

1 MICHAEL J. GROBATY, ESQ. (Bar No. 126140)
 JOHNSON & GROBATY
 2 Attorneys at Law
 4299 MacArthur Boulevard, Suite 215
 3 Newport Beach, California 92660
 Telephone (949) 851-6993
 4 Facsimile (949) 851-8062
 5 Attorneys for Defendant MARK KLEIN

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF ORANGE

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| <p>10 OCM, Inc., a California Corporation dba 11 Helpufinance.com, 12 Plaintiff, 13 vs. 14 MARK KLEIN, an individual, and does 1-25, inclusive, 15 Defendants. 16</p> | <p>) CASE NO.: 05CL00301)) Assigned For All Purposes to:) Hon. Robert Moss) Dept. C)) NOTICE OF SPECIAL MOTION AND) SPECIAL MOTION TO STRIKE THE) FIRST AND SECOND CAUSES OF) ACTION OF COMPLAINT) PURSUANT TO CCP SECTION) 425.16; REQUEST FOR) ATTORNEYS' FEES AND COSTS) AGAINST OCM, INC. IN THE SUM) OF \$10,286.30; MEMORANDUM OF) POINTS AND AUTHORITIES;) DECLARATIONS OF MARK KLEIN) AND MICHAEL J. GROBATY</p> |
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 20 TO PLAINTIFF AND HIS COUNSEL OF RECORD:
 21 PLEASE TAKE NOTICE that on April 22, 2005, at 10:00 a.m., or as soon thereafter as
 22 counsel may be heard in Department C of the above-entitled Court, located at 700 Civic Center
 23 Drive West, Santa Ana, CA 92701. Defendant Mark Klein, will and hereby does move this
 24 Court, pursuant to California *Code of Civil Procedure* Section 425.16 for an order striking
 25 Plaintiff's First and Second Causes of Action, and awarding this Defendant his attorneys' fees
 26 and costs in the sum of \$10,286.30 against Plaintiff OCM, Inc.


27 This Special Motion to Strike is made on the grounds that all the acts alleged against the
 28 Defendant in the First and Second causes of action were done by the moving party defendant in

1 furtherance of his right of free speech and right to petition the courts for redress of grievances
 2 under the California Constitution and the United States Constitution and Plaintiff cannot
 3 establish a probability of success on his claims.

4 This Special Motion to Strike is based upon the attached Memorandum of Points and
 5 Authorities, the accompanying declarations of Michael J. Grobaty and Mark Klein, all exhibits
 6 attached thereto filed concurrently herewith, all the pleadings, papers, records, and files in this
 7 case, on other matters of which judicial notice may be taken, and on such oral argument as may
 8 be presented to this Court at the hearing on this Motion.

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 10 DATED: March 22, 2005

JOHNSON & GROBATY

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 13 By: 
 14 Michael J. Grobaty, Esq.
 15 Attorneys for Defendant MARK KLEIN

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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

By filing this startling lawsuit, junkfaxer Plaintiff OCM, Inc. (hereinafter 'OCM') has launched a direct attack on the constitutional rights of moving party Defendant Mark Klein (hereinafter "Klein"), who he has victimized with his recent acts of illegal conduct. By filing this Anti-SLAPP motion, Klein respectfully asks this court to recognize OCM's lawsuit for exactly what it is--an unlawful attempt to dissuade Klein from exercising his constitutional right to free speech and to petition the government for redress of the wrongs perpetrated by OCM.

In its Complaint, OCM includes two causes of action for (1) Declaratory Relief and (2) Unfair Business Practices. As will be demonstrated below, Klein has received illegal junk faxes from OCM and has rightfully sued OCM in small claims court for these wilful violations of the federal Telephone Consumer Protection Act ("TCPA").¹ Since OCM's instant lawsuit seeks to punish and discourage Klein who for merely exercising his constitutional right of free speech and to petition the courts, this is precisely the type of action which is prohibited by California's Anti-SLAPP statute, *Code of Civil Procedure* Section 425.16.

