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Attorneys for Defendants
 8 NATIONSTAR MORTGAGE LLC and
 VERIPRO SOLUTIONS INC.
 9

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 TAQUELIA WASHINGTON TOLAND and
 GEORGIA TOLAND, individually and on
 13 behalf of All Others Similarly Situated,

14 Plaintiff,

15 vs.

16 NATIONSTAR MORTGAGE LLC, a
 Delaware limited liability company;
 17 VERIPRO SOLUTIONS INC., a Delaware
 corporation, and DOES 1 through 20,
 18

Defendant.
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Case No. 3:17-cv-02575-MEJ

**DEFENDANTS' ANSWER TO
 PLAINTIFFS' COMPLAINT**

Action Filed: March 24, 2017

20 In answer to the Complaint ("Complaint") of plaintiffs, Taquelia Washington Toland and
 21 George Toland ("Plaintiffs"), defendants Nationstar Mortgage LLC ("Nationstar") and Veripro
 22 Solutions Inc. ("Veripro"; collectively with Nationstar "Defendants") hereby admit, deny, and
 23 affirmatively allege as follows with regard to the various allegations in the Complaint:

24 1. Answering Paragraph 1, Defendants lack information or belief sufficient to respond
 25 to the allegations, and on that ground deny them.

26 2. Answering Paragraph 2, Defendants admit that Plaintiffs purport to represent a
 27 class of borrowers similarly situated against Defendants. Defendants deny that any class can or
 28 should be certified.

1 3. Answering Paragraph 3, Defendants admit the allegations.

2 4. Answering Paragraph 4, Defendants admit that Veripro is a corporation
3 incorporated in the state of Delaware. Defendants admit that Veripro is a wholly owned
4 subsidiary of Nationstar. Defendants admit that Veripro transacts business in Alameda County.
5 Except as expressly admitted, Defendants deny the remaining allegations.

6 5. Answering Paragraph 5, Defendants lack information or belief sufficient to respond
7 to the allegations, and on that ground deny them.

8 6. Answering Paragraph 6, Defendants admit that a Deed of Trust ("DOT 1") was
9 recorded against the property located at 1318 B Street, Unit B208, Hayward California (the
10 "Subject Property"), in the Alameda County Recorder's Office to secure repayment to lender
11 Countrywide Home Loans, Inc. by Plaintiffs in the amount of \$332,000. Defendants further admit
12 that a Deed of Trust and Request for Notice of Default ("DOT 2") was recorded against the
13 Subject Property, in the Alameda County Recorder's Office as instrument to secure repayment to
14 lender Countrywide Home Loans, Inc. by Plaintiffs in the amount of \$83,000. With regard to the
15 remaining allegations set forth in Paragraph 6, Defendants lack information or belief sufficient to
16 respond to the allegations, and on that ground deny them.

17 7. Answering Paragraph 7, Defendants lack information or belief sufficient to respond
18 to the allegations, and on that ground deny them.

19 8. Answering Paragraph 8, Defendants lack information or belief sufficient to respond
20 to the allegations, and on that ground deny them.

21 9. Answering Paragraph 9, Defendants admit that a Corporation Assignment of Deed
22 of Trust was recorded indicating that the beneficial interests under DOT 1 were transferred from
23 BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS
24 SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP. to FEDERAL
25 NATIONAL MORTGAGE ASSOCIATION in the official records of the Alameda County
26 Recorder's office. Defendants lack information or belief sufficient to respond to the remaining
27 allegations of Paragraph 9, and on that ground deny them.

28 10. Answering Paragraph 10, Defendants admit that a Trustee's Deed Upon Sale was

1 recorded with the County Recorder of the County of Alameda on May 30, 2012 indicating that the
2 Subject Property had been sold in a non-judicial foreclosure sale as a result of Plaintiffs' default
3 on DOT 1. Defendants further admit that the foreclosure sale did not yield sufficient funds to pay
4 off DOT 2, and that following the foreclosure sale, a deficiency balance remained on DOT 2.
5 Defendants respond that the remaining allegations of paragraph 10 set forth a legal conclusion for
6 which no admission or denial is required.

7 11. Answering Paragraph 11, Defendants admit that Nationstar acquired the servicing
8 rights to the loan previously secured by DOT 2. Defendants admit that certain correspondence
9 was sent to plaintiffs regarding the balance on the loan, but refer to the correspondence itself for a
10 more complete and accurate representation of its contents. Except as expressly admitted,
11 Defendants deny the remaining allegations.

12 12. Answering Paragraph 12, Defendants admit that Veripro sent Georgia Toland a
13 communication on October 10, 2016, a copy of which is attached to the Complaint as Exhibit A.
14 Defendants refer to the document itself for a more accurate statement of its contents. Except as
15 expressly admitted, Defendants deny the remaining allegations.

