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Superior Court of Santa Clara
BY _____ DEPUTY

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 IN AND FOR THE COUNTY OF SANTA CLARA

17 LEOTA C McCULLA, by 'and through LES
18 LINDOP, Acting Public Guardian, as
19 Conservator of the Estate of LEOTA C.
20 McCULLA, Conservatee,

CONSOLIDATED CASE
NO. CV785537

PLAINTIFFS' FIRST AMENDED
COMPLAINT:

21 Plaintiff*.

22 vs.

1. Declaratory and Injunctive Relief
2. Cancellation of Instruments
3. Quieting Title
4. Breach of Fiduciary Duty
5. Fraud
6. Negligence
7. Elder Abuse
8. Violation of Business and Professions Code §§ 17200 et seq.

23 AMARJIT S. WALIA, aka AMAR WALIA;
24 GAYLORD CARSONLEMKE;
25 CALIFORNIA FINANCE AND MORTGAGE,
26 [INC., dba CFM and CITICREDIT; JOSEPH S.
27 SCOTT; R E. STANDISH; C.J.
28 INVESTMENT SERVICES, INC. (as
Trustee); CHICAGO TITLE COMPANY;
SANTA CLARA LAND TITLE COMPANY,
aka/dba FINANCIAL TITLE COMPANY;
FINANCIAL TITLE COMPANY (as Trustee);
PEELLE FINANCIAL CORPORATION (as
Agent for Trustee/Beneficiary and/or as
Successor Trustee); BISHOP AND BISHOP
ASSOCIATES; ROY H. WEAVER, JR and
VERNA T. WEAVER (as Trustees for the Roy
and Vema Weaver Trust); ROY U. BILLINGS
'as Trustee for the Billings Revocable Living
Trust); GREGORY CASS (as Trustee for the
DN, Inc., Profit Sharing Trust); ANTHONY
C. SANTOS (as Trustee for the Anthony K.
Santos, DDS, Inc., Retirement Plan); ISAAC

(consolidated with Case No.: CV785561)

1 N. ABRAMS (as Trustee for the Isaac N.
2 Abrams Profit Sharing Trust); ISAAC N.
3 ABRAMS (as Trustee for the Georgia K.
4 Abram Profit Sharing Trust); CHARLES F.
5 WOJSLAW and TONI WOJSLAW (as
6 Trustees for the C. F. Wojslaw and T. M.
7 Wojslaw Revocable Trust); PAUL E.
8 NOWACK and SHIRLEY A. NOWACK (as
9 Trustees for the Nowack Family Trust); MARY
10 E. WEST (as Trustee for the Mary E. West
11 Trust); BETTY **RIDNOUR**; VERNON J.
12 **GALLAWAY** and BONNIE L. **GALLAWAY**
13 (as Trustees for the **Gallaway** Living Trust);
14 FLORA M. FEUERMAN (as Trustee for the
15 Flora M. Feuexman Trust); WILLIAM
16 FEUERMAN and FLORA M. FEUERMAN
17 (as Trustees for the William and Flora M.
18 **Feuerman** Family Trust); LEO J. PETRUCCI
19 (as Co-Trustee for the Petrucci Family Trust);
20 BART B. GACH and IRIS GACH (as Trustees
21 for the **Gach** Family Trust); MARION L.
22 **McCAULOU**; IGNATI-US PALERMO (as
23 Trustee for the Palermo Living Trust);
24 LAWRENCE COOK and ARLENE W. COOK
25 (as Trustees for the Lawrence F. Cook, Inc.,
26 Defined Benefit Pension Plan); GERALD F.
27 JOHNSON; MARY **HAUMESSER**; WILEY
28 AUSTIN SMITH and MARILYN JOAN
SMITH (as Trustees for the Smith Living
Trust); MARGIE D. TAMBELLINI (as
Trustee FBO Margie D. Tambellini Trust);
DAVID B. CURTIS, SHARON M. CURTIS
and JON J. WELLS (as Trustees for the
Starlight Building Maintenance, Inc. Profit
Sharing Plan); VERNICE **MURGUIA**;
PREMIER FINANCIAL ASSOCIATES, INC.
(as Agent for Trustee/Beneficiary and/or as
Successor Trustee); PLM LENDER
SERVICES, INC. (as Agent for
Trustee/Beneficiary and/or as Successor
Trustee); ROBERT V. GANT and **TENA M.**
GANT; THE **MALHOTRA FAMILY TRUST**;
VINOD K. MALHOTRA (Trustee); NEEMA
B. MALHOTRA (Trustee); FIRST
AMERICAN TITLE INSURANCE CO.; and
DOES 2 through 100, inclusive,

Defendants.

4. Eight of the seventeen loans that are the subject of this action remain outstanding. Notices of default and intent to sell have been recorded against her property for these eight outstanding-loans. In addition to money damages and penalties, plaintiff also seeks equitable relief to protect her property **from** foreclosure.

5. Further, defendants' conduct amounts to abuse of the elderly, whom the California legislature specifically sought to protect under the Elder Abuse statute, and it amounts to **unfair** business practices that are specifically prohibited by the **California** Legislature.

THE PARTIES

Plaintiffs

6. LEOTA CORBETT McCULLA is an eighty-four year old resident of Shingletown, County of Shasta. At all relevant times herein, record title to the real property wrongfully encumbered by defendants was in LEOTA C. McCULLA or in LEOTA C. McCULLA as Trustee of the LEOTA C. McCULLA 1996 REVOCABLE TRUST.

7. The SANTA CLARA PUBLIC GUARDIAN was appointed conservator of **McCULLA's** estate by Court order dated April 27, 1999. On March 10, 1999, the Acting Public Guardian of the County of Santa Clara was appointed Temporary Successor Trustee of the LEOTA C. McCULLA 1996 REVOCABLE TRUST. On or about October 8, 1999, the Court issued an Order on First Amended Petition to Revoke Trust(s), **Will**, and Power(s) of Attorney, to Create an Estate Plan, and to Hire an Expert, wherein the Court found that the LEOTA C. McCULLA 1996 REVOCABLE TRUST *was* void, *ab initio*, due to the lack of capacity of McCULLA and/or as the product of **fraud**, misrepresentation, and/or undue influence. The instant action is brought by the SANTA CLARA PUBLIC GUARDIAN as conservator of the estate of McCULLA

Defendants

The Caretaker Defendant

8. JOSEPH S. SCOTT (hereinafter "SCOTT"), is an individual who at all relevant times was an employee, caretaker, apartment manager, and/or financial manager for McCULLA

1 Defendant SCOTT at all relevant times was in a fiduciary and special relationship with McCULLA.
2 SCOTT was a resident of Santa Clara County, California, and/or was doing business therein at the
3 time of the actions alleged in the Complaint. SCOTT was convicted of embezzlement by the
4 caretaker of an elder based on his conduct as alleged in this complaint, and is currently imprisoned.

