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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 20 2009

ALAN CARLSON, Clerk of the Court

BY: J. TRAN, DEPUTY

9 SUPERIOR COURT OF STATE OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 T.M. KUMAR, an individual,)
12 Plaintiff,)
13)
14 v.)
15)
16 LLOYD A. CHARTON and STELLA M.)
17 CHARTON, TRUSTEES of the Charton)
18 Family Trust dated December 6, 1999; and)
19 DOES 1 through 50, inclusive,)
20 Defendants.)

CASE NO.

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) PROMISSORY FRAUD;
- (3) VIOLATION OF THE UNFAIR TRADE PRACTICES ACT;
- (4) USURY; AND
- (5) PRELIMINARY AND PERMANENT INJUNCTION

30-2009

00126312

21 Plaintiff T.M. Kumar ("Kumar") alleges as follows:

22 1.

23 **PRELIMINARY ALLEGATIONS**

24 **A. Parties.**

25 1. Kumar is and was at all times alleged herein an individual residing in the State of
26 California, County of Orange.

27 2. Defendants Lloyd A. Charton and Stella M. Charton, Trustees of the Charton Family
28

1 Trust dated December 6, 1999 (“Defendants”) are individuals residing in the State of California,
2 County of Orange.

3 **B. Defendants’ Agency and Conspiracy.**

4 3. The true names and capacities, whether individual, corporate, associate, or otherwise
5 of the Defendants named herein as Does 1 through 50, inclusive, and each of them, are unknown to
6 Kumar who therefore sues these Defendants by such fictitious names. Kumar will seek leave to
7 amend this Complaint to allege the true names and capacities of the fictitiously named Defendants
8 when and if the same have been ascertained. Kumar is informed and believes, and based thereon
9 alleges, that each Defendant named as a Doe herein participated in and was responsible in some
10 manner for the events, acts, representations, concealments, omissions and happenings described in
11 this Complaint, and legally caused the injuries and the damages proximately resulting therefrom to
12 Kumar as alleged herein.

13 4. Kumar is informed and believes that at all times alleged herein each of the defendants
14 was the agent, principal, co-conspirator, affiliate, representative, aider and abettor and/or partner of
15 each of the remaining defendants and, in doing the acts hereinafter alleged, was acting within the
16 scope of such relationship and with the permission, consent and/or ratification of his or its co-
17 defendants.

18 5. To the extent any individual defendant is and was conducting business through a
19 corporation, partnership, limited liability company, or other entity, such individual defendant
20 remains personally liable for any and all fraudulent and wrongful conduct carried on through the use
21 of the entity, to further any unlawful acts.

22 **C. Defendants’ Fraudulent Scheme To Collect Usurious Interest and Undisclosed Fees**
23 **From Kumar and Breach the Loan Transaction Documents.**

24 6. On or about March 1, 2008, Kumar and Defendants entered into a “Promissory Note”
25 (“Note”) pursuant to which Kumar borrowed \$2,250,000 from Defendants. The Note was secured
26 by a “*Deed of Trust and Assignment of Rights*” also dated March 1, 2008. True copies of the Note
27 and Deed of Trust are attached hereto as Exhibits “A” and “B” and incorporated herein by reference
28 (Hereinafter “The Loan Transaction”). The Note was secured by property owned by Kumar located

1 at 729 Ocean Front and 729 Gaviota Drive, Laguna Beach, CA 92651. The Note and Deed of Trust
 2 are junior in recorded priority to a loan secured by a first trust deed held by Washington Mutual in
 3 the principal sum of \$4,345,972. [Hereinafter, "the Loan Transaction".]

4 7. As part of the Loan Transaction, on or about May 1, 2008 Defendants provided
 5 Kumar with a "Good Faith Estimate of Loan Closing Costs" ("Good Faith Estimate"). A true copy
 6 is attached hereto as Exhibit "C" and incorporated herein by reference. The Good Faith Estimate
 7 provided in pertinent part:

8 " DATE: March 1, 2009 ANNUAL PERCENTAGE RATE: 12.00%
 9 BORROWER: T.M. KUMAR
 10 SUBJECT ADDR.: 729 OCEAN FRONT and 729 GAVIOTA DRIVE
 11 Laguna Beach, CA 92651

