

1 Jeffrey H. Lowenthal (SBN: 111763)  
2 Carlos A. Alvarez (SBN: 143839)  
3 Steyer Lowenthal Boodrookas  
4 Alvarez & Smith LLP  
5 One California Street, Third Floor  
6 San Francisco, California 94111  
7 Telephone: (415) 421-3400  
8 Facsimile: (415) 421-2234

9 Robert W. Biederman (SBN: 177321)  
10 Hubbard & Biederman, LLP  
11 1717 Main Street, Suite 4700  
12 Dallas, Texas 75201  
13 Telephone: (214) 857-6000

14 Richard B. Podoll  
15 Robert A. Kitsmiller  
16 Podoll & Podoll, P.C.  
17 Terrace Tower II  
18 5619 DTC Parkway, Suite 1100  
19 Greenwood Village, CO 80111-306  
20 Telephone: (303) 861-4000

21 Attorneys for Plaintiffs  
22 Daniel C. Silva, Larry Mattison,  
23 and the Classes Certified by the Court

**FILED**  
SAN MATEO COUNTY

AUG 30 2006

Clerk of the Superior Court  
By L. GUERRERO  
DEPUTY CLERK

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN MATEO**

18 DANIEL C. SILVA AND LARRY  
19 MATTISON,

20 Plaintiffs,

21 vs.

22 PROVIDENT FUNDING ASSOCIATES,  
23 L.P., PROVIDENT FUNDING GROUP,  
24 INC., and DOES 1 through 50, inclusive,

25 Defendants.

) CASE NO. CIV 443418

) CLASS ACTION

) ORDER GRANTING PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION

) DATE: June 5, 2006

) TIME: 9:00 a.m.

) DEPT.: 7

) JUDGE: Hon. Steven L. Dylina

) Trial: None Set

1 Plaintiffs Daniel C. Silva and Larry Mattison ("Plaintiffs") having filed moving and  
2 reply papers in support of their motion for class certification, Defendants Provident Funding  
3 Associates, L.P. and Provident Funding Group, Inc. (hereinafter collectively referred to as  
4 "Provident" or "Defendants"), having filed papers in opposition to that motion, the matter  
5 came on regularly for hearing before this Court on June 5, 2006, at 9:00 a.m., in Department 7,  
6 the Honorable Steven L. Dylina presiding. After consideration of the moving, opposition, and  
7 reply papers filed in connection with the above motion, the matter having been argued, and  
8 oral and documentary evidence having been received, and proof having been made to the  
9 satisfaction of the Court,

10 THIS COURT FINDS THAT:

- 11 1. To certify a class, there must be an ascertainable class and a well-defined  
12 community of interest. *See, e.g., Vasquez v. Superior Court*, 4 Cal.3d 800  
13 (1971); Cal. Code of Civil Procedure ("CCP"), § 382, and Civil Code ("CC") §  
14 1781(b).
- 15 2. Plaintiffs have established that there is an ascertainable class and a well-defined  
16 community of interest.
- 17 3. The class, as defined below, is ascertainable, within the meaning of CCP § 382  
18 and CC § 1781(b)(1). The class is numerous, and it is impracticable to bring  
19 the individual class members before the Court. *See Reyes v. Board of*  
20 *Supervisors of San Diego County*, 196 Cal. App.3d 1263 (1987).
- 21 4. There are essentially three factors for a well-defined community of interest:  
22 Class representatives must have the same interests as other members of the  
23 class; class representatives will fairly represent the class, and questions of law  
24 or fact common to the class are substantially similar and will predominate over  
25 questions affecting the individual members within the class. *See* CCP § 382 and  
26 CC § 1781(b). Plaintiffs satisfy all these factors.
- 27 5. The claims of Plaintiffs are typical of the claims or defenses of the class, as  
28 defined below, as prescribed by CCP § 382 and CC § 1781(b)(3).

- 1           6.     Plaintiffs and Plaintiffs' Counsel Steyer Lowenthal Boodrookas Alvarez &  
2                 Smith, LLP; Hubbard & Biederman, LLP, and Podoll & Podoll, PC will fairly  
3                 and adequately protect the interests of the class, as defined below, as required  
4                 by CCP § 382 and CC § 1781(b)(4). *See also Richmond v. Dart Indus., Inc.*, 29  
5                 Cal.3d 462 (1981).
- 6           7.     The questions of law or fact common to the class are substantially similar and  
7                 predominate over the questions affecting the individual members within the  
8                 meaning of CCP § 382 and CC § 1781(b)(2).
- 9           8.     As to issues of law that predominate, Plaintiffs have satisfied their burden under  
10                *Washington Mutual Bank v. Superior Court*, 24 Cal.4th 906 (2001) that it is  
11                constitutional to apply the law of California to the claims of the class. Because  
12                Plaintiffs have satisfied their burden, the burden shifts to Defendants that  
13                California law should not be applied to this action, and Defendants have failed  
14                to carry that burden. Moreover, the Court specifically rejects Defendants'  
15                position that the choice of law provision in the deed of trust applies to the  
16                claims of the class.
- 17           9.     As to the issues of fact that predominate, the Court finds that at least three  
18                common issues predominate; namely, Defendants' alleged use of defective  
19                payment coupons and envelopes; Defendants' purported failure to implement a  
20                system to determine when payments were received; and Defendants' alleged  
21                failure to credit a borrower's monthly payment by at least the last day of the  
22                grace period in the notes that was received on or before the last day of the grace  
23                period.