5 **The CFM Defendants**

6 9. AMARJIT S. WALIA, aka **AMAR** WALIA (hereinafter "WALIA"), is and at all
7 relevant times was, the owner and president of CALIFORNIA FINANCE AND MORTGAGE,
8 INC., dba CFM and CITICREDIT, and is a resident of and/or conducts business in Santa Clara
9 County, California. WALIA, as owner and president of CALIFORNIA FINANCE AND
10 MORTGAGE, INC., the loan broker for fifteen of the loan transactions described herein, was in a
11 fiduciary and special relationship with McCULLA Defendant WALIA has been convicted of
12 multiple felonies, including two counts of grand **theft**, conspiracy, and bribing a witness.

13 10. CALIFORNIA FINANCE AND MORTGAGE, INC., dba CFM and CITICREDIT
14 (hereinafter "**CFM**"), is and at all relevant times was, a corporation engaged in the finance and
15 mortgage broker business, and was the broker on fifteen of the seventeen loans to SCOTT. CFM
16 also acted as the original lender on at least one loan, recorded as Santa Clara Recorder's Office
17 Document No. 14123708. At all relevant times, CFM was in a fiduciary and special relationship
18 with McCULLA **CFM** is a resident of and/or conducts business in Santa Clara County, California.

19 11. GAYLORD CARSON LEMKE (hereinafter "LEMKE") is a licensed real estate
20 broker. He allowed **WALIA** and CFM, to operate their business with his broker's license.
21 However, LEMKE never participated in, supervised, or oversaw any of the loan transactions
22 handled by CFM, as required for a supervising broker. Defendant LEMKE at all relevant times was
23 in a fiduciary and special relationship with McCULLA. LEMKE is a resident of and/or conducts
24 business in Santa Clara County, California.

25 **The Notary Public Defendant**

26 12. R. E. STANDISH (hereinafter "STANDISH?") is, and at all relevant times was, a
27

1 Notary Public. STANDISH notarized and/or prepared various documents that are related to or are
2 the subject of this action. STANDISH notarized falsified documents. Further, based on
3 information and belief, R E. STANDISH acted in concert with or as the agent or representative of
4 defendant(s) **WALIA** and/or SCOTT. STANDISH is a resident of and/or conducts business in
5 Santa Clara County, California.

6 The Title Company Defendants

7 13. SANTA CLARALAND TITLE COMPANY, **aka/dba FINANCIAL TITLE**
8 COMPANY (hereinafter "SANTA CLARA LAND TITLE CO.") is, and at all relevant times was,
9 a corporation authorized to engage in, and at all times mentioned in this complaint engaged in,
10 business as an escrow and title company in Santa Clara County, California. Defendant SANTA
11 **CLARA LAND TITLE CO.**, acted as the escrow officer/company on thirteen loans recorded as
12 Santa Clara County Recorder's Office Document Nos. 13836205, 13836206, 13836207, and
13 13836208 recorded on August 29, 1997; Document Nos. 14091619, 14091622, and 14091625
14 recorded on March 12, **1998**; Document No. 14 123 708 recorded on April 3, 1998; Document Nos.
15 14349116, 14349118, and 14349120 recorded on August 24, 1998; Document No. 145 12537
16 recorded on November 20, 1998; and Document No. 14593452 recorded on January 12, 1999.
17 Further, SANTA CLARA LAND TITLE CO. acted as the original Trustee on several of the **above-**
18 described loans, evidenced by Santa Clara County Recorder's Office Document Nos. 14 123708,
19 **14349116, 14340118, 14349120 and 14593452.**

20 14. FIRST AMERICAN TITLE INSURANCE COMPANY (hereinafter "FIRST
21 AMERICAN") is, and at all relevant times was, a corporation authorized to engage in, and at all
22 times mentioned **in this** complaint engaged in business as an escrow and title company in Santa
23 Clara County, California. Plaintiff is informed and believes, and on that basis **alleges**, that FIRST
24 AMERICAN performed the title searches for all thirteen loans for which SANTA CLARA LAND
25 **TITLE CO.** acted as the escrow officer/company.

26 15. CHICAGO TITLE COMPANY is, and at all relevant times was, a corporation
27

1 authorized to engage in, business as an escrow and title company in Santa Clara County, California.
2 CHICAGO TITLE **CO.** acted as the escrow officer/company on two loans recorded as Santa Clara
3 County Recorder's Document No. 13573553 recorded on January 8, 1997, and Document No.
4 13658457 recorded on April 2, 1997.

5 **The Bishop Lenders Defendants**

6 16. BISHOP AND BISHOP ASSOCIATES is, and at all relevant times was, a
7 corporation engaged in the finance and mortgage broker business, and was the original lender
8 and/or lender's broker for four loans described herein and evidenced by Santa Clara County
9 Recorder's Office Document Nos. 13836205, 13836206, 13836207, and 13836208 recorded on
10 August 29, 1997.

11 17. ROY H. WEAVER, JR. and VERNA T. WEAVER (as Trustees for the Roy and
12 Vema Weaver Trust); ROY U. BILLINGS (as Trustee for the Billings Revocable Living Trust);
13 GREGORY CASS (as Trustee for the JDN, Inc., Profit Sharing Trust); ANTHONY K. SANTOS
14 (as Trustee for the Anthony K. Santos, DDS, Inc., Retirement Plan); ISAAC N. ABRAMS (as
15 Trustee for the Isaac N. Abrams Profit Sharing Trust); ISAAC N. **ABRAMS** (as Trustee for the
16 Georgia K. Abrams Profit Sharing Trust);. CHARLES F. WOJSLAW and TONI WOJSLAW (as
17 Trustees for the C. F. Wojslaw and T. M. Wojslaw Revocable Trust); PAUL E. NOWACK and
18 SHIRLEY A NOWACK (as Trustees for the Nowack Family Trust); MARY E. WEST (as
19 Trustee for the **Mary** E. West Trust); BETTY **RIDNOUR**; VERNON J. **GALLAWAY** and
20 BONNIE L. **GALLAWAY** (as Trustees for the **Gallaway** Living Trust); FLORA M. FEUERMAN
21 (as Trustee for the **Flora** M. Feuerman Trust); WILLIAM FEUERMAN and FLORA M.
22 FEUERMAN (as Trustees for the William and Flora M. Feuerman Family Trust); LEO J.
23 PETRUCCI (as Co-Trustee for the Petrucci Family Trust); BART B. GACH and IRIS GACH (as
24 Trustees for the **Gach** Family Trust); MARION L. **McCAULOU**; IGNATIUS **PALERMO** (as
25 Trustee for the Palermo Living Trust); LAWRENCE COOK and ARLENE W. COOK (as Trustees
26 for the Lawrence F. Cook, Inc., Defined Benefit Pension Plan); GERALD F. JOHNSON; MARY
27

1 **HAUMESSER**; WILEY AUSTIN SMITH and MARJLYN JOAN SMITH (as Trustees for the
2 Smith Living Trust); MARGIE D. **TAMBELLINI** (as Trustee FBO Margie D. Tambellini Trust);
3 DAVID B. CURTIS, SHARON M. CURTIS and JON J. WELLS (as Trustees for the Starlight
4 Building Maintenance, Inc., Profit Sharing Plan); and **VERNICE** MURGUIA (hereinafter
5 “BISHOP LENDERS”), were the original lenders and/or assignees for the loans described herein
6 and evidenced by Santa Clara County Recorder’s Office Document Nos. 13836205, 13836206,
7 13836207, and 13836208 recorded on August **29, 1997**.