13	<i>OPENING DRAW:</i>	<i>\$2,250,000.00</i>
14	<i>TRANSACTION FEES;</i>	
15	<i>SET UP FEE</i>	<i>\$500.00</i>
16	<i>UNDERWRITING FEE</i>	<i>\$67,500.00</i>
17	<i>ESCROW FEE</i>	<i>\$1,200.00</i>
18	<i>TITLE AND RECORDING</i>	<i>\$2,500.00</i>
19	<i>DISBURSEMENT FEE</i>	<i>\$0.00</i>
20	<i>FUNDING FEE</i>	<i>\$0.00</i>
21	<i>DRIVE-BY OPINION OF VALUE</i>	<i>\$225.00</i>
22	<i>SHIPPING</i>	<i>\$44.00</i>
23	<i>BROKER REFERRAL FEE</i>	<i>\$0.00</i>
24	<i>LIENS AND JUDGMENTS</i>	<i>\$0.00</i>
25	<i>CERTIFIED FUNDS FEE</i>	<i>\$150.00</i>
26		
27	<i>Cost of loan total</i>	<i>\$72,149.00</i>
28	<i>CASH TO BORROWER:</i>	<i>\$2,177,851.00</i>

1 At all times Kumar relied upon the Good Faith Estimate as true and correct, properly
2 identifying the correct loan interest rate and applicable loan fees.

3 8. As a further part of the loan transaction, Defendants provided Kumar with a
4 document entitled "*Document Signing Borrower Notice*" ("the Notice"). A true copy of the Notice is
5 attached hereto as Exhibit "D" and incorporated herein by reference. The Notice provided in
6 pertinent part:

7 "1. ***Private Lender The Charton Family Trust dated December 6, 1999 charges***
8 ***no upfront fees in connection with this loan prior to its recording, nor does***
9 ***Private Lender the Charton Family Trust dated December 6, 1999 charge***
10 ***any cancellation fees if borrower(s) decide to cancel this loan within the***
11 ***allotted three-day grace period. Borrower(s) should not give any monies to***
12 ***any person, in any capacity, in connection with this loan without written***
13 ***approval by both borrower(s) and Private Lender The Charton Family Trust***
14 ***dated December 6, 1999.***"

15 9. The Loan Ttransaction closed and/or settled on or about March 3, 2008. A
16 "*Settlement Statement*" was issued on that date. A true copy of the Settlement Statement is attached
17 hereto as Exhibit "E" and incorporated herein by reference. Pursuant to the Settlement Statement
18 various identified fees were ***in fact paid to Defendants*** which had not been previously disclosed in
19 the Good Faith Estimate and contrary to Defendants' representations in the Notice:

20 ...

21	<i>"812. Lenders Fee to Lloyd Charton and Associates</i>	<i>17,500.00</i>
22	<i>813. Underwriting Fee to GLMI, Inc.</i>	<i>40,000.00</i>
23	<i>814. Drive-by Opinion of Value to GLMI, INC.</i>	<i>225.00</i>
24	<i>815. Certified Funds Fee to GLMI, INC.</i>	<i>30.00</i>
25	<i>816. Shipping Fee to GLMI, INC.</i>	<i>44.00</i>
26	<i>817. Lender NST Fee to No Square Theatre of Laguna</i>	<i>5,000.00</i>
27	<i>818. GLMI NST Donation to No Square Theatre of Laguna</i>	<i>5,000.00</i>
28	<i>819. Set-up Fee to GLMI, INC></i>	<i>500.00</i>

1	825. April payment to Lloyd Charton and Associates	22,500.00
2	...	
3	1100. Title Charges:	
4	1101. Settlement or closing fee to Lawyers Title Company	1,200.00
5	1102. Abstract or title search	
6	1103. Title examination	
7	1104. Title insurance binder	
8	1105. Document preparation to Lawyers Title Company	50.00
9	...	
10	1109. Lender's coverage \$ 2,250,000.00 to Lawyers Title Company	2,500.00
11	...	
12	1306. Taxes: 2 nd ½ 07/08 to Orange Co. Tax Collector	23,591.95
13	...	
14	1310. Notary/Sign-Up Services to Escrow Freelance Services	150.00
15	1311. Hold Insurance Premium to Insurance agent	5,000.00
16	1400. Total Settlement Charges (Enter on line 103, Section J-and- line 502, Section	
17		K) 123,366.59"

18 10. As disclosed by the Settlement Statement, Defendants in fact received no less than
19 \$27,500 in undisclosed fees variously characterized as "Lender fees to Lloyd Charton and
20 Associates"; "Lender NST fee to No Square Theater of Laguna"; and "GLM fee to No Square
21 Theater of Laguna." Defendants failed to disclose these fees to Kumar prior to the Loan
22 Transaction's closing as represented in the Good Faith Estimate and Notice.

