

FILED

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K. TORRE, CLERK OF THE DISTRICT COURT
COUNTY OF CONTRA COSTA, CALIF.

BY: C. Green, Deputy Clerk

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11 Complainant NL, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF CONTRA COSTA

14 SUNTRUST MORTGAGE, INC., a
15 Virginia corporation,

16 Plaintiff,

17 v.

18 NAJARIAN LOANS, INC. dba
19 RESIDENTIAL PACIFIC MORTGAGE;
20 NL INC., a California corporation dba
21 RESIDENTIAL PACIFIC MORTGAGE;
22 and DOES 1 through 100, inclusive,

23 Defendants.

24 N.L., INC., a California corporation dba
25 RESIDENTIAL PACIFIC MORTGAGE,

26 Cross-Complainant,

27 v.

28 JAMES McCONVILLE, an individual;
LESLIE JOY AGUIRRE, an individual;
MICHAEL AHIKPOR, an individual;
DONNA M. PIETTE, an individual;
MARIAM RASULI, an individual;
ANGELA SPANGLER, an individual;
JACK CHARLES THOMAS, an
individual; JANETH ALFONZO, an
individual; IRELAND JOSEPH BOWERS,
an individual; JIMMY LEE LUJAN, an
individual; ALFREDO F. RAMOS, an
individual; JUANA BERNARDO, an

Case No. C07-01230

CROSS-COMPLAINT FOR INDEMNITY
AND DAMAGES

Judge: Thomas M. Maddock

Date Complaint Filed: June 5, 2007
Trial Date: None Set

1 individual; JACLYN CORR, an individual;
2 FLOYD WAYNE THOMAS; and ROES 1
through 100, inclusive,

3 Cross-Defendants.

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5 Cross-Complainant N.L., INC., a California corporation dba RESIDENTIAL
6 PACIFIC MORTGAGE ("NL" or "cross-complainant") alleges as follows:

7 GENERAL ALLEGATIONS

8 1. NL is a corporation duly organized and existing under the laws of the State
9 of California, with its principal place of business in the County of Contra Costa, State of
10 California. NL is licensed as a real estate broker by the California Department of Real Estate, and
11 is in the business of originating and selling residential mortgage loans.

12 2. NL is informed and believes and thereon alleges that JAMES
13 McCONVILLE ("McConville") is an individual residing in the County of Kern.

14 3. NL is informed and believes and thereon alleges that MICHAEL
15 AHIKPOR ("Ahiakpor") is an individual residing in the County of Kern.

16 4. NL is informed and believes and thereon alleges that LESLIE JOY
17 AGUIRRE ("Aguirre") is an individual residing in the County of Kern.

18 5. NL is informed and believes and thereon alleges that DONNA PIETTE
19 ("Piette") is an individual residing in the County of Kern.

20 6. NL is informed and believes and thereon alleges that MARIAM RASULI
21 ("Rasuli") is an individual residing in the County of Kern.

22 7. NL is informed and believes and thereon alleges that ANGELA
23 SPANGLER ("Spangler") is an individual residing in the County of Kern.

24 8. NL is informed and believes and thereon alleges that JACK CHARLES
25 THOMAS ("J. Thomas") is an individual residing in the County of Kern.

26 9. NL is informed and believes and thereon alleges that JANETH ALFONZO
27 ("Alfonzo") is an individual residing in the County of Kern.

1 10. NL is informed and believes and thereon alleges that IRELAND JOSEPH
2 BOWERS (“Bowers”) is an individual residing in the County of Kern.

3 11. NL is informed and believes and thereon alleges that JIMMY LEE LUJAN
4 (“Lujan”) is an individual residing in the County of Kern.

5 12. NL is informed and believes and thereon alleges that ALFREDO F.
6 RAMOS (“Ramos”) is an individual residing in the County of Kern.

7 13. NL is informed and believes and thereon alleges that JUANA
8 BERNARDO (“Bernardo”) is an individual residing in the County of Kern.

9 14. NL is informed and believes and thereon alleges that JACLYN CORR
10 (“Corr”) is an individual residing in the County of Kern.

11 15. NL is informed and believes and thereon alleges that FLOYD WAYNE
12 THOMAS (“F. Thomas”) is an individual residing in the County of Kern.

13 16. Ahiakpor, Aguirre, Piette, Rauli, Spangler, J. Thomas, Alfonzo, Bowers,
14 Lujan, Ramos, Bernardo, Corr, and F. Thomas shall be collectively referred to as the “Borrower
15 Cross-Defendants.”

