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11 Attorneys for Plaintiffs and the Putative Class

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 JUNICHIRO SONODA, LIEN DUONG,  
16 and MARVIN KUPERSMIT, individually  
and on behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 AMERISAVE MORTGAGE  
20 CORPORATION, a Georgia corporation,

21 Defendant.  
22  
23  
24  
25

Case No. C 11-01803 EMC

**CLASS ACTION**

**AMENDED COMPLAINT FOR VIOLATIONS OF  
THE TRUTH IN LENDING ACT, BREACH OF  
CONTRACT, BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND FAIR  
DEALING, VIOLATIONS OF THE CALIFORNIA  
CONSUMERS LEGAL REMEDIES ACT,  
CALIFORNIA'S FALSE ADVERTISING ACT,  
AND VIOLATIONS OF MULTIPLE STATES'  
UNFAIR OR DECEPTIVE PRACTICES  
STATUTES**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs, by their undersigned counsel, bring this action on behalf of themselves and  
2 all others similarly situated, and state as follows:

3 **INTRODUCTION**

4 1. Amerisave Mortgage Corporation (“Amerisave”) holds itself out to the public  
5 as a “direct correspondent lender” of residential home mortgages at the best rates available.  
6 It offers these rates not on its own mortgage products, but through loans it arranges on behalf  
7 of other lenders. For this reason, Amerisave claims it can shop around for the lowest rate,  
8 and lock in that rate for its customers. Amerisave advertises these low rates on its own  
9 website, and promises consumers that they can quickly request a “lock-in” of low advertised  
10 rates online.

11 2. In truth, it is the consumer, not the mortgage rate, that Amerisave locks in.  
12 Amerisave’s operations are a classic bait and switch, updated for the Internet era: in order to  
13 lock in a rate, Amerisave requires the consumer to pay for a property appraisal, even before  
14 Amerisave provides a Good Faith Estimate of closing costs, a deceptive practice that is  
15 forbidden by the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (“TILA”).

16 3. Amerisave then fails to lock in the rate, lets the rate lock period expire, and/or  
17 fails to honor its obligation to secure approval of consumers’ mortgage loans, often delaying  
18 the process for weeks and even several months. If the applicant is frustrated by Amerisave’s  
19 unnecessary delays and failure to keep its promises and pulls out of the loan, Amerisave will  
20 charge a substantial cancellation fee, as high as \$500.

21 4. Plaintiffs assert, on information and belief, that Amerisave improperly delays  
22 and denies mortgage applications and dishonors its promises, in an effort to keep the  
23 consumer “locked in,” so it can time the market and maximize its profit on the loan. If it  
24 cannot make the loan at a profit, Amerisave denies the loan for false reasons.

25 5. Amerisave has engaged in a nationwide scheme of illegal, unfair, unlawful,  
26 and deceptive business practices that violate both federal and state law. Amerisave has  
27 carried out this scheme by means of a centrally controlled set of policies and practices, and

1 implements the scheme with form documents, form notices, and uniform deceptive  
2 advertising mechanisms.

3 6. Amerisave violates TILA by charging fees to consumers prior to the provision  
4 of a Good Faith Estimate. Its activities also constitute a violation of the California  
5 Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*, the California Unfair  
6 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, the Maryland Consumer  
7 Protection Act, Md. Code Ann., Com. Law § 13-101 *et seq.*, and the Florida Deceptive and  
8 Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.* The practices described herein also  
9 constitute a breach of contract.

10 7. Plaintiffs seek injunctive relief to stop and prevent a recurrence of the  
11 challenged conduct, and to ensure Amerisave's compliance with applicable law regarding  
12 mortgage rate disclosures and allowable fees. They also seek damages and equitable relief  
13 for themselves and the Class and Subclasses generally, including restitution and  
14 disgorgement of funds obtained by Amerisave in violation of contract, state and/or federal  
15 law.

#### 16 **JURISDICTION AND VENUE**

17 8. The Superior Court of the State of California ("Superior Court") has  
18 jurisdiction over the subject matter pursuant to California Code of Civil Procedure § 410.10,  
19 California Civil Code §§ 1780 and 1781, California's False Advertising Act, Cal. Bus. &  
20 Prof. Code § 17500 *et seq.* The Superior Court also has jurisdiction pursuant to California  
21 Business and Professions Code § 17200 *et seq.* The Superior Court has personal jurisdiction  
22 over Amerisave, because Amerisave conducts substantial business activity throughout  
23 California and this County. Venue would be proper in the Superior Court pursuant to  
24 California Civil Code § 1780(d), California Code of Civil Procedure § 395.5, and California  
25 Business and Professions Code §§ 17202 and 17203.

26 9. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§  
27 1446, 1453, and 1332(d)(2), and the motion for removal filed by Defendant on April 13,

1 2011.

2 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) and the motion  
3 for removal filed by Defendant on April 13, 2011.

4 **THE PARTIES**

5 **A. PLAINTIFFS**

6 11. Plaintiff Junichiro Sonoda is a resident of San Mateo, California. In October  
7 2010, Mr. Sonoda applied to Amerisave to refinance an existing mortgage on his home.

8 12. Plaintiff Lien Duong is a resident of Potomac, Maryland. In October 2010,  
9 she applied to Amerisave to refinance an existing mortgage on her home.

10 13. Plaintiff Marvin Kupersmit is a resident of Jupiter, Florida. In April 2010, he  
11 applied to Amerisave to refinance an existing mortgage on his home.

12 **B. DEFENDANT**

13 14. Defendant Amerisave Mortgage Corporation (“Amerisave”) is a Georgia  
14 corporation with corporate headquarters at 3350 Peachtree Road, N.E., Suite 1000, Atlanta,  
15 Georgia. It claims to do business in all 50 states.

16 **FACTUAL ALLEGATIONS**

17 **A. Amerisave’s Mortgage Loan Services**

18 15. Amerisave advertises itself as a “direct correspondent lender” that can offer  
19 the lowest rates on residential mortgages. Its website explains why it can offer the lowest  
20 rates:

21 Amerisave utilizes state of the art technology, including online  
22 rate quotes, online good faith estimates and online loan  
23 applications. Our systems automate the loan process which  
reduces our costs enabling us to provide lower rates.

24 Amerisave is a direct correspondent lender for the largest  
25 mortgage banks in the country. We process, underwrite and  
26 close mortgages for most of the banks. Thus, we can shop your  
loan around like a broker, but we still maintain the control of a  
lender. This distinction is important, because it allows us to  
provide lower rates and to approve and close many more loans.

27 We lend in all 50 states, but we only have one central location.

1           Therefore, we have eliminated the costs of excessive brick and  
2           mortar branches.

3           16.     Amerisave advertises its rates nationally on its own website, in Google ads, on  
4           mortgage search websites like [www.lendingtree.com](http://www.lendingtree.com), and on financial news aggregator  
5           websites such as Yahoo! Finance (<http://finance.yahoo.com>), where consumers go for  
6           general financial news. The Yahoo page, for example, reports average rates for different  
7           kinds of mortgages in the country, on a daily basis. If a consumer clicks on the reported rate,  
8           the website enables one to find the currently quoted rates in one's locality, including interest  
9           rates, points and closing costs.

10          17.     On these mortgage rate comparison websites, Amerisave often appears as  
11          offering the lowest rates of any loan provider.

