Hearing Date and Time: March 22, 2016 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: February 24, 2016

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered
Shelley von Brincken,	Adv. Case No. 13-01436 (MG)
Plaintiff,	
v.	
GMAC Mortgage, LLC, or assignee, ETS Services, LLC, Ocwen Loan Servicing, LLC, and Does 1-20,	
Defendants.	

JOINT MOTION OF RESCAP LIQUIDATING TRUST AND RESCAP BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(6) AND (II) DISALLOWANCE OF PROOF OF CLAIM NUMBER 441 FILED BY PLAINTIFF

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The ResCap Liquidating Trust (the "Liquidating Trust"), as successor in interest to Defendants GMAC Mortgage, LLC ("GMACM") and Executive Trustee Services, LLC ("ETS" and, together with GMACM, the "Debtor Defendants"), each a debtor and debtor-in-possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors in possession, the "Debtors") and the ResCap Borrower Claims Trust (the "Borrower Trust" and, together with the Liquidating Trust, the "ResCap Trusts"), submit this joint motion (the "Motion") to (i) dismiss the above-referenced adversary proceeding (the "Adversary Proceeding") commenced by *pro se* plaintiff Shelley von Brincken ("Plaintiff") for failure to state a claim upon which relief can be granted and to (ii) disallow proof of claim number 441 (the "Proof of Claim") filed by Plaintiff. In support hereof, the ResCap Trusts submit the Declaration of Kathy Priore, dated January 25, 2016 (the "Priore Decl."), attached hereto as Exhibit 1, and respectfully represent:

I. PRELIMINARY STATEMENT

1. The Plaintiff's Adversary Proceeding should be dismissed under principles of res judicata and collateral estoppel. Each of the claims asserted in this action arise out of Plaintiff's allegations that GMACM wrongfully foreclosed on her mortgage loan. Those claims have already been litigated and dismissed by the U.S. District Court for the Eastern District of California (the "California District Court"). Plaintiff seeks to avoid the preclusive effect of the California District Court's prior ruling by arguing that her claims are based on GMACM's alleged violation of the FRB Consent Order (defined below). However, Plaintiff has no private right to enforce that judgment against GMACM, and her creative attempts to plead new legal theories cannot escape the fact that a court of competent jurisdiction has already conclusively determined that GMACM's foreclosure was not improper. Thus, Plaintiff is barred under

principles of res judicata and collateral estoppel from asserting any additional claims sounding in wrongful foreclosure against the same defendants before this Court. Accordingly, the Adversary Proceeding should be dismissed pursuant to FRCP 12(b)(6) for failure to state a claim upon which relief can be granted.

2. In addition, to the extent the Court dismisses the Adversary Proceeding, the Proof of Claim, which is based on the same underlying allegations regarding GMACM's wrongful foreclosure asserted in the Adversary Proceeding, should be disallowed and expunged from the Claims Register (defined below).

II. JURISDICTION AND VENUE

3. The Court has jurisdiction over this Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Pursuant to Rule 7012-1 of the Local Rules of Bankruptcy Procedure, the ResCap Trusts consent to the entry of final orders or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. § 1409. The statutory predicates for the relief sought herein are section 502(b) of the Bankruptcy Code and Bankruptcy Rules 3007 and 7012.

III. BACKGROUND

A. General Bankruptcy Case Background

(i) General Overview

4. On May 14, 2012, each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

5. At the time the Debtors filed these Chapter 11 cases, Residential Capital, LLC ("ResCap") and GMACM were parties to a Consent Order dated April 13, 2011 with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the "FRB Consent Order"). See Priore Decl. at ¶ 6.

