

[attorney name redacted], Esq. (CSBN ///////////////)  
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Attorneys for Plaintiffs Jean and John Lopez  
**Note: all names have been changed.**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

Jean Lopez, an individual; and  
John Lopez, an individual,

Plaintiffs

vs.

George Smith, an individual;  
PQRS Financial, Inc., a California corporation;  
XYZ Home Loans, Inc., a Arizona corporation;  
and  
DOEs 1 through 20, inclusive,

Defendants

Case Number: [redacted]  
Complaint Filed: [redacted]  
Assigned to Dept: [redacted]

**FIRST AMENDED COMPLAINT FOR  
(1) FRAUD; AND  
(2) BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING  
(2 COUNTS)**

Demand for Jury Trial

TO THE HONORABLE COURT:

Pursuant to Code of Civil Procedure § 472, Plaintiffs Jean Lopez and John Lopez  
hereby submit this First Amended Complaint and allege:

**PARTIES**

1. Plaintiff Jean Lopez is an individual residing in Los Angeles County.
2. Plaintiff John Lopez is an individual residing in Los Angeles County.
3. The Plaintiffs are married.

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3 4. Defendant George Smith (hereinafter “SMITH”) is an individual doing business  
4 in Los Angeles County.

5 5. Defendant PQRS Financial, Inc (hereinafter “PQRS”), is a California  
6 corporation with offices in [redacted], California. HOMFIELD is presently in bankruptcy  
7 proceedings.

8 6. Defendant XYZ Home Loans, Inc. (hereinafter “XYZ”), is a Arizona corporation  
9 that as been qualified by the California Secretary of State to do business in California, and  
10 that has offices in Los Angeles County.

11 7. The true names of Defendants DOEs 1 to 20, inclusive, are unknown to the  
12 Plaintiffs at this time. Plaintiffs sue those Defendants by such fictitious names pursuant to  
13 Code of Civil Procedure § 474. Each of the Defendants designated as a DOE is legally  
14 responsible for the injuries and damages to Plaintiff alleged herein.

15 8. Any and all of the Defendants was an agent of each of the remaining Defendants,  
16 and, in doing the things alleged herein, was acting within the course and scope of such  
17 agency, and with the permission and consent of the other co-Defendants.

18 9. Individual Defendants are each alter egos of the organizational Defendants by  
19 way of control, capitalization and/or unity of interest.

20 **GENERAL ALLEGATIONS**

21 10. In March 2006, Plaintiffs agreed to purchase a home located at [redacted]  
22 (hereinafter the “PROPERTY” and the “PURCHASE” thereof).

23 11. In connection with the PURCHASE and for the purpose of obtaining financing,  
24 Plaintiffs engaged SMITH, who writes loans as an agent for PQRS and XYZ. Through and  
25 with SMITH, the Plaintiffs negotiated with PQRS resulting in Plaintiffs signing and  
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2 accepting an adjustable rate mortgage loan against the PROPERTY naming PQRS as the  
3 lender (hereinafter the “**MORTGAGE**”).  
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5 12. While in SMITH’S office, Plaintiffs observed a plaque on the wall stating that  
6 SMITH was “Salesman of the Year” for XYZ, and SMITH told Plaintiffs that he works for  
7 XYZ. Nevertheless, SMITH led Plaintiffs to believe, and Plaintiffs reasonably believed, that  
8 in negotiating the MORTGAGE, SMITH was acting solely as an agent of PQRS. However,  
9 unbeknownst to Plaintiffs, in negotiating the MORTGAGE, SMITH was also acting as an  
10 agent of XYZ, whom he and PQRS both knew would subsequently purchase the  
11 MORTGAGE.

12 13. The MORTGAGE, as accepted and signed by the Plaintiffs, contained a one-year  
13 prepayment penalty (hereinafter the “**ONE-YEAR PREPAY**”), which meant that, in the  
14 event that the loan was paid off (*e.g.* pursuant to refinancing or selling the PROPERTY)  
15 before the end of the first year, a substantial penalty would apply based on a complicated  
16 formula. The ONE-YEAR PREPAY effectively precluded the Plaintiffs from refinancing  
17 during the first year.