12          18.     Amerisave states that it is a "direct correspondent lender." What this means is  
13          not generally known to the layperson. In truth, it is not a "direct lender," because it does not  
14          actually sell its own loans, and because its ownership of the loan lasts a very short time and is  
15          guaranteed to end instantaneously or very soon after closing. Amerisave's central sales pitch  
16          is that it gets customers the lowest rate by choosing among *other* lenders' wholesale loan  
17          products, just as brokers do.

18          19.     The market for mortgage lending has become highly concentrated, with only a  
19          few of the largest banks offering their own home mortgage loan products. Three big lenders,  
20          Wells Fargo, Bank of America and Chase, originated 56 percent of all residential mortgages  
21          in 2010, according to statistics compiled by MortgageDaily.com. One way these lenders sell  
22          their products is through "wholesale origination," using mortgage brokers and correspondent  
23          lenders to sell their products. For example, the one and only purchaser of a Wells Fargo  
24          mortgage loan that Amerisave puts its name on is Wells Fargo. In its 2010 Annual Report,  
25          Wells Fargo reported that it was the second biggest correspondent lender, funding \$148  
26          billion of mortgage loans, which constituted 36% of its mortgage volume. Wells Fargo  
27          regards these loans as its own, and does not mention any correspondent lender or broker who  
28          made any of them.

1           20. Amerisave also does not bear the financial risk of a lender, because it only  
2 will close a loan when it has obtained underwriting approval from the actual lender, and it  
3 can transfer the loan directly to that lender after closing. It can either do this through a line  
4 of credit that allows it to take short-term loans, or it can use funds provided by the actual  
5 lender at closing. This practice is known as “table funding.” The method or methods  
6 Amerisave uses to fund its activities are unknown to Plaintiffs at this time.

7           21. The payment arrangement between Amerisave and the lenders whose products  
8 it offers is unknown to Plaintiffs at this time. On information and belief, Amerisave offers  
9 the products of wholesale lenders, plus a markup, similar to the payment structure that  
10 lenders arrange with brokers.

11           22. Amerisave also does not maintain the “control of a lender,” because it is  
12 required to follow the underwriting requirements of the lender whose products it sells. To  
13 the extent that Amerisave performs any underwriting services, it is acting as the lender’s  
14 agent. The lending banks, not Amerisave, provide the applicable loan documents and  
15 instructions, and set the rates that may be charged in connection with the loan.

16           23. Also like a broker, Amerisave does not retain ownership of any of the loans it  
17 helps to arrange. According to data collected by the Federal Financial Institutions  
18 Examination Council for 2009, the most recent year for which data are available, Amerisave  
19 sold each and every one of the 9,035 loans it originated. As a correspondent lender, it also  
20 does not service any of the loans after transfer.

21           24. The Department of Housing and Urban Development promulgated new  
22 regulations in April 2010, eliminating the FHA approval process for loan correspondents, and  
23 requiring them to either become brokers, become third-party originators through sponsorship  
24 by a FHA-approved lender, or become lenders themselves. Its stated purpose in doing so  
25 was to eliminate “risk.” Loan correspondent approval expired as of December 31, 2010. In  
26 the new regulation, HUD referred to correspondent lenders as “agents” and the wholesale  
27 lenders as “principals.” HUD has reserved for further consideration whether it should

1 continue to allow a third-party originator to close a loan in its own name. 75 F.R. 20718; 24  
 2 C.F.R. § 202.8.<sup>1</sup> Plaintiffs are unaware at this time whether Amerisave continues to act as a  
 3 correspondent lender for non-FHA, “conventional” mortgage loans.

4 25. Similarly, the Real Estate Settlement Procedures Act, 12 U.S.C. § 3500.2,  
 5 treats mortgage brokers and correspondent lenders as equivalent regarding their disclosure  
 6 obligations: “A loan correspondent approved under 24 C.F.R. 202.8 for Federal Housing  
 7 Administration programs is a mortgage broker for purposes of this part.” It defines  
 8 “mortgage broker” as follows: Mortgage broker means a person (not an employee of a  
 9 lender) or entity that renders origination services and serves as an intermediary between a  
 10 borrower and a lender in a transaction involving a federally related mortgage loan, including  
 11 such a person or entity that closes the loan in its own name in a table funded transaction.”<sup>2</sup>  
 12

13 **B. Amerisave’s Application Process**

14 26. If a consumer clicks on Amerisave’s quoted rate (via a web link), the  
 15 consumer is sent to Amerisave’s website, www.amerisave.com, which one can also visit  
 16 directly.

17 27. Amerisave has represented that securing a low mortgage rate will take a  
 18 matter of minutes, with such promises as “Apply, Get Pre-Qualified & Request Rate  
 19 Lock...Complete the entire process online in less than 10 minutes!”

20 \_\_\_\_\_  
 21 <sup>1</sup> HUD further commented, “Limiting approval to mortgagees reflects the recognition  
 22 that the mortgagee, by underwriting, servicing, or owning a loan, is the most critical lending  
 23 party to a mortgage transaction. It is the mortgagee that determines whether a borrower  
 24 qualifies for the mortgage for which the borrower applied, and, therefore, determines the risk  
 25 of lending money to the borrower.”

26 <sup>2</sup> RESPA mandates specific HUD-1 statement disclosure instructions to “a mortgage  
 27 broker originating a loan in its own name,” which instruction applies to correspondent  
 28 lenders like Amerisave. *See* 12 U.S.C. Appx., Section L (“Settlement Charges”). The statute  
 also addresses the situation of “a mortgage broker who provides origination services to  
 submit a loan to a Lender for approval,” stating what disclosures that “broker” must make on  
 the HUD-1 statement.

1           28. Amerisave lists quoted rates on a wide variety of mortgage products, with  
2 different combinations of interest rates and upfront costs. It also provides links to compare  
3 its quoted rates with those of competitors. Thus, Amerisave is explicit that the quoted rates  
4 are the rates it is currently offering. The website states: "Get a Personalized Mortgage Rate  
5 Quote / Takes 10 seconds, No Personal Info Required."

6           29. Amerisave provides answers to basic questions about its services on its  
7 website, including explaining that one can quickly secure a rate lock by applying online:

8                   **How do I lock?**

9                   To request a rate lock, just click the apply button. Complete  
10                   the application. At the end of the application our system will  
11                   let you know if you are pre-qualified. Once you are pre-  
12                   qualified our system will allow you to request a lock for the  
13                   rate you have selected.

14           30. Amerisave represents that the applicant can lock in the rate before the rest of  
15 the application proceeds:

16                   **How long does it take to get approved?**

17                   Typically, you will receive your conditional pre-approval  
18                   within 2 hours.

19                   **What happens after I apply?**

20                   After you apply, our system will let you know if you have been  
21                   pre-qualified in seconds. After you are pre-qualified, our  
22                   system allows you to lock in the rate you have selected.

23           31. Thus, Amerisave communicates to consumers that by submitting an  
24 application, they will receive an immediate or same-day notification regarding pre-  
25 qualification and the rate lock.

26           32. Amerisave has further deceived consumers by explicitly warning that its  
27 competitors give an inaccurate Good Faith Estimate and mortgage rate in order to charge  
28 other fees, and by clear implication, Amerisave does not:

                  Good Faith Estimates are just estimates. Many brokers and  
                  lenders will give you a low ball estimate, and then after you  
                  have paid for your appraisal, they will inform you that the



1 mortgage rate or closing cost have gone up. Look for lenders  
2 that guarantee their closing costs up front.