While Klein can easily meet his burden to establish the applicability of the Anti-SLAPP statute, OCM cannot possibly meet its burden of establishing the probability of success on the merits. For the reasons set forth below, the instant Special Motion to Strike the First and Second Causes of Action of OCM's Complaint must be granted, and statutory attorneys' fees and costs should be awarded to Klein.

2. FACTUAL BACKGROUND

A. The Legitimate Small Claims Action Filed Against OCM, Inc. by Klein.

In 2004, Klein received illegal, unsolicited fax advertisements from OCM on two separate occasions. (Klein Decl., Pgh. 2); (True and correct copies of the fax advertisements are attached as Exhibits "A" and "B"). Upon receiving these illegal unsolicited faxes from OCM,

¹ See 47 U.S.C. Section 227(b)(1)(C). Section 227 was added to the Act by the Telephone Consumer Protection Act of 1991.

1 Klein exercised his constitutional right to petition the government for redress by filing a small
 2 claims action in Santa Clara Superior Court against OCM for its violations of the TCPA. (Klein
 3 Decl. Pgh. 3). Klein’s small claims action was filed in the venue where the illegal faxes were
 4 received and he successfully received a favorable judgment against OCM. (A true and correct
 5 copy of Klein’s Notice of Entry of Judgment against OCM is attached as Exhibit “C”).
 6 Thereafter, OCM appealed the small claim’s court judgment and has concurrently filed the
 7 instant baseless complaint in a direct attempt to chill Klein from exercising his constitutional
 8 rights of free speech and petition.

9 **3. THE ANTI-SLAPP STATUTE PROHIBIT PLAINTIFF’S DECLARATORY**
 10 **RELIEF AND UNFAIR BUSINESS PRACTICES CLAIMS**

11 **A. California’s Anti-SLAPP Statute.**

12 California *Code of Civil Procedure* Section 425.16(b)(1)² establishes a two-step process
 13 for determining whether to grant a defendant’s Anti-SLAPP Motion to Strike. First, the court
 14 decides whether the defendant has made a threshold *prima facie* showing that the cause of action
 15 arises “from any act...in furtherance of the...right of petition or free speech under the United
 16 States or California Constitution.” Section 425.16(b)(1); *Wilcox v. Superior Ct.* (1994) 27
 17 Cal.App.4th 809, 820. The California Supreme Court ruled that the right of petition
 18 encompasses the “basic act of filing litigation” for the purpose of determining the applicability of
 19 the anti-SLAPP statute. *Navellier v. Sletten* (2002) 29 Cal.4th. 82, 90.

20 To meet his burden under the Anti-SLAPP statute, Klein does not need to “establish [his]
 21 actions are constitutionally protected under the First Amendment as a matter of law,” but rather
 22 need only to make a *prima facie* showing that the suit “arises” from actions falling within one of
 23 the four categories enumerated in 425.16(e). *Wilcox*, 27 Cal. App. 4th at 820; *Braun v. Chronicle*
 24 *Publ’g Co.* (1997) 52 Cal. App. 4th 1036, 1043, 1048.

25 If the court finds that Klein has made such a showing, the burden shifts to the plaintiff to
 26

27
 28 ²References to California *Code of Civil Procedure* Section 425.16 will be cited in the text
 of the Motion as “Section 425.16”

1 demonstrate and substantiate with evidence, that there is a probability of success on the claim.
2 California *Code of Civil Procedure* Section 425.16(b)(1); *DuPont Merck Pharm. Co. v. Superior*
3 *Ct.* (2000) 78 Cal. App. 4th 562, 567-68; *Paul for Council v. Hanyecz* (2001) 85 Cal.App. 4th
4 1356, 1364. Significantly, to encourage “participation in matters of public significance,” the
5 Legislature has explicitly stated that Section 425.16 is to be construed broadly. *Code of Civil*
6 *Procedure* Section 425.16(a).

