

ENDORSED
FILED
ALAMEDA COUNTY

MAR 21 2006

CLERK OF THE SUPERIOR COURT
By Alphonsine Oates, Deputy

1 BILL LOCKYER, Attorney General
of the State of California
2 ALBERT NORMAN SHELDEN
Senior Assistant Attorney General
3 BENJAMIN G. DIEHL (Ca. Bar No. 192984)
Deputy Attorney General
4 300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-5548
Facsimile: (213) 897-4951

6 WAYNE STRUMPFER
Acting California Corporations Commissioner
7 ALAN S. WEINGER
Acting Deputy Commissioner
8 JUDY L. HARTLEY (Ca. Bar No. 110628)
Senior Corporations Counsel
9 320 W. 4th Street, Ste. 750
Los Angeles, California 90013-2344
10 Telephone: (213) 576-7604

11 THOMAS J. ORLOFF, District Attorney
County of Alameda
12 CHRISTOPHER G. CARPENTER
Assistant District Attorney
13 LAWRENCE C. BLAZER (Ca. Bar No. 95598)
Senior Deputy District Attorney
14 7677 Oakport Street, Suite 650
Oakland, CA 94621
15 Telephone: (510) 569-9281

16 [Additional Attorneys For Plaintiff Listed on Following Page]
17 Attorneys for Plaintiff

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF ALAMEDA**

20 THE PEOPLE OF THE STATE OF
CALIFORNIA, by the Attorney General, the
21 California Corporations Commissioner, and the
District Attorneys of Alameda, Los Angeles,
22 Merced, Monterey, San Francisco, and San
Mateo Counties,

23 Plaintiff,

24 v.

25 AMERIQUEST MORTGAGE COMPANY, a
Delaware corporation; ACC CAPITAL
26 HOLDINGS CORPORATION, a Delaware
corporation; TOWN AND COUNTRY
27 CREDIT COPORATION, a Delaware
corporation; and AMC MORTGAGE
SERVICES, INC., formerly known as Bedford
28 Home Loans, a Delaware corporation,
Defendants.

Case No.: **RG06260804**

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
RELIEF PURSUANT TO SECTIONS
17206 AND 17536 OF THE BUSINESS
AND PROFESSIONS CODE**

1 ADDITIONAL COUNSEL FOR PLAINTIFF:

2 STEVE COOLEY, District Attorney
County of Los Angeles
3 THOMAS A. PAPAGEORGE (Ca. Bar No. 77690)
Head Deputy District Attorney
4 STUART C. LYTTON (Ca. Bar No. 114241)
Deputy District Attorney
5 Consumer Protection Division
201 N. Figueroa Street, Room 1200
6 Los Angeles, CA 90012
Telephone: (213) 580-3319
7 Facsimile: (213) 480-9420

8
9 GORDON SPENCER, District Attorney
County of Merced
RICHARD S. MICHAELS (Ca. Bar No. 51940)
10 Special Prosecutor
2222 "M" Street
11 Merced, CA 95340
Telephone: (209) 725-3600
12 Facsimile: (209) 725-3669

13
14 DEAN D. FLIPPO, District Attorney
County of Monterey
DENINE GUY (Ca. Bar No. 145360)
15 Deputy District Attorney
1200 Aguajito Road, Room 301
16 Monterey, CA 93940
Telephone: (831) 647-7770
17 Facsimile: (831) 647-7762

18
19 KAMALA D. HARRIS
District Attorney of the City and County of San Francisco
JUNE D. CRAVETT (Ca. Bar No. 105094)
20 Assistant District Attorney
732 Brannan Street
21 San Francisco, California 94103
Telephone: (415) 551-9537
22 Facsimile: (415) 551-9504

23
24 JAMES P. FOX, District Attorney
County of San Mateo
JOHN E. WILSON (Ca. Bar No. 95602)
25 Deputy District Attorney In Charge
Consumer & Environmental Protection Unit
26 400 County Center, 3rd Floor
Redwood City, CA 94063
27 Telephone: (650) 363-4098

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1 1. Plaintiff the People of the State of California, by the Attorney General, the
2 California Corporations Commissioner, and the District Attorneys of Los Angeles, Alameda, San
3 Francisco, San Mateo, Monterey, and Merced Counties (collectively, "Plaintiff" or the "People"),
4 brings this action pursuant to sections 17204, 17206, 17535 and 17536 of the Business and
5 Professions Code and sections 22713 and 50324 of the California Financial Code.