3 33. The small print on the website has included this disclaimer: "Pricing shown  
4 assumes you can lock and close your loan today." This is a legal impossibility: TILA  
5 requires that the creditor deliver disclosures of closing costs no later than the seventh  
6 business day before consummation. 12 C.F.R. § 226.19(a)(2)(i). For this reason alone,  
7 Amerisave's representations of mortgage rates are deceptive.

8 34. TILA is clear that the *only* fee a creditor or any other person may charge a  
9 prospective borrower before providing a Good Faith Estimate is a fee for a credit check. 12  
10 C.F.R. § 226.19(a) states in part:

11 (ii) Imposition of fees. Except as provided in paragraph  
12 (a)(1)(iii) of this section, neither a creditor nor any other person  
13 may impose a fee on a consumer in connection with the  
14 consumer's application for a mortgage transaction subject to  
15 paragraph (a)(1)(i) of this section before the consumer has  
16 received the [good faith] disclosures required by paragraph  
17 (a)(1)(i) of this section. If the disclosures are mailed to the  
18 consumer, the consumer is considered to have received them  
19 three business days after they are mailed.

20 (iii) Exception to fee restriction. A creditor or other person may  
21 impose a fee for obtaining the consumer's credit history before  
22 the consumer has received the disclosures required by  
23 paragraph (a)(1)(i) of this section, provided the fee is bona fide  
24 and reasonable in amount.

25 35. Only after Amerisave has charged a \$35 fee for a credit check does it reveal  
26 that the customer must pay for a property appraisal in order for Amerisave to determine that  
27 there is a "high likelihood" that the loan will be approved, and for Amerisave to lock in the  
28 mortgage rate. It schedules the property appraisal as soon as possible, even the very next  
day.

36. Amerisave does not need an appraisal to lock in an interest rate, and it does  
not use it for that purpose. On information and belief, lenders generally do not schedule a  
property appraisal until a loan goes to underwriting, because the purpose of the appraisal is

1 not to judge the credit-worthiness of the applicant, but whether the property is sufficiently  
2 valuable to serve as collateral for the loan, and for mortgage insurance purposes. Moreover,  
3 lenders generally require payment for the appraisal at closing, and certainly not before a  
4 Good Faith Estimate has been provided.

5 37. Amerisave routinely charges and obtains fees for property appraisals prior to  
6 providing a Good Faith Estimate of closing costs.

7 38. Amerisave represents to consumers that a lock-in can be obtained in minutes.  
8 But its standard practice is to demand substantial additional documentation before providing  
9 a rate lock, which no applicant could provide in minutes. The documents Amerisave requires  
10 before completing a lock-in request, on a pre-printed form it transmits to its consumers (titled  
11 “Final Step: Documents Needed Prior To Locking Your Rate”), include recent paystubs,  
12 W2s, and statements of all liquid assets and retirement accounts.

13 39. One mortgage advice source, *The Mortgage Insider*, explains this scheme:

14 **Why do originators tell mortgage lock lies?**

15 They tell lies simply to cover mistakes made at the time they  
16 quoted the rate. If they forgot to adjust the rate for low credit  
17 scores, higher loan-to-values, or to waive escrows, these mistakes  
become evident at the time of lock.

18 Loan officers also tell lock lies because of a false belief they can  
19 “call the market” and pick the day that makes them the most yield  
spread premium, they will risk your mortgage lock and lie to you  
about it.<sup>3</sup>

20 40. On information and belief, Amerisave is making deceptive promises to  
21 consumers that it can lock rates it does not intend to keep, so that it can maximize its profits  
22 at the expense of its consumers.

23  
24  
25 \_\_\_\_\_  
26 <sup>3</sup> The MortgageInsider.net, *Mortgage Lock Fraud Abounds*,  
<http://themortgageinsider.net/mortgage-lock-fraud-abounds.html> (last visited Feb. 8, 2011).

1 **C. Plaintiffs' Facts**

2 ***Junichiro Sonoda***

3 41. Junichiro Sonoda applied for a home mortgage online with Amerisave on  
4 October 8, 2010, after comparing rates at the mortgage comparison site www.bankrate.com,  
5 reviewing Amerisave's website, and speaking with an Amerisave agent, John Noh.

6 42. Mr. Sonoda intended to refinance his existing mortgage with Bank of  
7 America, the balance of which stood at \$406,000. The current value of his house located in  
8 San Mateo, California, as confirmed by a property appraisal, was around \$700,000.

9 43. On October 8, 2010, Mr. Sonoda paid \$35 for a credit check, and \$400 for an  
10 appraisal, in order to lock in his rate of 3.5% for a 15 year, fixed mortgage. Only after  
11 paying these fees did Mr. Sonoda receive a Good Faith Estimate of closing costs.

12 44. Mr. Sonoda informed Amerisave, in an email to Mr. Noh on October 9, 2010,  
13 and in his online application, that he had a mortgage provided by his employer of about  
14 \$50,000, one that the employer would pay off over a period of several years, as a condition of  
15 his continued employment.

16 45. Amerisave scheduled the appraisal for October 10, 2010. On October 13, Mr.  
17 Sonoda was informed that his loan was pre-approved, the file had been sent to underwriting,  
18 and a loan processor had been assigned. Mr. Noh informed him in an October 15 email that  
19 everything was in order:

20 Yes, our title company will take care of the subordination. I  
21 will make sure of it.

22 UW [underwriting] takes about 2 weeks right now. I can assure  
23 you that there is nothing to worry about. It just needs to go thru  
the necessary steps.

24 I will be in touch. Thank you

25 46. Amerisave did not keep these promises. An employee in Amerisave's  
26 underwriting department, Tawnie Teamer, informed Mr. Sonoda on November 9, 2010 that  
27 the loan was "conditionally approved":

1           Unfortunately, the terms of the 2nd mortgage do not comply  
2           with investor guidelines and must be paid off or release[d];  
             therefore we will need to obtain a payoff for this mortgage.

3           47.     Mr. Sonoda had told Mr. Noh at the outset of his application that he had no  
4           desire to pay off this loan, which his employer would pay off as a benefit in connection with  
5           his continued employment with the company. Mr. Noh again informed him, in a November  
6           5 email, that this would not be a problem:

7                     I have already informed Tawnie and having underwriting look  
8                     into this. There is nothing wrong with your 2nd mortgage and I  
9                     will resolve this issue for us. I will contact you about this again  
10                    as I have escalated to management here at Amerisave. Your  
                     current loan is with BofA and BofA is one of our investors so I  
                     do not foresee any problems. I will let you know. Thank you

11          48.     On December 7, Amerisave, through an email from Mr. Noh, informed Mr.  
12          Sonoda that the mortgage could not be approved because of the promissory note provided by  
13          his employer.

14          49.     Mr. Sonoda applied for a loan with Amerisave and paid for an appraisal and  
15          other fees in reliance on Amerisave's representations on its website, its forms and  
16          documents, and from representations made by Amerisave employees.

17                   ***Lien Duong***

18          50.     Lien Duong received an email solicitation from Amerisave on or about  
19          October 15, 2010. She was interested in taking advantage of historically low interest rates  
20          and refinancing the mortgage on her home.