7 **B. The First Cause of Action for Declaratory Relief Violates Section 425.16**

8 The Anti-SLAPP statute is designed to quickly dispose of SLAPP suits that chill the valid
9 exercise of the constitutional rights of freedom of speech and right to petition for redress of
10 grievances. *Code of Civil Procedure* Section 425.16(a). As the court in *Dixon v. Superior Court*
11 explained, “SLAPP plaintiffs do not intend to win their suits; rather, they are filed solely for
12 delay and distraction, and to punish activists by imposing litigation costs on them for exercising
13 their constitutional right to speak.” *Dixon v. Superior Court* (1994) 30 Cal. App. 4th 733, 741.

14 OCM’s request for declaratory relief falls squarely within the purpose of the Anti-SLAPP
15 statute because it arises solely out of Klein’s act of filing litigation against it in Santa Clara small
16 claims court. (OCM Complaint pgs. 4-5). In essence, OCM is seeking to have this court
17 adjudicate an issue that has previously been adjudicated in Klein’s favor in the small claim’s
18 court. Such an abuse of process can only be construed as an unlawful attempt to limit Klein’s
19 constitutional right to file litigation.

20 As stated above, Klein’s act of filing litigation against OCM falls within the category of
21 constitutional right to petition enumerated by Section 425.16. See *Navellier* at p. 90. Since
22 OCM’s declaratory relief request challenges Klein’s constitutional right to petition, there is no
23 question Section 425.16 is applicable to this claim. Thus, the burden now shifts to OCM to
24 establish with evidence the probability that its request for declaratory relief will prevail on the
25 merits. It cannot do so.

26 **1. OCM’s request that the TCPA should not be applied in state court is**
27 **meritless**

28 In an attempt to hinder Klein’s act of filing litigation against it, OCM requests that this

1 court declare that it does not have jurisdiction to adjudicate matters under the TCPA. (OCM's
2 Complaint pgh. 9). Contrary to OCM's argument, the TCPA gives state courts exclusive
3 jurisdiction over private rights of action and limits federal court jurisdiction to civil actions to
4 enforce the TCPA brought by state attorneys general or the Federal Communications
5 Commission.³ *Id*; see 47 U.S.C. Section 227(b)(3); see also *Murphey v. Lanier*, 204 F.3d 911
6 C.A. (Cal) 2000 (holding that there is no private cause of action in federal court under the
7 TCPA).

8 Even if OCM alleged that California has the right to prevent its courts from hearing
9 private actions to enforce the TCPA's substantive rights, California has not exercised this right.
10 *Kauffman*, 110 Cal.App.4th at 897. California has never adopted a statute prohibiting private
11 TCPA actions in state court and its legislature has concluded that the sending of unsolicited fax
12 advertisements creates an action under the TCPA in state court. *Id.* at 905. The California
13 legislature, in a further attempt to eliminate any confusion regarding the applicability of the
14 TCPA in state court, repealed the *Business & Professions Code* Section 17538.4 restrictions on
15 unsolicited fax advertisements. *Kaufman*, 110 Cal.App.4th at 903.

16 Klein, as a recipient of an unsolicited facsimile advertisement from OCM, Inc., was
17 justified in bringing a private cause of action under the TCPA in California State Court. *Id.* at
18 905. Therefore, this Court has exclusive jurisdiction to adjudicate the instant matter under the
19 terms of the TCPA.⁴

20 **2. According to the TCPA, OCM is an Initiator of the unsolicited facsimile**
21 **transmissions sent to Klein**

22 OCM has incorrectly alleged that it is not the initiator of the facsimile transmissions sent
23

24
25 ³ "The legislative history and purpose of the TCPA support the view that Congress
26 intended to confer exclusive jurisdiction on state courts over private rights of action..." *Kaufman*
v. ACS Systems, Inc., (2003) 110 Cal.App.4th 886, 896.

27 ⁴OCM's claim for declaratory relief is an equitable remedy that cannot be adjudicated in
28 the instant court. *Code of Civil Procedure* Section 580(5) (Stating that a claim for declaratory
relief is not an available remedy in a limited civil case).

1 to Klein. According to 47 U.S.C. Section 227(b)(1)(c), it shall be unlawful for any entity to use a
2 telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile
3 machine.