6. On November 21, 2012, this Court entered an order approving the sale of the Debtors' mortgage loan servicing platform to Ocwen Loan Servicing, LLC ("Ocwen").[1]

7. On February 15, 2013, the Ocwen sale closed.

8. On December 11, 2013, the Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the "Confirmation Order") approving the terms of the Chapter 11 plan, as amended (the "Plan"), filed in these Chapter 11 Cases [Docket No. 6065]. On December 17, 2013, the Effective Date (as defined in the Plan) of the Plan occurred, and, among other things, the Borrower Trust and the ResCap Liquidating Trust were established [Docket No. 6137].

9. The Plan provides for the creation and implementation of the Liquidating Trust, which, among other things, is "authorized to make distributions and other payments in accordance with the Plan and the Liquidating Trust Agreement" and is responsible for the wind down of the affairs of the Debtors' estates. See Plan, Art. VI.A-D; see also Confirmation Order ¶ 22. Pursuant to the Confirmation Order and the Plan, the Liquidating Trust was vested with

[1] See *Order under 11 U.S.C. §§ 105, 363, and 365 and Fed. Bankr. P. 2002, 6004, 6006, and 9014 (I) Approving (A) Sale of Debtors' Assets Pursuant to Asset Purchase Agreement with Ocwen Loan Servicing, LLC; (B) Sale of Purchased Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Thereto; (D) Related Agreements; and (II) Granting Related Relief* [Docket No. 2246].

broad authority over the post-confirmation liquidation and distribution of the Debtors' assets. See generally, Confirmation Order ¶¶ 26, 30, 48; Plan, Art. VI.

10. The Plan also provides for the creation and implementation of the Borrower Trust, which is established for the benefit of Borrowers who filed Borrower Claims (as such terms are defined in the Plan) to the extent such claims are ultimately allowed either through settlement or pursuant to an order of the Court. See Plan, Art. IV.F. The Borrower Trust was established to, among other things, "(i) direct the processing, liquidation and payment of the Allowed Borrower Claims in accordance with the Plan, and the distribution procedures established under the Borrower Claims Trust Agreement, and (ii) preserve, hold, and manage the assets of the Borrower Claims Trust for use in satisfying the Allowed Borrower Claims." See id.

(ii) Claim Specific Background

11. On May 16, 2012, the Court entered an order [Docket No. 96] appointing Kurtzman Carson Consultants LLC ("KCC") as the notice and claims agent in these Chapter 11 Cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these Chapter 11 Cases and (b) maintain the official claims register for the Debtors (the "Claims Register").

12. On August 29, 2012, this Court entered an order approving the Debtors' motion to establish procedures for filing proofs of claim in the Chapter 11 Cases [Docket No. 1309] (the "Bar Date Order").[2]

[2] The Bar Date Order established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (the "General Bar Date") and prescribing the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the "Governmental Bar Date"). Bar Date Order ¶¶ 2, 3. On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Docket No. 2093]. The Governmental Bar Date was not extended.

13. On March 21, 2013, the Court entered an order (the "Procedures Order") [Docket No. 3294] approving, among other things, certain procedures to be applied in connection with objections to claims filed by current or former borrowers (collectively, the "Borrower Claims," and the procedures relating thereto, the "Borrower Claims Procedures"). The Procedures Order includes specific protections for borrowers and sets forth a process for the Debtors to follow before objecting to certain categories of Borrower Claims. For example, the Borrower Claims Procedures require that, prior to objecting to certain categories of borrower claims, individual borrowers must be furnished with a letter requesting additional documentation in support of the purported claim (a "Request Letter"). (See Procedures Order at 4).

14. On June 21, 2013, the Debtors sent Plaintiff a Request Letter pursuant to the Borrower Claims Procedures. See Priore Decl. at ¶ 20.