16 13. Answering Paragraph 13, Defendants admit that Veripro sent Taquelia Washington
17 a communication on January 12, 2017, a copy of which is attached to the Complaint as Exhibit B.
18 Defendants refer to the document itself for a more accurate statement of its contents. Except as
19 expressly admitted, Defendants deny the remaining allegations.

20 14. Answering Paragraph 14, Defendants admit that Veripro sent Plaintiffs a
21 communication on February 9, 2017, a copy of which is attached to the Complaint as Exhibit C.

22 15. Answering Paragraph 15, Defendants admit that Veripro sent Plaintiffs a
23 communication on February 9, 2017, a copy of which is attached to the Complaint as Exhibit C.
24 Defendants refer to the document itself for a more accurate statement of its contents.

25 16. Answering Paragraph 16, Defendants respond that the paragraph contains a
26 statement of law which requires neither an admission nor a denial.

27 17. Answering Paragraph 17, Defendants admit that Plaintiffs have defined their class
28 to include only borrowers who received debt collection letters from Defendant in the form of

1 Exhibits “A” and/or “C.” Defendants deny that Defendants sent all borrowers who had deficiency
2 balances on a purchase money second mortgage or purchase money home equity line of credit
3 letters in the form of Exhibits “A” and/or “C” after a foreclosure or short sale of a first mortgage.

4 18. Answering Paragraph 18, Defendants admit that Veripro sent plaintiffs certain
5 correspondence regarding the balance owed on their loan, but refer to the letters attached to the
6 Complaint themselves for a more accurate statement of their contents. Defendants deny the
7 remaining allegations of paragraph 18.

8 19. Answering Paragraph 19, Defendants admit that Nationstar reported that plaintiffs
9 owed a deficiency balance to the credit reporting agencies. Defendants deny the remaining
10 allegations of paragraph 19.

11 20. Answering the first sentence of Paragraph 20, Defendants admit that Plaintiffs
12 purport to represent a class of borrowers similarly situated against Defendants. Defendants deny
13 that Plaintiffs’ claims are suitable for class treatment.

14 21. Answering Paragraph 21, Defendants deny the allegations.

15 22. Answering Paragraph 22, Defendants deny the allegations.

16 23. Answering Paragraph 23, Defendants deny the allegations.

17 24. Answering Paragraph 24, Defendants deny the allegations.

18 25. Answering Paragraph 25, Defendants lack information or belief sufficient to
19 respond to the allegations, and on that ground deny them.

20 26. Answering Paragraph 26, Defendants deny the allegations.

21 27. Answering Paragraph 27, Defendants incorporate by reference their responses to
22 the prior paragraphs as though fully set forth herein.

23 28. Answering Paragraph 28, Defendants admit that they may have acted as debt
24 collectors in certain communicating with plaintiffs. Defendants lack information or belief
25 sufficient to respond to the remaining allegations of paragraph 28, and on that ground deny them.

26 29. Answering Paragraph 29, Defendants deny the allegations.

27 30. Answering Paragraph 30, Defendants deny the allegations.

28 31. Answering Paragraph 31, Defendants deny the allegations.

1 that Plaintiffs and/or the purported class are entitled to any relief.

2 **AFFIRMATIVE DEFENSES**

3 As further, separate, and affirmative defenses to the Complaint, Defendants allege:

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim)**

6 The Complaint fails to state a claim upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 **(Compliance With Governing Law)**

9 Defendants' conduct was consistent with, permitted by, dictated by, and in certain respects
10 required by, applicable law, and therefore cannot be the subject of recovery in this action.

11 **THIRD AFFIRMATIVE DEFENSE**

12 **(Good Faith)**

13 This action is barred, in whole or in part, because Defendants acted in good faith and
14 honesty in fact, and always observed reasonable commercial standards of fair dealing in the trade
15 when dealing with Plaintiffs and the putative class members.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Proportional Fault)**

18 Any injury or damage to Plaintiffs and the putative class members was a result of the
19 intentional, negligent, or otherwise wrongful acts of third parties, and any claims against
20 Defendants shall be reduced in proportion to the faults of these third parties.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Comparative Fault)**

23 Plaintiffs and the putative class members were at fault with respect to the matters alleged
24 in the Complaint, and Plaintiffs' and the putative class members recovery, if any, should be barred
25 or reduced in proportion to their comparative fault.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 **(Superseding Cause)**

28 Plaintiffs may not recover against Defendants because Plaintiffs' and the putative class

1 members' purported damages were the proximate result of superseding causes unrelated to any act
2 by Defendants.

3 SEVENTH AFFIRMATIVE DEFENSE

4 (Causation)

5 Plaintiffs' and the putative class members' claims are barred, in whole or in part, because
6 Defendants' alleged acts were not the actual or proximate cause of the damages, if any, suffered
7 by Plaintiffs or the putative class members.