4 OCM is liable under the instant code section because it used a third party agent to
5 transmit the unsolicited facsimile transmissions to Klein. *See California Civil Code* Section
6 2338; *see also Kaufman*, 110 Cal.App.4th at 910 (stating that the entity on whose behalf
7 facsimiles are transmitted are ultimately liable for compliance with the rule banning unsolicited
8 facsimile advertisements). When Klein received the unsolicited facsimile transmissions, he
9 called the toll free number located on the transmission at which time a third party answered and
10 directly transferred his call to an OCM representative. (Klein Decl. pgh. 3).

11 OCM is liable for the acts of its agents. As such, OCM's use of a third party agent makes
12 it liable under the TCPA.⁵ Therefore, this Court must declare that OCM was the initiator of two
13 unsolicited facsimile advertisements transmitted to Klein. 47 U.S.C. Section 227(b)(1)(c).

14 **3. OCM's request that this Court apply Business & Professions Code Section**
15 **17538.45 is spurious.**

16 Amazingly, OCM's attempt to limit Klein's constitutional right to petition includes
17 OCM's request that its present lawsuit be adjudicated pursuant to a state statute that has no
18 factual relevance to the instant matter. According to OCM, the applicable law to be applied is
19 *Business & Professions Code* Section 17538.45 which is a statute that provides for the regulation
20 of "unsolicited electronic mail advertisements."

21 Klein has never contended that he was the recipient of an unsolicited electronic mail
22 advertisement. He has only alleged that he was the recipient of two unsolicited facsimile
23 transmissions. (Klein Decl. pgh. 3). This statute contains no provisions regarding the sending of
24 unsolicited facsimile transmissions and as such provides this Court with no legal guidance. *See*
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26 ⁵OCM is not a "Facsimile Broadcaster" within the meaning of 47 C.F.R. Section 227.
27 At no time has Klein made this contention since the instant code's definition of "Facsimile
28 Broadcaster" is not applicable to OCM's role as the initiator of the facsimile transmissions. 47
C.F.R. Section 227(f)(4).

1 *Business & Professions Code* Section 17538.45.

2 In conclusion, the moving party Klein has established that OCM's lawsuit involves an
3 attack on his constitutional right to petition the courts for redress of grievances. As such, Section
4 425.16 is applicable to the First Cause of Action for Declaratory Relief. Likewise, Klein has
5 demonstrated that Plaintiff cannot meet its burden of establishing the probability of success on its
6 request for Declaratory Relief. As a result, this Court must grant this Special Motion to Strike
7 the First Cause of Action for Declaratory Relief pursuant to Section 425.16.

8 **C. The Second Cause of Action for Unfair Competition Violates Section 425.16**

9 The Plaintiff's Second Cause of Action for Unfair Competition under *Business &*
10 *Professions Code* Section 17200 alleges that Klein is in the business practice of filing frivolous
11 lawsuits against defendants who did not initiate a facsimile transmission within the meaning of
12 *Business & Professions Code* Section 17538.45 and has made a business practice of filing suits
13 under the federal law in state court in an attempt to make a profit. (OCM's Complaint pgh. 13).
14 OCM further contends that Klein waived his rights by providing pertinent personal information
15 to a third party so as to allow the third party to sell the mortgage lead to OCM. (OCM's
16 Complaint pgh. 14). As will be discussed below, these claims, and others, attack Klein's
17 constitutional right to petition thereby invoking the protections of the ANTI-SLAPP statute.
18 Likewise, it will be demonstrated that OCM cannot prove the probability of success on these
19 spurious allegations.

20 The Anti-SLAPP statute is applicable to any conduct "in furtherance of the exercise of the
21 constitutional right of petition or the constitutional right of free speech in connection with a
22 public issue or an issue of public interest." *Code of Civil Procedure* Section 425.16(e).

23 As stated above, Klein's act of filing litigation falls within the category of constitutional
24 right to petition enumerated by Section 425.16. See *Navellier* at p. 90. Since the entire Second
25 Cause of Action is premised on Klein's act of filing litigation against OCM, there is no question
26 Section 425.16 is applicable to this claim.

27 Thus, the burden now shifts to OCM to establish the probability of success on its Unfair
28 Competition cause of action. It cannot do so.