21          51.     Ms. Duong was seeking to obtain a mortgage with Amerisave of around  
22          \$400,000. At that time, her house had a value of approximately \$1.4 million, so her loan-to-  
23          value ratio was quite low, less than 30 percent. (Lenders routinely approve loans with a 20  
24          percent down payment, or a loan-to-value ratio of 80 percent.) In addition, she and her  
25          husband had excellent credit scores.

26          52.     Ms. Duong called the phone number Amerisave provided on or about October  
27          15, 2010. She heard a pre-recorded message telling her that she would get better rates than

1 even Amerisave's agent could see online.

2 53. Ms. Duong hung up the phone and visited the Amerisave website, at  
3 www.amerisave.com, as instructed by Amerisave. She completed the requested information,  
4 and indicated that she was interested in a 10-year mortgage at the quoted rate of 3.375%.

5 54. The website indicated that in order to submit her application and lock in her  
6 rate, she would have to pay \$35, stating, "we require a deposit of \$35 for a pre-qualification  
7 or a pre-approval." The website also stated that once the application is "pre-qualified/pre-  
8 approved," "Amerisave can lock the rate selected." Ms. Duong provided her credit card  
9 authorization for the \$35 charge. A few minutes later, Ms. Duong received a message stating  
10 that she was "pre-approved," and presented a list of mortgage rates she could select in order  
11 to lock in.

12 55. Only at this time did Amerisave inform Ms. Duong that she must pay a \$625  
13 appraisal fee in order to *request* a lock. Amerisave states, "Your lock request will not be  
14 processed until you have paid for your appraisal. This is the final step prior to requesting  
15 your lock." The web page states, "The borrower(s) authorizes Amerisave to charge the cost  
16 of the appraisal to the card below. The cost of the appraisal is non-refundable."

17 56. Because of Amerisave's promises to Ms. Duong that she was pre-approved on  
18 condition that she resolve a \$100 medical bill that Amerisave stated was showing as negative  
19 on her credit, Ms. Duong authorized a payment of \$625 for the appraisal in order to lock in  
20 her rate, providing her credit card number online. The appraisal order form also states,  
21 "Amerisave will do everything possible to get you the mortgage you desire."

22 57. Ms. Duong expected, as the Amerisave website stated, that she would find out  
23 within a matter of minutes or hours whether she was pre-approved and whether her rate was  
24 locked in. She did not. In fact, Amerisave then sent her a form indicating that her interest  
25 rate was not fixed but "floating."

26 58. Ms. Duong paid for an application fee/credit check and the appraisal on  
27 October 15, 2010. The appraisal purchased through Amerisave in order to obtain a lock-in

1 rate was scheduled for October 18, 2010.

2 59. Ms. Duong did not receive a Good Faith Estimate until October 19, 2010.

3 60. The credit check that Ms. Duong authorized on October 15, 2010 showed the  
4 existence of a \$100 unpaid medical bill. This report was in error.

5 61. Ms. Duong provided documentation that the billing error had been resolved  
6 promptly after Amerisave requested it, with a letter from the collections company dated  
7 October 25, 2010.

8 62. Despite Ms. Duong's prompt satisfaction of Amerisave's demand and the full  
9 payment of the appraisal and application fee, Amerisave failed to lock in her rate or to  
10 process her application. Interest rates have since risen.

11 63. Ms. Duong filed a complaint with the Maryland Office of the Commissioner  
12 of Financial Regulations Consumer Services Unit on November 30, 2010. Her complaint is  
13 pending with the agency.

14 ***Marvin Kupersmit***

15 64. On April 23, 2010, after comparing rates online, Marvin Kupersmit applied to  
16 Amerisave for a 30-year, fixed rate mortgage to refinance the existing mortgage on his home,  
17 in Jupiter, Florida.

18 65. Mr. Kupersmit's existing mortgage balance was slightly over \$400,000, and  
19 he sought to refinance for the same amount with a lower interest rate than he had on his  
20 current loan. He also had a second mortgage with a balance of \$98,000. His house was  
21 valued at approximately \$1.2 million. Thus, his total loan-to-value ratio was just over 40  
22 percent.

23 66. Amerisave required Mr. Kupersmit to pay \$750 for an appraisal, plus \$35 for  
24 a credit check, in order to apply for the loan. He paid these amounts on April 30, 2010.

25 67. Amerisave's emails to Mr. Kupersmit reflect that it ordered the appraisal on  
26 April 30, 2010, and conducted the appraisal on May 5, 2010.

27 68. Amerisave did not provide Mr. Kupersmit with a Good Faith Estimate until  
28

1 June 10, 2010, or more than a month after he paid the appraisal/lock-in fee.

2 69. Amerisave informed Mr. Kupersmit that he was preapproved as of May 7,  
3 2010, and was given a rate lock for 30 days. Mr. Kupersmit promptly sent in all documents  
4 Amerisave requested relating to his income and assets. Indeed, Amerisave's records reflect  
5 that he sent all of the requested documents to Amerisave by May 1, 2010. Yet Amerisave  
6 continually requested additional documentation of his income and assets, resulting in the rate  
7 lock expiring through no fault of Mr. Kupersmit.

8 70. Amerisave denied his loan on or around June 21, 2010, stating that his income  
9 was not sufficient. This was surprising to Mr. Kupersmit, who was applying for a low loan-  
10 to-value loan, and has assets valued in the millions of dollars, including monthly retirement  
11 income and income from part-time work.

12 71. After Amerisave denied his loan, Mr. Kupersmit applied for and quickly  
13 obtained a similar loan with SunTrust. SunTrust charged him \$450 for the property  
14 appraisal.

15 **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

16 72. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and California  
17 Civil Code § 1781, Plaintiffs bring this action as a class action on behalf of themselves and  
18 all others similarly situated as members of a proposed national class. This putative class  
19 (hereinafter "the Class") is defined as follows:

20 All individuals who applied for a home mortgage with Amerisave,  
21 and were required to and did pay a property appraisal fee and/or  
22 other fees (other than a fee for a credit check) before receiving a  
Good Faith Estimate.

23 73. Plaintiff Junichiro Sonoda brings this action on behalf of a subclass ("the  
24 California Subclass") defined as follows:

25 All California residents who applied for a home mortgage with  
26 Amerisave, and were required to and did pay a property appraisal  
27 fee and/or other fees (other than a fee for a credit check) before  
receiving a Good Faith Estimate.

1           74.     Plaintiff Lien Duong brings this action on behalf of a subclass (“the Maryland  
2 Subclass”) defined as follows:

3                   All Maryland residents who applied for a home mortgage with  
4                   Amerisave, and were required to and did pay a property appraisal  
5                   fee and/or other fees (other than a fee for a credit check) before  
6                   receiving a Good Faith Estimate.

7           75.     Plaintiff Marvin Kupersmit brings this action on behalf of a subclass (“the  
8 Florida Subclass”) defined as follows:

9                   All Florida residents who applied for a home mortgage with  
10                   Amerisave, and were required to and did pay a property appraisal  
11                   fee and/or other fees (other than a fee for a credit check) before  
12                   receiving a Good Faith Estimate.

13           76.     Excluded from the Class and Subclasses are: (a) Amerisave and any of its  
14 corporate parents, subsidiaries, affiliates, partners, officers, directors, predecessors, or  
15 successors; (b) any entity in which any Amerisave or other excluded entity has a controlling  
16 interest; (c) any judge or judicial official assigned to this matter and his or her immediate  
17 family; and (d) the legal representatives, successors or assigns of any such excluded persons  
18 or entities.