B. Events Giving Rise to the Adversary Proceeding

(i) Origination and Foreclosure of Plaintiff's Loan

15. Plaintiff was a borrower under a mortgage loan (the "Loan") that was originated by Mortgageclose.com, Inc. ("Lender") on or about January 14, 2009. See Priore Decl. at ¶ 7. The Loan was evidenced by a note in the amount of $220,000.00 (the "Note"), which was secured by real property located at 14738 Wolf Rd., Grass Valley, California 95949 (the "Property") pursuant to a deed of Trust (the "Deed of Trust") executed contemporaneously with the Note. Id. Non-Debtor GMAC Bank purchased the loan from Lender. GMACM purchased the loan from GMAC Bank and transferred its interest to the Federal National Mortgage Association ("Fannie Mae"). Id.

16. As a result of Plaintiffs' continuing default under the Loan, GMACM, acting in its capacity as servicer on behalf of Fannie Mae, initiated a non-judicial foreclosure

with respect to the Property. See Priore Decl. at ¶ 8. The trustee's sale occurred on August 31, 2010, where Fannie Mae was the successful bidder for the Property. Id.

17. On February 15, 2013 servicing of the Property was transferred to Ocwen. See Priore Decl. at ¶ 9.

18. Upon information and belief, on September 20, 2013, Fannie Mae sold the Property to a third party, Wolf Creek Associates. See Priore Decl. at ¶ 10.

(ii) Plaintiff's Prior Litigation Against the Debtor Defendants

(a) Plaintiff's 2010 Action

19. On August 10, 2010, Plaintiff, acting *pro se*, filed a complaint in the California District Court, Case No. 2:10-cv-2153 (the "2010 Action"), against Lender and Debtor ETS asserting nonspecific claims arising out of allegations of predatory lending, fraud, and wrongful foreclosure. See Priore Decl. at ¶ 11.

20. On September 1, 2010, Plaintiff filed an amended complaint adding GMACM as a defendant to the 2010 Action. See Priore Decl. at ¶ 12.

21. On February 16, 2011, Plaintiff filed a second amended complaint (the "Second Amended 2010 Complaint") in the 2010 Action with the assistance of counsel. See Priore Decl. at ¶ 13. The Second Amended 2010 Complaint asserted claims for: violations of HOEPA, RESPA, TILA, and the Fair Credit Reporting Act; fraudulent misrepresentation; breach of fiduciary duties; unjust enrichment; civil conspiracy; civil RICO violations; quiet title; usury and fraud; wrongful foreclosure; and breach of security instrument.

22. On June 30, 2011, the California District Court entered an order (the "2010 Dismissal Order") dismissing all counts of the Second Amended 2010 Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). See Priore Decl. at ¶ 14.

23. Pursuant to Rule 4 of the Federal Rules of Appellate Procedure, the time to appeal the dismissal of the 2010 Action expired on July 30, 2011. FED. R. APP. P. 4(a)(1)(A). Plaintiff did not appeal the dismissal of the 2010 Action. See Priore Decl. at ¶ 15.

(b) Plaintiff's 2012 Action

24. On June 25, 2012, Plaintiff filed a complaint (the "FDCPA Complaint") in the California District Court, Case No. 2:12-cv-1689 (the "FDCPA Action"), against GMACM, MERS, Fannie Mae, and Fannie Mae's counsel in the Unlawful Detainer Action, Pite Duncan LLP. See Priore Decl. at ¶ 16. The complaint asserted claims for violations of the federal Fair Debt Collection Practices Act based upon the foreclosure of Plaintiff's Loan.

25. On February 21, 2013, District Court dismissed the FDCPA Complaint on all counts against all defendants upon a finding that Plaintiff failed to show: (1) that the defendants were debt collectors within the meaning of the FDCPA, and (2) that the defendants engaged in debt collection activity.[3] See Priore Decl. at ¶ 17.

26. Pursuant to Rule 4 of the Federal Rules of Appellate Procedure, the time to appeal the dismissal of the FDCPA Action expired on March 23, 2013. FED. R. APP. P. 4(a)(1)(A). Plaintiff did not appeal the dismissal of the FDCPA Action. See Priore Decl. at ¶ 18.