23 11. Additionally, contrary to Defendants' representations as set forth in the *Good Faith*
24 *Estimate* the actual annual interest rate charged to Kumar by Defendants was 13 ½ %, not 12% as
25 represented. As alleged more fully below, Defendants' act of charging Plaintiff a 13 ½ % annual
26 interest rate is usurious and a violation of California law, subjecting Defendants to treble damages.

27 12. Defendants further failed to give Plaintiff the three day right of cancellation as set
28 forth in the "Notice":

1 "... nor does Private Lender the Charton Family Trust dated December 6,
2 1999 charge any cancellation fees if borrower(s) decide to cancel this loan **with the**
3 **allotted three-day grace period.**"

4 The Loan Transaction documents were executed on March 1, 2008. The Loan Transaction
5 closed and funded on March 3, 2008, and Defendants *inter alia* received their undisclosed fees.
6 Kumar was accordingly deprived of this contractual three day cancellation rights.

7 **B. Defendants' Wrongful Foreclosure.**

8 13. In or about March 23, 2009 Defendants recorded a "*Notice of Default and Election to*
9 *Sell Under Deed of Trust*" ("Notice of Default") arising from Kumar's purported nonpayment of
10 monthly interest and principal of "\$6,106.61 as of 3/23/09..." A true copy is attached hereto as
11 Exhibit "F" and incorporated herein by reference. In or about July 2, 2009 Defendants recorded a
12 "*Notice of Trustee's Sale Under Deed of Trust*" ("Notice of Sale"). A true copy is attached hereto
13 as Exhibit "G" and incorporated herein by reference. The Notice of Sale provides in part that: "[t]he
14 total amount of the unpaid balance ... is \$2,402,252.44" In fact, as of July 2, 2009 Kumar owed
15 Defendants \$2,250,000 in principal and interest from June 1 to June 30, 2009. Defendants attempt to
16 foreclose is wrongful; the Notices of Default and Sale are materially false and inaccurate; and the
17 purported unpaid defaulted amounts are materially false.

18 14. As alleged more fully alleged herein, as a consequence of Defendants' wrongful
19 conduct, Kumar seeks *inter alia* general, special and treble damages for Defendants' wrongful act of
20 charging usurious interest; rescission of the Loan Transaction; a preliminary and permanent
21 injunction to prevent Defendants' wrongful foreclosure; and attorneys' fees and costs.

22 **FIRST CAUSE OF ACTION**

23 **[Breach of Contract Against Defendants]**

24 15. Kumar realleges paragraphs 1 through 14, inclusive.

25 16. Kumar has performed all obligations to be performed under the Loan Transaction,
26 except to the extent such obligations have been excused as a result of Defendants' prior material
27 breach.

28 17. Defendants' wrongful conduct as alleged herein constitutes a material breach of the

1 Loan Transaction; specifically Defendants' breach includes:

- 2 • Defendants' failure to disclose the receipt of loan "*upfront fees*" in violation of the
- 3 Notice
- 4 • Defendants charging annual interest of 13 ½% instead of 12% as falsely disclosed in
- 5 the Good Faith Estimate
- 6 • Defendants failure to give Kumar a contractual three day cancellation right as
- 7 disclosed in the Notice
- 8 • Defendants wrongful receipt of usurious interest
- 9 • Defendants wrongful recording of materially false Notices of Default and Sale.

10 18. As a proximate cause of Defendants' material breach of the Agreement, Kumar has
11 suffered general, special and consequential damages in a sum to be proved at trial, but believed to
12 exceed \$1,000,000, according to proof at trial. Kumar is further entitled to prejudgment interest on
13 all sums awarded, and attorneys' fees and costs.

14 19. Pursuant to California Civil Code section 1692, Kumar is entitled to rescind
15 the Loan Transaction, and *inter alia* recover all general, special and consequential damages
16 incurred. Kumar accordingly demands rescission of the Loan Transaction and an award of damages,
17 pursuant to section 1692.

18 SECOND CAUSE OF ACTION

19 **[Promissory Fraud Against Defendants]**

20 20. Kumar realleges paragraphs 1 through 19, inclusive.

