

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

TILTON JACK,

Plaintiff,

v.

GOLDEN FIRST MORTGAGE CORP., MICHAEL
GOLTCHÉ, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., CITIBANK,
N.A., and DEUTSCHE BANK NATIONAL TRUST
CO.,

Defendants.

**Civil Action No.: 07-CV-3088
(NGG) (RML)**

**SECOND AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Each year, predatory lending extracts billions of dollars of wealth from low-income communities, depriving homeowners of their hard-earned equity and vitiating the promise of financial security that is the cornerstone of homeownership. Predatory lenders target the equity, and ultimately the homes, of vulnerable homeowners by extending unaffordable loans packed with excessive fees and interest rates.

2. In recent years, predatory lenders have aggressively marketed an array of “exotic” or “non-traditional” loans to vulnerable homeowners. Many of these loans carry deceptively low “teaser” rates and other abusive terms, which obscure the true cost of the loan. By qualifying the borrower for these loans at the initial rate, despite the borrower’s inability to make future payments, lenders almost guarantee that the borrower will default on the loan. Predatory lenders fuel this process by rewarding mortgage brokers with an incentive structure that pays the broker more through the yield spread premium (“YSP”) for steering consumers into loans with higher

interest rates than they qualify for and less favorable terms such as prepayment penalties.

Lenders are also rewarded through higher interest rates for making so-called stated income loans—loans where the borrower’s income is not verified through traditional documentation of income—even where documentation is, in fact, available. Thus, it is not surprising that the proliferation of predatory loans in the subprime mortgage market is one of the primary causes of the nationwide foreclosure epidemic.

3. Tilton Jack is an elderly Brooklyn homeowner who faces the possibility of losing his long-time home because he fell prey to the false promise of a low-interest loan. In 2006, Mr. Jack contacted Michael Goltche of Golden First Mortgage Corporation in response to a brochure he received. Goltche told Mr. Jack that he had qualified for a loan with a 1% annual interest rate, which would reduce his current monthly mortgage payments by \$700. Goltche also convinced Mr. Jack that the loan’s principal would not increase over time if Mr. Jack simply made one additional payment of \$1100 per year.

4. In fact, Goltche and Golden First grossly misrepresented the terms of the loan. The loan that Mr. Jack received was not a fixed-rate, or even a traditional adjustable-rate loan, but rather an “MTA Power ARM,” a type of loan known as a “Payment Option ARM [Adjustable Rate Mortgage]” (“POARM”).

5. Payment option ARMs have been called the most complicated mortgage product ever marketed to consumers. The complexity of POARMs are illustrated by the extremely complicated terms of Mr. Jack’s mortgage, which contains typical POARM terms:

- a. The mortgage has a very low teaser rate, 1%, which is in effect for a very short time—here only *one* day. On the second day, the rate jumps to the “fully indexed rate,” —8.132%. The note provides that the interest rate will change monthly

thereafter, according to the movement of an index plus a margin. By July 2007, Mr. Jack's rate had risen to 8.722%.

b. The 1% initial teaser rate is used to calculate the monthly payment, which is calculated as if the loan would bear a 1% interest rate for the full term, rather than the actual rate. Thus, the minimum payment—here \$1,385.30—required to be paid for the first year only prevents the loan from going into default. In the “payment option” ARM, Mr. Jack is given the “choice” each month of four payment options. The payment amount that Goltche described to Mr. Jack was only the minimum monthly payment option.

c. The minimum payment is not sufficient to pay the interest accrued each month, so the shortfall is added to the outstanding principal, making the loan negatively amortize. During the first year of Mr. Jack's loan, the principal increased by more than \$13,000. Thus, while Mr. Jack's minimum required monthly payments for the first year are lower than his previous mortgage, the actual cost of the loan is much higher.

d. The “minimum” payment is re-calculated each year for the first five years, but there is a “payment cap” which limits the annual payment re-set to no more than 7.5% higher than the previous year's. After the fifth year, the payment cap is removed, and the payments then jump to an amount necessary to fully amortize the loan over 25 years.

e. The payment cap may be removed much earlier than the end of the fifth year. Because the loan negatively amortizes, the principal balance can grow faster than assumed at consummation if the index rate rises. Therefore, the loan has a “principal

cap,” in Mr. Jack’s case, of 110%. In the event that the balance grows to 110% of the original loan principal during the first five years, the annual 7.5% payment cap comes off. If Mr. Jack continues to pay the minimum payment—the only payment he is capable of making—the subject loan will hit that 110% cap in September 2008, only 25 months into the loan’s term. At that point his payment will reset to over \$3,000 a month including escrow.

(See Adjustable Rate Note, attached hereto as Exhibit A.)

6. The initial low teaser rate (1%), and the low minimum payment, along with the complexity of the loan, make the POARM an ideal product to mislead borrowers with representations about “low interest rates” and “low payments.” The promotional material that Mr. Jack received about his POARM in fact touted its supposed ability to allow borrowers to “[a]fford a larger home with less cash!”

7. At the time the subject loan was originated, Mr. Jack’s fully amortizing payment on his prior first lien mortgage was \$1,800 per month, excluding taxes and insurance. According to a billing statement from September 2006, the initial “minimum” payment (including taxes and insurance) for the payment option ARM was a lower \$1,385.30, but the interest-only payment of \$2,651.54 was substantially more than his previous payment—as was the fully-amortizing payment for a 30-year term of \$2,872.03. (See Billing Statement dated 09/18/2006, attached hereto as Exhibit B.) After just six weeks, the negative amortization had already added more than \$1,100 to the principal balance. (See Exhibit B.) When Mr. Jack’s loan was made, the lender projected the 110% principal cap to be breached by the end of 2008, at which point his monthly payments (including taxes and insurance) would reset to over \$3,000. (See TIL Disclosure Statement dated 07/26/2006, attached hereto as Exhibit C.)

8. Mr. Jack has a monthly income of about \$5,100, primarily from fixed pension, social security, and disability payments. This amount of income provides Mr. Jack with no plausible ability to afford the monthly mortgage payment of more than \$3,000—well in excess of half his monthly income—that his lender projected would be required by the end of 2008. Thus, on the date of origination, the loan was virtually certain to result in the loss of equity through negative amortization and to end in default as it was predictably unsustainable for an elderly person on a fixed income.