19           77.     Plaintiffs seek class certification for the Class and Subclasses under California  
20 Code of Civil Procedure § 382 and under California Civil Code § 1781 for the California  
21 Subclass only.

22           78.     The members of the Class and Subclasses are so numerous that joinder is  
23 impracticable. Amerisave states that it brokers loans in all fifty states. The precise number  
24 of individuals in the Class and Subclasses, and the identities of the members, is ascertainable  
25 from the business records of Amerisave. Upon information and belief, Plaintiffs estimate  
26 that the Class and Subclasses number, at least, in the thousands.

27           79.     Common questions of law and fact exist as to all members of the Class and  
28 Subclasses, which predominate over any individual questions. Among the questions of law  
and fact common to the Class and Subclasses are:



- 1 a. Whether Amerisave has sought and collected fees and charges not
- 2 authorized by TILA;
- 3 b. Whether Amerisave failed to provide the disclosures required by
- 4 TILA;
- 5 c. Whether Amerisave's activities constitute a breach of contract;
- 6 d. Whether Amerisave's activities constitute a breach of the implied
- 7 covenant of good faith and fair dealing;
- 8 e. Whether Amerisave's activities constitute unfair and deceptive
- 9 practices;
- 10 f. Whether Amerisave's representations constitute false advertising;
- 11 g. Whether Amerisave's activities should be enjoined; and
- 12 h. The correct measure of damages to the Class and Subclasses.

13 80. Plaintiffs' claims are based on a centralized website, form documents,  
14 standardized sales practices, accounting policies and improper billing practices that were  
15 used or implemented by Amerisave on a nationwide basis.

16 81. There are no substantial individual questions among the Class or Subclasses'  
17 claims, other than the amount of relief that each Class member or Subclass member is  
18 entitled to receive, which question is susceptible to common proof. Common questions thus  
19 predominate.

20 82. Plaintiffs' claims are typical of the claims of the members of the Class or their  
21 respective Subclasses, for the reason that Plaintiffs and all other members of the Class and  
22 Subclasses sustained harm arising out of Amerisave's common course of wrongful conduct.  
23 Each of the members of the Class and Subclasses was subject to the same lending practices  
24 followed by Amerisave. Plaintiffs, like other members of the Class and Subclasses, have  
25 been substantially damaged by the unfair and deceptive treatment they have suffered at  
26 Amerisave's hands.

27 83. Plaintiffs are adequate representatives of the borrowers whom they seek to

1 represent. Plaintiffs' interests do not conflict with the interests of the individual members of  
2 the Class and Subclasses that they seek to represent. Plaintiffs have retained counsel who are  
3 competent and experienced in complex class action litigation. The interests of the members  
4 of the Class and Subclasses will be fairly and adequately protected by Plaintiffs and their  
5 counsel.

6 84. Plaintiffs have suffered the same type of damage inflicted by Amerisave on  
7 the Class and Subclasses generally, and they are intent on obtaining relief for these alleged  
8 unfair and deceptive practices. They are fully committed to fairly, adequately, and  
9 vigorously representing and protecting the interests of the members of the Class and  
10 Subclasses. They have retained counsel competent and experienced in class action and  
11 consumer protection litigation for this purpose.

12 85. A class action is superior to other available methods for fairly and efficiently  
13 adjudicating the controversy. Among other reasons, the costs of litigation are high and  
14 Plaintiffs' and Class members' damages are comparatively small; a class action better serves  
15 class members' interests than individually controlling the prosecution of separate actions; no  
16 other litigation is known to be pending; this forum is well-suited for bringing the stated  
17 claims; and Plaintiffs know of no serious difficulty likely to be encountered in the  
18 management of this action that would preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 (Violations of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*  
21 by Plaintiffs Individually and on Behalf of the Class)

22 86. Plaintiffs reallege and incorporate by reference all preceding allegations of  
23 law and fact.

24 87. Amerisave is a "creditor" within the meaning of TILA, because it regularly  
25 extends consumer credit which is payable by agreement in more than four installments or for  
26 which the payment of a finance charge is or may be required within the meaning of 15 U.S.C.  
27 § 1602(f) and 12 C.F.R. § 6.2(a)(17).

28 88. TILA, specifically Federal Reserve Regulation Z, 12 C.F.R. § 226 *et seq.*

1 (“Regulation Z”), forbids mortgage lenders from charging any fee, other than a reasonable  
2 fee for a credit check, until they have provided a “Good Faith Estimate” of costs. 12 C.F.R.  
3 § 226.19(a).

4 89. Amerisave has violated and is violating this provision, by charging Plaintiffs  
5 and members of the Class for an application fee, hundreds of dollars for a property appraisal,  
6 and/or charges for other fees before issuing Good Faith Estimates.

7 90. Regulation Z also states, “If an advertisement for credit states specific credit  
8 terms, it shall state only those terms that actually are or will be arranged or offered by the  
9 creditor.” 12 C.F.R. § 226.24(a).

10 91. The Plaintiffs and members of the Class have been damaged by such  
11 violations, in that they have been charged improper fees, and in that they have either paid  
12 such fees or had their property encumbered by such fees.

13 92. Pursuant to 15 U.S.C. § 1640, Plaintiffs and members of the Class are entitled  
14 to relief under TILA, including statutory and actual damages, attorneys’ fees, an injunction,  
15 and a declaratory judgment that Amerisave’s conduct violates TILA.

16 **SECOND CAUSE OF ACTION**

17 (Breach of Contract by Plaintiffs Individually and on Behalf of the Class)

18 93. Plaintiffs reallege and incorporate by reference all preceding allegations of  
19 law and fact.

20 94. A contract is formed between Amerisave and consumers who pay for an  
21 application fee and/or an approval fee to obtain a lock-in mortgage rate. Amerisave offers a  
22 lock-in rate in exchange for payment of the application fee, and then additionally requires  
23 payment of an appraisal fee. Plaintiffs and the Class accept the offer by paying the fee(s),  
24 which constitutes consideration for obtaining a lock-in mortgage rate.

25 95. Pursuant to the provisions of the contract with consumers who apply,  
26 Amerisave assumed the rights and obligations of a mortgage broker or “correspondent  
27 lender” for Plaintiffs Sonoda, Duong, and Kupersmit and members of the Class.

1 96. Amerisave breached the terms of the contract by changing the terms of the  
2 contract after it was entered, by failing to lock in mortgage rates, and failing to process  
3 mortgage applications pursuant to agreed terms and within a reasonable amount of time.

4 97. Plaintiffs and all members of the Class gave consideration that was fair and  
5 reasonable, and they have performed all conditions, covenants, and promises required to be  
6 performed under their contracts with Amerisave.

7 98. Amerisave has imposed or collected amounts that are not due and owing by  
8 contract including, without limitation, appraisal fees and application deposit fees.

9 99. As a result of Amerisave's breach of the contract, Plaintiffs and members of  
10 the Class suffered and will continue to suffer reasonable and foreseeable consequential  
11 damages resulting from such breaches, including payment of application fees, appraisal fees,  
12 cancellation fees, costs of obtaining an alternative mortgage, and the loss of a favorable lock-  
13 in mortgage rate which results in increased interest, longer loan payoff times, and higher  
14 principal balances and other damages for breach of contract.

15 100. Plaintiffs and members of the Class are entitled to damages and other relief  
16 for breach of contract, in an amount to be determined according to proof at time of trial.