16 17. In or about July, August, September, and October 2006, NL entered into
17 loan transactions with the Borrower Defendants evidenced by respective promissory notes and
18 deeds of trust. A true and correct copy of the deed of trust as between NL and Aguirre is attached
19 hereto as Exhibit “A,” and is the same form deed of trust used as to all of the Borrower
20 defendants (“the DOTs”). The DOTs provided at paragraph 8 that the borrower would be in
21 default “if, during the Loan application process, Borrower or any persons or entities acting at the
22 direction of Borrower or with Borrower’s knowledge or consent gave materially false,
23 misleading, or inaccurate information or statements to Lender (or failed to provide Lender with
24 material information) in connection with the Loan.” The subject DOTs were to be performed in
25 the County of Contra Costa, State of California, and the harm caused by cross-defendants alleged
26 herein occurred in the County of Contra Costa, State of California.

1 22. Without admitting any allegation in the Complaint, and while specifically
2 and unequivocally denying any and all liability to plaintiff SunTrust, cross-complainant alleges
3 that if it is found liable as a consequence of the allegations contained in the Complaint, such
4 liability would be the direct or proximate cause and result of the carelessness, negligence or other
5 wrongful conduct or omissions of cross-defendants, and each of them, warranting in equity that
6 cross-defendants, and each of them, indemnify cross-complainant for damages for which they are
7 found liable, if any.

8 23. Should it be determined that based on the allegations of the Complaint
9 cross-complainant is liable for any of the damages alleged in such pleadings, then cross-
10 complainant asserts that the liability resulted totally or partially from the acts and omissions of
11 cross-defendants, and each of them. Cross-complainant asserts that it is entitled to equitable
12 implied indemnity from cross-defendants, and each of them, and contribution, for comparative
13 fault based upon the proportion to which any such damages were caused by the acts, omissions,
14 negligence, carelessness, or other fault of cross-defendants, and each of them. The indemnity and
15 contribution rights are to be determined by the proportional degree of fault or liability of cross-
16 defendants, and each of them. Cross-complainant alleges that it is entitled to total or partial
17 recoveries and indemnity from said cross-defendants, and each of them, based upon the
18 comparative fault principles set forth under the decision of *American Motorcycle Assn. v.*
19 *Superior Court* (1978) 29 Cal.3d 578, and subsequent case law.

20 24. Cross-complainant is informed and believes, and thereon alleges, that the
21 allegations of damages suffered by plaintiff SunTrust, which allegations cross-complainant
22 expressly denies, are properly attributable, totally or partially, to cross-defendants, and each of
23 them. Accordingly, cross-defendants are required by law to hold cross-complainant harmless and
24 indemnify it, totally or partially, for the amount of any judgment, settlement or damages for
25 which cross-complainant may be held responsible and for any and all recoverable costs incurred
26 by it as a result of the Complaint.

27 25. Cross-Complainant further alleges that in order to adjudicate comparative
28 fault so as to determine the percentage of liability and responsibility of the cross-defendants, for

1 the Complaint that the information provided by the Borrower Cross-Defendants was false or
2 incomplete, NL alleges that cross-defendants intentionally concealed this information from NL in
3 connection with applying for the subject loans for the purpose of inducing NL to enter into the
4 subject loan agreements.

5 29. NL was ignorant of the facts alleged to be true by SunTrust, and reasonably
6 relied upon the representations and information provided by cross-defendants in entering into the
7 subject loan transactions. Had NL been aware of the facts alleged by SunTrust, it would not have
8 entered into the subject loan transactions without first ensuring that SunTrust or other potential
9 purchasers of the loan were aware and approved of the additional information.

10 30. As a direct and proximate result of cross-defendants' conduct, NL has been
11 damaged in an amount in excess of the jurisdictional minimum of this Court, such amount to be
12 proven at the trial of this action.

13 31. Based solely on the allegations of SunTrust in the Complaint that the
14 information provided by the Borrower Cross-Defendants was false or incomplete, alleges that the
15 acts of cross-defendants were willful, wanton, malicious and oppressive, in that each acted with a
16 conscious disregard of NL's rights. Consequently, if the allegations of SunTrust are true that the
17 information provided by the Borrower Cross-Defendants was false or incomplete, NL is entitled
18 to an award of exemplary and punitive damages against cross-defendants, and each of them.

19 WHEREFORE, cross-complainant prays for judgment as hereinafter set forth.

20 THIRD CAUSE OF ACTION

21 (Fraud – Intentional Misrepresentation)

22 (Against McConville, the Borrower Defendants, and ROES 1 through 100)

23 32. Cross-complainant incorporates herein by this reference, as though set
24 forth in full in this paragraph, each and every allegation set forth in Paragraphs 1 through 31,
25 inclusive, above.