C. The Adversary Proceeding

27. On August 26, 2013, Plaintiff filed a complaint (the "Initial Adversary Complaint") initiating the Adversary Proceeding [AP Docket No. 1].

[3] GMACM took the position that the FDCPA Action was stayed with respect to claims asserted against it in light of the pending Chapter 11 Cases, but also filed and joined in other parties' motions to dismiss the action. The magistrate judge took note of this apparent inconsistency, but determined that it need not resolve the inconsistency because the bases upon which Pite Duncan moved to dismiss the complaint applied equally to all defendants. See Priore Decl. at ¶ 17 n. 2.

28. On January 21, 2014, Plaintiff filed a motion to amend the Initial Adversary Complaint [AP Docket No. 13].

29. On January 24, 2014, the Court entered order granting Plaintiff's motion to amend the Initial Adversary Complaint and directing that an amended complaint be filed within 30 days [AP Docket No. 14].

30. On February 21, 2014, Plaintiff filed an amended adversary complaint [AP Docket No. 15] (the "Amended Adversary Complaint").[4]

31. The Amended Adversary Complaint asserts claims arising out of GMACM's alleged violation of the FRB Consent Order based on Plaintiff's assertions that: (a) Plaintiff was not in default under her Loan when the foreclosure took place (Amended Adversary Complaint, ¶ 15); (b) Plaintiff did not receive adequate notice of the mortgage default as required under claimant's "contract" (id.); and (c) GMACM used false instruments to foreclose on the Property (id. at ¶ 16). In connection with these claims, Plaintiff is seeking "the entire value of her home" and costs of suit. Id. at p. 8.

D. The Proof of Claim

32. On August 27, 2012, Plaintiff filed the Proof of Claim, asserting a secured claim against GMAC Mortgage in the amount of $186,940.72 (which was the amount Fannie Mae paid for the Property at the trustee's sale). See Exhibit O to Priore Decl. The Proof of Claim describes the basis for the claim as "Debt Instrument 'Deed of Trust'" and attaches a copy of the Deed of Trust and limited correspondence from GMAC Mortgage regarding the Loan as the only support for the claim. See id.

[4] The Amended Adversary Complaint was docketed on February 25, 2014.

33. Plaintiff supplemented the Proof of Claim by a response to the Request Letter, which was received by the Debtors on July 22, 2013 (the "Response Letter"). See Priore Decl. at ¶ 17. The Response Letter states that the Proof of Claim "is filed based upon a fraudulent and unlawful non-judicial foreclosure that was commenced on the [Property] by GMAC Mortgage, LLC on September 3, 2010." See Exhibit P to Priore Decl.

IV. ARGUMENT

A. The Adversary Proceeding Should Be Dismissed Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6)

34. Bankruptcy Rule 7012 incorporates by reference Rule 12(b)-12(i) of the Federal Rules of Civil Procedure ("FRCP"). FRCP 12(b) provides that a party may assert specified defenses by motion, including lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim upon which relief can be granted, and that a motion asserting any of these defenses may be made before pleading. The Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

(i) Legal Standard

35. FRCP 12(b)(6) permits dismissal of an action for failure to state a claim upon which relief can be granted. For FRCP 12(b)(6) purposes, a court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). The sole issue raised by a motion to dismiss pursuant to FRCP 12(b)(6) is whether the facts pleaded, if established, would support a claim for relief. Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). If as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," a claim must be dismissed. Id. at 327 (citation omitted).

36. The Court's review on a motion to dismiss pursuant to FRCP 12(b)(6) is generally limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). In addition, the Court may also consider "matters of which judicial notice may be taken" and "documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." Brass v. Am. Film Techs., Inc., 987 F.2d 142, 150 (2d Cir. 1993). See also Fed. R. Evid. 201(b), (c) ("(b) The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. . . . (c) The court: (1) may take judicial notice on its own; or (2) must take judicial notice if a party requests it and the court is supplied with the necessary information."); Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007), ("[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record."); Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995) (noting that, in connection with a motion to dismiss, a court may consider all papers appended as well as matters of judicial notice).