6 **PARTIES AND VENUE**

7 2. At all relevant times, Defendant Ameriquest Mortgage Company, a Delaware
8 corporation ("Ameriquest"), was, and is now, licensed by the Commissioner as a finance lender
9 and residential mortgage lender and servicer pursuant to sections 22100 and 50002 of the
10 California Financial Code and has transacted business throughout the State of California,
11 including in the Counties of Alameda, Los Angeles, Merced, Monterey, San Francisco, and San
12 Mateo.

13 3. At all relevant times, Defendant ACC Capital Holdings Corporation ("ACCCH"),
14 was, and is now, a Delaware corporation and has transacted business throughout the State of
15 California, including in the Counties of Alameda, Los Angeles, Merced, Monterey, San
16 Francisco, and San Mateo.

17 4. At all relevant times, Defendant Town and Country Credit Corporation, a
18 Delaware corporation ("Town and Country"), was, and is now, licensed by the Commissioner as
19 a residential mortgage lender and servicer pursuant to section 50002 of the California Financial
20 Code and has transacted business throughout the State of California, including in the Counties of
21 Alameda, Los Angeles, Merced, Monterey, San Francisco, and San Mateo.

22 5. At all relevant times, Defendant AMC Mortgage Services, Inc., a Delaware
23 corporation formerly known as Bedford Home Loans ("AMC Mortgage Services"), was, and is
24 now, licensed by the Commissioner as a finance lender and residential mortgage lender and
25 servicer pursuant to sections 22100 and 50002 of the California Financial Code and has
26 transacted business throughout the State of California, including in the Counties of Alameda, Los
27 Angeles, Merced, Monterey, San Francisco, and San Mateo.

1 6. Whenever reference is made in this Complaint to any act of any corporate or other
2 business Defendant, that reference shall mean that the corporation or other business did the acts
3 alleged in this Complaint through its officers, directors, employees, agents and/or representatives
4 while they were acting within the actual or ostensible scope of their authority.

5 7. At all relevant times, each Defendant has committed the acts, caused others to
6 commit the acts, ratified the commission of the acts, or permitted others to commit the acts
7 alleged in this Complaint and has made, caused, ratified, or permitted others to make, the untrue
8 or misleading statements alleged in the First and Second Causes of Action in this Complaint.
9 Whenever reference is made in this Complaint to any act of Defendants, such allegation shall
10 mean that each Defendant acted individually and jointly with the other Defendants. Ameriquet,
11 Town and Country and AMC Mortgage Services shall be referred to collectively as “the
12 Ameriquet Parties,” and the term “Defendants” wherever used in this Complaint shall mean all
13 named defendants.

14 8. The violations of law alleged in this Complaint were committed throughout the
15 State of California and in the Counties of Alameda, Los Angeles, Merced, Monterey, San
16 Francisco and San Mateo.

17 **DEFENDANTS’ BUSINESS ACTS AND PRACTICES**

18 9. In the ordinary course of business, the Ameriquet Parties have originated and
19 funded real estate secured loans with borrowers in the State of California. These real estate
20 secured loans were made from or at the Ameriquet Parties' retail lending branches during the
21 period January 1, 1999 through December 31, 2005 (the “Covered Transactions”).

22 10. The Offices of the California Attorney General, the California Department of
23 Corporations, and the District Attorneys’ Offices of Alameda, Los Angeles, Merced, Monterey,
24 San Francisco and San Mateo Counties, as well as state attorneys general and financial regulators
25 in other states, received and investigated complaints and conducted examinations concerning the
26 Covered Transactions. Those complaints, investigations and examinations related to the
27 Ameriquet Parties' conduct including, but not limited to, the following practices (collectively,
28 “the Lending Practices”):

1 **A. Representations Regarding Loans:** The Ameriquest Parties induced
2 consumers into obtaining loans by representing to them that the Ameriquest Parties would
3 provide them with a low interest rate, low fee loan, and/or a loan with a fixed interest rate, but, in
4 a "bait and switch," instead provided loans to consumers at significantly higher rates or higher
5 fees than originally promised, and/or provided the consumers with an adjustable rather than a
6 fixed rate loan. These statements were untrue or misleading because Ameriquest was unlikely to
7 make the loan on the terms initially offered.