9. Through repeated misrepresentations and inaccurate disclosures, defendants prevented Mr. Jack from comprehending the truly destructive nature of the loan. Moreover, defendants knew or should have known that the mortgage was unsuitable for Mr. Jack, who they knew or should have known lacked the ability to repay the loan.

10. Defendants' fraudulent and deceptive actions violated numerous federal and state consumer-protection laws, including the Truth in Lending Act; the Home Ownership and Equity Protection Act; the Real Estate Settlement Procedures Act; the New York State Deceptive Practices Act; the New York State usury law; and the common law doctrines of fraud and conspiracy to commit fraud. Golden First's conduct also breached its contract with Mr. Jack.

II. JURISDICTION AND VENUE

11. This Court has federal question jurisdiction over plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

12. This Court has supplemental jurisdiction over plaintiff's pendent state law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to this complaint occurred within the Eastern District

of New York.

III. PARTIES

14. Tilton Jack is an 82-year-old African-American widower who has lived in Brooklyn, New York for almost forty years. He currently resides in his home located at 2511 Cortelyou Road, Brooklyn, NY 11226 (the “subject property”).

15. Golden First Mortgage Corporation is a mortgage lender. Golden First is organized under the laws of New York and maintains its principal place of business at 3 Grace Avenue, Great Neck, NY 11021. Golden First is a licensed mortgage banker in the state of New York.

16. At the time of the subject transaction, Michael Goltche was a principal and/or employee of Golden First.

17. Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for American Brokers Conduit and/or any assignee, is organized under the laws of Delaware. MERS maintains its principal place of business at 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182. MERS is named as a necessary party to this action pursuant to Rule 19 of the Federal Rules of Civil Procedure.

18. Upon information and belief, Citibank, N.A., is the trustee for the securitization pool that contains Mr. Jack’s loan pursuant to a Pooling and Servicing Agreement dated August 1, 2006 between American Home Mortgage Assets, LLC, Wells Fargo Bank, N.A. and Citibank, N.A. The American Home Mortgage Assets Trust 2006-4 holds the pool and issues mortgage-backed pass through certificates. Citibank, N.A.’s principal corporate trust office for administration of this trust is located at 388 Greenwich St., 14th Floor, New York, New York 10013. Citibank, N.A., is named as a necessary party to this action pursuant to Rule 19 of the

Federal Rules of Civil Procedure.

19. Upon information and belief, Deutsche Bank National Trust Company is the custodian that holds Mr. Jack's mortgage loan. Deutsche Bank National Trust Company is a federal credit agency with offices at 1761 East St. Andrew Place, Santa Ana, California 92705.

IV. STATEMENT OF FACTS

20. In 1985, Tilton Jack and his wife Joyce purchased their first home, a two-story property located at 2511 Cortelyou Road in Brooklyn, where they lived with their eight children. Mrs. Jack, who worked as a home health aide, died in 1987. In the decade following Mrs. Jack's death, the eight children all moved away from home. In 1998, Mr. Jack retired from his job as a car inspector for the Metropolitan Transit Authority, where he had worked for more than fifteen years.

21. In December 2004, Mr. Jack obtained a \$260,000 mortgage from Ameriquest Mortgage Company. The interest rate was fixed at approximately 7.4% and Mr. Jack's payments—which covered both interest and principal—were approximately \$1,800 per month (excluding escrow for property taxes and insurance).

22. In 2006, Mr. Jack received a brochure advertising refinance mortgage loans with low interest rates. Mr. Jack called the telephone number given on the brochure and spoke with Michael Goltche. Mr. Jack and Mr. Goltche would go on to have several conversations, both over the telephone and in person, regarding a refinance mortgage loan.

23. Mr. Goltche collected personal and income information from Mr. Jack in order to process a loan application, including Mr. Jack's social security number, passport, bank statements, social security payment and pension information. Mr. Jack also provided Mr.

Goltche with a written authorization to obtain Mr. Jack's past tax returns from the Internal Revenue Service.

24. Based on the information in Golden First's loan file, Mr. Goltche or an agent of another defendant blacked out the payment amounts on the social security and pension payment stubs provided by Mr. Jack.

25. Mr. Goltche told Mr. Jack he could help him refinance his mortgage at a 1% interest rate, enabling him to pay off all of his debts and lower his monthly payments to about \$1,100. Mr. Goltche also told Mr. Jack that because he was dealing directly with the lender, as opposed to proceeding via a mortgage broker, he would avoid any cost normally associated with brokers' services and therefore incur the lowest costs possible in connection with the loan. Golden First eventually sent Mr. Jack a packet of loan documents with instructions for him to sign and return certain forms. Mr. Jack did not sign the papers because he found them confusing.

26. A short time later, Mr. Goltche and another Golden First employee came to Mr. Jack's home, determined to persuade Mr. Jack to accept the loan. Mr. Goltche and his colleague explained to Mr. Jack that the papers he had received reflected the terms that Mr. Goltche had previously described. As a result, on or about July 16, 2006, Mr. Goltche obtained Mr. Jack's signature on several papers, but did not provide Mr. Jack with copies.

27. The documents that Mr. Jack signed on July 16, 2006 indicated that Mr. Jack would receive a mortgage loan with an interest rate based on a margin of 2.30% above the interest rate of certain U.S. Treasury Securities and calculated a 5.140% annual percentage rate of interest over the course of the loan. None of the documents Mr. Jack signed on July 16, 2006 described a Payment Option ARM or any other type of loan that provided for negative amortization.