8 18. C. J. INVESTMENT SERVICES, INC. (hereinafter “C.J.I.S.”) is, and at all
9 relevant times was, a California corporation doing business in Santa Clara County, California, and
10 is authorized to engage in the mortgage **service** business. C.J.I.S. was the original Trustee under
11 four Long Form Deeds of Trust and Assignments of Rents recorded in Santa Clara County,
12 California, as Document Nos. 13836205, 13836206, 13836207, and 13836208 recorded on August
13 29, 1997.

14 19. Defendant PLM LENDER SERVICES, INC. (hereinafter “PLM”) is a corporation
15 doing business in Santa Clara County, California, and is, and at all relevant times was, authorized to
16 engage in the mortgage **service** business, and is the agent for the beneficiary and/or is the Successor
17 Trustee for said loans evidenced by Santa Clara County Recorder’s Office Document Nos.
18 13836205, 13836206, 13836207, and 13836208 recorded on August 29, 1997. PLM recorded
19 notices of default and election to sell for the four loans for which the BISHOP LENDERS are the
20 original lenders and/or assignees.

21 **Other Lender Defendants**

22 20. Defendants ROBERT V. GANT and **TENA** M. GANT (Husband and Wife as
23 **Joint** Tenants) are individuals who reside in and/or do business in Santa Clara County, California,
24 **and** are the assignees of a loan **described** herein and evidenced by Santa Clara County Recorder’s
25 **Office** Document No. 14123708 recorded on April 3, 1998.

26 21. Defendant PEELLE FINANCIAL CORPORATION (**hereinafter** “PEELLE”) is a
27

1 corporation doing business in Santa Clara County, California, and is, and at all relevant times was,
2 authorized to engage in the mortgage service business and is the agent for beneficiary/assignee
3 and/or the Successor Trustee for said loan evidenced by Santa Clara County Recorder's Office
4 Document No. 14123708 recorded April 3, 1998. PEELLE recorded a notice of default and
5 election to sell for the loan for which the GANT defendants are assignees/beneficiaries.

6 22. THE MALHOTRA FAMILY TRUST and the Trustees of said trust, **VINOD K.**
7 **MALHOTRA** and **NEEMA B. MALHOTRA** (hereinafter "MALHOTRA CO-TRUSTEES"), are
8 an entity and individuals who reside in and/or are doing business in Santa Clara County, California,
9 and are the original lenders and/or assignees of three loans described herein and evidenced by Santa
10 Clara County Recorder's Office Document Nos. 14349116, 14349118, and 14349120 recorded on
11 August 24, 1998.

12 23. PREMIER FINANCIAL ASSOCIATES, INC., (hereinafter "PREMIER") is a
13 corporation doing business in Santa Clara County, California, and is, and at all relevant times was,
14 authorized to engage in the mortgage service business and is the Successor Trustee and/or agent
15 for the beneficiary for said loans evidenced by Santa Clara County Recorder's Office Document
16 Nos. 14349116, 14349118, and 14349120 recorded August 24, 1998. PREMIER recorded a
17 notice of default and election to sell for the three loans for which the MALHOTRA defendants are
18 the original lenders and/or assignees.

19 24. The true names and capacities, whether individual, corporate, associate or
20 otherwise, of defendants DOES 2 through 100, inclusive, are unknown to **plaintiff**, who therefore
21 **sues** said defendants by such fictitious names pursuant to Code of Civil Procedure section 474;
22 **plaintiff further** alleges that each of said fictitious defendants is in some manner responsible for the
23 acts and occurrences herein set forth. Plaintiff is informed and believes, and thereon alleges, that
24 each of these fictitiously named defendants claim some right, title, estate, lien, or interest in the
25 property described herein adverse to **plaintiff's** title, and their claims, and each of them, constitute a
26 cloud on plaintiffs title to that property. **Plaintiff will** amend this Complaint to show these
27

1 defendants' true names and capacities when same are ascertained, as well as the manner in which
2 each fictitious defendant is responsible.

3 25. Plaintiff is informed and believes, and upon such basis alleges, that at all times herein
4 mentioned, each of the defendants herein was an agent, servant, employee and/or joint venturer of
5 each of the remaining defendants, and was at all times acting within the course and scope of said
6 agency, service, employment, and/or joint venture.

7 26. The defendants aided and abetted, encouraged and rendered substantial assistance in
8 accomplishing the wrongful conduct and their wrongful goals and other wrongdoing complained of
9 herein. Each of the defendants acted with an awareness of its wrongdoing and realized that its
10 conduct would substantially assist the accomplishment of the **wrongful** conduct, wrongful goals,
11 and wrongdoing.

12 STATEMENT OF THE CASE

13 27. **Plaintiff McCULLA**, by and through the Public Guardian of the County of Santa
14 Clara, as Conservator of the Estate of LEOTA C. **McCULLA, Conservatee**, owns real property
15 known as 1383 Calle Oriente, **Milpitas**, California 95035 (APN 029-05-042); 1407 **Calle** Oriente,
16 Milpitas, California 95035 (APN 029-05-041); 1416 Calle Oriente, Milpitas, California 95035,
17 1430 Calle Oriente, Milpitas, California 95035, 1444 Calle Oriente, Milpitas, California 95035
18 (APN 029-05-023); and 1425 Calle Oriente, Milpitas, California 95035 (APN **029-05-005**), and
19 described as:

20 PARCELS A, B, C, D, and E, as shown upon that certain Map entitled,
21 "Record of Survey-Lands of **Timerick** Company, Inc., being Lots 25 and
22 26 of Tract No. 2575 "Monte De Oro", Book 166 of Maps, page **45**",
23 which said Record of Survey Map was filed for record in the **office of** the
24 Recorder of the County of Santa Clara, State of California, on May 6, 1964
25 **in** Book 178 of Maps, page 6.

26 PARCEL F, AS SHOWN UPON THAT CERTAIN MAP **ENTITLED**,
27 "**RECORD OF SURVEY-LANDS OF TIMERICK COMPANY**,
28 **INCORPORATED, BEING LOTS 25 AND 26 OF TRACT NO. 2575**
"MONTE DE ORO" BOOK 166 OF MAPS, PAGE 45", WHICH SAID
RECORD OF SURVEY MAP WAS FILED FOR RECORD **IN THE**
OFFICE OF THE RECORDER OF THE COUNTY OF SANTA **CLARA**,
STATE OF CALIFORNIA ON MAY 6, 1964 IN BOOK 178 OF MAPS,

1 PAGE 6.

2 PARCEL G., AS SHOWN UPON THAT CERTAIN MAP ENTITLED,
3 "RECORD OF SURVEY-LANDS OF **TIMERICK** COMPANY,
4 INCORPORATED, BEING LOTS 25 AND 26 OF TRACT NO. 2575
5 "MONTE DE ORO" BOOK 166 OF MAPS, PAGE **45**", **WHICH SAID**
6 RECORD OF SURVEY MAP WAS FILED FOR RECORD IN THE
7 OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA
8 STATE OF CALIFORNIA ON MAY **6, 1964** IN BOOK 178 OF MAPS,
9 PAGE 6.

