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 SUNTRUST MORTGAGE, INC.

**FILED**  
 JUN 05 2007

K. YOUNG, CLERK OF THE COUNTY  
 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF CONTRA COSTA  
 By \_\_\_\_\_  
 Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF CONTRA COSTA - MARTINEZ BRANCH

GREEN & HALL  
 ATTORNEYS AT LAW  
 10000 BAYVIEW DRIVE  
 SUITE 100  
 SAN ANA, CALIFORNIA 92705

11 SUNTRUST MORTGAGE, INC., a Virginia  
 corporation,

Case No. **C07 - 01280**

12 Plaintiff,

**COMPLAINT FOR:**

13 vs.

1. BREACH OF CONTRACT;
2. DECLARATORY RELIEF;
3. NEGLIGENCE; AND
4. NEGLIGENT MISREPRESENTATION

14 NAJARIAN LOANS, INC. dba RESIDENTIAL  
 15 PACIFIC MORTGAGE; NL INC., a California  
 corporation dba RESIDENTIAL PACIFIC  
 16 MORTGAGE; and DOES 1 through 100,  
 inclusive,

PER LOCAL RULE 5 THIS  
 CASE IS ASSIGNED TO  
 DEPT 16

17 Defendants.

SUMMONS ISSUED

19 For its Complaint herein, Plaintiff SUNTRUST MORTGAGE, INC., alleges as follows:

\$ 320.00 - 0049

- 20 1. SunTrust Mortgage, Inc. ("SunTrust") is a Virginia corporation with its principal  
 21 place of business in Richmond, Virginia.
- 22 2. SunTrust is informed and believes and, based thereon, alleges that defendant NL  
 23 Inc. ("NL"), is a California corporation that maintains its principal place of business in Alamo,  
 24 California. SunTrust is further informed and believes and, based thereon, alleges that NL does  
 25 business as Residential Pacific Mortgage. At all times relevant hereto, NL was engaged in the  
 26 business of originating mortgage loans.
- 27 3. The true names and capacities, whether individual, corporate, associate or otherwise,  
 28 of defendants named herein as DOES 1 through 100, inclusive, are not known to SunTrust, which

COMPLAINT

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1 therefore sue said defendants by such fictitious names. SunTrust will amend its Complaint to  
 2 allege their true names and capacities when ascertained.

3 4. SunTrust is informed and believes and, based thereon, alleges that defendants DOBS  
 4 1 through 100, inclusive, are responsible in some manner for the occurrences alleged herein, and  
 5 that any damages sustained by SunTrust were and are the direct and proximate result of the  
 6 actions of said defendants, and each of them. (For ease of reference, any reference in this  
 7 Complaint to Defendants, or any of them, will include DOBS 1 through 100.) In addition to NL,  
 8 DOBS 1 through 15 were involved in the origination, underwriting and funding of the loans  
 9 described herein (hereinafter "Third Party Originators"); DOBS 16 through 30 were involved in  
 10 the appraisal of the real property which served as security for the loans described herein.

11 5. Defendants were and now are the agents, servants and employees of one or more of  
 12 the other defendants and, in doing the things alleged herein, were acting within the course and  
 13 scope of their authority or employment as the agent, servant and employee of each remaining  
 14 defendant.

15 6. SunTrust is informed and believes and, based thereon, alleges that at all times  
 16 relevant hereto, DOBS 31 through 40 (collectively, the "NL Individual Defendants") are  
 17 individuals who were or are owners, principals, directors and/or officers of NL. The NL  
 18 Individual Defendants were and are alter egos of NL. At all times relevant hereto, there existed  
 19 such a unity of interest between the NL Individual Defendants and NL that any separateness has  
 20 ceased to exist between them for the following reasons:

21 (a) The NL Individual Defendants exercised complete dominancy and control  
 22 over NL such that NL is a mere shell and instrumentality for the conduct of the NL Individual  
 23 Defendants' own business.

24 (b) The NL Individual Defendants carried on the activities and business of NL  
 25 without conducting necessary directors' and shareholders' meetings and otherwise failed to adhere  
 26 to requisite corporate formalities.

27 (c) The NL Individual Defendants inadequately capitalized NL relative to the  
 28 business they conducted and the risk of loss attendant thereon.

1 7. Adherence to the fiction of a separate existence between the NL Individual  
 2 Defendants and NL would therefore sanction fraud and permit an abuse of the corporate privilege.  
 3 The NL Individual Defendants used the corporate form of NL, unjustly and in derogation of  
 4 SunTrust's interests; justice and equity can only be accomplished, and fraud and unfairness  
 5 defeated, by a disregard of any distinction between NL and the NL Individual Defendants.