28. During the period when Mr. Goltche was attempting to convince Mr. Jack to close on the loan, Mr. Jack received an unsolicited telephone call from a mortgage broker to whom Mr. Jack mentioned the Golden First loan. The mortgage broker told Mr. Jack that he should not accept the loan because the principal would increase over time. Mr. Jack subsequently called Mr. Goltche to inform him that he did not want this type of loan. In response, Mr. Goltche told Mr. Jack not to worry and explained that as long as Mr. Jack made one extra \$1,100 payment each year, the loan's principal would not increase. Mr. Goltche added that after one or two years he would help Mr. Jack to refinance into an even better loan without his having to pay any closing fees, and that this would be possible because Golden First would pay off all of Mr. Jack's credit cards, causing his credit score to improve substantially. These statements convinced Mr. Jack that the loan's principal would not increase over time. Relying on Mr. Goltche's statements, Mr. Jack agreed to close on the loan. When he began making monthly payments, Mr. Jack included an additional \$114.70 to cover the extra \$1,100 per year that would prevent the principal from growing.

29. On or about July 26, 2006, a Golden First employee picked up Mr. Jack at his home and drove him to Golden First's office for the closing. The only people present were Mr. Jack, Mr. Goltche, and a woman whom Goltche introduced as a notary public and who entered and left the room repeatedly, bringing and taking papers each time. Mr. Jack told Mr. Goltche that he thought he should have a lawyer with him, but Goltche replied that a lawyer was unnecessary. Mr. Goltche instructed Mr. Jack to sign a number of papers, explaining that they simply formalized the loan from Golden First that they had discussed. Mr. Jack noticed a \$19,690 charge listed on one of the documents and asked why it was being imposed. (See HUD-

1 dated July 26, 2006, attached hereto as Exhibit D.) Mr. Goltche responded that it was routine and that he would provide an itemized list of the charges to Mr. Jack after the closing.

30. As part of the July 26, 2006 closing, Mr. Jack signed a Mortgage Loan Commitment contract with Golden First. (See Mortgage Loan Commitment dated July 26, 2006, attached hereto as Exhibit I.) The Commitment contract promised Mr. Jack that his “initial fixed interest rate will remain in effect for the first 1.00 months.” (Exhibit I ¶ 4B.) It guaranteed Mr. Jack that “[t]he margin that will be added to the index to compute the interest rate changes will be 3.4500%.” (Exhibit I ¶ 4B.) It also promised Mr. Jack that his “loan does not involve the possibility of negative amortization.” (Exhibit I ¶ 13E.)

31. As part of the July 26, 2006 closing, Mr. Jack was instructed to sign two, quite different Truth-in-Lending Disclosure statements. One statement estimated that the annual percentage rate on Mr. Jack’s loan would be 6.389% and that Mr. Jack would incur \$470,008.39 in finance charges over the course of the loan. The other statement disclosed that the annual percentage rate on the loan would be 8.718% and that Mr. Jack would incur \$660,639.90 in finance charges over the course of the loan.

32. As part of the July 26, 2006 closing, Mr. Jack was also instructed to sign multiple, inconsistent HUD-1 settlement statements. One statement disclosed total settlement charges of \$28,116.40—including \$19,690.00 of unitemized “Addendum Charges”—and listed no broker fee. (See Exhibit D.) Another statement disclosed \$32,362.36 in total settlement charges (in addition to \$37,433.00 of “debts to be paid off” listed on an addendum), including a \$17,150.00 broker fee. A third HUD-1 statement disclosed \$32,349.38 in total settlement charges. The HUD-1 statements also noted that Golden First would receive an \$11,747.75 service release premium. (See Exhibit D.) Mr. Jack did not receive a copy of the HUD-1 settlement statements

that disclosed the \$17,150.00 broker fee. Instead, he was given a complete copy of only the HUD-1 statement listing the settlement charges as \$28,116.40, and he was not given a copy of the addendum to which that HUD-1 statement refers, despite having requested it at the closing.

33. After the closing, Mr. Goltche gave Mr. Jack a sheet of paper that purportedly illustrated the way in which this new loan operated. It showed that the monthly payments would be \$1,103 for the first year, then \$1,186 for the second year, and would continue increasing—by 7.5% per year—for ten years. When he received this document—which is not from his lender and did not, in fact, accurately reflect the terms of his loan, but did explain that his payments would go up—Mr. Jack understood for the first time that his monthly payments would increase. (See World Savings Chart, attached hereto as Exhibit E.)

34. When Mr. Jack returned home he began to feel uneasy about the transaction, worried that he had been pressured into a bad deal without being allowed to properly review the documents or consult with an attorney. Mr. Jack did not receive written notice of his right to cancel the loan. However, at some point before or during the closing, Mr. Goltche verbally had informed Mr. Jack that he would have three days to cancel the loan after the closing. Mr. Jack immediately called Mr. Goltche to cancel the loan. He was unable to reach Mr. Goltche directly, so he left him voice mail messages. Mr. Jack also called Mr. Goltche's mobile phone, but was unable to reach him.

35. Mr. Jack called Mr. Goltche several times per day for approximately one week after the closing, both at work and on Mr. Goltche's mobile phone, intent on rescinding the mortgage he had been pressured into signing. Each time he called Mr. Goltche's work, Mr. Jack was put directly into Mr. Goltche's voice mail. Mr. Jack left messages that went unreturned.

36. On or about August 2, 2006, Golden First learned that neither of the Truth-in-Lending Disclosure statements that Mr. Jack had signed on July 26, 2006 was accurate. Golden First received instructions to have Mr. Jack sign a new Truth-in-Lending Disclosure statement that disclosed an annual percentage rate of 8.741% and \$661,394.90 in finance charges over the life of the loan. These amounts represented a \$755 increase in finance charges and 0.023% increase in APR over the figures that were disclosed at closing. Upon information and belief, Mr. Jack never received or signed this new Truth-in-Lending Disclosure form.

37. Documents relating to Mr. Jack's mortgage reveal that the terms he ultimately received were considerably different than both the terms described by Mr. Goltche and the terms reflected in the documents that Golden First had mailed to Mr. Jack several weeks earlier. Goltche misled Mr. Jack about a number of material features of the loan, enticing him to sign a loan that stripped tens of thousands of dollars in equity from his home; that would cost him, over the life of the loan, almost two-and-a-half times as much as previously represented; and whose monthly payments would quickly rise above his ability to pay, exposing him to significant risk of foreclosure.

38. One of the documents Mr. Jack ultimately received, which purported to be the first page of a HUD-1 Settlement Statement related to his loan, in fact listed the incorrect settlement date and lacks any indicia that it was presented to or signed by Mr. Jack on the actual date of his settlement. (Exhibit G.)