8 **B. Representations Regarding Future Refinancing:** As part of an effort to
9 induce consumers to accept unfavorable loan terms, such as a high monthly payment or interest
10 rate, sales representatives for the Ameriquest Parties told consumers that they could refinance in
11 a few months and would be able to obtain more favorable terms at that time. These statements
12 were untrue or misleading because the Ameriquest Parties were unlikely to provide a refinance
13 under the terms represented by their sales representatives. Additionally, any consumers who did
14 refinance would likely incur a substantial prepayment penalty, thus limiting their ability to obtain
15 a more favorable loan.

16 **C. Loan Discount Points:** The Ameriquest Parties failed to provide timely
17 and adequate information to consumers concerning the amount and purpose of "discount" points
18 and fees imposed on their loans. Further, prior to February 2003, the rate reduction, if any,
19 varied among borrowers who paid the same amount of discount points.

20 **D. Adjustable Interest Rates:** The Ameriquest Parties have misrepresented
21 the terms of the adjustable rate provisions of their loans, including misrepresenting how the
22 interest rate for the loan would in fact adjust. These statements were untrue or misleading
23 because the Ameriquest Parties and their sales representatives failed to describe the true terms of
24 the adjustable rate provision of the loans, and because the Ameriquest Parties were unlikely to
25 provide an adjustable rate loan on the terms represented. Further, the Ameriquest Parties did not
26 or did not adequately disclose that the adjustable rate loans include a provision specifying that
27 the interest rate will never be lower than the initial rate on the loan.

28

1 **E. Consumers' Credit Ratings:** The Ameriquest Parties made
2 misrepresentations to consumers regarding their credit ratings, including representing they had
3 poorer credit than they in fact did, or that the Ameriquest Parties could only provide a consumers
4 with certain loan terms because of their supposedly poor credit. These statements were untrue or
5 misleading because in many cases, the consumers may have had better credit than Defendants
6 represented, or been eligible for fixed rate loans, and, regardless of the consumers' credit,
7 Defendants included adjustable rates in Ameriquest loans in order to maximize their revenue
8 and/or profit. Additionally, Defendants induced their sales representatives to sell adjustable rate
9 loans by paying higher commissions for the sale of an adjustable rather than a fixed a rate loan.

10 **F. Prepayment Penalties:** The Ameriquest Parties misled consumers about
11 the presence and terms of prepayment penalties on loans offered by the Ameriquest Parties, and
12 about whether prepayment penalties could be waived for consumers who refinanced their loans.

13 **G. Inflated Appraisals:** The Ameriquest Parties engaged in deceptive or
14 misleading acts and practices which resulted in the Ameriquest Parties obtaining inflated
15 appraisals that were substantially in excess of the market value of homes of consumers.

16 **H. Inflated Income:** The Ameriquest Parties engaged in acts and practices
17 which resulted in fabricated and/or inflated income information for consumers, and/or
18 non-existent or inflated amounts of assets for prospective borrowers on loan applications.

19 **I. Disparaging Federal Disclosures:** The Ameriquest Parties engaged in
20 acts and practices that encouraged consumers to ignore the Truth In Lending Act (TILA, 15
21 U.S.C. §§ 1601 *et seq.*) and Real Estate and Settlement Procedures Act (RESPA, 12 U.S.C. §§
22 2601 *et seq.*) disclosures (including the Good Faith Estimate), misrepresented that these
23 disclosures were not representative of the actual loan terms the consumers would receive, or
24 otherwise disparaged the accuracy and relevance of the required federal disclosures.

25 **J. Appraisal Fees - Denied Loans:** The Ameriquest Parties routinely failed
26 to refund appraisal fees in instances where Ameriquest denied loans and there was no failure on
27 the part of the borrower to disclose outstanding liens and/or to provide other essential
28 information in violation of section 22301(b) of the California Financial Code.

1 **K. Appraisal Fees - Canceled Loans:** The Ameriquet Parties failed to
2 refund appraisal fees in instances where borrowers canceled loans during the cancellation period
3 provided for under TILA.

4 **L. Returned Check Fees:** The Ameriquet Parties charged “non-sufficient
5 fund” fees in excess of the maximum allowed under section 22320 of the California Financial
6 Code.