6 8. SunTrust is informed and believes and, based thereon, alleges that at all times  
 7 relevant hereto, DOES 46 through 60 are individuals who were or are owners, principals, directors  
 8 and/or officers of the Third Party Originators (hereinafter collectively, the "TPO Individual  
 9 Defendants"). The TPO Individual Defendants were and are alter egos of the Third Party  
 10 Originators. For all relevant times alleged herein, there existed such a unity of interest between  
 11 the TPO Individual Defendants and the Third Party Originators that any separateness has ceased  
 12 to exist between them for the following reasons:

13 (a) The TPO Individual Defendants exercised complete dominance and control  
 14 over the Third Party Originators such that the Third Party Originators are mere shells and  
 15 instrumentalities for the conduct of the TPO Individual Defendants' own business.

16 (b) The TPO Individual Defendants carried on the activities and business of the  
 17 Third Party Originators without conducting necessary directors' and shareholders' meetings and  
 18 otherwise failed to adhere to requisite corporate formalities.

19 (c) The TPO Individual Defendants inadequately capitalized the Third Party  
 20 Originators relative to the business they conducted and the risk of loss attendant thereon.

21 9. Adherence to the fiction of a separate existence between the TPO Individual  
 22 Defendants and the Third Party Originators would therefore sanction fraud and permit an abuse of  
 23 the corporate privilege. The TPO Individual Defendants used the corporate form of the Third  
 24 Party Originators unjustly and in derogation of SunTrust's interests; justice and equity can only be  
 25 accomplished, and fraud and unfairness defeated, by a disregard of any distinction between the  
 26 Third Party Originators and the TPO Individual Defendants.

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 FORT LAUDERDALE, FLORIDA

**GENERAL ALLEGATIONS**

1  
2 10. On or about December 7, 2001, SunTrust and NL entered into a Correspondent  
3 Loan Purchase Agreement whereby NL agreed to sell and SunTrust agreed to purchase loans  
4 secured by deeds of trust on residential dwellings which SunTrust would then package and sell to  
5 investors in the secondary mortgage market (the "Agreement").

6 11. Pursuant to the Agreement and the STM Correspondent Seller Guide (the "Manual")  
7 incorporated therein, NL made numerous representations and warranties with respect to each loan  
8 that it sold or would sell to SunTrust. For example, NL agreed and represented that there were no  
9 circumstances or conditions with respect to any loan NL sold to SunTrust that could reasonably be  
10 expected to cause private institutional investors to regard the loan as an unacceptable investment,  
11 or that could reasonably be expected to adversely affect the loan's value or marketability.

12 12. NL further agreed and represented that all loans it sold to SunTrust would conform  
13 with all underwriting guidelines contained in the Manual, and that all such loans would be based  
14 upon, supported and accompanied by written documentation which was complete, true, accurate  
15 and not misleading in any material respect.

16 13. In the event that any of the above-referenced representations and warranties were  
17 breached by NL, NL agreed and was obligated to repurchase such loan(s) from SunTrust.  
18 Therefore, NL is contractually obligated to repurchase from SunTrust any loans that were based  
19 upon or accompanied by any incomplete, false, inaccurate or misleading information.

20 14. NL also agreed to indemnify, defend and hold harmless SunTrust with respect to,  
21 among other things, any losses or damages (including attorneys' fees and costs) which may result  
22 from NL's breach of the Agreement or other failure to perform thereunder.

23 15. SunTrust has purchased from NL not less than thirty-three (33) loans which were  
24 based upon incomplete, false, inaccurate or misleading information. The borrower, loan number,  
25 principal amount and property address for each of the thirty-three loans referenced above are as  
26 follows:

