-printed forms in violation of Business and Professions Code Section
23 10147.5;
- 24 i. Unfairly and unlawfully acting as agent for the general public without the
25 knowledge or consent from the public in violation of Business and Professions
26 Code Section 10176(d);
- 27
28

- 1 j. Unlawfully requiring members of the general public to pay compensation or
2 commissions to auctioneers and / or runners employed by the auctioneers that
3 do not carry a license issued by the DRE for offering to sell and / or soliciting
4 offers from potential buyers of real estate in violation of Business and
5 Professions Code Sections 10130, 10131, 10132, 10137, 10138, and 10139;
- 6 k. Unlawfully collecting secret profits and / or undisclosed amounts of
7 compensation from members of the general public in violation of Business and
8 Professions Code Section 10176 (i); and
- 9 l. Failing to exercise reasonable supervision by the broker licensee over the
10 activities of the salespersons for the advertising, marketing, and the soliciting of
11 auction bids and / or offers to purchase real estate, in violation of Business and
12 Professions Code Section 10176(h).

13
14 32. For the purposes of this Complaint the term, “**Auction Event**” should be
15 construed to mean: “The publicly held forum where Defendants held or participated in
16 what appeared to be an auction process creating a public perception that real estate was to
17 be sold to the winning bidder.”

18 **VI.**

19 **COMMON ALLEGATIONS / BASIC ALLEGATIONS**

20 33. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 32 of
21 the foregoing paragraphs as though fully set forth and alleged below.

22 34. The named Plaintiffs, collectively, have suffered a direct injury by each of the business
23 practices alleged herein.

24 35. J. TORRES and L. TORRES viewed an Auction Marketing Method advertisement by one
25 or more of the Defendants that stated “75 homes must be sold at auction”. This advertisement
26 showed a property with a minimum bid price of \$95,000 (“Minimum Bid”). This property was
27 also seen on an Auction Marketing Method advertisement in the So Cal multiple listing service
28

1 with the same Minimum Bid. At the Auction Event, which was held in March of 2008 by one or
2 more of Defendants in the City of Pomona, County of Los Angeles, runners employed by the
3 auctioneers/brokers approached J. TORRES and L. TORRES to solicit a higher bid and was
4 successful at convincing L. TORRES to do so. As a result, L. TORRES was the winning bidder
5 on real estate at a price of \$146,000 with one or more Defendants.

6 36. After adding the sales commission, also known as a "buyer's premium" of 5% or \$7,300,
7 the total purchase price was to be \$153,300. L. TORRES, as the winning bidder had
8 immediately applied for a loan with one or more of the Defendants and believed to have opened
9 escrow with one or more Defendants, as required by Defendants. The Defendants settlement
10 service providers were affiliates of one or more other Defendants and used a price determined
11 solely by the Defendants without giving L. TORRES any affiliated business arrangement
12 disclosure ("AfBA Disclosure").

13 37. Approximately 30 days after L. TORRES was the winning bidder at the Auction Event
14 and when escrow was supposed to close, one or more Defendants informed her that she would
15 not be able to purchase the property unless she came up with \$50,000 more money, putting the
16 price of the home almost 30% higher than her winning bid price.

17 38. P. TERRACIANO also viewed Auction Marketing Method advertisements by one or
18 more Defendants and attended an Auction Event in the County of Los Angeles, California, where
19 he was the winning bidder of real estate. P. TERRACIANO signed all of Defendants required
20 pre-printed forms, paid the required deposit, opened escrow on the property and subsequently
21 purchased the property.
22

23 **VI.**

24 **FIRST CAUSE OF ACTION**

25 **UNFAIR COMPETITION ACT (CAL. BUS & PROF. CODE § 17500 and §17200)**
26 **(Against All Defendants)**

27 39. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 38 of
28 the foregoing paragraphs as though fully set forth and alleged below.

**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, DAMAGES AND
RESTITUTION UNDER BUSINESS AND PROFESSIONS CODE §17500 AND §17200**

1 40. This Complaint is filed and these proceedings are instituted, pursuant to sections
2 17203 and 17204 of the Business and Professions Code, to obtain restitution, disgorgement,
3 and other available remedies and damages from Defendants for their acts, omissions, and
4 business practices as alleged herein, in violation of the Unfair Competition Act.

5 41. The acts and business practices, as alleged herein, including all of the Auction
6 Marketing Methods employed by Defendants, constituted a common, continuous, and
7 continuing course of common conduct that resulted in false and misleading advertising. In
8 addition, Defendants, by using the Auction Marketing Method, are using bait and switch to
9 draw Plaintiffs and Plaintiffs' Class to the Auction Events, only to find out that the scheme
10 employed by the Defendants is misleading and false.