21 21. Defendants' affirmatively represented to Kumar as part of the Loan Transaction that:

- 22 • Defendants would receive no "*upfront*" fees
- 23 • The annual interest rate was 12%
- 24 • That Kumar had a three day cancellation right

25 22. In fact, Defendants had (1) no intention to comply with Defendants' obligations under
26 the Loan Transaction and representations alleged therein; and (2) actually intended to cause Kumar
27 to enter into the Loan Transaction that included usurious charges; undisclosed "*upfront fees*"; and
28 deprived Kumar of his contractual three day cancellation rights. Defendants' representations to

1 Kumar were knowingly false when made, intended to induce Kumar to enter into the Loan
2 Transaction.

3 23. Had Kumar actually known of Defendants' promissory fraud, Kumar would have
4 never entered into the Loan Transaction. Kumar reasonably relied upon Defendants' representations
5 and promises as alleged herein and did not discover the fraud until 2009.

6 24. As a proximate cause of Defendants' promissory fraud, Kumar has suffered general,
7 special and consequential damages in a sum to be proved at trial but believed to exceed \$1,000,000.
8 Kumar is further entitled to prejudgment interest on all sums awarded.

9 25. The aforementioned conduct of defendants, and each of them, was fraudulent, willful,
10 malicious and oppressive. Defendants' conduct was carried out with the intention of damaging
11 Kumar and causing Kumar to enter into an unlawful Loan Transaction. Defendants' conscious
12 disregard of Kumar's rights justifies an award of punitive damages in a sum to be awarded in the
13 discretion of the jury.

14 **THIRD CAUSE OF ACTION**

15 **[Unfair Trade Practices Against All Defendants**

16 **Bus. & Prof. Code §17200 et seq.]**

17 26. Kumar realleges paragraphs 1 through 25, inclusive.

18 27. Defendants' breach of contract and other wrongful conduct as alleged herein, is
19 violative of California's unfair competition law embodied in California Business and Professions
20 Code § 17200 *et seq.*, and constitutes an unlawful, unfair and fraudulent business act or practice.
21 Kumar is accordingly entitled to injunctive relief, monetary restitution and all other remedies
22 provided under the unfair competition law against defendants, and each of them.

23 **FOURTH CAUSE OF ACTION**

24 **[Usury Against All Defendants]**

25 28. Kumar realleges paragraphs 1 through 29, inclusive.

26 29. Defendants' act of charging Kumar 13 1/2% interest as alleged on the Loan
27 Transaction is barred as a matter of law as an illegal, usurious contract term; Defendants' act is a
28 violation of California Constitution Article XV, § 1. Kumar is accordingly entitled to damages of

1 treble interest of all sums paid to Defendants as illegal and usurious interest. On information and
2 belief, said treble interest is in a sum of no less than \$1,000,000 according to proof at trial.

3 **FIFTH CAUSE OF ACTION**

4 **[Preliminary and Permanent Injunction Against All Defendants]**

5 30. Kumar realleges paragraphs 1 through 29, inclusive.

6 31. Kumar seeks preliminary and permanent injunction relief to prohibit Defendants from
7 wrongfully foreclosing on his property located at 729 Ocean Front and 729 Gaviota Drive, Laguna
8 Beach, California. Said property is unique; irreplaceable; and damages for its loss to Defendants'
9 wrongful foreclosure would be inadequate as a matter of law to compensate Kumar. Kumar would
10 suffer irreparable damage. Kumar is accordingly entitled to injunctive relief and all other equitable
11 relief within the power of the Court to prevent the loss of Kumar's unique one of a kind properties.

12 **PRAYER**

13 WHEREFORE, Kumar prays for judgment against Defendants, and each of them, as follows:

- 14 1. For general, special and consequential damages according to proof at trial but
15 believed to exceed \$1,000,000;
- 16 2. For punitive damages in the discretion of the jury;
- 17 3. For all remedies pursuant to the Unfair Trade Practices Act including
18 preliminary and permanent injunctive relief;
- 19 4. For treble damages;
- 20 5. For prejudgment interest and attorneys' fees; and
- 21 6. For such other and further relief as the Court deems just and proper, including
22 further preliminary and permanent injunctive relief.

23 Dated: July 17, 2009

Respectfully submitted,

24
25
26 By: _____

Jeffrey S. Berice
Attorney for Plaintiff
T.M. Kumar