24           IT IS THEREFORE ORDERED THAT the motion of Plaintiffs Daniel C. Silva and  
25     Larry Mattison for an order certifying the class in the above-entitled action under is  
26     GRANTED as to four claims asserted in the Second Amended Complaint; namely, Cal. Bus. &  
27     Prof. Code § 17200 et seq., CC § 1750 et seq., breach of contract, and breach of implied  
28     covenant of good faith and fair dealing.

1 IT IS FURTHER ORDERED THAT the following Class is certified: those persons  
2 who between November 30, 2000, and July 14, 2005 sent payment by mail to the Los Angeles  
3 processing facility that Provident has used to process note payments, and were assessed or paid  
4 late charges. This Class contains the following subclasses: (i) those persons whose promissory  
5 notes were secured by their primary residence and who between February 2001 and April 2004  
6 sent payment to Provident by mail to the Los Angeles processing facility, using the coupon and  
7 envelope provided to them, and who were assessed or paid late charges; (ii) those persons  
8 whose promissory notes were secured by property other than their primary residence and who  
9 between February 2001 and April 2004 sent payment to Provident by mail to the Los Angeles  
10 processing facility, using the coupon and envelope provided to them, and who were assessed or  
11 paid late charges-this subclass does not include claims under CC § 1750 et seq.; (iii) those  
12 persons whose promissory notes were secured by their primary residence and who between  
13 November 30, 2000, and July 14, 2005, sent payment by mail to the Los Angeles processing  
14 facility, and were assessed or paid late charges; and (iv) those persons whose promissory notes  
15 were secured by property other than their primary residence and who between November 30,  
16 2000 and July 14, 2005, sent payment by mail to the Los Angeles processing facility, and were  
17 assessed or paid late charges-this subclass does not include claims under CC § 1750 et seq.  
18 Excluded from the Class are all persons (i) whose monthly payments that resulted in the  
19 assessment of a late charge were not mailed before the last day of the grace period set forth in  
20 their promissory notes; (ii) whose monthly payments prior to February 2001 and after April  
21 2004 that resulted in the assessment of a late charge were processed more than one day after  
22 the last day of the grace period set forth in their promissory notes; (iii) whose late charges were  
23 waived by Provident prior to June 5, 2006; (iv) whose monthly payments that resulted in the  
24 assessment of a late charge were in an amount less than the full amount of the monthly  
25 principal and interest set forth in their notes; (v) whose monthly payment of principal and  
26 interest included a late charge payment for that month; (vi) who are legal representatives,  
27 officers, directors, employees, assigns and successors of Provident or any of their affiliates,  
28 subsidiaries, or parents; and (vi) who are the presiding and any appellate judges in this case,

1 and all relatives of these judges within the third degree of consanguinity. Notwithstanding  
2 anything to the contrary in connection with the above exclusions from the Class, any Class  
3 Member who has been assessed multiple late charges some of which are not subject to any  
4 exclusion, is a Class Member to the extent of such non-excluded late charges.

5 IT IS FURTHER ORDERED THAT Plaintiffs Daniel C. Silva and Larry Mattison are  
6 certified as representatives of the Class. Daniel C. Silva is certified as the representative of  
7 each subclass that involves promissory notes secured by the primary residence of the borrower,  
8 and Daniel C. Silva and Larry Mattison are certified as the representative of each subclass that  
9 involves promissory notes secured by property other than the borrower's primary residence.

10 IT IS FURTHER ORDERED that Plaintiffs' Counsel Steyer Lowenthal Boodrookas  
11 Alvarez & Smith LLP, Hubbard & Biederman, LLP and Podoll & Podoll, P.C. are certified as  
12 counsel for the Class and each subclass.

13 IT IS FURTHER ORDERED that Plaintiffs shall prepare a Notice to the Class in  
14 conformity with CC §1781(e) and submit that Notice to the Court for approval within thirty  
15 (30) days of the entry of this Order.

16 AUG 30 2006

STEVEN L. DYLINE

17 Dated: August \_\_\_\_\_, 2006

18 Honorable Steven L. Dylina  
19 Judge of the Superior Court

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