10 PARCEL H, as shown on that certain Map entitled, "Record of **Survey-**
11 **Lands of Timerick** Company, Inc., being Lots 25 and 26 of Tract No. 2575
12 'Monte De Oro', Book 166 of Maps, page **45**", which said Record of
13 Survey Map was filed for record in the office of the Recorder of the
14 County of Santa Clara, State of California, on May 6, 1964 in Book of
15 Maps numbered 178 at page 6.

16 (hereinafter the "Milpitas apartments") A Litigation Guarantee pertaining to the subject
17 real property is attached hereto as **Exhibit A**, and incorporated herein by reference.

18 28. McCULLA has a history of mental instability, including an extended
19 commitment at **Camarillo** State psychiatric facility in the 1950's and 1960's.

20 29. SCOTT was a tenant in one of her apartments sometime in the early
21 1990's. He **befriended** her, preying on McCULLA's age, mental instability, and
22 **infirmities**. In the mid **1990's**, McCULLA moved her residence to Shingletown,
23 California. McCULLA was unable to manage the Milpitas Apartments **after** the death of a
24 friend who had essentially managed them for her. On or about April **17, 1994**, McCULLA
25 and SCOTT entered into a written agreement for SCOTT to manage the apartments,
26 under which SCOTT was to receive a payment of \$500 per month and **free** rent and
27 utilities in an apartment unit.

28 30. **Instead** of faithfully acting in McCULLA's interests as her property
manager, SCOTT abused the trust placed in him. SCOTT, by **fraud**, undue **influence** and
forgery, gained control of all of McCULLA's financial **affairs**, and took out seventeen
loans secured by her real property, without her knowledge or approval.

31. On or about January **8, 1996**, SCOTT, composed a trust for McCULLA on

1 his computer which named McCULLA as Trustee and himself as the first Successor
2 Trustee. The document **also** named SCOTT to inherit the entire remainder of the
3 McCULLA real property estate, i.e., all six (6) Milpitas apartment buildings. On or about
4 February 14, 1996, SCOTT obtained a power of attorney on certain Milpitas apartments
5 at 1416, 1430 and 1444 **Calle** Oriente. Also, on March 15, 1996, SCOTT obtained a loan
6 in the amount of **\$120,000.00** as “attorney in fact” for McCULLA, and recorded a Deed
7 of Trust With Assignment of Rents as Santa Clara County Recorder’s Office Document
8 No. 1322764 1. Two months later, on May 17, 1996, SCOTT obtained another loan in the
9 amount of **\$250,000.00** as “attorney in fact” for McCULLA, and recorded a Deed of
10 Trust With Assignment of Rents as Santa Clara County Recorder’s Office Document No.
11 13296422. Defendant SCOTT obtained said loans without the **full** knowledge, consent
12 and valid authorization **from** McCULLA and SCOTT used said loan proceeds for his own
13 use and benefit in breach of his fiduciary duty.

14 32. A copy of a document captioned “Resignation of Trustee,” procured by the
15 District Attorney of Santa Clara **from** defendant **WALIA**, which is undated but purports to
16 be notarized by R. E. Standish on August 22, 1997, and signed by SCOTT, but not
17 McCULLA is attached hereto **as Exhibit B**, and incorporated herein by reference. A
18 **copy** of a second document also captioned “Resignation of Trustee,” which is undated but
19 purports to be notarized by Jessie Magat on August 25, 1997, and signed by McCULLA
20 and SCOTT, is attached hereto and incorporated by reference **as Exhibit C**. Using these
21 documents, SCOTT as the purported Successor Trustee entered into fifteen additional
22 loan transactions between January, 1997 and January, 1999. **WALIA**, and CFM, with the
23 assistance of STANDISH, participated in thirteen of these fifteen loan transactions.

24 33. The Resignation of Trustee dated August **25, 1997** and purportedly signed
25 **by** McCULLA is a forgery. The document was not signed by McCULLA Attached
26 hereto and incorporated by reference **as Exhibit D** is a Declaration of M. Patricia Fisher, a
27

1 certified document examiner, stating that McCULLA did not sign said Resignation of
2 Trustee. Attached hereto and incorporated by reference as **Exhibit E** is a copy of the page
3 for August 22, 1997, and August 25, 1997, of the notary book of Jessie Magat showing
4 that he did not notarize the signature of **McCULLA**.

5 34. Based on information and belief, **plaintiff** alleges that SCOTT was
6 encouraged, and assisted by WALIA and CFM to **fraudulently** take control of
7 **McCULLA's** finances, through intentionally forging, altering and preparing loan
8 documents to secure said loans.

9 35. At the time SANTA CLARA LAND **TITLE CO.** participated in said loan
10 transactions with the above named defendants, SANTA CLARA LAND **TITLE CO.** knew
11 or should have known of said fraudulent and illegal activity, and that SCOTT did not have
12 record title to the Milpitas Apartments. SANTA **CLARA** LAND TITLE CO. failed to
13 examine documents that purportedly gave SCOTT authority to enter into said loan
14 transactions, failed to properly obtain loan applications, failed to require Federal Truth in
15 Lending notification, failed to ensure **that** a broker had reviewed and signed off on said
16 loans, and failed to have appropriate title searches performed.

17 36. At the time CHICAGO TITLE CO. participated in loan transactions with
18 SCOTT, CHICAGO **TITLE CO.** knew or should have known that SCOTT did not have
19 record title to the Milpitas apartments. CHICAGO TITLE CO. failed to examine
20 documents that purportedly gave SCOTT authority to **enter** into said loan transactions,
21 failed to properly obtain loan applications, and either failed to perform or negligently
22 **performed** title searches which would have revealed not only that SCOTT did not have
23 record title to the Milpitas Apartments, but that McCULLA had record title.

24 37. FIRST AMERICAN performed the title searches for SANTA CLARA
25 **LAND** TITLE CO. FIRST AMERICAN failed to examine documents that purportedly
26 **gave** SCOTT authority to enter into said loan transactions, failed to properly obtain loan
27

1 applications, and either failed to perform or negligently performed title searches which
2 would have revealed not only that SCOTT did not have record title to the Milpitas
3 Apartments, but that McCULLA had record title.

4 38. BISHOP & BISHOP ASSOCIATES participated as a broker for lenders or
5 as a lender in at least four loan transactions with SCOTT, WALIA and CPM. BISHOP &
6 BISHOP ASSOCIATES knew or should have known that WALIA was not a licensed
7 broker and that any loans in which he was a participant would be of questionable validity.
8 Had BISHOP & BISHOP ASSOCIATES examined the documents that purportedly gave
9 SCOTT authority to enter into said loan transactions, BISHOP & BISHOP
10 ASSOCIATES would have known that SCOTT did not have record title to the Milpitas
11 Apartments.

12 39. All defendants engaged in multiple loan transactions under extremely
13 questionable circumstances, including but not limited to:

- 14 a. Although every single loan was entered into with SCOTT as Successor
15 Trustee, record title was always in McCULLA as Trustee of THE 1996
16 LEOTA C. McCULLA LIVING TRUST.
- 17 b. SCOTT entered into seventeen loans between March 1996 and January
18 1999, including multiple loan transactions on the same days.
- 19 c. The loan fees associated with these loans were **extraordinarily** high, ranging
20 **from** fifteen points on the loans with the BISHOP LENDERS, over
21 eighteen **points on** the loan with the **GANT's**, and ten points on the loans
22 with the **MALHOTRA** defendants.