37. Moreover, while facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions, which are not entitled to the assumption of truth. Hirsch, 72 F.3d at 1088, 1092. A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010). See also Papasan v. Allain, 478 U.S. 265, 286 (1986) (stating that, on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation").

38. Although complaints drafted by *pro se* plaintiffs are to be "construed liberally," claims asserted by pro se plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with "a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery." Iwachiw v. N.Y. City Bd. of Elections, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citations omitted). Plaintiff's Amended Adversary Complaint fails to satisfy this *de minimus* standard.

(ii) Plaintiff Lacks Standing to Enforce the FRB Consent Order Against GMACM

39. The sole cause of action identified in the Amended Adversary Complaint is GMACM's alleged violation of the FRB Consent Order. See Amended Adversary Complaint at 2. However, paragraph 30 of the FRB Consent Order expressly provides that "Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Order." See FRB Consent Order, attached to Priore Decl. as **Exhibit A**. Accordingly, by its own terms, the FRB Consent Order cannot be enforced by Plaintiff against GMACM. For that reason alone, the Amended Adversary Complaint fails to state a claim upon which relief can be granted, and must be dismissed.

(iii) Plaintiff's Claims are Barred by Res Judicata and Judicial Estoppel

40. At its heart, Plaintiff's Amended Adversary Complaint is based on her allegations that GMAC Mortgage wrongfully foreclosed on her Loan. See, e.g., Amended Adversary Complaint at ¶ 15 (asserting that GMACM breached the FRB Consent Order because Plaintiff was not in default under the Loan and therefore GMACM wrongfully foreclosed on the Property). However, the issue of whether GMAC Mortgage wrongfully foreclosed has already

been litigated and dismissed on the merits by the California District Court in the 2010 Action. Thus, Plaintiffs' claims are barred under the doctrines of res judicata and collateral estoppel. Sure-Snap Corp. v. State St. Bank & Trust Co., 948 F.2d 869, 870 (2d Cir. 1991). Plaintiff attempts to avoid the res judicata and collateral estoppel effects of the 2010 Dismissal Order by repackaging those same claims under a new cause of action—violation of the FRB Consent Order. As a matter of law, that attempt also fails.

41. If, based on the face of the complaint, incorporated documents, matters of public record, and matters of which a court could take judicial notice, "a successful affirmative defense appears, then dismissal under FRCP 12(b)(6) is proper." See, e.g., Hall v. Hodgkins, 305 Fed. Appx. 224, 228 (5th Cir. 2008), Banco Santander de Puerto Rico v. Lopez-Stubbe (In re Colonial Mortg. Bankers Corp.), 324 F.3d 12, 16 (1st Cir. 2003). See also Rodi v. S. New England Sch. of Law, 389 F.3d 5, 12, 17-19 (1st Cir. 2004) ("[A] properly raised affirmative defense can be adjudicated on a motion to dismiss so long as (i) the facts establishing the defense are definitively ascertainable from the complaint and the other allowable sources of information, and (ii) those facts suffice to establish the affirmative defense with certitude." (citation omitted)). Thus, where claims and issues are precluded based on res judicata or judicial estoppel, they are subject to dismissal under FRCP 12(b)(6). See, e.g., Aegis Realty Corp. v. Langer (In re Aegis Realty Corp.), 301 B.R. 116 (Bankr. S.D.N.Y. 2003) (dismissing claim on res judicata grounds on a motion to dismiss by defendant); Gazes v. Delprete (In re Clinton St. Food Corp.), 254 B.R. 523 (Bankr. S.D.N.Y. 2000) (dismissing claim on res judicata and collateral estoppel grounds on a motion to dismiss by defendants).