26 33. Based solely on the allegations of SunTrust in the Complaint that the
27 information provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that
28 cross-defendants, including McConville, were aware that the information provided on the

1 respective loan applications was incorrect and incomplete in that, *inter alia*, they falsely stated
2 that the loan obligations listed on the Form 1003 submitted as part of their respective applications
3 represented the total loan obligations existing for each of the respective borrowers. Based solely
4 on the allegations of SunTrust in the Complaint that the information provided by the Borrower
5 Cross-Defendants was false or incomplete, NL alleges that cross-defendants intentionally
6 misrepresented these facts, including their total existing loan obligations, in connection with
7 applying for the subject loans for the purpose of inducing NL to enter into the subject loan
8 agreements.

9 34. NL was ignorant of the facts alleged by SunTrust, and reasonably relied
10 upon the representations and information provided by cross-defendants in entering into the
11 subject loan transactions. Had NL been aware of the facts alleged by SunTrust, it would not have
12 entered into the subject loan transactions without first ensuring that SunTrust or other potential
13 purchasers of the loan were aware and approved of the additional information.

14 35. As a direct and proximate result of cross-defendants' conduct, NL has been
15 damaged in an amount in excess of the jurisdictional minimum of this Court, such amount to be
16 proven at the trial of this action.

17 36. Based solely on the allegations of SunTrust in the Complaint that the
18 information provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that
19 the acts of cross-defendants were willful, wanton, malicious and oppressive, in that each acted
20 with a conscious disregard of NL's rights. Consequently, if the facts alleged by SunTrust are
21 proven to be true, NL is entitled to an award of exemplary and punitive damages against cross-
22 defendants, and each of them.

23 WHEREFORE, cross-complainant prays for judgment as hereinafter set forth.
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1 FOURTH CAUSE OF ACTION

2 (Fraud – Negligent Misrepresentation)

3 (Against McConville, the Borrower Defendants, and ROES 1 through 100)

4 37. Cross-complainant incorporates herein by this reference, as though set
5 forth in full in this paragraph, each and every allegation set forth in Paragraphs 1 through 36,
6 inclusive, exclusive of paragraph 31, above.

7 38. Based solely on the allegations of SunTrust in the Complaint that the
8 information provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that
9 cross-defendants, including McConville, while believing that the information contained on the
10 subject borrowers' respective loan applications was correct and complete, were not reasonable in
11 so believing. Based solely on the allegations of SunTrust in the Complaint that the information
12 provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that cross-
13 defendants represented facts, including, *inter alia*, their total existing loan obligations, in
14 connection with applying for the subject loans for the purpose of inducing NL to enter into the
15 subject loan agreements.

16 39. NL was ignorant of the facts alleged to be true by SunTrust, and reasonably
17 relied upon the representations and information provided by cross-defendants in entering into the
18 subject loan transactions. Had NL been aware of the facts alleged by SunTrust, it would not have
19 entered into the subject loan transactions without first ensuring that SunTrust or other potential
20 purchasers of the loan were aware and approved of the additional information.

21 40. As a direct and proximate result of cross-defendants' conduct, NL has been
22 damaged in an amount in excess of the jurisdictional minimum of this Court, such amount to be
23 proven at the trial of this action.

24 WHEREFORE, cross-complainant prays for judgment as hereinafter set forth.
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1 FIFTH CAUSE OF ACTION

2 (Breach of Contract)

3 (Against the Borrower Defendants, and ROES 1 through 100)

4 41. Cross-complainant incorporates herein by this reference, as though set
5 forth in full in this paragraph, each and every allegation set forth in Paragraphs 1 through 40,
6 inclusive, above.

7 42. The subject Deeds of Trust required the Borrower Defendants to provide
8 correct and complete financial information in connection with the subject loan applications, and
9 provided that the failure to do so constitutes a default under the respective Deeds of Trust.

10 43. Based solely on the allegations of SunTrust in the Complaint that the
11 information provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that
12 the Borrower defendants breached the Deeds of Trust by, *inter alia*, failing to provide accurate
13 and complete financial information.

14 44. NL has performed all obligations, covenants, and acts required of it under
15 the Deeds of Trust, except as to those which were excused by the conduct of cross-defendants.

16 45. As a direct and proximate result of cross-defendants' breach, NL has been
17 damaged in an amount in excess of the jurisdictional minimum of this Court, such amount to be
18 proven at the trial of this action.

19 WHEREFORE, cross-complainant prays for judgment as hereinafter set forth.

20 SIXTH CAUSE OF ACTION

21 (Conspiracy)

22 (Against McConville, the Borrower Defendants, and ROES 1 through 100)

23 46. Cross-complainant incorporates herein by this reference, as though set
24 forth in full in this paragraph, each and every allegation set forth in Paragraphs 1 through 45,
25 inclusive, above.