18 14. The ONE-YEAR PREPAY was separately signed on a one-page writing entitled  
19 “Prepayment Penalty Addendum” that was attached to the MORTGAGE. However, SMITH  
20 had originally prepared the said Addendum with a three-year (rather than one-year)  
21 prepayment penalty. Plaintiffs were unwilling to sign it in that form because it would have  
22 tripled the time during which a pre-payment penalty would apply, thereby effectively  
23 precluding the Plaintiffs from refinancing during the first three years. Consequently,  
24 SMITH, acting as a disclosed agent of PQRS and as an undisclosed agent of XYZ, agreed to  
25 reduce the pre-payment penalty period to one-year. As executed, the ONE-YEAR PREPAY  
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2 has the original words “THIRTY SIX” (preceding the word “months”) crossed out and  
3 replaced in handwriting with “TWELVE” (months).  
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5 15. Escrow was scheduled to close on the PURCHASE at approximately 11:59 p.m.  
6 on April 1, 2006. By April 1, 2006 the Plaintiffs had already closed escrow on the sale of  
7 their prior home, and on April 1, 2006 they were in the midst of moving out of that home.  
8 Then, quite literally at the eleventh hour on April 1, 2006, SMITH contacted the Plaintiffs  
9 and demanded that they meet with him at 11:00 p.m. at a restaurant. At the meeting, SMITH  
10 pressured the Plaintiffs to sign another “Prepayment Penalty Addendum” providing a three-  
11 year prepayment penalty—with the words “THIRTY SIX” not crossed out (hereinafter the  
12 “**THREE-YEAR PREPAY**”). The Plaintiffs objected, as they had previously objected, but  
13 SMITH said this would be necessary to close escrow because, without the THREE-YEAR  
14 PREPAY, PQRS would be unable to re-sell the MORTGAGE on the secondary market.  
15 SMITH did not disclose to Plaintiffs that the true reason for his pressuring them to sign the  
16 THREE-YEAR PREPAY was that XYZ intended to purchase the MORTGAGE and desired  
17 to “squeeze” Plaintiffs at the last minute into this considerably disadvantageous position.  
18 Without disclosing that XYZ, as his principal, was behind his squeeze play, SMITH told  
19 Plaintiffs that unless they signed, the escrow would not close. To induce Plaintiffs into  
20 signing the THREE-YEAR PREPAY, SMITH, acting for himself, and acting as a disclosed  
21 agent of PQRS, and acting as an undisclosed agent of XYZ, represented to Plaintiffs that if  
22 they wanted to refinance the PROPERTY after the first year but before the end of three  
23 years, then he (SMITH) and PQRS would honor it so they would not have to pay a pre-  
24 payment penalty. SMITH said to the Plaintiffs that in such event, “I will take care of it.”  
25 Based on SMITH’S representation, the Plaintiffs signed the THREE-YEAR PREPAY. Thus,  
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2 SMITH intentionally caused the Plaintiffs to believe that, notwithstanding their signing of the  
3 THREE-YEAR PREPAY, if they wished to refinance during the first three years, then the  
4 already executed ONE-YEAR PREPAY would, in fact, be operative.  
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6 16. The ONE-YEAR PREPAY was not destroyed and remains a part of the  
7 MORTGAGE. The THREE-YEAR PREPAY contains no wording indicating that it  
8 supercedes, amends, replaces or otherwise abrogates the ONE-YEAR PREPAY.

9 Consequently, with both the ONE-YEAR PREPAY and the THREE-YEAR PREPAY  
10 included, the MORTGAGE is ambiguous as written because it is unclear whether one or the  
11 other (or both) of the two attached prepayment addenda was intended by the parties. As a  
12 matter of law, this ambiguity in the written contract must be resolved by other evidence  
13 (outside the writing), including the orally expressed intentions of the parties. Specifically,  
14 Plaintiffs intended that the ONE-YEAR PREPAY would be operative, and SMITH, as a  
15 disclosed agent of PQRS and an undisclosed agent of XYZ, agreed that the ONE-YEAR  
16 PREPAY (and not the THREE-YEAR PREPAY) would be operative.

17 17. Escrow closed, and Plaintiffs then moved into the PROPERTY.

18 18. Shortly thereafter, mortgage rates went up, and the monthly payment on the  
19 MORTGAGE approximately tripled what it had initially been. The Plaintiffs are living on a  
20 fixed income, and knew they would be unable to maintain such high payments.  
21 Consequently, about six months after escrow closed, the Plaintiffs started shopping for a  
22 fixed rate loan to refinance the property, and they assumed they would be able to close such  
23 refinancing at the end of the first year, pursuant to SMITH'S representation that the ONE-  
24 YEAR PREPAY would be operative.