7 **N. File Maintenance:** The Ameriquet Parties failed to maintain records
8 required by section 22156 of the Financial Code and sections 1425 and 1435 of title 10 of the
9 California Code of Regulations.

10
11 **FIRST CAUSE OF ACTION, BROUGHT ON BEHALF OF THE PEOPLE, BY THE**
12 **CALIFORNIA CORPORATIONS COMMISSIONER, AGAINST ALL DEFENDANTS**
13 **FOR INJUNCTIVE RELIEF AND RESTITUTION PURSUANT TO CALIFORNIA**
14 **FINANCIAL CODE SECTIONS 22713 AND 50324**

15 11. The People reallege and incorporate by reference all paragraphs above, as
16 though fully set forth in this cause of action.

17 12. At all relevant times, sections 22161 and 50503(a)(2) of the California
18 Financial Code made it unlawful to make or disseminate false, misleading, or deceptive
19 statements regarding loans.

20 13. The Ameriquet Parties have violated and continue to violate sections
21 22161 and 50503(a)(2) of the California Financial Code by advertising, publishing, distributing
22 or broadcasting, or causing or permitting to be advertised, published, distributed, or broadcast,
23 untrue or misleading statements with the intent to induce members of the public to enter into
24 mortgage transactions. Such untrue or misleading statements include but are not limited to the
25 statements described in paragraph 10 above.

26 14. All Defendants knew, or by the exercise of reasonable care should have
27 known, that the statements identified in paragraph 13, above, were untrue or misleading at the
28 time they were made.

1 15. The Amerquest Parties violated section 22301 of the California Financial
2 Code by failing to refund appraisal fees charged in denied loans wherein there was no failure on
3 the part of the borrower to disclose outstanding liens and/or to provide other essential
4 information.

5 16. The Amerquest parties have failed to refund appraisal fees in instances
6 where borrowers canceled loans during the cancellation period provided under TILA

7 17. The Amerquest Parties violated section 22320 of the California Financial
8 Code by charging excessive "non-sufficient fund" fees.

9 18. The Amerquest Parties violated section 22156 of the California Financial
10 Code and sections 1425 and 1435 of title 10 of the California Code of Regulations by failing to
11 maintain books and records that would enable the Commissioner to determine if Amerquest is
12 complying with the California Finance Lenders Law ("CFL," California Financial Code
13 sections 22100 *et seq.*).

14
15 **SECOND CAUSE OF ACTION, BROUGHT ON BEHALF OF THE PEOPLE BY THE**
16 **ATTORNEY GENERAL AND DISTRICT ATTORNEYS, AGAINST ALL**
17 **DEFENDANTS**

18 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**
19 **(UNTRUE OR MISLEADING STATEMENTS)**

20 19. The People reallege and incorporate by reference all paragraphs above, as
21 though fully set forth in this cause of action.

22 20. All Defendants have violated, and continue to violate section 17500 of the
23 Business and Professions Code by making, disseminating or causing to be made or disseminated,
24 whether directly or indirectly, untrue or misleading statements with the intent to induce members
25 of the public to enter into mortgage transactions, including but not limited to the statements set
26 forth in paragraph 10, above.

27 21. Defendants knew, or by the exercise of reasonable care should have
28 known, that these statements were untrue or misleading at the time they were made.

1 **THIRD CAUSE OF ACTION, BROUGHT ON BEHALF OF THE PEOPLE BY THE**
2 **ATTORNEY GENERAL AND DISTRICT ATTORNEYS, AGAINST ALL**
3 **DEFENDANTS**

4 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
5 **(UNFAIR COMPETITION)**

6 22. The People reallege and incorporate by reference all paragraphs above, as
7 through fully set forth in this cause of action.

8 23. Defendants have engaged in, and continue to engage in, acts or practices
9 that violate section 17200 of the Business and Professions Code. Such acts or practices include,
10 but are not limited to the conduct identified in paragraph 10, above, and in the First and Second
11 Causes of Action.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment as follows:

14 1. Pursuant to sections 17203 and 17535 of the Business and Professions
15 Code, for an order that Defendants and their direct and indirect subsidiaries, affiliates, officers,
16 directors, employees, agents, related entities, successors, and assigns, and any and all other
17 persons who act in concert or participate with Defendants, be permanently restrained and
18 enjoined from making, disseminating, or causing to be made or disseminated any misleading,
19 untrue and/or deceptive statements in violation of section 17500 of the Business and Professions
20 Code or engaging in any acts of unfair competition in violation of section 17200 of the Business
21 and Professions Code, including, but not limited to, the untrue or misleading statements and
22 business acts and practices alleged in the Second Cause of Action to the Complaint, relating to
23 the marketing or sale of loans and related products to borrowers and consumers;