1 OCM's unfair business practice claim alleges that Klein's small claims action was a
2 frivolous lawsuit filed for the purpose of extorting money from OCM. (OCM's Complaint pgs.
3 13, 15). OCM, however, omits the material fact that Klein received a favorable judgment against
4 it in Santa Clara small claim's court and was awarded \$2500.00 in damages. (See Exhibit "C").
5 Klein received its favorable judgment even after OCM was given a full opportunity to contest its
6 liability. (Klein Decl. pgh. 4).

7 OCM is now asking this Court to accept its contention that Klein's act of initiating a
8 lawsuit in which he ultimately received a favorable judgment is an unfair business practice. The
9 Court must not accept this meritless argument.

10 For all the above reasons, the Second Cause of Action violates the California Anti-
11 SLAPP statute. This Special Motion to Strike the Second Cause of Action for Unfair Business
12 practices pursuant to Section 425.16 must be granted.

13 **4. THE DEFENDANTS ARE ENTITLED TO ATTORNEYS' FEES AND COSTS**
14 **IF THEY PREVAIL ON THIS MOTION.**

15 If the court grants this Special Motion to Strike, the Anti-SLAPP statute requires this
16 court to award the Defendants attorneys' fees and costs. *Code of Civil Procedure* Section
17 425.16(c) states: "In any action subject to subdivision (b), a prevailing defendant on a special
18 motion to strike shall be entitled to recover his or her attorneys' fees and costs."

19 As set forth in the accompanying declaration attorney Michael J. Grobaty, the defendants
20 will have incurred attorneys' fees in the sum of \$10,250.00 in connection with the preparation,
21 filing and argument of this Motion, and reply brief. Furthermore, the defendant has incurred
22 \$36.30 in costs in filing a responsive pleading in this action. Consequently, upon granting the
23 instant special motion to strike, the court should award defendants attorneys' fees and costs
24 against Plaintiff O.M., Inc. in the total sum of \$10,286.30.

25 **5. CONCLUSION**

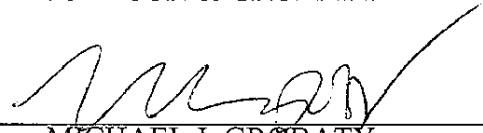
26 As demonstrated above, OCM's Complaint is a quintessential SLAPP suit. In its First
27 Cause of Action, OCM is not only attempting to convince this Court that it does not have
28 jurisdiction under the TCPA but that it should apply a Business & Professions Code that has no

1 factual relevance. In response, Klein has proven that this Court has jurisdiction to decide this
 2 matter under the TCPA . With his Second Cause of Action, OCM alleges that Klein's lawsuit is
 3 frivolous and initiated solely to extort money. Incredibly, OCM makes this argument after Klein
 4 received a favorable verdict in Santa Clara Small Claims Court.

5 For all the reasons set forth herein, the court should grant this Special Motion to Strike
 6 the First and Second Causes of Action in OCM's complaint, and award the moving party
 7 defendants attorneys' fees and costs in the sum of \$10,286.30.

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 9 DATED: March 22, 2005

JOHNSON & GROBATY

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 11 By: 
 12 MICHAEL J. GROBATY,
 Attorneys for Defendant MARK KLEIN

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DECLARATION OF MARK KLEIN

I, Mark Klein, do declare as follows:

1. I am the Defendant in the within action and am over the age of eighteen. I have personal, first hand knowledge of all facts contained in this declaration, and could competently testify thereto if called upon to do so.

2. Prior to receiving the unsolicited facsimile transmissions, I never maintained an existing business or personal relationship with OCM or the third party that sent me the facsimile transmissions.

3. In 2004, I received illegal, unsolicited fax advertisements from OCM on two separate occasions. I did not request or consent to receiving the instant facsimile transmissions. After I received the unsolicited facsimile transmissions, I called the toll free number located on the transmission at which time a third party answered and directly transferred my call to an OCM representative.