11 42. In addition to the acts described above, Defendants have also used unlawful, unfair,
12 and/or fraudulent business practices, which acts, practices, and omissions are designed to
13 obtain profits and other ill-gotten gains that include, but are not limited to the following:
14

15 a. requiring or directing the use of controlled or affiliated settlement service
16 providers, at whatever undisclosed rates the settlement service providers desire to charge to the
17 consumers, in order to obtain secret profits;

18 b. requiring the consumer buyers to pay non-negotiable pre-set commissions (often
19 to unlicensed companies) using a fictional unearned settlement service fee entitled "buyers
20 premium" that is typically between 5%-10% of the purchase price;

21 c. violating sections 8 and 9 of the Real Estate Settlement Procedures Act
22 ("RESPA") 12 U.S.C. 2607(a) and (b) et seq. and 12 U.S.C. 2608 et seq. by paying, receiving,
23 and/or exchanging prohibited payments and things of value on loan transactions as well as
24 paying, receiving or exchanging unearned fees, things of value on loan transactions as well as
25 receiving or exchanging unearned fees, things of value, portions, splits, or percentages of
26 payments made for the rendering of a settlement service in connection with a transaction
27 involving a federally related mortgage loan other than for services actually performed and by
28

1 requiring the use of certain settlement service providers including the Defendants' title insurance
2 companies.

3 43. As a direct and proximate result of Defendants, and each of their deceptive and false
4 advertisements used in the Auction Marketing Method, and Defendants unlawful, unfair,
5 and fraudulent business practices, J. TORRES, L. TORRES, P. TERRACIANO, and
6 CLASS #1-3 have sustained damages in a sum to be proven at trial.

7 WHEREFORE, plaintiffs L. TORRES, J. TORRES, P. TERRACIANO, and CLASS #1
8
9 3 demands against all Defendants in the First Cause of Action:

- 10 1. That Defendants be preliminarily and permanently enjoined from using any of the
11 Auction Marketing Methods and for Defendants to be enjoined from violating Unfair
12 Competition Laws, as alleged herein;
- 13 2. For restitution that Defendants be ordered to restore to Plaintiffs' and Plaintiffs' Class
14 all funds acquired by means of any act or practice declared by this court to be
15 unlawful or fraudulent or constitute unfair competition under Business and
16 Professions Code section 17200 et seq., or untrue or misleading advertising under
17 17500 et seq.; of all money due to Plaintiffs and Plaintiffs Class from the unlawful and
18 unfair business practices of Defendants and each of them;
- 19 3. For general and special damages according to proof;
- 20 4. For interest on all sums owed at the legal rate;
- 21 5. For attorney's fees and Costs of Suit; and
- 22 6. Any other relief that the court deems just and proper.

23 Dated: June 12, 2008

24 **SPAINHOUR LAW GROUP**

25
26
27 By: 

28 Kevin A. Spainhour, Esq., Attorney for
Plaintiffs

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, DAMAGES AND
RESTITUTION UNDER BUSINESS AND PROFESSIONS CODE §17500 AND §17200

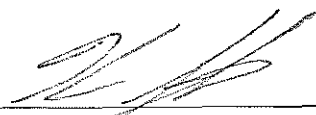
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues triable by jury.

Dated: June 12, 2008

SPAINHOUR LAW GROUP

By: 
Kevin A. Spainhour, Esq., Attorney for
Plaintiffs

“EXHIBIT A”



CATALIST™

HOMES INC.

May 9, 2008

Kevin A. Spainhour, Esq.
Spainhour Law Group
16541 Gothard Street, Suite 111
Huntington Beach, CA 92647

RE: May 7th Correspondence - Juan and Laura Torres.

Dear Mr. Spainhour:

We are in receipt of your letter dated May 7th, 2008. There are several inaccuracies in the portrayal of events that should be cleared up:

- 1) Your client signed a receipt and approval of the auction Terms and Conditions which clearly spells out that this was a reserve auction and winning bids were subject to lender approval. A copy of such receipt is provided.
- 2) The auctioneer called all bids at the auction "Sold- Subject to Lender Confirmation" and we have the entire auction on video tape. Additionally the Statue of Frauds does not provide for a verbal purchase contract anyway.
- 3) Your client signed a California Residential Purchase Agreement which is an offer to purchase until accepted by the seller (copy provided). The contract gave the seller Seven (7) days to accept or the contract becomes null and void.
- 4) Countrywide Home Loans, as servicer for Morgan Stanley Trust, submitted the offer, even though it was below reserve, for consideration by management. Several weeks later the offer was rejected and your client was informed the winning bid must be substantially higher to gain approval. Your client declined to move forward and the deposit money was returned.
- 5) Countrywide Home Loans never signed the purchase contract, or escrow instructions, nor did they indicate any sort of acceptance. According to California Law, there was never a contract to sell this home and there can be no claim for specific performance.
- 6) The attached escrow instructions clearly indicate and fully disclose the relationship between Benchmark Escrow and CataList Homes, Inc and were signed by your client. There is no affiliated business between CataList Homes Inc. or Benchmark Escrow and either Countrywide or Landsafe Title.

7) CataList Homes Inc. was not the listing broker for this home.

We understand the frustration of attending the auction and having a bid rejected. CataList Homes and DoveBid in fact do not get paid when offers get rejected.

Since your client had no contract, received their deposit back, and there is clearly no violation of any laws we suggest you drop this matter. We apologize for the inconvenience but pursuing a dead-end legal matter will do no good for any of us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Davin".

Michael Davin
President

cc: Stephen V. Lopardo, Esq. /James & Lopardo