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3 19. By that time, PQRS had sold the MORTGAGE to XYZ. The MORTGAGE  
4 documents PQRS delivered to XYZ included both the ONE-YEAR PREPAY and the  
5 THREE-YEAR PREPAY. Plaintiffs made repeated attempts to get XYZ to honor the ONE-  
6 YEAR PREPAY. But XYZ refused for nearly a year to honor the ONE-YEAR PREPAY  
7 and instead contended that Plaintiffs were bound by the THREE-YEAR PREPAY.  
8 Consequently, the Plaintiffs were unable to refinance. Meanwhile, the interest rate kept  
9 rising. This forced the Plaintiffs to make minimum payments that were less than the amount  
10 of interest due. This resulted in negative amortization of the MORTGAGE and its ballooning  
11 to a principal balance exceeding the appraised value of the PROPERTY. Ultimately the  
12 Plaintiff's equity in the PROPERTY dropped to zero and then became negative, which made  
13 refinancing impossible unless a down payment were made. Plaintiffs were and are in no  
14 position to make a down payment on a refinance.

15 20. Plaintiffs, who were ignorant that SMITH had all along been acting as an  
16 undisclosed agent of XYZ, made repeated demands on SMITH and (through SMITH) on  
17 PQRS that they make good on the ONE-YEAR PREPAY and "take care of it." Plaintiff's  
18 demands were made by telephone calls, letters and personal visits to SMITH'S office.  
19 SMITH, as a disclosed agent of PQRS and as an undisclosed agent of XYZ, systematically  
20 evaded the Plaintiffs, including by being unavailable on the phone, failing to return calls,  
21 failing to respond to letters, and being unavailable at his office.

22 21. Plaintiffs filed a complaint with the California Department of Corporations  
23 against XYZ. In response thereto, on August 28, 2007 XYZ finally acquiesced to the true  
24 terms of the MORTGAGE, by sending Plaintiffs a letter admitting that they had the ONE-  
25 YEAR PREPAY in their file and agreeing to honor it. **Exhibit 1** attached hereto sets forth a  
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2 true and correct copy of the said letter. But the long delay before honoring the ONE-YEAR  
3 PREPAY—to a time approximately five months after expiration of the first year of the  
4 MORTGAGE—resulted in the Plaintiffs missing numerous opportunities to refinance on far  
5 more favorable terms, and also resulted in the said ballooning of the principle balance of the  
6 MORGAGE to an amount equal to or exceeding the market value of the PROPERTY.  
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8 **First Cause of Action for Fraud**  
9 **(Against All Defendants)**

10 22. Plaintiffs incorporate all previously pleaded allegations.

11 23. The Defendants did intentionally perform a “bait and switch” tactic on the  
12 Plaintiffs by (1) baiting them into executing the MORTGAGE based on the ONE-YEAR  
13 PREPAY, upon which the Plaintiffs proceeded into escrow, and sold and moved out of their  
14 prior home, and then (2) switching at the eleventh hour by pressuring the Plaintiffs to execute  
15 the THREE-YEAR PREPAY, thereby introducing an ambiguity into the MORTGAGE as  
16 written.

17 24. The Defendants induced the Plaintiffs to execute the THREE-YEAR PREPAY  
18 by falsely representing that the Defendants would honor the ONE-YEAR PREPAY and “take  
19 care of it” if the Plaintiffs wanted to refinance after one year but before three years. The  
20 Defendants knew these representations were false because they no intention of doing what  
21 they said they would do. The Defendants instead intended that the Plaintiffs rely on these  
22 false representations as if true so as to induce the Plaintiffs into executing the THREE-YEAR  
23 PREPAY. The Defendants further intended, if requested by the Plaintiffs to honor the ONE-  
24 YEAR PREPAY, to refuse by falsely asserting that the THREE-YEAR PREPAY would be  
25 operative.  
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3 25. The Plaintiffs did not know that the Defendants' said representations were false,  
4 and instead believed them to be true. In justifiable reliance thereon, and to avert the scenario  
5 (as threatened by the Defendants) of the escrow failing to close, the Plaintiffs executed the  
6 THREE-YEAR PREPAY at the eleventh hour, thereby introducing an ambiguity into the  
7 MORTGAGE as written.

8 26. As a direct and proximate result of the Defendants' fraud, the Plaintiffs have  
9 suffered general damages, *inter alia*, (a) in the amount of the excessive interest they paid  
10 over what they would have paid had the ONE-YEAR PREPAY been timely honored and  
11 they had thereby been able to timely refinance the PROPERTY at a fixed rate, and (b) by the  
12 negative amortization of the MORTGAGE and the interest that has accumulated on top of  
13 that negative amortization.

14 27. Plaintiffs are also entitled to punitive and/or exemplary damages from the  
15 Defendants to punish their intentional, outrageous, malicious, despicable and illegal conduct.

16 28. WHEREFORE, the Plaintiffs pray for judgment as set forth *post*.