4. After receiving these illegal unsolicited faxes from OCM, I exercised my constitutional right to petition the government for redress by filing a small claims action in Santa Clara Superior Court against OCM for its violations of the TCPA. I filed the small claims action in the venue where the illegal faxes were received. Although OCM opposed my small claims action, I received a favorable judgment against OCM.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 18 day of March, 2005 at LOS ALTOS, California.



MARK KLEIN

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DECLARATION OF MICHAEL J. GROBATY

I, Michael J. Grobaty, do declare as follows:

1. I am an attorney at law duly licensed to practice before all courts in the State of California. I am attorney of record for Defendant Mark Klein in the within action.

2. I have personal, firsthand knowledge of all facts within this declaration and could competently testify thereto if called upon to do so.

3. I have been an attorney and practiced law in California for 18 years, and am a founding member of the law firm of Johnson & Grobaty. My standard hourly rate is \$250 per hour, which is the rate I am charging the defendants for representing them in this action. According to *Code of Civil Procedure* Section 425.16(c), if the defendant prevails in this Motion, he will be entitled to a recovery of attorneys' fees and costs.

4. In connection with researching, preparing and filing the instant motion I have spent 33 hours of time to date. I anticipate spending another 2 hours reviewing the opposition and preparing a reply brief. I also anticipate spending another 3 hours preparing for and attending oral argument on this matter. Thus, by the time this motion has been argued, my client will have incurred the sum of \$10,250.00 in attorneys fees.

5. The defendant has incurred substantial costs in connection with having to defend this litigation. The fee for filing the instant motion was \$36.30.

6. Based on the above, if the defendant prevails on this Motion, we seek an award of attorneys' fees in the sum of \$10,250.00, and an award of costs in the sum of \$36.30. The total of the fees and costs amount to \$10,286.30.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22nd day of March, 2005, at Newport Beach, California.



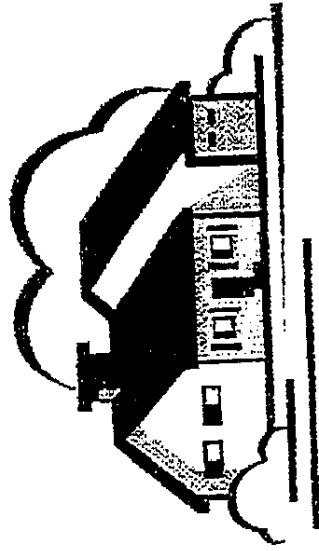
MICHAEL J. GROBATY

EXHIBIT A

Lowest Rates in 45 Years

Interest Only 15 Year Fixed 30 Year Fixed
3.5% **4.75%** **5.25%**
APR 4.84% APR 4.94% APR 5.48%

ARM
1.25%
APR 4.84%



- | Amount | Payment |
|-----------------|-----------|
| • \$200,000 ⇒ | \$666.50 |
| • \$300,000 ⇒ | \$999.50 |
| • \$500,000 ⇒ | \$1666.25 |
| • \$800,000 ⇒ | \$2666 |
| • \$1,000,000 ⇒ | Call Us |

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*Upon Receipt of full package.

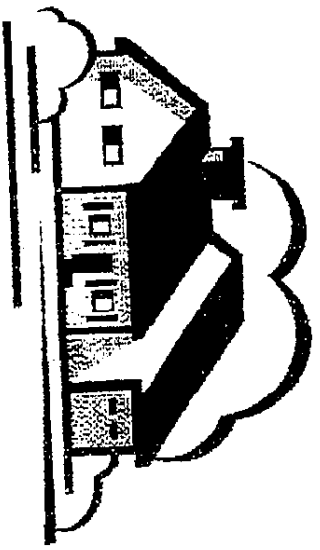
To be removed from our database call toll free at 1-877-407-3448

EXHIBIT B

Lowest Rates in 45 Years

| ARM | Interest Only | 15 Year Fixed | 30 Year Fixed |
|---------------------------|---------------|---------------------------|---------------------------|
| 1.25% APR 4.84% | 3.5% | 4.75% APR 4.94% | 5.25% APR 5.49% |

- Amount Payment
- \$200,000 ⇒ \$666.50
 - \$300,000 ⇒ \$999.50
 - \$500,000 ⇒ \$1,666.25
 - \$800,000 ⇒ \$2,666
 - \$1,000,000 ⇒ Call Us



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"I thought no one could help me with my credit score below 480, but they helped me refinance and pay off my bills!"