39. Unbeknownst to Mr. Jack, the 1% interest rate that he was promised lasted for only *one day*. On the second day, August 1, 2006, the interest rate increased to 8.132%—a rate that was calculated by adding a 3.70% margin to the average yield of certain U.S. Treasury Securities. Mr. Jack's minimum monthly payment amount was computed on the basis of the 1%

interest rate, and that payment amount is fixed for one year. Therefore, Mr. Jack's minimum monthly payment (including the amount collected for taxes and insurance) has been \$1,385.30 since August 1, 2006. However, because the interest rate increased drastically on that same date, Mr. Jack's minimum monthly payments fail to cover even the interest that has accumulated each month. For example, the interest that accrued in the first month of the loan was, upon information and belief, approximately \$2,324.40, resulting in \$1,221.18 being added to the principal after just one month.

40. Under the terms of the loan, the minimum monthly payment amount is recomputed once each year in order to account for the changes in the interest rate, but the new minimum payment amount cannot differ from the previous one by more than 7.5%. Thus, on September 1, 2007, Mr. Jack's new minimum monthly payment amount will be \$1,468.04—still much less than the amount of interest that accrues each month.

41. Golden First knew or should have known that Mr. Jack does not have sufficient income to repay the loan. If Mr. Jack pays the minimum payment, the unpaid portion of the interest is added each month to the principal, causing it to increase with each payment that Mr. Jack makes. The principal on the loan is currently more than \$367,000, and it is increasing more rapidly each month since the higher the principal the more interest it generates. Initial monthly statements received by Mr. Jack show that the interest that accumulates each month is now more than \$2,500. (See Billing Statement dated 06/11/2007, attached hereto as Exhibit F.) Once the principal reaches 110% of the amount that was originated, or \$377,300, Mr. Jack will no longer have the same minimum payment option and will be required to make the monthly payments in the fully amortizing amount, which will be approximately \$3,300 (including taxes and insurance). That is more than double his current monthly payment, and substantially more than

half of his monthly income. If Mr. Jack continues to make the minimum payments, the reset will occur in September 2008. Mr. Jack could not afford the fully amortizing payment, which accurately reflects the true cost of the loan, in the first month of the loan and will certainly not be able to afford this new fully amortizing payment after tens of thousands of dollars have been added to the balance of the loan.

42. Moreover, because the mortgage contains a significant prepayment penalty for the first three years (six months' interest, which at the current interest rate and based on the current loan balance, would be more than \$12,500), repayment of the loan or refinancing within the first three years in order to avoid the payment shock of the reset would only further add to the growing principal balance, making it almost impossible for Mr. Jack to refinance into a mortgage with affordable monthly payments. This prepayment penalty effectively traps Mr. Jack into a loan that he cannot afford.

43. Another harmful aspect of Mr. Jack's loan is that it refinanced not only his previous mortgage, but also many of his unsecured debts. As a result, the debt secured by Mr. Jack's home was increased by \$83,000, to \$343,000, and continues to increase every month through negative amortization. (See Exhibit D.) The HUD-1 Settlement Statements that Mr. Jack signed on July 26, 2006 indicate that \$37,433 in unsecured debts were paid off from the proceeds of the subject loan, that Mr. Jack incurred more than \$32,300 in settlement charges, and that he received slightly less than \$14,300 in cash.

44. The mortgage statements that Mr. Jack receives each month obscure the true terms of the loan and even reinforce Goltche's misleading descriptions of the loan. A prominent box at the top of each statement lists a number of items, including "Principal & Interest," which was initially listed as \$1,103.22, suggesting that this amount suffices to pay all of the interest and

principal, and that the loan is a traditional fully amortizing payment. (See Exhibit B; Exhibit F.)

45. The monthly statements also contain “special messages” near the bottom of the page indicating that Mr. Jack has four “payment options” and briefly describing each one. The statement does not explain how the first, “minimum payment,” option is computed and the first sentence of the description mentions both interest and principal. The amount due under this option was initially \$1,385.30 (including taxes and insurance) and upon information and belief it is the amount that is described in the mortgage as the “monthly payment” amount. (See Exhibit B; Exhibit F.) The “payment options” other than the initial minimum payment far exceed any amount Mr. Jack could repay each month. The interest-only payment due October 1, 2006 (the second “payment option” under the mortgage) was \$2,651.54—an amount that exceeds one-half of Mr. Jack’s monthly income. The principal and interest payment (the third “payment option”) was \$2,872.03 a month—also exceeding one-half of Mr. Jack’s monthly income. (See Exhibit B.)

46. Mr. Goltche never told Mr. Jack that he would have “payment options.” Nor do the mortgage documents Mr. Jack received at closing clearly or adequately explain the terms of his mortgage, including the fact that the minimum monthly payments described in the mortgage will not cover the interest accumulating each month. Mr. Goltche repeatedly told Mr. Jack that the mortgage would have a 1% interest rate. Indeed, many of the documents Mr. Jack received concerning his mortgage during the origination and closing process prominently touted a 1% interest rate, with only glancing—if any—mention that the interest rate would immediately jump by more than a factor of eight.

47. These misrepresentations were able to go undetected by Mr. Jack because the minimum monthly payment amount for the entire first year was calculated based on a 1%

interest rate even though the interest rate almost immediately increased. Mr. Jack's monthly payment statements reinforce the misrepresentations by prominently declaring the artificially low monthly payment amount to be the "Principal & Interest" payment, when in fact the payment falls far short of covering the interest and is never applied to the principal at all.

48. These misrepresentations were instrumental in inducing Mr. Jack to sign the loan documents, as they made the loan appear not only affordable, but far superior to his prior loan. They concealed the fact that the interest rate would be high; that it could change every month; that the payment amount quoted would not cover the interest, much less principal and interest; that, unlike his previous mortgage, his balance would increase each month as the unpaid interest was added to the balance; and that in approximately two years Mr. Jack would be required to make payments nearly three times larger than those billed during the first year.