23 40. A total of **\$2,361,000** was borrowed by SCOTT using the Milpitas
24 Apartments to secure the loans. Of this total amount, approximately \$527,099, an
25 **inconscionable** portion of the proceeds **from** the seventeen loans, went to pay broker fees, .
26 **oints**, commissions, investments, advances, loan processing and other fees.

1 41. SCOTT used the remaining money, inter alia, to purchase a home for
2 himself at 842 Vasona Street in Milpitas, California (hereinafter “Vasona Street
3 property”), to pay his income taxes and personal **legal** expenses, and otherwise for his own
4 benefit and use. Further, **plaintiff is** informed and believes, that the proceeds of
5 subsequent loans were used to pay off prior loans made to SCOTT.

6 42. On April **23, 1999**, SCOTT was arrested and charged with four felony
7 counts of grand **theft**, embezzlement and elder **fraud** stemming **from** his management of
8 **McCULLA’s** assets. On or about July 21, 1999, SCOTT entered a plea of guilty of one
9 felony count of Penal Code Section 368, Theft or Embezzlement From An Elder Or
10 Dependant Adult With Enhancement.

11 **FIRST CAUSE OF ACTION**

12 **DECLARATORY AND INJUNCTIVE RELIEF**

13 **(Against Walia, CFM, Peelle, PLM, Premier, Bishop & Bishop Associates, Bishop**
14 **Lenders, Robert V. Gant and Tena M. Gant; the Malhotra Family Trust,**
15 **and the Malhotra Co-Trustees)**

16 Plaintiff hereby incorporates by reference paragraphs 1 through 42, inclusive, of
17 this Complaint, as though fully set forth in this Cause of Action.

18 43. SCOTT **fraudulently** executed and delivered to defendants **WALIA** and
19 CFM, and/or defendant title companies seventeen Promissory Notes between March 1998
20 and January, 1999. Of said Promissory Notes, eight remain unpaid, and a copy of each
21 unpaid Promissory Note is attached hereto **as Exhibit(s) F (F-1 through F-8)**, and
22 incorporated herein by reference

23 44. To secure payment of the principal sums and interest as provided in the
24 eight remaining Promissory Notes and as part of each transaction, SCOTT delivered to
25 CFM and/or to defendant title companies eight Deeds of Trust, by the terms of which
26 defendant SCOTT, as purported **Trustor**, conveyed to defendants FINANCIAL TITLE
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1 COMPANY and C.J.I.S., as Trustees, the real property described in Paragraph 25. The
2 outstanding eight Deeds of Trust were recorded in the Santa Clara County Office of the
3 Recorder as Document Nos. 13836205, 13836206, 13836207, 13836208 recorded on
4 August 29, 1997; Document No. 14123708 recorded on April 3, 1998; and Document
5 Nos. 14349116, **14349118**, **14349120** recorded on August 24, 1998.

6 45. CFM and WALIA acted as the broker for the eight outstanding loans
7 described herein, and placed said loans and/or assigned said loans and Deeds of Trust,
8 together with Promissory Notes, to defendants BISHOP AND BISHOP ASSOCIATES;
9 BISHOP LENDERS; ROBERT V. GANT and **TENA M. GANT**; THE **MALHOTRA**
10 FAMILY TRUST; and the **MALHOTRA** CO-TRUSTEES as the original lenders and/or
11 assignees of said loans.

12 46. On June 11, 1999, PEELLE, as agent for defendants ROBERT V. GANT
13 and **TENA M. GANT**, caused to be recorded a Notice of Default and Election To Sell as
14 Document No. 14853746 of the Official Records of Santa Clara County, California,
15 alleging that a breach of the obligation secured by the Deed of Trust had occurred,
16 consisting of **plaintiff's** alleged failure to make payments, and **PEELLE** gave notice of
17 Trustee's Sale set for October 14, 1999, at 11:00 AM., to satisfy that obligation.

18 47. A Notice of Default and Election to Sell Under Deed of Trust was
19 recorded on June 18, 1999, as Santa Clara County Recorder's **Office** Document No.
20 14863633 by PREMIER on behalf of beneficiary CFM and **CFM's** assignees, the
21 MALHOTRA FAMILY TRUST and the **MALHOTRA** CO-TRUSTEES.

22 48. Notices of Default and Election to Sell Under Deed of Trust, tiled August
23 31, 1999, as Santa Clara County Recorder's Office No. 14964329, 14964330, 1496433 1
24 and 14964332 were tiled by PLM, on behalf of the lenders and/or beneficiaries/ assignees
25 BISHOP AND BISHOP ASSOCIATES and BISHOP LENDERS. A true and correct
26 copy of the Notices of Default and Elections to Sell listed in ¶¶**46-48** are attached hereto
27

1 as Exhibit(s) **G(G-1 through G-4)**.

2 49. A breach of the alleged obligations for which the Deeds of Trust are
3 security has not occurred in that at all relevant times herein record title was in McCULLA
4 as Trustee, and because SCOTT and defendants embezzled and fraudulently entered into
5 said loan transactions and security agreements without the consent of McCULLA An
6 actual controversy exists between **plaintiff and** defendants concerning their respective
7 rights and duties in the real property in the described transactions in that (a) plaintiff
8 contends that authorization and/or signatures on all loan documents and Deeds of Trust
9 were procured by fraud, undue influence and abuse; and **(b)** defendants in some manner
10 dispute this contention and contend that their security interest is valid.

11 50. **Plaintiff desires a** judicial determination and declaration of **plaintiff's** and
12 defendants' respective rights and duties, specifically that SCOTT, by **fraud**, embezzlement
13 and breach of fiduciary duty entered into the herein described promissory notes, loans and
14 security agreements without the authority and consent of McCULLA Further, that all
15 Promissory Notes and Deeds of Trust allegedly executed by defendant SCOTT **from**
1 6 March 1996 to the present **affecting** said real property are void as to McCULLA and void
17 as to said real property as described in Paragraph 1 above. Such a declaration is
18 appropriate at this time so that **plaintiff** may determine her rights and duties before the real
19 property that is the subject of this dispute is sold at a foreclosure sale.

20 51. ROBERT V. GANT and **TENA M. GANT, THE MALHOTRA FAMILY**
21 **TRUST, MALI-IOTRA CO-TRUSTEES, BISHOP AND BISHOP ASSOCIATES,**
22 **BISHOP LENDERS, and CFM,** as lenders/beneficiaries and/or the Trustees, Successor
23 Trustees, or other agents for beneficiaries, intends to sell, and, unless restrained, will sell
24 or cause to be sold the trust property, to **plaintiff's** great and irreparable injury in that the
25 real property is plaintiff's former residence and is currently her sole source **of** income and
26 support, and such a sale would cause irreparable tax consequences. **Plaintiff has** no other
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1 plain, speedy or adequate remedy, and the injunctive relief prayed for below is necessary
2 and appropriate at this time to prevent irreparable loss to **plaintiff's** interests.