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	<u>Borrower</u>	<u>Loan No.</u>	<u>Principal Amount</u>	<u>Address</u>
1				
2	Leslie Joy Aguirre	0203967682 0203967914	\$124,000 \$15,500	521 Oasis Drive Ridgecrest, CA 93555
3				
4	Juana Bernardo	0203967765 0203967773	\$124,000 \$15,500	461 Sahara Drive Ridgecrest, CA 93555
5	Juana Bernardo	0203967740 0203967757	\$124,000 \$15,500	245 Palm Drive Ridgecrest, CA 93555
6				
7	Ireland Joseph Bowens	0203981055 0203981097	\$116,000 \$14,500	500 Sahara Drive Ridgecrest, CA 93555
8	Jaclyn Corr	0204317069 0204317085	\$132,000 \$16,500	417 Palm Drive Ridgecrest, CA 93555
9				
10	Jaclyn Corr	0204317101 0204317127	\$132,000 \$16,500	533 Palm Drive Ridgecrest, CA 93555
11	Jimmy Lujan	0204316921 0204316947	\$124,000 \$15,500	232 Palm Drive Ridgecrest, CA 93555
12				
13	Jimmy Lujan	0204316970 0204317010	\$124,000 \$15,500	401 Oasis Drive Ridgecrest, CA 93555
14	Alfredo Ramos	0203967237 0203967807	\$124,000 \$15,500	417 Oasis Drive Ridgecrest, CA 93555
15				
16	Alfredo Ramos	0203967278 0203967815	\$124,000 \$15,500	236 Palm Drive Ridgecrest, CA 93555
17	Mariam Rasuli	0203967716 0203967724	\$124,000 \$15,500	228 Palm Drive Ridgecrest, CA 93555
18				
19	Mariam Rasuli	0203980354 0203980388	\$124,000 \$15,500	509 Oasis Drive Ridgecrest, CA 93555
20	Angela Spangler	203865209	\$116,000	240 Sahara Drive Ridgecrest, CA 93555
21				
22	Angela Spangler	203865217	\$124,000	316 Sahara Drive Ridgecrest, CA 93555
23	Angela Spangler	203865233	\$124,000	513 Sahara Drive Ridgecrest, CA 93555
24				
25	Floyd Wayne Thomas	0203981311 0203981337	\$116,000 \$14,500	240 Oasis Drive Ridgecrest, CA 93555
26	Floyd Wayne Thomas	0203981360 0203981386	\$116,000 \$14,500	312 Oasis Drive Ridgecrest, CA 93555
27				
28	Jack Charles Thomas	0203967062 023967781	\$124,000 \$15,500	304 Oasis Drive Ridgecrest, CA 93555

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9:30am From NL (noPleading) Complaint (2).doc

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RIDGECREST, CALIFORNIA

1 The total principal amount of these loans is \$2,447,500. Moreover, SunTrust is currently  
 2 reviewing a number of additional loans which NL may be obligated to repurchase on the grounds  
 3 that NL failed to disclose to SunTrust the existence of additional mortgage liabilities held by the  
 4 borrowers. In each such loan, NL failed to disclose additional mortgage liabilities held by the  
 5 borrower(s).

6 16. Each of the above borrowers had previously acquired other properties in the same  
 7 Ridgcrest community and NL failed to disclose to SunTrust the substantial mortgage liabilities  
 8 undertaken by the borrowers in connection with their prior acquisitions. Accordingly, these  
 9 thirty-three (33) loans are unmarketable, unacceptable to private institutional investors, and have  
 10 left SunTrust severely damaged.

11 17. SunTrust is now the rightful owner of these thirty-three (33) loans, having paid in  
 12 full to purchase them. SunTrust has complied with all obligations imposed upon it by the  
 13 Agreement, except those conditions and obligations the performance of which have been  
 14 prevented by Defendants. Despite numerous demands having been made, NL has breached the  
 15 Agreement in many regards, as set forth herein.

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract - Failure to Repurchase Loans -**  
 18 **Against NL and DOES 31-40)**

19 18. SunTrust hereby realleges and incorporates by reference each and every allegation  
 20 set forth in paragraphs 1 through 17 of this Complaint as though set forth in full herein.

21 19. Pursuant to the Agreement, Defendants are obligated to repurchase not less than  
 22 thirty-three (33) loans from SunTrust.

23 20. Specifically, pursuant to the Agreement, Defendants are obligated to repurchase any  
 24 loans sold to SunTrust which contain or were based upon any information, statement or document  
 25 which was incomplete, false, inaccurate or misleading in any material respect when made or  
 26 delivered, regardless of whether Defendants knew or should have known of such incompleteness,  
 27 falsity or inaccuracy at such time. SunTrust is informed and believes and, based thereon, alleges  
 28 that Defendants sold loans to SunTrust which contain or were based upon incomplete, false,

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1 inaccurate or misleading information, statements or documents (the "Misrepresented Loans").

2 Defendants are obligated to repurchase the Misrepresented Loans from SunTrust.

3 21. SunTrust has made repeated demands for Defendants to repurchase the  
4 Misrepresented Loans, but such demands have been refused.