49. In addition to misrepresenting the interest rate, and therefore the cost of the loan, Mr. Goltche concealed many fees that were charged to Mr. Jack, including \$19,690 listed as "Addendum Charges" that Mr. Jack asked to have itemized. Similarly, Mr. Goltche told Mr. Jack that all of his credit cards would be paid off, that he would be reimbursed for the appraisal for which he had paid, and that he would receive between \$15,000 and \$20,000 cash from the proceeds of the loan. Upon information and belief, approximately \$6,000 in credit card debt was not paid off, Mr. Jack was not reimbursed for the appraisal, and he received about \$14,288.35.

50. Mr. Goltche also assured Mr. Jack that he could refinance after one or two years. Yet Goltche failed to inform Mr. Jack that the loan contains a three-year prepayment penalty that would likely cost Mr. Jack more than \$12,000 if he were to refinance after one year, and even more if he were to refinance later.

51. Goltche also concealed the identity of the lender from Mr. Jack. Goltche

consistently represented to Mr. Jack that Golden First would be originating the loan, and presented Mr. Jack with numerous documents listing Golden First as the lender. Goltche and a notary public were the only people present at the closing. Only after signing the loan did Mr. Jack realize that the lender was American Brokers Conduit, not Golden First.

52. Golden First and Mr. Goltche profited handsomely from Mr. Jack's loan, receiving \$31,341.75 in fees from the transaction. Golden First received a \$17,150 broker fee, an \$850 processing fee, and a \$695 document preparation fee out of the proceeds of Mr. Jack's mortgage. Golden First also received an \$11,747.75 "service release premium"—commonly known as a yield spread premium ("YSP")—for completing Mr. Jack's loan. Accordingly, the settlement agent forwarded a \$30,442.75 check to Golden First once Mr. Jack closed the loan. Additionally, Golden First received an \$899 application fee when Mr. Jack first met with Mr. Goltche. Upon information and belief, Golden First and Mr. Goltche received at least a portion of this compensation solely for the purpose of inducing Mr. Jack to take out a loan on terms less favorable than were otherwise available to him.

53. Upon information and belief, after Mr. Jack's loan originated, through a series of transactions, the loan was securitized and placed into a trust, American Home Mortgage Assets Trust 2006-4. Defendant Citibank, N.A. is the trustee. Defendant Deutsche Bank National Trust Company is the custodian who now holds Mr. Jack's mortgage loan.

54. American Brokers Conduit, the lender named in Mr. Jack's mortgage, was a licensed mortgage banker in the state of New York that operated as a wholesale subprime lender and obtained its loans through a network of mortgage brokers. The collapse of the subprime lending industry led American Home Mortgage Investment Corporation, the parent of American Brokers Conduit, to file for bankruptcy in the United States Bankruptcy Court for the District of

Delaware on August 6, 2007. Mr. Jack filed a proof of claim against American Home Mortgage Investment Corporation with the Delaware bankruptcy court on October 15, 2007.

FIRST CAUSE OF ACTION
TRUTH IN LENDING ACT

(Against Citibank, N.A. and Deutsche Bank National Trust Co.)

55. Plaintiff repeats and realleges paragraphs 1 through 54 as set forth herein.

56. At the time of the subject transaction, American Brokers Conduit acted as a creditor who regularly engaged in the making of mortgage loans, payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. Accordingly, the loan was made subject to the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*, and its implementing regulations, Federal Reserve Board Regulation Z, 12 C.F.R. § 226.

57. As a result of the subject transaction, defendants acquired an interest in plaintiff’s primary dwelling that secures payment or performance of an obligation.

58. On information and belief, this consumer credit transaction violated the disclosure requirement of TILA and Regulation Z by underdisclosing the finance charge and APR for Mr. Jack’s loan. 15 U.S.C. §§ 1605, 1638(a)(3)-(4). These underdisclosures include, but are not limited to, the \$755 in finance charges (and the resulting APR understatement) discovered on or about August 2, 2006 not to have been included on the Truth in Lending Disclosure Statement provided to Mr. Jack at closing.

59. On information and belief, this consumer credit transaction violated the disclosure and rescission requirements of TILA and Regulation Z by failing to provide two copies of the notice of the right to rescind and an accurate date for the expiration of the rescission period, in violation of 15 U.S.C. § 1635 and 12 C.F.R. § 226.23(b).

60. This consumer credit transaction, because of conflicting representations, failed to make required disclosures clearly and conspicuously in writing in violation of 15 U.S.C. § 1632(a) and Regulation Z § 226.17(a) and therefore failed to deliver all “material” disclosures as required by the Act and Regulation Z, including the following:

- a. failing to disclose properly and accurately the “amount financed,” in violation of 15 U.S.C. § 1638(a)(2) and 12 C.F.R. § 226.18;
- b. failing to disclose properly and accurately the “finance charge,” in violation of 15 U.S.C. § 1638(a)(3) and 12 C.F.R. § 226.18;
- c. failing to disclose properly and accurately the “annual percentage rate,” in violation of 15 U.S.C. § 1638(a)(4) and 12 C.F.R. § 226.18;
- d. failing to disclose properly and accurately the “total of payments,” in violation of 15 U.S.C. § 1638(a)(5) and 12 C.F.R. § 226.18(h); and
- e. failing to disclose properly and accurately the number, amount, and due dates or period of payments scheduled to repay the obligation, in violation of 15 U.S.C. § 1638(a)(6) and 12 C.F.R. § 226.18(g).

61. The TILA violations described at paragraphs 58-60 above give plaintiff an extended right to rescind the loan held by defendants pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23. Plaintiff is also entitled to an extended right of rescission against any assignees of the loan pursuant to 15 U.S.C. § 1641(c).

62. On July 27, 2006 Mr. Jack rescinded the transaction by calling Michael Goltche, an agent of Golden First, whom Mr. Jack had been made to believe was his lender. He made several calls to rescind the transaction on that day and on each day of the week that followed the transaction.

63. On July 5, 2007, Mr. Jack again rescinded the transaction by mailing a notice of rescission to American Brokers Conduit's Legal Department. (See Rescission Letter dated 07/05/2007, attached hereto as Exhibit H.)