17 101. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs and  
18 members of the Class are entitled to recover their reasonable attorney's fees, costs, and  
19 expenses incurred in bringing this action.

20 **THIRD CAUSE OF ACTION**

21 (Breach of Implied Covenant of Good Faith and Fair Dealing  
22 by Plaintiffs individually and on Behalf of the Class)

23 102. Plaintiffs reallege and incorporate by reference all preceding allegations of  
24 law and fact.

25 103. Pursuant to the provisions of the contract with consumers who apply,  
26 Amerisave assumed the rights and obligations of a mortgage broker or "correspondent  
27 lender" for Plaintiffs Sonoda, Duong, and Kupersmit and members of the Class.

28 104. As detailed above, Amerisave formed a contract with Plaintiff and members

1 of the Class to lock-in mortgage interest rates upon payment of application deposit fees, and  
2 then by payment of appraisal fees.

3 105. In addition to its express terms, every contract carries with it an implied  
4 covenant of good faith and fair dealing. This implied covenant prevents one contracting  
5 party from unfairly frustrating the other party's right to receive the benefits of the contract.  
6 Amerisave is obligated to act in good faith and deal fairly with each individual who entered  
7 into a contract for a lock-in mortgage rate.

8 106. Pursuant to the implied covenant in the contracts, Amerisave had a duty not to  
9 deprive Plaintiffs and members of the Class of the benefits of those contracts, and had a duty  
10 to do everything that the contracts presupposed each of the parties would do to accomplish  
11 the purposes of those contracts.

12 107. Amerisave has violated the implied covenant of good faith and fair dealing in  
13 its contracts with Plaintiffs and Class members by failing to process mortgage applications  
14 pursuant to agreed terms, failing to process mortgage loan applications consistent with its  
15 responsibilities to Plaintiffs, failing to provide lock-in rates, and unreasonably delaying the  
16 processing of loan paperwork such that Plaintiffs and Class members are deprived of a lock-  
17 in rate.

18 108. As a result of Amerisave's breach of the implied covenant of good faith and  
19 fair dealing, Plaintiffs and members of the Class suffered and will continue to suffer  
20 reasonable and foreseeable consequential damages resulting from such breaches, including  
21 payment of application fees, appraisal fees, cancellation fees, costs of obtaining an  
22 alternative mortgage, and the loss of a favorable lock-in mortgage rate which results in  
23 increased interest, longer loan payoff times, and higher principal balances and other damages  
24 for breach of the implied covenant of good faith and fair dealing.

25 109. Plaintiffs and members of the Class are entitled to damages and other relief  
26 for Amerisave's breach of the implied covenant of good faith and fair dealing, in an amount  
27 to be determined according to proof at time of trial.

1 110. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs and  
2 members of the Class are entitled to recover their reasonable attorney’s fees, costs, and  
3 expenses incurred in bringing this action.

4 **FOURTH CAUSE OF ACTION**

5 (Violations of the Consumers Legal Remedies Act,  
6 Cal. Civ. Code § 1750 *et seq.*, by Plaintiff Sonoda Individually  
7 and on Behalf of the California Subclass)

8 111. Plaintiffs reallege and incorporate by reference all preceding allegations of  
9 law and fact.

10 112. By offering to compare mortgage rates provided by third-party lenders and  
11 “lock in” a low rate for the benefit of the consumer, Amerisave has purported to provide a  
12 “service” within the meaning of California Civil Code § 1761(b), a provision of the  
13 Consumers Legal Remedies Act (“CLRA”), California Civil Code § 1750 *et seq.*

14 113. The CLRA states that its provisions are to be “liberally construed and applied  
15 to promote its underlying purposes, which are to protect consumers against unfair and  
16 deceptive business practices.” Cal. Civ. Code § 1760. The CLRA also provides that “[a]ny  
17 waiver by a consumer of the provisions of this title is contrary to public policy and shall be  
18 unenforceable and void.” Cal. Civ. Code § 1751.

19 114. Amerisave has violated and is violating § 1770(a)(5) of the CLRA by  
20 representing that the goods and services it provides have characteristics and benefits which  
21 they do not have, including without limitation, failing to adequately disclose the terms of the  
22 mortgage services provided and the fees associated with those services, and promising  
23 benefits (such as a lock-in mortgage rate) which are not accurate or realistic.

24 115. Amerisave has violated and is violating § 1770(a)(9) of the CLRA by  
25 advertising goods and services with an intent not to sell them as advertised, including without  
26 limitation, advertising a locked-in mortgage rate, yet failing to take steps necessary to  
27 provide the promised lock-in rate, and/or delaying and obfuscating to avoid providing the  
28 promised lock-in rate.

1 116. Amerisave has violated and is violating § 1770(a)(14) of the CLRA by  
2 representing that its transactions with consumers confer rights and remedies that are  
3 prohibited by law, specifically that by promising to “lock in” another lender’s mortgage rate,  
4 it has the right to collect application and appraisal fees prior to providing a Good Faith  
5 Estimate, in violation of TILA.

6 117. Amerisave has violated and is violating § 1770(a)(17) of the CLRA by  
7 representing that consumers will receive an economic benefit in the form of a locked-in  
8 mortgage rate provided within minutes or hours of application, when that economic benefit is  
9 contingent upon the lender’s approval of the mortgage, an event that does not occur until  
10 after the consumer has paid the application and appraisal fees and which in many instances,  
11 as the named plaintiffs’ experiences show, never occurs at all.

12 118. Amerisave has violated and is violating § 1770(a)(19) of the CLRA by  
13 including unfair and unconscionable terms in its contracts to provide lock-in mortgage rates,  
14 including but not limited to requiring borrowers to pay for appraisals before they are  
15 necessary, and before receiving a good faith estimate, in violation of TILA. Amerisave  
16 possesses bargaining strength and power far superior to that of Plaintiff Sonoda and other  
17 customers. Without discussion or negotiation, Amerisave offers standardized form contracts,  
18 drafted by Amerisave, which are contracts of adhesion because they are offered on a take-it-  
19 or-leave-it basis. The agreement is substantially one-sided in favor of Amerisave. It is,  
20 therefore, unlawful, unfair, fraudulent, and unconscionable.

21 119. On July 22, 2011, Plaintiff Sonoda, through his counsel, sent a notice and  
22 demand letter, on behalf of himself and all other similarly situated, by certified mail, return  
23 receipt, to Amerisave, pursuant to California Civil Code section 1782(a). As of August 8,  
24 2011, Plaintiff had not received a response from Amerisave.

25 120. As a result of the unfair and deceptive acts and practices of Amerisave herein  
26 above described, Plaintiff Sonoda and members of the California Subclass have suffered  
27 damage, including economic loss.

1 121. Plaintiff Sonoda and members of the California Subclass hereby request actual  
2 and punitive damages and injunctive relief, pursuant to California Civil Code § 1780(a) and  
3 1781(a), and attorney’s fees, costs and expenses pursuant to California Civil Code § 1780(e)  
4 and California Code of Civil Procedure § 1021.5.

5 122. Amerisave’s violations of multiple provisions of the CLRA are ongoing and,  
6 unless enjoined, will harm additional members of the Class and California Subclass.

7  
8 **FIFTH CAUSE OF ACTION**

9 (Violations of the Unfair Competition Law (“UCL”),  
10 Cal. Bus. & Prof. Code § 17200 *et seq.*, by Plaintiff Sonoda Individually  
11 and on Behalf of the California Subclass)

12 123. Plaintiffs reallege and incorporate by reference all preceding allegations of  
13 law and fact.