26 47. Based solely on the allegations of SunTrust in the Complaint that the
27 information provided by the Borrower Cross-Defendants was false or incomplete, Cross-
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1 complainant alleges that cross-defendants knowingly and willfully conspired and agreed among
2 themselves to provide false information to NL in connection with the various loan applications.

3 48. Based solely on the allegations of SunTrust in the Complaint that the
4 information provided by the Borrower Cross-Defendants was false or incomplete, Cross-
5 complainant alleges that cross-defendants engaged in actions to facilitate the preparation and
6 execution of the loan documents at issue.

7 49. Based solely on the allegations of SunTrust in the Complaint that the
8 information provided by the Borrower Cross-Defendants was false or incomplete, Cross-
9 complainant alleges, the various acts of cross-defendants were made as a result of, and in
10 furtherance of, an agreement whereby each of them knowingly conspired to defraud and harm NL
11 through concealment and suppression of the circumstances surrounding the loan applications.

12 50. Based solely on the allegations of SunTrust in the Complaint that the
13 information provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that
14 cross-defendants did the acts and things herein alleged pursuant to, and in furtherance of, the
15 conspiracy and above alleged agreement.

16 51. Based solely on the allegations of SunTrust in the Complaint that the
17 information provided by the Borrower Cross-Defendants was false or incomplete, cross-
18 complainant is informed and believes and thereon alleges that cross-defendants engaged in
19 actions to facilitate the preparation and execution of the loan documents at issue for their own
20 benefit and to the detriment of Cross-complainant.

21 52. Based solely on the allegations of SunTrust in the Complaint that the
22 information provided by the Borrower Cross-Defendants was false or incomplete, cross-
23 complainant alleges that the last overt act in furtherance of the above-described conspiracy
24 occurred on or about October 3, 2006, the last date of execution of any of the subject loan
25 documents by the Borrower Cross-Defendants.

1 53. As a direct and proximate result of cross-defendants' conduct, NL has been
2 damaged in an amount in excess of the jurisdictional minimum of this Court, such amount to be
3 proven at the trial of this action.

4 54. Based solely on the allegations of SunTrust in the Complaint that the
5 information provided by the Borrower Cross-Defendants was false or incomplete, NL alleges that
6 the acts of cross-defendants were willful, wanton, malicious and oppressive, in that each acted
7 with a conscious disregard of NL's rights. Consequently, NL is entitled to an award of exemplary
8 and punitive damages against cross-defendants, and each of them.

9 WHEREFORE, cross-complainant prays for judgment as follows:

10 ON THE FIRST CAUSE OF ACTION:

11 1. For a decree confirming cross-complainant's entitlement to total indemnity,
12 or determining the prorated indemnity and contribution liability of cross-defendants, and each of
13 them, for any sums cross-complainants are compelled to pay as a result of any damages,
14 judgment, settlement or other awards, if any, adjudicated or recovered against them by reason of
15 the claims of other parties to this action, including the Complaint, and including any sums
16 expended by cross-complainants related to the defense of such actions;

17 2. For all recoverable costs, including but not limited to any recoverable costs
18 under Code of Civil Procedure section 1021.6; and

19 3. For such other and further relief as this Court may deem just and proper.

20 ON THE SECOND, THIRD, AND SIXTH CAUSES OF ACTION:

21 1. For damages according to proof;

22 2. For exemplary damages according to proof;

23 3. For costs of suit; and

24 4. For such other and further relief as the Court deems proper.

25 ON THE THIRD AND FOURTH CAUSES OF ACTION:

26 1. For damages according to proof;

27 2. For costs of suit; and

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

Dated: May ____, 2008

MILLER STARR REGALIA

By: 

DAVID E. HARRIS
Attorneys for Defendant and Cross-
Complainant NL, INC.

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PROOF OF SERVICE

SUNTRUST MORTGAGE, INC. v. NAJARIAN LOANS INC., et al.,
Contra Costa Superior No. C07-01230

I, Eloise Ogden, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 1331 N. California Blvd., Fifth Floor, Post Office Box 8177, Walnut Creek, CA 94596. On May 9, 2008, I served the within documents:

**CROSS-COMPLAINT FOR INDEMNITY AND DAMAGES
SUMMONS ON CROSS-COMPLAINT**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Howard D. Hall
Michael E. Lisko
Green & Hall, APC
1851 East First Street, 10th Floor
Santa Ana, California 92705-4052
Tel.: (714) 918-7000
Fax: (714) 918-6996

ATTORNEYS FOR SUNTRUST
MORTGAGE, INC.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2008, at Walnut Creek, California.



Eloise Ogden