64. Any assignees of the loan are liable for all of the above claims (1) pursuant to 15 U.S.C. § 1641(e) because they were "apparent on the face of the disclosure statement"; and (2) pursuant to 15 U.S.C. § 1641(d).

65. On information and belief, this consumer credit transaction also violated the disclosure requirements of TILA and Regulation Z by failing to provide either an itemization of the amount financed, a qualified substitution for the itemization of the amount financed, or a statement that Mr. Jack had a right to request such an itemization, in violation of 15 U.S.C. § 1638(a)(2)(B) and 12 C.F.R. § 226.18(c).

66. As a result of the aforesaid violations of TILA and Regulation Z, Citibank N.A. and Deutsche Bank National Trust Co. are liable to plaintiff for:

- a. the return of any money or property that has been given to anyone in connection with the transaction and the termination of defendant's security interest in the property;
- b. actual damages in an amount to be determined at trial;
- c. statutory damages as provided by 15 U.S.C. § 1640;
- d. costs and disbursements; and
- e. attorneys' fees to the Center for Responsible Lending.

SECOND CAUSE OF ACTION
HOME OWNERSHIP AND EQUITY PROTECTION ACT

(Against Citibank, N.A. and Deutsche Bank National Trust Co.)

67. Plaintiff repeats and realleges paragraphs 1 through 66 as set forth herein.

68. The Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639, is an amendment to TILA and offers further protections for high rate mortgages, as defined by 15 U.S.C. § 1602(aa)(1)(B)(i), Federal Reserve Board Regulation Z, 12 C.F.R § 226.32.

69. A mortgage that is a credit transaction secured by the consumer’s principal dwelling and whose “total points and fees” exceed eight percent of the total loan amount is a high rate mortgage within the meaning of the HOEPA. 15 U.S.C. § 1602(aa)(1)(B)(i). The definition of “points and fees” includes “*all* compensation paid to mortgage brokers.” 12 C.F.R. § 226.32(b)(1)(ii) (emphasis added).

70. The subject consumer credit transaction was secured by Mr. Jack’s principal dwelling.

71. The subject loan transaction is subject to HOEPA because, among other things, the total points and fees payable by Mr. Jack exceeded eight percent of the total loan amount. The \$31,341.75 received by Golden First and Mr. Goltche in compensation from the transaction represents more than 9.7% of the total loan amount. See Official Staff Commentary on Regulation Z § 226.32(a)(1)(ii)-1.

72. The subject consumer credit tradition violated HOEPA and Regulation Z by:

- a. failing to provide Mr. Jack with the disclosures required under HOEPA at least three business days prior to the consummation of the transaction, in violation of 15 U.S.C. § 1639(a) and (b) and 12 C.F.R. §§ 226.32(c);
- b. providing Mr. Jack with a loan that contains a prepayment penalty, in violation of 15 U.S.C. § 1639(c) and 12 C.F.R. § 226.32(d)(6);
- c. providing Mr. Jack with a loan that contains negative amortization terms, in violation of 15 U.S.C. § 1639(f) and 12 C.R.F. § 226.32(d)(2); and

- d. extending credit without regard to Mr. Jack's ability to pay the debt, in violation of 15 U.S.C. § 1639(h) and 12 C.R.F. § 226.34(a)(4).

73. These violations of HOEPA and Regulation Z give Mr. Jack a statutory right to rescind the loan pursuant to 15 U.S.C. §§ 1635 and 1639(j) and 12 C.F.R. § 226.23.

74. On July 27, 2006 Mr. Jack rescinded the transaction by calling Michael Goltche, an agent of Golden First, whom Mr. Jack had been made to believe was his lender. He made several calls to rescind the transaction during the week that followed the transaction.

75. On July 5, 2007, Mr. Jack again rescinded the transaction by mailing a notice of rescission to American Brokers Conduit's Legal Department. (See Exhibit H.)

76. Any assignees of the loan are liable for all claims that Mr. Jack asserts pursuant to 15 U.S.C. § 1641(d).

77. As a result of the aforesaid violations of HOEPA and Regulation Z, Citibank N.A. and Deutsche Bank National Trust Co. are liable to plaintiff for:

- a. rescission of the mortgage loan transaction, the return of any money or property that has been given to anyone in connection with the transaction, and the termination of defendant's security interest in the property;
- b. actual damages in an amount to be determined at trial;
- c. statutory damages as provided by 15 U.S.C. § 1640;
- d. costs and disbursements; and
- e. attorneys' fees to the Center For Responsible Lending.

THIRD CAUSE OF ACTION
GENERAL BUSINESS LAW § 349 ("DECEPTIVE PRACTICES ACT")

**(Against Golden First, Michael Goltche, Citibank, N.A.
and Deutsche Bank National Trust Co.)**

78. Plaintiff repeats and realleges paragraphs 1 through 77 as set forth herein.

79. The documents that defendants gave to Mr. Jack concerning his loan, including the Mortgage Loan Commitment contract and those used to close Mr. Jack's mortgage, do not accurately, consistently, or simply disclose the terms of the mortgage, including the interest rate and payment amounts, willfully and maliciously deceiving and misleading customers in violation of the Deceptive Practices Act, Gen. Business Law § 349, ("§ 349").

80. Under the pick-a-payment scheme in Mr. Jack's mortgage, if Mr. Jack were to pay only the interest on the mortgage his payments would initially have been \$2,606.48, more than one-half of his monthly income. For the monthly mortgage payment to cover the interest and the principal amount owed—as his prior loan did—he would have had to pay initially \$2,830.53, also more than one-half of his reported monthly income. By choosing the “minimum payment” option, Mr. Jack's payments did not pay the interest owed on the loan every month and resulted in an increase in the principal amount each month. On information and belief, if Mr. Jack continues to make the “minimum payment,” the principal amount will grow until September of 2008, when it will be more than \$377,000 (over \$34,000 more than he originally borrowed) reaching the 110% principal cap. When the principal cap is reached, the new minimum monthly payments will increase to over \$3,000.00 a month—an amount substantially more than one-half of his monthly income. In addition, the mortgage's significant three-year prepayment penalty would add, at the time of the reset in September 2008, over \$13,000 to the principal balance if he attempted to refinance. The increased principal balance from the negative amortization and the prepayment penalty make it highly unlikely that Mr. Jack could refinance his mortgage to avoid the payment shock.