3 WHEREFORE plaintiff prays for relief as set forth below.

4 **SECOND CAUSE OF ACTION**

5 **CANCELLATION OF INSTRUMENTS**

6 **(Against Walia, CFM, Peelle, PLM, Premier, Bishop & Bishop Associates, Bishop**
7 **Lenders, Robert V. Gant and Tena M. Gant; the Malhotra Family Trust,**
8 **and the Malhotra Co-Trustees)**

9 Plaintiff hereby incorporates by reference paragraphs 1 through 5 1, inclusive, of
10 this Complaint, as though fully set forth in this Cause of Action.

11 52. The Promissory Notes Secured by Deeds of Trust for (a) Six Hundred **Fifty**
12 **Thousand and 00/100 Dollars (\$650,000.00)**, dated August 19, 1997; **(b) Two Hundred**
13 **Seventeen Thousand and 00/100 Dollars (\$217,000.00)**, dated August 19, 1997; (c) Two
14 **Hundred Seventeen Thousand and 00/100 Dollars (\$217,000.00)**, dated August 19, 1997;
15 (d) Two Hundred Seventeen Thousand and **00/100 Dollars (\$217,000.00)**, &ted August
16 19, 1997; (e) One Hundred Thousand and **00/100 Dollars (\$100,000.00)**, dated March 31,
17 1998; **(f) Seventy Thousand and 00/100 Dollars (\$70,000.00)**, dated August 17, 1998; (g)
18 **Seventy Thousand and 00/100 Dollars (\$70,000.00)**, dated August 17, 1998; and **(h)**
19 **Seventy Thousand and 00/100 Dollars (\$70,000.00)**, dated August 17, 1998, **fraudulently**
20 **executed by SCOTT and defendants in favor of CFM, and/or BISHOP LENDERS,**
21 **Exhibit(s) F (F-1 through F-8)**, and the Deeds of Trust With Assignment of Rents
22 recorded in Santa Clara County, California, Official Records as (a) Document Nos.
23 13836205, 13836206, 13836207 and 13836208 on August 29, 1997; **(b) Document No.**
24 **14123708 on April 3, 1998;** and (c) Document Nos. 14349116, 14349118, and 14349120
25 **on August 24, 1998, between SCOTT as Trustor, and C. J.I.S. and/or FINANCIAL**
26 **TITLE COMPANY, as Trustee, and CFM, and/or BISHOP LENDERS, as beneficiary,**
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1 should be declared void, as SCOTT's authorization and signatures on said Promissory
2 Notes and Deeds of Trust were procured by **fraud**, undue influence and fiduciary abuse.
3 Further, any assignment and/or successor in interest to said Promissory Notes and Deeds
4 of Trust to BISHOP AND BISHOP ASSOCIATES, ROBERT V. GANT and **TENA M.**
5 **GANT**, BISHOP LENDERS, and the **MALHOTRA** FAMILY TRUST and MALHOTRA
6 CO-TRUSTEES, and any of their assignees, should be declared void as to **plaintiff** and the
7 real property described herein.

8 53. If said Promissory Notes and Deeds of Trust With Assignment of Rents are
9 **left** outstanding, plaintiff may be required to pay them or to defend lawsuits based on
10 them, and by refusing to pay them **plaintiff will** be damaged in her credit and/or be caused
11 to suffer the loss of her real property by foreclosure sale.

12 54. Defendants have given nothing of value to plaintiff: and/or the damages
13 sustained by **plaintiff exceeds** the value of any benefit that might be restored.

14 WHEREFORE plaintiff prays for relief as set forth below.

15 **THIRD CAUSE OF ACTION**

16 **QUIETING TITLE**

17 **(Against Walia, CFM, Peelle, PLM, Premier, Bishop & Bishop Associates, Bishop**
18 **Lenders, Robert V. Gant and Tena M. Gant; the Malhotra Family Trust,**
19 **and the Malhotra Co-Trustees)**

20 Plaintiff hereby incorporates by reference paragraphs 1 through 54, inclusive, of
21 this Complaint, as though fully set forth in this Cause of Action.

22 55. **McCULLA** seeks to quiet title to the **Milpitas** Apartments, more
23 particularly described in Paragraph 25 above, in herself as against all adverse claims,
24 including, but not limited to, claims of defendants named herein, as well as all persons
25 unknown. The defendants named herein as "all persons unknown, claiming any legal or
26 equitable right, title, estate, lien, or interest in the property described in **the** complaint
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1 adverse to plaintiffs title, or any cloud on **plaintiff's** title thereto" (hereinafter sometimes
2 referred to as "the unknown defendants") are unknown to **plaintiff**. These unknown
3 defendants, and each of them, claim some right, title, estate, lien, or interest in the
4 property described herein adverse to **plaintiff's** title, and their claims, and each of them,
5 constitute a cloud on **plaintiff's** title to that property.

6 56. The basis of **plaintiff's** title is a quitclaim deed recorded April 27, 1981, in
7 Santa Clara County Recorder's Office Book G049, page 568, a Community Property
8 Order and Order Approving Fees, tiled March 25, 1985, and a Judgment of Final
9 Distribution on Waiver of Accounting, filed June 24, 1985, in the Superior Court of the
10 State of California, County of Santa Clara, granting the above-described property in fee
11 simple to **plaintiff**, and recorded in the Official Records of the County of Santa Clara,
12 California, in Book J314, page 2104, as Document No. 8375271, and in Book J389, page
13 2217, as Document No. 8456214.

14 57. **McCULLA**, by and through her Conservator, the Public Guardian of the
15 County of Santa Clara, is presently in possession of the above-described property, and has
16 been in possession at all relevant times herein.

17 58. **McCULLA** is informed and believes, and on that basis alleges, that
18 defendants CFM, FINANCIAL TITLE COMPANY (as Trustee), C.J.I.S. (as Trustee),
19 PREMIER (as Agent/Successor Trustee), PEELLE (as Agent/Successor Trustee), PLM
20 (as Agent/Trustee), BISHOP and BISHOP ASSOCIATES, BISHOP LENDERS,
21 ROBERT V. GANT and **TENA M. GANT**, the MALHOTRA FAMILY TRUST, and the
22 MALHOTRA CO-TRUSTEES claim an adverse interest to **plaintiff** in the **above-**
23 described real property as the Trustee for defendants, as beneficiaries and/or assignees
24 under certain documents recorded as Document Nos. **13836205, 13836206, 13836207,**
25 and 13836208 on August **29, 1997; (b)** Document No. 14123708 on April **3, 1998;** and
26 **(c)** Document Nos. **14349116, 14349118,** and 14349120 on August **24, 1998,** in the

1 Office of the Recorder of Santa Clara County, California.

2 59. Some of the defendants named herein, and some of the unknown
3 defendants, specifically those designated as DOES 50 through 100, may claim interests in
4 the property adverse to plaintiff as assignees and/or successors of defendant CFM, and/or
5 as assignees and/or successors of other defendants.