42. Under the doctrine of res judicata, or claim preclusion, litigants, such as Plaintiff, are not permitted more than "one bite of the apple." Sure-Snap Corp. v. State St. Bank

& Trust Co., 948 F.2d at 870. Res judicata prevents a party from re-litigating a cause of action, thereby giving finality to legal proceedings. Kelley v. S. Bay Bank (In re Kelley), 199 B.R. 698, 702 (B.A.P. 9th Cir. 1996).

43. To determine whether the doctrine of claim preclusion bars plaintiffs' re-litigation of their claims, bankruptcy courts in the Second Circuit "consider whether (1) the prior decision was a final judgment on the merits, (2) the litigants were the same parties, (3) the prior court was of competent jurisdiction, and (4) the causes of action were the same." Corbett v. MacDonald Moving Servs., Inc., 124 F.3d 82, 87-88 (2d Cir. 1997); Busick v. Workmen's Comp. Appeals Bd., 500 P.2d 1386, 1391-92 (Cal. 1972). Similarly, under California law, res judicata bars a claim when: (1) the prior litigation resulted in a final judgment on the merits; (2) privity exists between the parties in the prior action and the present action; and (3) the present action or proceeding relates to the same primary right as did the prior action. See, e.g., Busick, 500 P.2d at id. In addition, "[i]n the bankruptcy context, the Court must also determine 'whether an independent judgment in a separate proceeding would impair or destroy rights or interests established by the judgment entered in the first action.'" HSBC Bank USA, Nat'l Ass'n v. Adelphia Commc'ns Corp., Nos. 07-CV-553A(RJA), 07-CV-555A(RJA), 07-CV-554A(RJA), 2009 WL 385474, at *11 (W.D.N.Y. Feb. 12, 2009) (citing Corbett, 124 F.3d at 89).

44. On the other hand, the principle of collateral estoppel, or issue preclusion, "bars relitigation of any factual or legal issue that was actually decided in previous litigation 'between the parties, whether on the same or a different claim.'" Dennis v. Rhode Island Hosp. Trust Nat'l Bank, 744 F.2d 893, 899 (1st Cir. 1984) (quoting RESTATEMENT (SECOND) OF JUDGMENTS, § 27 (1982)). As with claim preclusion, "[t]he underlying principle of issue preclusion is that one who has actually litigated an issue should not be allowed to relitigate it…."

Chase v. Chase (In re Chase), 392 B.R. 72, 80 (Bankr. S.D.N.Y. 2008) (citation and internal quotation marks omitted). Under California law, collateral estoppel applies if the following elements are met: (1) The issue sought to be precluded from relitigation must be identical to that decided in a former proceeding; (2) The issue must have been actually litigated in the former proceeding; (3) The issue must have been necessarily decided in the former proceeding; (4) The decision in the former proceeding must be final and on the merits; and (5) The party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. See Cal-Micro, Inc. v. Cantrell (In re Cantrell), 329 F.3d 1119, 1123 (9th Cir. 2003) (citing Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001)).

45. Here, all the elements of claim preclusion and issue preclusion are satisfied with respect to the Debtor Defendants, thus barring Plaintiff's prosecution of the Adversary Proceeding against the Debtor Defendants. Plaintiff and the Debtor Defendants were all parties to the 2010 Action, over which the California District Court had proper jurisdiction. In both the Adversary Proceeding and the 2010 Action, Plaintiff asserted claims against the Debtor Defendants for fraud, wrongful foreclosure, and breach of Plaintiff's Loan documents. Compare Second Amended Complaint, attached to Priore Decl. as Exhibit H, at ¶¶ 132-53 with Amended Adversary Complaint, attached to Priore Decl. as Exhibit O at 2, ¶¶ 15-16. Pursuant to FRCP 12(b)(6), the California District Court dismissed all claims against GMACM and ETS for failure to state a claim. See Order, attached to Priore Decl. as Exhibit I. That dismissal became final upon expiration of the 30 day period to file a notice of appeal of the California District Court's final order entered on June 30, 2011. See Docket Report, attached to Priore Decl. as Exhibit J. Thus, the California District Court's ruling is a final decision on the merits. See, e.g., Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 399 n.3 (1981) (stating that dismissal under