81. Because the prepayment penalty is computed as six months' interest on the principal balance, and because—unlike a traditional loan—the principal balance of the subject loan increases with each payment made, the penalty that Mr. Jack would have to pay if he were to refinance this loan within three years of origination increases over time. In other words, if Mr. Jack had refinanced on September 1, 2006, he would have had to pay a penalty of approximately \$11,200; if Mr. Jack were to refinance on August 1, 2007, he would have to pay a penalty of more than \$12,500; in September 2008, the penalty increases to more than \$13,000. The continually increasing prepayment penalty further demonstrates the unfair and deceptive nature of the loan and its unsuitability for Mr. Jack. Moreover, this three-year prepayment penalty violates the New York General Obligations Law § 5-501(3)(b), which limits to one year the prepayment penalty on any loan secured by a one- or two-family dwelling occupied by its owner and with an interest rate in excess of six percent per annum.

82. Defendants' willful and malicious inclusion of a three-year prepayment penalty violates New York General Obligations Law § 5-501(3)(b) and constitutes an unfair, misleading and deceptive trade practice under § 349.

83. Upon information and belief, the YSP paid to Golden First was excessive and was unrelated to any service or benefit provided to Mr. Jack. On the contrary, on information and belief, this fee was paid to Golden First as a reward for inducing Mr. Jack to sign a loan on such detrimental terms. On information and belief, the YSP structure resulted in Mr. Jack being steered into a loan that was much more costly than other loans he could have qualified for.

84. On information and belief, defendants chose to steer Mr. Jack into a higher interest rate "stated income" loan to increase their profits even though Mr. Jack provided documentation of his income.

85. Defendants knew or should have known that Mr. Jack could not afford to make the payments on the loan necessary to pay the interest or interest and principal on the loan or sustain the minimum payments after September 2008.

86. Defendants' making of a mortgage loan to Mr. Jack that defendants knew he could not repay willfully and maliciously deceived and misled consumers, specifically Mr. Jack, violating § 349.

87. Defendants' lending to Mr. Jack without consideration of his ability to repay the mortgage constitutes an unfair, misleading, and deceptive trade practice under § 349.

88. Defendants' willful and malicious steering of Mr. Jack into a loan to with grossly unfavorable terms based on YSP incentives constitutes an unfair, misleading and deceptive trade practice under § 349.

89. Defendants' willful and malicious steering of Mr. Jack into a stated income loan with a higher interest rate, despite the fact that he provided documentation of income, constitutes an unfair, misleading and deceptive trade practice under § 349.

90. Defendants repeatedly misrepresented the essential terms—and therefore the cost—of the loan to Mr. Jack, deceiving him into believing that the interest rate was much lower than it was, that his monthly payments would cover much more of the interest than they do, and that he would be able to refinance the loan without incurring any cost after one year. Many of the misrepresentations constituted violations of the requirement that disclosures made pursuant to TILA be “clear and conspicuous,” rendering those and any other disclosures inoperative and depriving Mr. Jack of the crucial information that TILA is meant to secure for borrowers. Accordingly, defendants' willful and malicious misrepresentations and lack of clear and conspicuous disclosure constitute an unfair and deceptive trade practice under § 349.

91. As authorized by § 349(h), plaintiff seeks an order from this Court enjoining Golden First and Michael Goltche from the unlawful actions and practices under the Deceptive Practices Act described in paragraphs 79-90.

92. Any assignees of the loan are liable for all claims that Mr. Jack asserts pursuant to 15 U.S.C. § 1641(d).

93. As a result of their violations of the Deceptive Practices Act, Golden First, Michael Goltche, Citibank, N.A. and Deutsche Bank National Trust Co. are liable to Mr. Jack for:

- a. actual damages;
- b. statutory damages as provided by § 349(h);
- c. treble damages as provided by § 349(h);
- d. costs and disbursements; and
- e. attorneys' fees to the Center for Responsible Lending.

FOURTH CAUSE OF ACTION
FRAUD

(Against Golden First and Michael Goltche)

94. Plaintiff repeats and realleges paragraphs 1 through 93 as set forth herein.

95. Defendants fraudulently, intentionally, and knowingly induced Mr. Jack to enter into the subject mortgage transaction by misrepresenting and/or failing to provide material information, including the following:

- a. misrepresenting to Mr. Jack that the annual interest rate on the subject mortgage was 1% for one year;
- b. misrepresenting to Mr. Jack that twelve monthly payments of \$1,103.22, plus one additional \$1,103.22 payment per year, would cover the interest on the loan;

- c. misrepresenting to Mr. Jack that he could easily refinance after one year, when in fact doing so would cause him to incur a prepayment penalty;
 - d. misrepresenting to Mr. Jack that Golden First Mortgage Corporation would be the originating lender;
 - e. misrepresenting to Mr. Jack that the fees payable from the proceeds of the mortgage were bona fide and reasonable and necessary for the extension of credit;
 - f. misrepresenting to Mr. Jack that he did not need the assistance of counsel;
 - g. misrepresenting to Mr. Jack that the subject loan would provide him a benefit; and
 - h. misrepresenting to Mr. Jack that he could afford the subject loan.
96. Mr. Jack suffered serious injury as the proximate result of his reliance on the defendants' intentional misrepresentations and failures to disclose.
97. As a result of the aforesaid fraud, the mortgage loan transaction should be declared void, and the security interest created under the transaction should be terminated. In addition, Golden First and Michael Goltche are liable to Mr. Jack for:
- a. actual damages;
 - b. punitive damages;
 - c. costs and disbursements; and
 - d. attorneys' fees to the Center for Responsible Lending.