14 124. The California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*  
15 *seq.* (“UCL”), defines unfair competition to include any “unlawful,” “unfair,” or “fraudulent”  
16 business act or practice. Cal. Bus. & Prof. Code § 17200.

17 125. Amerisave’s conduct, as alleged above, constitutes unlawful, unfair and/or  
18 deceptive acts and practices with respect to the California Subclass for the reasons set forth  
19 below, without limitation:

- 20 a. Violation of California’s Consumers Legal Remedies Act, Cal. Civ. Code  
21 § 1750 *et seq.*;
- 22 b. Breaching its contract, and the implied covenant of good faith and fair dealing  
23 included therein, to provide a lock-in mortgage rate, and provide a mortgage  
24 loan;
- 25 c. Imposing and collecting unnecessary and excessive fees and charges,  
26 particularly appraisal fees, not authorized by law;
- 27 d. Securing customer payments and commitments to applications while  
28 promising a rate lock-in, but not providing that lock-in;



- 1 e. Failing to timely process mortgage applications, and refusing to process
- 2 applications for pretextual reasons;
- 3 f. Charging cancellation fees;
- 4 g. Failing to extend rate lock-in periods when Amerisave is responsible for the
- 5 delay;
- 6 h. Misleading or otherwise misinforming consumers about the amounts properly
- 7 due and owing;
- 8 i. Failing to reasonably or properly administer customer applications;
- 9 j. Engaging in conduct that violates state and federal consumer protection laws;
- 10 and
- 11 k. Harassing or otherwise treating consumers unfairly and without regard to
- 12 obligations of good faith and fair dealing.

13 126. As a result of Amerisave's unlawful, unfair, and fraudulent conduct, Plaintiff  
14 Sonoda and members of the California Subclass suffered injury in fact and lost money and  
15 property, including, but not limited to, the application fee and appraisal and other fees  
16 charged by Amerisave.

17 127. Pursuant to California Business and Professions Code § 17203, Plaintiff  
18 Sonoda and members of the California Subclass seek declaratory and injunctive relief for  
19 Amerisave's unlawful, unfair, and fraudulent conduct and to recover restitution.

20 128. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff Sonoda and  
21 members of the California Subclass are entitled to recover reasonable attorneys' fees, costs,  
22 and expenses incurred in bringing this action.

23 **SIXTH CAUSE OF ACTION**

24 (Violations of the Unfair Competition Law ("UCL"),  
25 Cal. Bus. & Prof. Code § 17200 *et seq.*, by Plaintiff Sonoda Individually  
26 and on Behalf of the California Subclass)<sup>4</sup>

27 <sup>4</sup> Plaintiffs plead this additional UCL count based on violations independent of the  
28 Consumers Legal Remedies Act, an alternative set out by the Court in its Order dated July 8,  
2011 (Docket No. 41).

1  
2 129. Plaintiffs reallege and incorporate by reference all preceding allegations of  
3 law and fact.

4 130. The California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*  
5 *seq.* (“UCL”), defines unfair competition to include any “unlawful,” “unfair,” or “fraudulent”  
6 business act or practice. Cal. Bus. & Prof. Code § 17200.

7 131. Amerisave’s conduct, as alleged above, constitutes unlawful, unfair and/or  
8 deceptive acts and practices with respect to the California Subclass for the reasons set forth  
9 below, without limitation:

- 10 a. Breaching its contract, and the implied covenant of good faith and fair dealing  
11 included therein, to provide a lock-in mortgage rate, and provide a mortgage  
12 loan;
- 13 b. Imposing and collecting unnecessary and excessive fees and charges,  
14 particularly appraisal fees, not authorized by law;
- 15 c. Securing customer payments and commitments to applications while  
16 promising a rate lock-in, but not providing that lock-in;
- 17 d. Failing to timely process mortgage applications, and refusing to process  
18 applications for pretextual reasons;
- 19 e. Charging cancellation fees;
- 20 f. Failing to extend rate lock-in periods when Amerisave is responsible for the  
21 delay;
- 22 g. Misleading or otherwise misinforming consumers about the amounts properly  
23 due and owing;
- 24 h. Failing to reasonably or properly administer customer applications;
- 25 i. Engaging in conduct that violates state and federal consumer protection laws;  
26 and
- 27 j. Harassing or otherwise treating consumers unfairly and without regard to

1 obligations of good faith and fair dealing.

2 132. As a result of Amerisave's unlawful, unfair, and fraudulent conduct, Plaintiff  
3 Sonoda and members of the California Subclass suffered injury in fact and lost money and  
4 property, including, but not limited to , the application fee and appraisal and other fees  
5 charged by Amerisave.

6 133. Pursuant to California Business and Professions Code § 17203, Plaintiff  
7 Sonoda and members of the California Subclass seek declaratory and injunctive relief for  
8 Amerisave's unlawful, unfair, and fraudulent conduct and to recover restitution.

9 134. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff Sonoda and  
10 members of the California Subclass are entitled to recover reasonable attorneys' fees, costs,  
11 and expenses incurred in bringing this action.

12 **SEVENTH CAUSE OF ACTION**

13 (Violations of California's False Advertising Act,  
14 Cal. Bus. & Prof. Code, 17500 *et seq.* by Plaintiff Sonoda Individually  
and on Behalf of the California Subclass)

15 135. Plaintiffs reallege and incorporate by reference all preceding allegations of  
16 law and fact.

17 136. The California False Advertising Act, Cal. Bus. & Prof. Code § 17500 *et seq.*  
18 ("FAA"), prohibits untrue or misleading advertising. A court may order injunctive relief and  
19 restitution as remedies for any violations of the FAA as part of the UCL.

20 137. At all times material herein, Amerisave has engaged in mass advertising and  
21 marketing campaigns to the public, including the California Subclass, and offering to provide  
22 mortgages without fully disclosing the terms and conditions, including the processing of a  
23 rate-lock, the cost of a rate-lock, and the requirement of paying an appraisal fee. The  
24 representations include but are not limited to those to the effect that Amerisave had the best  
25 mortgage rates, that it could lock in rates within minutes, and that its state-of-the-art  
26 technology allows it to produce lower rates.

27 138. Amerisave engaged in the misrepresentations herein alleged with the intent to  
28

1 induce the public and California Subclass members to enter into a mortgage loan with  
2 Amerisave and/or to pay up fees front for a lock-in rate.

3 139. Amerisave's advertising was untrue or misleading and likely to deceive the  
4 public in that while Amerisave stated and implied that it would lock in rates, it systematically  
5 and routinely failed to provide lock-in mortgage rates and failed to fully disclose the terms  
6 and conditions of obtaining a lock-in mortgage rate.

7 140. Plaintiff Sonoda viewed Amerisave's website and relied on its statements and  
8 representations in deciding to obtain a mortgage from Amerisave.

9 141. In making and disseminating the statements herein alleged, Amerisave knew,  
10 or by the exercise of reasonable care should have known, that the statements were and are  
11 untrue or misleading, and for this reason, Amerisave acted in violation of the FAA.

12 142. The business acts and practices of Amerisave as described herein also  
13 constitute unfair business practices in violation of the FAA, because such acts and practices  
14 are substantially injurious to consumers and offensive to established California public policy.