5 22. As a direct and proximate result of Defendants' substantial breaches of the  
6 Agreement, SunTrust has incurred, and will continue to incur, substantial damages in an amount  
7 to be proven at trial and which is in excess of the minimum jurisdiction of this Court.

8 23. Further, the Agreement requires NL to indemnify SunTrust for, among other things,  
9 its attorneys' fees and costs in connection with any loss or damage SunTrust may suffer as a result  
10 of NL's breach of the Agreement. SunTrust has incurred, and continues to incur, substantial  
11 attorneys' fees and costs resulting from the prosecution of this Complaint.

12 24. Defendants are further obligated to repurchase any loans sold to SunTrust for which  
13 NL failed to disclose to SunTrust the existence of additional mortgage liabilities held by the  
14 borrowers. SunTrust is currently reviewing a number of additional loans which NL may be  
15 obligated to repurchase on these and other grounds. If SunTrust concludes, as a result of its  
16 investigation, that NL is obligated to repurchase additional loans under the terms of the  
17 Agreement, it will seek leave of Court to amend its Complaint to include the additional loans and  
18 circumstances requiring NL's repurchase of the same.

19 **SECOND CAUSE OF ACTION**

20 **(Declaratory Relief - Breach of Contract -**

21 **Failure to Repurchase Loans - Against NL and DOES 31-40)**

22 25. SunTrust hereby realleges and incorporates by reference each and every allegation  
23 set forth in paragraphs 1 through 24 of this Complaint as though set forth in full herein.

24 26. Pursuant to the Agreement, NL is obligated to repurchase the Misrepresented Loans  
25 from SunTrust, and SunTrust has demanded such repurchases, but NL has refused. NL should be  
26 ordered to repurchase such loans at the repurchase price defined in the Agreement and, in  
27 exchange for such payment, SunTrust will reconvey and return full ownership and possession of  
28 such loans to NL.

1 27. A dispute has arisen and an actual controversy exists between SunTrust and NL  
 2 regarding whether NL must repurchase the Misrepresented Loans, indemnify SunTrust for  
 3 damages it has incurred on these loans, and whether NL must pay for SunTrust's attorneys' fees  
 4 and costs incurred in this action. SunTrust desires a judicial declaration of its rights, and NL's  
 5 duties and obligations, in accordance with the Agreement and SunTrust's contentions herein. A  
 6 declaration of the respective rights and liabilities of the parties with regard to the Misrepresented  
 7 Loans is necessary as SunTrust has no other adequate remedy at law. Such declaration will avoid  
 8 a multiplicity of actions that will otherwise be required if SunTrust must bring separate actions  
 9 with respect to each Misrepresented Loan.

10 28. Further, the Agreement requires NL to indemnify SunTrust for, among other things,  
 11 its attorneys' fees and costs in connection with any loss or damage SunTrust may suffer as a result  
 12 of NL's breach of the Agreement. SunTrust has incurred, and continues to incur, substantial  
 13 attorneys' fees and costs resulting from the prosecution of this Complaint.

14 **THIRD CAUSE OF ACTION**

15 **(Negligence - Against All Defendants)**

16 29. SunTrust hereby realleges and incorporates by reference each and every allegation  
 17 set forth in paragraphs 1 through 28 of this Complaint as though set forth in full herein.

18 30. Defendants held themselves out as loan professionals who were practiced and  
 19 skilled in the accurate origination and underwriting of mortgage loans, and/or the appraisal of real  
 20 property security for such loans, pursuant to lawful and ethical business practices mandated by the  
 21 mortgage loan industry. Thus, in purchasing loans from NL including, but not limited to, the  
 22 Misrepresented Loans, SunTrust justifiably relied upon Defendants' skill. Defendants therefore  
 23 owed SunTrust a duty to exercise care and diligence in the performance of their services as the  
 24 originators, underwriters, and/or funders of the loans and/or the appraisal of the real property  
 25 security for the loans SunTrust purchased from NL including, but not limited to, the  
 26 Misrepresented Loans. These duties obligated Defendants to accurately determine whether the  
 27 loans were of suitable investment quality, and Defendants made representations that the loans  
 28 were of investment quality and acceptable credit risk, and/or that sufficient security existed to

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1 protect the loan investment.