FIFTH CAUSE OF ACTION
CIVIL CONSPIRACY TO COMMIT FRAUD

**(Against Golden First, Michael Goltche, Citibank, N.A.
and Deutsche Bank National Trust Co.)**

98. Plaintiff repeats and realleges paragraphs 1 through 97 as set forth herein.

99. Defendants knowingly entered into an agreement to fraudulently induce Mr. Jack to enter into the subject mortgage.

100. Defendants intentionally, knowingly and willfully participated in this scheme by committing overt acts and making misrepresentations and/or failing to provide material information, in furtherance of the agreement, including but not limited to those representations set forth above in paragraph 95 above.

101. Through their unlawful conduct constituting a civil conspiracy to defraud a vulnerable and elderly homeowner, defendants acted in a malicious, willful, wanton, and oppressive fashion, in reckless disregard of Mr. Jack's rights.

102. Mr. Jack suffered serious injury as the proximate result of his reliance on defendants' misrepresentations and omissions.

103. Any assignees of the loan are liable for all claims that Mr. Jack asserts pursuant to 15 U.S.C. § 1641(d).

104. As a result of the aforesaid conspiracy to commit fraud, the mortgage transaction should be declared void, and the security interest created under the transaction should be terminated. In addition, Golden First, Michael Goltche, Citibank, N.A. and Deutsche Bank National Trust Co. are liable to Mr. Jack for:

- a. actual damages;
- b. punitive damages;
- c. costs and disbursements; and
- d. attorney's fees to the Center for Responsible Lending.

SIXTH CAUSE OF ACTION
REAL ESTATE SETTLEMENT PROCEDURES ACT

(Against Golden First Mortgage Corporation)

105. Plaintiff repeats and realleges paragraphs 1 through 104 as set forth herein.

106. Mr. Jack's mortgage is a "federally related mortgage loan" as defined in 12 U.S.C. § 2602(1), and therefore is subject to the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 *et seq.*

107. Defendant Golden First violated RESPA with respect to plaintiff's loan transaction by: (a) giving or accepting kickbacks or other things of value in violation of 12 U.S.C. § 2607(a) and 24 C.F.R. § 3500.14(b); and (b) giving a portion, split, or percentage of charges made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed, in violation of 12 U.S.C. § 2607(b) and 24 C.F.R. § 3500.14(c).

108. Among other things, no goods or facilities were furnished, nor were any services performed in exchange for the \$31,341.75 in fees Golden First received from the transaction. Furthermore, even if goods, facilities or services were provided, their value was not reasonably related to the payments.

109. Therefore, Golden First is liable to Mr. Jack for:

- a. actual damages, trebled under 12 U.S.C. § 2607(d)(2);
- b. costs and disbursements; and
- c. attorneys' fees to the Center for Responsible Lending.

SEVENTH CAUSE OF ACTION
GENERAL OBLIGATIONS LAW § 5-501

**(Against Golden First Mortgage Corporation,
Citibank, N.A and Deutsche Bank National Trust Co.)**

110. Plaintiff repeats and realleges paragraphs 1 through 109 as set forth herein.

111. The subject loan is secured by an interest in real property improved by a one-family residence occupied by the owner, and the interest rate charged on that loan exceeds six per centum per annum.

112. The prepayment penalty imposed on the subject loan has a term of three years, in violation of § 5-501(3)(b).

113. As a result of the aforesaid violation, the mortgage transaction should be declared void, and the security interest created under the transaction should be terminated, pursuant to § 5-511.

EIGHTH CAUSE OF ACTION
BREACH OF CONTRACT

(Against Golden First Mortgage Corporation)

114. Plaintiff repeats and realleges paragraphs 1 through 113 as set forth herein.

115. Golden First entered into a binding Mortgage Loan Commitment contract with Mr. Jack on July 26, 2006. (See Exhibit I.)

116. Golden First received valuable consideration in return for agreeing to provide Mr. Jack with a mortgage loan on the terms stated in the Commitment contract.

117. Golden First breached its promise in the Commitment contract to provide Mr. Jack with a mortgage loan with an “initial fixed interest rate [that] will remain in effect for the first 1.00 months,” by instead providing him with a loan whose initial fixed interest rate remained in effect for only one day. (See Exhibit I ¶ 4B.)

118. Golden First breached its promise in the Commitment contract to provide Mr. Jack with a mortgage loan with an interest rate set based upon an index rate plus a 3.45% margin by instead providing him with a loan whose margin was 3.70%. (See Exhibit I ¶ 4B.)

119. Golden First breached its promise in the Commitment contract to provide Mr. Jack with a mortgage loan that “does not involve the possibility of negative amortization” by instead providing him with a Payment Option ARM whose monthly minimum payments were less than the interest that accrued each month. (See Exhibit I ¶ 13E.)

120. Mr. Jack suffered serious injury as a result of these breaches of contract by Golden First.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, plaintiff Tilton Jack respectfully requests that this Court:

- a. rescind the underlying mortgage loan transaction and terminate any security interest in plaintiff's property created under the transaction;
 - b. enjoin enforcement of the mortgage and note and declare the mortgage and note unenforceable;
 - c. award actual damages in an amount to be determined at trial;
 - d. award statutory damages;
 - e. award punitive damages in an amount to be determined at trial;
 - f. award liquidated damages;
 - g. award attorneys' fees to the Center for Responsible Lending;
 - h. award reasonable costs of this action;
 - i. enjoin defendants from engaging in deceptive acts and practices that affect consumers in New York State under NY General Business Law § 349(h);
 - j. declare the mortgage void, and terminate the security interest pursuant to § 5-511;
- and

k. award such other and further relief as this Court deems just and proper.

DATED: Brooklyn, NY
April 30, 2008

Respectfully submitted,

/s/ Jennifer Sinton
Jennifer Sinton, Of Counsel (JS-1820)
Navid Vazire, Of Counsel (NV-1215)
Jessica Attie, Of Counsel (JA-1817)
John C. Gray, Esq.
SOUTH BROOKLYN LEGAL SERVICES
105 Court Street, 3rd Floor
Brooklyn, New York 11201
(718) 237-5500

/s/ Eric Halperin
Melissa Briggs, Esq., *pro hac vice*
Eric Halperin, Esq., *pro hac vice*
CENTER FOR RESPONSIBLE LENDING
910 17th Street NW
Suite 500
Washington, DC 20006
(202) 349-1872

Attorneys for Plaintiff Tilton Jack