8 EIGHTH AFFIRMATIVE DEFENSE

9 (Laches)

10 Plaintiffs' and the putative class members' claims are barred in whole or in part by the
11 doctrine of laches.

12 NINTH AFFIRMATIVE DEFENSE

13 (Estoppel)

14 Plaintiffs and the putative class members, by reason of their knowledge, statements
15 conduct approval, authorization, and/or ratification, are estopped from recovery herein.

16 TENTH AFFIRMATIVE DEFENSE

17 (Consent)

18 Plaintiffs and the putative class members consented to the conduct alleged in the
19 complaint.

20 ELEVENTH AFFIRMATIVE DEFENSE

21 (Statute of Limitations)

22 Plaintiffs' and the putative class members' claims are barred in whole or in part by the
23 applicable statutes of limitation.

24 TWELFTH AFFIRMATIVE DEFENSE

25 (Waiver)

26 Plaintiffs' and the putative class members' claims are barred in whole or in part by the
27 doctrine of waiver.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiffs and the putative class members failed to mitigate, minimize, or avoid damages associated with their claims.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Each of the purported claims for relief set forth in the complaint is barred by the equitable doctrine of unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reasonable Procedures)

Plaintiffs' claims are barred because Defendants had reasonable procedures in place to comply with the applicable statutes.

SIXTEENTH AFFIRMATIVE DEFENSE

(Bona Fide Error)

To the extent there was any violation of the Rosenthal Act, which Defendants deny, such violation was unintentional and was a bona fide error that occurred notwithstanding Defendants' maintenance of procedures adopted to avoid such a violation.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Corrective Measures)

To the extent there was any violation of the Rosenthal Act, which Defendants deny, Defendants are informed and believe that they took necessary steps to correct the purported violations and, accordingly, Defendants are not liable for any such violation.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Preemption)

Plaintiffs' claims challenging defendants' credit reporting practices are preempted, in whole or in part, by the Fair Credit Reporting Act.

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NINETEENTH AFFIRMATIVE DEFENSE

(Conduct Not “Unlawful” – Bus. & Prof. Code, §17200)

Defendants’ business practices are not unlawful in that they comply with all applicable statutes and regulations.

TWENTIETH AFFIRMATIVE DEFENSE

(Conduct Not “Unfair” – Bus. & Prof. Code, §17200)

Defendants’ business practices are not “unfair” within the meaning of Business and Professions Code §17200. The utility of the practices outweigh any potential harm.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Conduct Not “Fraudulent” or “Likely to Mislead” – Bus. & Prof. Code, §17200)

Defendants’ business practices are and were not likely to mislead the public.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Other Defenses)

Defendants have insufficient knowledge and information on which to form a belief as to whether it has additional affirmative defenses, and reserves the right to assert additional affirmative defenses in the event discovery indicates such defenses would be appropriate.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Maintenance of Reasonable Practices and Procedures)

To the extent there was any violation of the California Consumer Credit Reporting Agencies Act (“CCRAA”), which Defendants deny, Defendants are not liable because at the time of the violation Defendants maintained reasonable procedures to comply with the provisions of this Act. *See* Cal. Civ. Code § 1785.25(g). Any violations by Defendants were unintentional and resulted despite the maintenance of procedures reasonably adapted to avoid such violations.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Set-off)

Plaintiffs’ claims are subject to set-off of all sums due and owing to Defendants, if any.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE**(Voluntary Payment)**

This action is barred, in whole or in part, by the voluntary payment doctrine. Defendants allege on information and belief that members of the putative class voluntarily paid defendants the amounts plaintiffs allege were wrongfully collected. These payments were made with knowledge of the facts underlying the lawsuit and so cannot be recovered in this action.

TWENTY-SIXTH AFFIRMATIVE DEFENSE**(Accord and Satisfaction)**

Defendants are informed and believe that some putative class members entered into subsequent agreements with defendants whereby defendants agreed to accept a reduced balance in full satisfaction of the underlying deficiency balance. The subsequent agreements provide putative class members different consideration and extinguish any alleged prior obligation owed to defendants. These agreements therefore operate as an accord and satisfaction and bar the claims plaintiff attempt to pursue here.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE**(Modification of Contract)**

Defendants are informed and believe that some putative class members entered into subsequent agreements with defendants whereby defendants agreed to accept a reduced balance in full satisfaction of the underlying deficiency balance. Defendants have fully performed under those modifications to the extent not prevented by the putative class members. Accordingly, any claim based that defendants were not entitled to collect certain amounts from those putative class members is precluded under applicable law.

DATED: June 8, 2017

SEVERSON & WERSON
A Professional Corporation

By: /s/ Mary Kate Kamka
Mary Kate Kamka

Attorneys for Defendants NATIONSTAR MORTGAGE
LLC and VERIPRO SOLUTIONS INC.