R. Harris, CA

Commercial Loans

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- Jumbo Loans? Great rates!
- Get Cash > Pay off your Bills
- 5 minute Pre Approval
- 10 day loan close*

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*Upon Receipt of full package.

For New Purchase Quotes
800.642.3419

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA, SMALL CLAIMS DIVISION

Department 86, 270 Grant Avenue, Palo Alto, CA 94306 (650)462-3800

SMALL CLAIMS CASE NO.: 2-04-SC-001606

NOTICE TO ALL PLAINTIFFS AND DEFENDANTS: Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the back of this sheet for important information about your rights. AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS: Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea el reverso de este formulario para obtener informacion de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE (Name, street address, and telephone number of each):

Klein Mark

1192 St Anthony Ct Los Altos, CA 94024

Telephone No.:

DEFENDANT/DEMANDADO (Name, street address, and telephone number of each):

Ocm Mortgage Corporation

2700 N. Main St #105 Santa Ana, CA 92705

Telephone No.:

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered as checked below on (date): 11/4/04

- 1. [X] Defendant (name, if more than one): shall pay plaintiff (name, if more than one): \$2500.00 principal and: \$ 111.00 costs on plaintiff's claim. 2. [] Defendant does not owe plaintiff any money on plaintiff's claim. 3. [] Plaintiff (name, if more than one): shall pay defendant (name, if more than one): \$ principal and: \$ costs on defendant's claim. 4. [] Plaintiff does not owe defendant any money on defendant's claim. 5. [] Possession of the following property is awarded to plaintiff (describe property): 6. [] Payments are to be made at the rate of: \$ per (specify period): , beginning on (date): and on the (specify day): day of each month thereafter until paid in full. If any payment is missed, the entire balance may become due immediately. 7. [] Dismissed in court [] with prejudice. [] without prejudice. 8. [] Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment) (form SC-132) is attached. 9. [] Other (specify): 10. [] This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle. If the judgment is not paid, the judgment creditor may apply to have the judgment debtor's driver's license suspended. 11. Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided. 12. [] This notice was personally delivered to: [] Plaintiff [] Defendant 13. CLERK'S CERTIFICATE OF MAILING -- I certify that I am not a party to this action. This Notice of Entry of Judgment was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below. [X] Plaintiff [X] Defendant

Place of mailing:

Palo Alto, California

Date of mailing: 11/4/04

Clerk, by [Signature], Deputy

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California, I am over the age of 18 years and not a party to the within action; my business address is 4299 MacArthur Boulevard, Suite 215, Newport Beach, California 92660.

On this date I served the foregoing document described as:

NOTICE OF SPECIAL MOTION AND SPECIAL MOTION TO STRIKE THE FIRST AND SECOND CAUSES OF ACTION OF COMPLAINT PURSUANT TO CCP SECTION 425.16; REQUEST FOR ATTORNEYS' FEES AND COSTS AGAINST OCM, INC. IN THE SUM OF \$10,286.30; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MARK KLEIN AND MICHAEL J. GROBATY

Said document was served on the interested party or parties in this action by placing a true copy thereof, enclosed in a sealed envelope, and addressed as noted below.

I am familiar with our firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one working day after the date of deposit for mailing in this declaration.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 22, 2005**, at Newport Beach, California.


JUANITA NGUYEN

| MAILING LIST | |
|--|--|
| CASE NAME | : OCM, Inc., v. Mark Klein |
| COURT | : O.C.S.C. - CENTRAL JUSTICE CENTER |
| CASE NO. | : CASE NO.: 05CL00301 |
| Sunil A. Brahmhatt, Esq. LAW OFFICES OF SUNIL A. BRAHMBHATT, PLC. 2700 North Main Street, Suite 945 Santa Ana, California 92705 | Attorneys for Plaintiff Telephone: (714)285-1092 Facsimile: (714) 285-2349 |