24 2. Pursuant to sections 22713(a) and 50324(a) of the California Financial
25 Code, for an order that Defendants and their direct and indirect subsidiaries, affiliates, officers,
26 directors, employees, agents, related entities, successors, and assigns, and any and all other
27 persons who act under, by, through, or on behalf of Defendants, be permanently restrained and
28 enjoined from advertising, publishing, distributing, broadcasting, or otherwise making or causing

1 or permitting to be advertised, published, distributed, broadcast, or made, any statement or
2 representation that is false, misleading, or deceptive, or that omits material information that is
3 necessary to make the statements not false, misleading, or deceptive in violation of sections
4 22161 and 50503(a)(2) of the California Financial Code, including but not limited to those
5 statements or representations alleged in the First Cause of Action, relating to the marketing or
6 sale of loans and related products to consumers, including the rates, terms, or conditions for
7 making or negotiating loans;

8 3. Pursuant to section 22713(a) of the California Financial Code, for an order
9 that Ameriquest its direct and indirect subsidiaries, affiliates, officers, directors, employees,
10 agents, related entities, successors, and assigns, and any and all other persons who act under, by,
11 through, or on behalf of Ameriquest, be permanently restrained and enjoined from engaging in
12 any act in violation of sections 22156, 22301(b), and 22320 of the California Financial Code or
13 sections 1425 and 1435 of title 10 of the California Code of Regulations, including but not
14 limited to those acts alleged in the First Cause of Action;

15 4. Pursuant to sections 17203 and 17535 of the Business and Professions
16 Code and sections 22713(b) and 50324(b) of the California Financial Code, for an order
17 requiring Defendants to make restitution to borrowers;

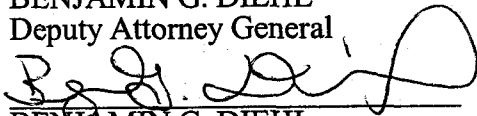
18 5. That the Court grant relief pursuant to sections 17206 and 17535 of the
19 Business and Professions Code; and

20 6. For an order that Plaintiff be awarded its costs of suit, including but not
21 limited to all costs of investigation.

22 DATED: March 16, 2006

BILL LOCKYER
Attorney General
ALBERT NORMAN SHELDEN
Senior Assistant Attorney General
BENJAMIN G. DIEHL
Deputy Attorney General

23
24
25
26 By:


BENJAMIN G. DIEHL
Deputy Attorney General

1 DATED: March 16, 2006

WAYNE STRUMPFER
Acting California Corporations Commissioner
ALAN S. WEINGER
Acting Deputy Commissioner

2
3
4 By: 
JUDY L. HARTLEY
Senior Corporations Counsel

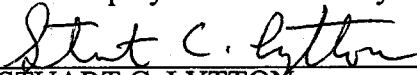
5 DATED: March 20, 2006

THOMAS J. ORLOFF
District Attorney of Alameda County

6
7 By: 
LAWRENCE C. BLAZER
Senior Deputy District Attorney


8
9 DATED: March 16, 2006

STEVE COOLEY
District Attorney of Los Angeles County
THOMAS A. PAPAGEORGE
Head Deputy District Attorney

10
11 By: 
STUART C. LYTTON
Deputy District Attorney

12
13 DATED: March 20, 2006

GORDON SPENCER
District Attorney of Merced County

14
15 By: 
RICHARD S. MICHAELS
Special Prosecutor

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17 DATED: March 20, 2006

DEAN D. FLIPPO
District Attorney of Monterey County

18
19 By: 
DENINE GUY
Deputy District Attorney

20
21 DATED: March 20, 2006

KAMALA D. HARRIS
District Attorney of the City and County of San Francisco

22
23 By: 
JUNE D. CRAVETT
Assistant District Attorney

24
25 DATED: March 20, 2006

JAMES P. FOX
District Attorney of San Mateo County

26
27 By: 
JOHN E. WILSON
Deputy District Attorney In Charge,
Consumer & Environmental Protection Unit