6 60. **McCULLA** is seeking to quiet title against the claim of defendants, if any,
7 as follows: CFM, **FINANCIAL** TITLE COMPANY (as Trustee), C.J.I.S. (as Trustee),
8 **PREMIER** (as Agent/Successor Trustee), **PEELLE** (as Agent/Successor Trustee), **PLM**
9 (as Agent/Trustee), **BISHOP** and **BISHOP ASSOCIATES**, **BISHOP LENDERS**,
10 **ROBERT V. GANT** and **TENA M. GANT**, **THE MALHOTRA** FAMILY TRUST, and
11 the **MALHOTRA CO-TRUSTEES**, as well as the claims of the assignees and/or
12 successors of defendants described above; the claims of all unknown defendants described
13 above, whether or not the claim or cloud is known to. **plaintiff**, and all unknown, uncertain
14 or contingent claims, if any. The claims of defendants are without any right whatever and
15 the above defendants have no right, title, estate, lien or interest whatever in the **above-**
16 described property.

17 61. **Plaintiff seeks** to quiet title as of the date of this complaint.

18 WHEREFORE **plaintiff** prays for relief as set forth below.

19 **FOURTH CAUSE OF ACTION**

20 **BREACH OF FIDUCIARY DUTY**

21 **(Against Scott, **Walia**, CFM, Lemke, Santa Clara Land Title Co.,**

22 **Chicago Title Co., and First American)**

23 **Plaintiff** hereby incorporates by reference paragraphs 1 through 61, inclusive, of
24 this Complaint, as though fully set forth in this Cause of Action.

25 62. Defendants **SCOTT** as **McCULLA's** caretaker, **WALIA** as **SCOTT's** real
26 estate agent, **CFM** as **SCOTT's** broker, **LEMKE** as **SCOTT's** broker, and **SANTA**
27

1 CLARA LAND TITLE CO., CHICAGO TITLE CO., and FIRST AMERICAN as title
2 insurance/escrow companies, each owed to McCULLA a fiduciary duty of the highest
3 good faith, integrity and fair dealing.

4 63. The defendants breached and violated their fiduciary obligations to
5 McCULLA by participating in the above mentioned loan transactions, and by concealing
6 and failing to inform McCULLA of the facts regarding the loan transaction concerning her
7 real property.

8 64. The defendants abused and breached the trust and confidence of
9 McCULLA by participating in the misdeeds alleged herein.

10 65. The defendants engaged in the wrongful acts described herein with the
11 intent to gain an advantage over McCULLA and to benefit themselves to the detriment of
12 McCULLA

13 66. As a proximate result of the defendants' **wrongful** conduct, McCULLA has
14 sustained and will sustain substantial economic losses and other general and specific
15 damages. These damages include, inter alia, the loss of equity in the Milpitas apartments,
16 lost profits, loss of future income, and lost interest, all in an amount to be determined
17 according to proof

18 67. The actions taken by defendants set **forth** above were in all respects
19 malicious, willful and oppressive, and manifested either disregard or contempt for the
20 rights of plaintiff. Plaintiff is thereby entitled to an award of punitive and exemplary
21 damages in an amount according to proof at time of trial.

22 68. As the subject transactions involved McCULLA who at all relevant times
23 herein was a senior citizen, **plaintiff is further entitled** to treble damages and penalties
24 **pursuant** to Civil Code section 3345 because defendants knew or should have known that
25 their conduct was directed to one or more senior citizens.

26 **WHEREFORE** plaintiff prays for relief as set forth below.
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FIFTH CAUSE OF ACTION

FRAUD

(Against Scott, **Walia**, CFM, **Lemke**, Santa Clara Land Title Co.,
Chicago Title Co., and First American)

Plaintiff hereby incorporates by reference paragraphs 1 through 68, inclusive, of this Complaint, as though fully set forth in this Cause of Action.

69. Defendants knowingly and intentionally concealed material facts **from** plaintiffs including but not limited to, the **falsified** trustee documents, including the Resignation of Trustee, in order to cause loan transactions that were not in her interest or for her benefit to occur, and in order to embezzle and/or to otherwise wrongfully pay themselves excessive, inappropriate fees, commissions, advances, investments and usurious interest. Defendants further concealed the very existence of the loan transactions alleged herein **from** plaintiff

70. Defendants were under a duty to disclose all material facts to plaintiff based on the relationship that existed between defendants and **plaintiff**.

71. Plaintiff was unaware of the true facts of the loan transactions, or that the loans even existed. Plaintiff would not have permitted SCOTT to enter into such loan transactions had all material terms of the loans been disclosed to her.

72. **As** a proximate result of the defendants' wrongful conduct, **McCULLA** has **sustained** and will sustain substantial economic losses and other general and specific damages. These damages include, inter alia, the loss of equity in the Milpitas apartments, lost profits, loss of future income, and lost interest, all in an amount to be determined **according** to proof

73. The actions taken by defendants set forth above were in all respects malicious, willful and oppressive, and manifested either disregard or contempt for the rights of plaintiff. Plaintiff is thereby entitled to an award of punitive and exemplary

1 trusted to handle loan transactions that **affected** McCULLA. Defendants knew, or in the
2 exercise of their duty reasonably should have known, that defendant LEMKE had a
3 practice of “renting” the use of his broker’s license to persons and companies such as
4 **WALIA** and CPM, without even minimal supervision, training, and review of any
5 involvement with the loans and transactions undertaken.

6 78. **As** a proximate result of the defendants’ wrongful conduct, McCULLA has
7 sustained and will sustain substantial economic losses and other general and specific
8 damages. These damages include, inter alia, the loss of equity in the Milpitas apartments,
9 lost profits, loss of **future** income, and lost interest, attorney fees and conservatorship
10 costs and fees, as well as great physical and emotional pain and **suffering** all in an amount
11 to be determined according to proof at trial.

12 **WHEREFORE, plaintiff** prays for relief as set forth below.

13 **SEVENTH CAUSE OF ACTION**

14 **ELDER ABUSE**

15 **(Against Scott, Walia, CFM, Lemke, Santa Clara Land Title Co.,**
16 **Chicago Title Co., and First American)**

17 Plaintiff hereby incorporates by reference paragraphs 1 through 78, inclusive, of
18 this Complaint, as though fully set forth in this Cause of Action.

1 9 79. This cause of action is brought pursuant to California Welfare &
20 Institutions Code sections 15600 et seq.

21 80. At all times herein mentioned, plaintiff resided in the State of California and
22 was an elder within the meaning of the California Welfare & Institutions Code.

23 81. Defendants stood in a position of trust with **plaintiff**. SCOTT assumed a
24 relationship to McCULLA as her care custodian, purported attorney in **fact**, bookkeeper,
25 apartment manager, financial manager and/or purported successor trustee. Defendants
26 **WALIA** as SCOTT’s real estate agent, CPM as SCOTT’s broker, **LEMKE** as SCOTT’s

1 broker, and SANTA CLARA LAND TITLE CO., CHICAGO TITLE CO., and **FIRST**
2 **AMERICAN** as title insurance companies stood in a position of trust with **McCULLA**.

3 82. Defendants knew, or reasonably should have known, that **plaintiff trusted**
4 defendants to only prepare documents that were fair and equitable, to only charge a
5 reasonable amount for defendants' services, and to only secure **loans** and encumber her
6 real property for **plaintiff's** benefit and no one else's.