2 31. Defendants knew or had reason to know that their representations regarding these  
3 loans, including but not necessarily limited to the Misrepresented Loans, would be used by NL to  
4 sell the loans to mortgage investors such as SunTrust. Defendants further knew or had reason to  
5 know that mortgage investors such as SunTrust would rely upon their representations regarding  
6 the loans, including but not necessarily limited to the Misrepresented Loans, in deciding whether  
7 to purchase them. Defendants therefore owed to SunTrust a duty to exercise care and diligence in  
8 serving as loan professionals, loan brokers and originators and appraisers for the loans, including,  
9 but not limited to, accurately representing the borrowers' ability to repay their respective loans  
10 and/or the true fair market value of the real property security for the loans SunTrust purchased  
11 from NL.

12 32. With regard to the Misrepresented Loans, and potentially others, Defendants  
13 breached their duties to SunTrust by failing to adequately determine that the information  
14 submitted in connection with these loans was accurate and sufficient to allow SunTrust to invest  
15 in such loans.

16 33. As a direct and proximate result of Defendants' negligent conduct, the  
17 Misrepresented Loans, and potentially others, cannot be resold on the secondary market. As such,  
18 SunTrust has incurred, and will continue to incur, substantial damages in an amount to be proven  
19 at trial and which is in excess of the minimum jurisdiction of this Court.

20 **FOURTH CAUSE OF ACTION**

21 **(For Negligent Misrepresentation - Against All Defendants)**

22 34. SunTrust hereby realleges and incorporates by reference each and every allegation  
23 set forth in paragraphs 1 through 33 of this Complaint as though set forth in full herein.

24 35. Defendants knew or had reason to know that their representations regarding the  
25 Misrepresented Loans, as well all loans originated by NL or Third Party Originators working with  
26 NL, would be used by NL to sell the loans to mortgage investors such as SunTrust. Defendants  
27 misrepresented material facts in connection with their representations without any reasonable  
28 grounds to believe such facts to be true. Had Defendants exercised reasonable care, they would

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1 have known and/or discovered said misrepresentations prior to the preparation and completion of  
2 their information submitted in connection with and in support of the borrowers' residential  
3 mortgage loan applications.

4 36. Defendants made such misrepresentations with the intent to induce SunTrust to rely  
5 on same in purchasing the loans, including but not necessarily limited to the Misrepresented  
6 Loans. SunTrust did not know, nor did it have any reason to believe, that the facts described  
7 herein above were false and, thus, SunTrust relied to its detriment on said statements.

8 37. Defendants held themselves out as mortgage loan professionals, skilled in the  
9 practice of accurately presenting a borrower's mortgage loan qualifications and/or the appraisal of  
10 real property security pursuant to lawful and ethical business practices mandated by their industry  
11 and SunTrust. Thus, in purchasing the Misrepresented Loans from NL, among others, SunTrust  
12 justifiably relied upon the representations made by Defendants referenced above.

13 38. As a direct and proximate result of Defendants' negligent conduct, the  
14 Misrepresented Loans, and potentially others, contain and are based upon material  
15 misrepresentations, and are not of investment quality. As such, SunTrust has suffered general and  
16 special damages in an amount to be determined at the time of trial but which exceeds the  
17 minimum jurisdiction of this Court.

18 WHEREFORE, SunTrust respectfully requests that the Court enter judgment against  
19 Defendants, and each of them, as follows:

20 **ON THE FIRST CAUSE OF ACTION**

21 1. General and special damages in an amount to be determined at the time of trial but  
22 which exceeds the minimum jurisdiction of this Court.

23 2. For attorneys' fees and costs;

24 **ON THE SECOND CAUSE OF ACTION**

25 3. For a judicial determination of the rights of SunTrust and the respective liabilities  
26 and duties of the Defendants, and each of them, relating to the Agreement and their obligation to  
27 repurchase the Misrepresented Loans, indemnify SunTrust, and to pay SunTrust's attorneys' fees  
28 and costs incurred in this action;

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COMPLAINT

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1 4. For attorneys' fees and costs;

2 **ON THE THIRD AND FOURTH CAUSES OF ACTION**

3 5. For general and special damages in an amount to be determined at the time of trial  
4 but which exceeds the minimum jurisdiction of this Court.

5 **AS TO ALL CAUSES OF ACTION**

6 6. For interest and costs; and

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

8  
9 Dated: June 4, 2007

GREEN & HALL, A PROFESSIONAL CORPORATION

10  
11 By: 

Howard D. Hall, Esq.  
Michael E. Lisko, Esq.

Attorneys for Plaintiff  
SUNTRUST MORTGAGE, INC.

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