15 143. In addition, the business acts and practices of Amerisave as described herein  
16 constitute fraudulent business practices in violation of the FAA, because such acts and  
17 practices are likely to deceive California consumers.

18 144. Plaintiff Sonoda and members of the California Subclass have suffered  
19 economic injury as a result of Amerisave's conduct alleged herein, including but not limited  
20 to the application fee and appraisal and other fees charged by Amerisave.

21 145. Pursuant to California Business and Professions Code § 17535, Plaintiff  
22 Sonoda and the California Subclass seek to enjoin these acts and practices and to obtain  
23 restitution of all funds seized from Plaintiff and the California Subclass by reason and  
24 through the use of such false advertising. Pursuant to California Business and Professions  
25 Code § 17535, Plaintiff Sonoda, individually, and on behalf of all members of the California  
26 Subclass who are, have been or may be, subjected to these unlawful, unfair, and fraudulent  
27 business acts and practices of Amerisave, hereby requests preliminary and permanent

1 injunctive relief prohibiting such practices in the future, and such other orders as may be  
2 necessary to restore to each class member any money or property, real or personal, which  
3 may have been seized from them by means of such false advertising, and to disgorge all  
4 profits Amerisave has earned thereby. In addition, pursuant to California Code of Civil  
5 Procedure § 1021.5, Plaintiff Sonoda and the California Subclass are entitled to recover  
6 reasonable attorneys' fees, costs and expenses incurred in bringing this action.

7  
8 **EIGHTH CAUSE OF ACTION**

9 (Violations of Maryland's Consumer Protection Act,  
10 Md. Code Ann., Com. Law § 13-101 *et seq.*, by Plaintiff Duong Individually  
11 and on Behalf of the Maryland Subclass)

12 146. Plaintiffs reallege and incorporate by reference all preceding allegations of  
13 law and fact.

14 147. Md. Code. Ann., Com. Law § 13-408 authorizes any person to bring an action  
15 for damages to recover for injury or damages sustained as a result of a practice prohibited  
16 under Title 13.

17 148. Plaintiffs are "consumers" and Defendant is a "merchant" as defined in Md.  
18 Code Ann., Com. Law § 13-101.

19 149. Amerisave engaged in an unfair or deceptive trade practice when it made false  
20 and/or misleading statements regarding consumers' ability to apply for a residential home  
21 mortgage, and to lock in a quoted interest rate by applying online and paying required fees.  
22 Md. Code. Ann., Com. Law § 13-301(1), (2), (5), (6) & (9).

23 150. Amerisave engaged in an unfair or deceptive trade practice when it  
24 represented that it was offering low-interest loans at rates that were lower than its  
25 competitors but were not, in fact, available. *Id.* § 13-301(1), (2), (3), (5), (6), (8) & (9).

26 151. Amerisave engaged in an unfair or deceptive trade practice when it required  
27 Plaintiff and the Maryland Subclass to pay an appraisal fee in order to obtain a rate-lock, and  
28 when it subsequently failed to provide the rate-lock. *Id.* § 13-301(2), (5), (7) & (9).

152. Amerisave engaged in an unfair or deceptive trade practice when it entered

1 into an agreement to process residential home mortgage applications for Plaintiff and the  
2 Maryland Subclass, but it did not process those applications as promised. *Id.* § 13-301(2),  
3 (5), (7) & (9).

4 153. The injury that Plaintiff Duong and the Maryland Subclass have suffered is  
5 substantial, it is not outweighed by any countervailing benefits to consumers or competition  
6 that it produced, and it is not an injury that they could reasonably have avoided.

7 154. As a result of the unfair and deceptive trade practices enumerated herein,  
8 Plaintiff Duong and members of the Maryland Subclass have been substantially injured and  
9 are entitled to recovery of damages, including but not limited to the fees they paid Amerisave  
10 in connection with their applications for residential home mortgages.

11 155. Plaintiff Duong and members of the Maryland Subclass are entitled to relief  
12 for Amerisave's illegal, unfair and/or deceptive practices, including injunctive and  
13 declaratory relief, damages, and attorneys' fees and court costs.

14 **NINTH CAUSE OF ACTION**

15 (Violation of Florida's Deceptive and Unfair Trade Practices Act,  
16 Fla. Stat. § 501.201 *et seq.*, by Plaintiff Kupersmit Individually  
and on Behalf of the Florida Subclass)

17 156. Plaintiffs reallege and incorporate by reference all preceding allegations of  
18 law and fact.

19 157. The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat.  
20 § 501.201 *et seq.*, prohibits deceptive and unfair trade practices, and provides that an  
21 aggrieved person may bring an action to obtain a declaratory judgment that an act or practice  
22 violates the statute, and to obtain an injunction against a person who has violated, is violating  
23 or is likely to violate the statute.

24 158. Amerisave engaged in an unfair or deceptive trade practice when it made false  
25 and/or misleading statements regarding consumers' ability to apply for a residential home  
26 mortgage, and to lock in a quoted interest rate by applying online and paying required fees.

27 159. Amerisave engaged in an unfair or deceptive trade practice when it

1 represented that it was offering low-interest loans at rates that were lower than its  
2 competitors but were not, in fact, available.

3 160. Amerisave engaged in an unfair or deceptive trade practice when it required  
4 Plaintiff and the Florida Subclass to pay an appraisal fee in order to obtain a rate-lock, and  
5 when it subsequently failed to provide the rate-lock.

6 161. Amerisave engaged in an unfair or deceptive trade practice when it entered  
7 into an agreement to process residential home mortgage applications for Plaintiff and the  
8 Florida Subclass, but it did not process those applications as promised.

9 162. As a result of the illegal, unfair and deceptive trade practices enumerated  
10 herein, Plaintiff Kupersmit and members of the Florida Subclass have been injured and are  
11 entitled to damages, including but not limited to the fees they paid Amerisave in connection  
12 with their applications for residential home mortgages.

13 163. Plaintiff Kupersmit and members of the Florida Subclass are entitled to relief  
14 for Amerisave's illegal, unfair and/or deceptive practices, including injunctive and  
15 declaratory relief, damages, and attorneys' fees and court costs.

16 **PRAYER FOR RELIEF**

17 Wherefore Plaintiffs request that this Court issue an order certifying the Class and the  
18 California, Maryland, and Florida Subclasses pursuant to Federal Rule of Civil Procedure 23,  
19 appointing Plaintiffs and their counsel to represent the Class and Subclasses, and awarding:

- 20 1. Actual, special, and general damages according to proof;
- 21 2. Statutory damages and penalties;
- 22 3. Restitution, disgorgement and all other equitable remedies, according to  
23 proof;
- 24 4. Preliminary and permanent injunctive relief against Amerisave to ensure  
25 uniform standards of servicing conduct towards all class members and to prevent future  
26 wrongful conduct;
- 27 5. Prejudgment interest at the maximum legal rate;

- 1 6. Punitive, exemplary and enhanced damages according to proof;
- 2 7. An accounting;
- 3 8. Declaratory Judgment as necessary to correct the wrongs inflicted on them;
- 4 9. Litigation Expenses and Costs of the proceedings herein;
- 5 10. Reasonable attorneys' fees, costs and expenses; and
- 6 11. All such other and further relief as the Court deems just.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand a jury trial on each and every cause of action so triable.

9 Dated: August 8, 2011

By: /s/ Craig L. Briskin

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