7 83. Defendants knew, or reasonably should have known, that plaintiff SCOTT
8 was embezzling, taking, secreting and/or misappropriating **plaintiff's** loan proceeds to a
9 wrongful use. Defendants knew, or reasonably should have known, that the seventeen
10 loans taken out by SCOTT in less than three years, which encumbered **plaintiff's** real
11 property, were not for the benefit of or in the interests of plaintiff, and that SCOTT had no
12 legal ability to take out such loans.

13 84. Defendants stood in a position of trust to **plaintiff**, and **from** said position
14 **of** trust, defendants unfairly took money, **unfairly** approved loans, unfairly paid money to
15 **other** persons, and encumbered real property of **plaintiff that** was not in the due and **lawful**
16 **execution** of that duty of trust owed plaintiff constituting financial abuse as defined by
17 **section** 15610.30 of the Welfare and Institutions Code.

18 85. As a proximate result of the defendants' wrongful conduct, **McCULLA** has
19 **sustained** and will sustain substantial economic losses and other general and specific
20 **damages**. These damages include, inter alia, the loss of equity in the Milpitas apartments,
21 lost profits, loss of **future** income, and lost interest, **all** in an amount to be determined
22 **according** to proof

23 86. The actions taken by defendants set forth above were in **all** respects
24 **malicious, willful** and oppressive, and manifested either disregard or contempt for the
25 rights of plaintiffs and class members. Defendants were fully **cognizant** of the position of
26 trust in which defendants stood. Plaintiff is thereby entitled to an award of punitive and
27

1 exemplary damages as well as attorneys' fees, pursuant to Welfare & Institutions Code
2 section 15657, in an amount according to proof at time of trial.

3 87. As the subject transactions involved McCULLA, who at all relevant times
4 herein was a senior citizen, plaintiff is further entitled to treble damages and penalties
5 pursuant to Civil Code section 3345 because defendants knew or should have known that
6 their conduct was directed to one or more senior citizens.

7 WHEREFORE, plaintiff prays for relief as set forth below.

8 **EIGHTH CAUSE OF ACTION**

9 **UN-FAIR AND UNLAWFUL AND DECEPTIVE BUSINESS ACT AND/OR**
10 **PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS**
11 **CODE SECTION 17200 *ET SEQ.***

12 **(Against Scott, Walia, CFM, Lemke, Standish, Santa Clara Land Title Co.,**
13 **Chicago Title Co., First American, and Bishop & Bishop Associates)**

14 Plaintiff hereby incorporates by reference paragraphs 1 through 87, inclusive, of
15 this Complaint, as though fully set forth in this Cause of Action.

16 88. This cause of action is brought pursuant to California Business &
17 Professions Code §§ 17200 et sea.

18 89. The conduct of defendants detailed above constitutes unfair, unlawful
19 and/or **fraudulent** business **practices** within the meaning of California Business &
20 Professions Code § 17200.

21 90. Defendants have derived economic benefit **from** the possession of money
22 and real property **wrongfully** obtained **from** McCULLA Pursuant to California Business
23 & Professions Code § 17203, **plaintiff has** a right to seek **from** defendants, and each of
24 them, restitution and the disgorgement of all earnings, profits, compensation and benefit
25 obtained by defendants **from** McCULLA through defendants' conduct in violation of
26 Business & Professions Code §§ 17200 et seq.

1 91. Pursuant to Business & Professions Code Section 17203, **plaintiff**,
2 individually, and on behalf of the general public, seeks an order of this Court enjoining the
3 defendants named in this cause of action **from** continuing their unfair, **unlawful** and/or
4 deceptive business acts or practices. **Plaintiff** and the public will be irreparably harmed **if**
5 such an order is not granted..

6 92. The actions taken by defendants set forth above were in **all** respects
7 malicious, willful and oppressive, and manifested either disregard or contempt for the
8 rights of plaintiffs and class members. Defendants were fully cognizant of the position of
9 trust in which defendants stood. **Plaintiff is** thereby entitled to an award of punitive and
10 exemplary damages as well as attorneys' fees, pursuant to Welfare & Institutions Code
11 section 15657, in an amount according to proof at time of trial.

12 93. As the subject **transactions** involved **McCULLA**, who at all relevant times
13 herein was a senior citizen, **plaintiff is further** entitled to treble **damages and** penalties
14 pursuant to Civil Code section 3345 because defendants knew or should have known that
15 their conduct was directed to one or more senior citizens.

16 WHEREFORE, plaintiff requests judgment as **follows**:

17 1 That the Court issue a declaration that any transaction allegedly entered
18 into and executed by SCOTT between March 1, 1996, and the present date, **affecting**
19 **McCULLA's** right, title and interest in, or any encumbrance against **McCULLA's** real
20 property, the Milpitas Apartments, more **particularly** described in Paragraph 25, is void;

21 2. That the Court issue a temporary restraining order, preliminary injunction,
22 and permanent injunction **restraining** defendant, individually and/or in their representative
23 **capacity**, their agents, attorneys and representatives, and all persons acting in concert or
24 participating with them, **from** selling, attempting to sell, or causing to be sold the real
25 property described in Paragraph 1 either under the power of sale in the Deed(s) of Trust
26 **or** by foreclosure action;

1 3. That the Court issue a declaration that McCULLA is the owner in fee
2 simple of the real property described in Paragraph 1, and that defendants and their agents,
3 successors and assigns, and any unknown defendants have no interest in the property
4 adverse to **McCULLA**;

5 4. That defendant(s) deliver the promissory notes more **particularly** described
6 in paragraph 46 herein forthwith to the Clerk of the Court for cancellation, and that
7 defendant(s) reconvey any and **all** Deeds of Trust **affecting plaintiff's** real property more
8 particularly described herein at paragraph 13, to McCULLA.

9 5. For prejudgment interest at the maximum legal rate;

10 6. For treble, punitive and exemplary damages and penalties pursuant to Civil
11 Code Section 3345(b), Business and Professions Code Sections, 17200, et sea., and
12 Welfare and Institutions Code Section 15657 in an amount **sufficient** to punish and deter
13 against similar conduct in the future;

14 7. For compensatory damages to McCULLA in an amount according to proof
15 at trial;

16 8. For special and general damages to McCULLA in the amount according to
17 proof at trial;

18 9. For reasonable costs and attorneys' fees under applicable law, and
19 conservator's fees and costs incurred in this action;

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10. For an order enjoining the **wrongful** conduct of defendants pursuant to
Business & Professions Code Section 17203; and

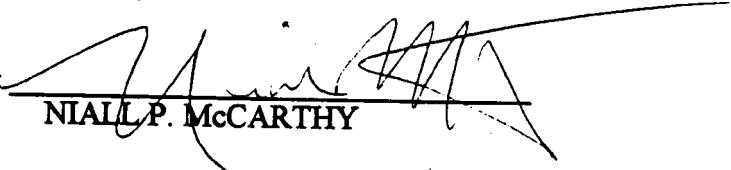
11. For such other and **further** relief as the Court may deem appropriate.

Plaintiffs hereby demands a jury trial.

DATED: ^{FEB 24} ~~January 21~~, 2000

COUNTY OF SAN JOSE
ANN MILLER RAVEL, COUNTY COUNSEL
DENIS G. O'NEAL, DEPUTY

COTCHETT, PITRE & SIMON

By 
NIALL P. McCARTHY