17 **Second Cause of Action for Breach of the Implied Covenant of**  
18 **Good Faith and Fair Dealing**  
19 **(Against All Defendants)**

20 29. Plaintiffs incorporate all previously pleaded allegations.

21 30. The MORTGAGE is a contract that includes the implied covenant of good faith  
22 and fair dealing.

23 31. Plaintiffs' execution of the THREE-YEAR PREPAY was fraudulently induced  
24 at the eleventh hour, thereby introducing ambiguity into the MORTGAGE as written.  
25 However, as discussed above, the oral representations made by the Defendants resolved the  
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2 ambiguity to the effect that the ONE-YEAR PREPAY (and not the THREE-YEAR  
3 PREPAY) was the operative prepayment provision. XYZ ultimately (but untimely) admitted  
4 this under pressure from the Department of Corporations and agreed to (untimely) honor the  
5 ONE-YEAR PREPAY.  
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7 32. The Plaintiffs performed in good faith all that they were required to perform  
8 under the MORTGAGE.

9 33. The Defendants had a duty of good faith and fair dealing to timely cooperate  
10 with Plaintiffs to honor the operative ONE-YEAR PREPAY in lieu of the fraudulently  
11 induced THREE-YEAR PREPAY. The Defendants did not. Instead, the Defendants  
12 intentionally acted in bad faith by refusing to honor the ONE-YEAR PREPAY until  
13 pressured to do so by the Department of Corporations. The Defendants' ultimate honoring of  
14 the ONE-YEAR PREPAY did not occur until after many months of stalling, which stalling  
15 was done in bad faith by the Defendants.

16 34. As a direct and proximate result of the Defendants' bad faith, the Plaintiffs have  
17 suffered general damages, *inter alia*, (a) in the amount of the excessive interest they paid  
18 over what they would have paid had the ONE-YEAR PREPAY been timely honored and  
19 they had thereby been able to timely refinance the PROPERTY at a fixed rate, and (b) by the  
20 negative amortization of the MORTGAGE and the interest that has accumulated on top of  
21 that negative amortization.

22 35. WHEREFORE, the Plaintiffs pray for judgment as set forth *post*.

23 **Jury Demand**

24 Plaintiffs demand trial by jury on all matters so triable herein.  
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## Prayer for Relief

**WHEREFORE**, Plaintiffs pray for judgment by this Court as follows:

A. On all causes of action: for general damages in an amount to be determined at trial but not less than \$500,000.00.

B. On the first cause of action: for punitive and/or exemplary damages in an amount to be determined at trial.

C. For the award of reasonable attorney's fees;

D. For costs of suit incurred herein; and

E. For such further or different relief as the Court deems just and proper.

Dated: \_\_\_\_\_

The [redacted] Firm

By: \_\_\_\_\_  
[redacted], Esq.,  
Attorneys for Plaintiffs Jean and John Lopez

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**Exhibit 1**

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3 **Verification**

4 I, Jean Lopez, declare as follows:

5 1. I am a Plaintiff in the action set forth in the First Amended Complaint herein  
6 above.

7 2. I have personal knowledge of all the matters stated in the First Amended  
8 Complaint, and, if called as a witness, I could competently testify thereto, except as to those  
9 matters stated upon information and belief, and as to those matters, I believe them to be true.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Signed at \_\_\_\_\_, California on \_\_\_\_\_.

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14 Jean Lopez  
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3 **Verification**

4 I, John Lopez, declare as follows:

5 1. I am a Plaintiff in the action set forth in the First Amended Complaint herein  
6 above.

7 2. I have personal knowledge of all the matters stated in the First Amended  
8 Complaint, and, if called as a witness, I could competently testify thereto, except as to those  
9 matters stated upon information and belief, and as to those matters, I believe them to be true.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Signed at \_\_\_\_\_, California on \_\_\_\_\_.

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13 \_\_\_\_\_  
14 John Lopez  
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3 **Proof of Service**

4 I, the undersigned, declare:

5 I am a citizen of the United States of America, am over the age of eighteen (18) years, and  
6 am not a party to the within action. My address is [redacted].

7 On \_\_\_\_\_, I caused to be served the following document(s): **FIRST AMENDED**  
8 **COMPLAINT**, on the parties involved, enclosed in one or more envelopes addressed as  
9 follows:

10 [redacted]  
[redacted]  
[redacted]

11   XX   BY MAIL: I caused each envelope, with postage fully prepaid, to be placed in the  
12 United States mail at [redacted], California.

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

15 Executed on \_\_\_\_\_, at [redacted], California,  
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