FRCP 12(b)(6) is a "judgment on merits"); Teltronics Servs., Inc. v. L. M. Ericsson Telecommc'ns, Inc., 642 F.2d 31, 34 (2d Cir. 1981), ("Judgments under Rule 12(b)(6) are on the merits, with res judicata effects . . . ." (quoting Exchange Nat'l Bank of Chi. v. Touche Ross & Co., 544 F.2d 1126, 1130-31 (2d Cir. 1976))); Dana Point Safe Harbor Collective v. Superior Court of Orange Cty., 243 P.3d 575, 577 (Cal. 2010) (finding that under California law, "[a] judgment is the final determination of the rights of the parties (Code Civ. Proc., § 577) when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." (internal quotations omitted)). Additionally, the determination of whether Plaintiff stated a claim for relief was essential to the judgment on the Debtor Defendants' motion to dismiss the 2010 Action. Accordingly, the claims sought to be pursued by Plaintiff in the Adversary Proceeding are barred under principles of res judicata and/or collateral estoppel, thus warranting dismissal.

B. The Proof of Claim Should Be Disallowed and Expunged

46. To the extent the Court determines that principles of res judicata and collateral estoppel warrant dismissal of the Adversary Proceeding, the Court should also disallow the Proof of Claim, which is based on the allegations and claims asserted in the Adversary Proceeding—namely, that GMACM wrongfully foreclosed on Plaintiff's Property.

(i) Legal Standard

47. A filed proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If an objection refuting at least one of the claim's essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. See In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), aff'd sub nom., Peter J. Solomon Co. v. Oneida, Ltd., No. 09-cv-2229 (DC), 2010 U.S. Dist. LEXIS 6500 (S.D.N.Y. Jan. 22,

2010); In re Rockefeller Ctr. Props., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000), aff'd sub nom., NBC v. Rockefeller Ctr. Props. (In re Rockefeller Ctr. Props), 266 B.R. 52 (S.D.N.Y. 2001), aff'd, 46 Fed. Appx. 40 (2d Cir. 2002).

48. Moreover, section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law…." 11 U.S.C. 502(b)(1). Furthermore, the burden of persuasion is on the holder of a proof of claim to establish a valid claim against a debtor. Feinberg v. Bank of N.Y. (In re Feinberg), 442 B.R. 215, 220-22 (Bankr. S.D.N.Y. 2010).

(ii) Analysis

49. Plaintiff's Proof of Claim purports to be based on the Deed of Trust that secured the Loan prior to foreclosure, and seeks the value of the foreclosed Property. The Liquidating Trust, in support of the Borrower Trust, conducted an exhaustive examination of the Debtors' books and records and concluded that there is no potential basis of liability against the Debtors that could support the Proof of Claim other than the claims already asserted by Plaintiff in the 2010 Action and, now, the Adversary Proceeding. See Priore Decl. at ¶ 5. As established above, the Plaintiff lacks standing to assert claims for violation of the FRB Consent Order and the Adversary Proceeding is barred by res judicata and/or collateral estoppel. Accordingly, the Borrower Trust objects to the Proof of Claim, which should be disallowed and expunged for the same reasons the Adversary Proceeding should be dismissed.

V. CONCLUSION

Accordingly, for the reasons set forth herein, the ResCap Trusts respectfully request that the Court (i) enter an order dismissing the Adversary Proceeding with prejudice,

substantially in the form attached hereto as Exhibit 2; (ii) enter an order disallowing and expunging the Proof of Claim substantially in the form attached hereto as Exhibit 3; and (iii) grant such other and further relief as it deems just and proper.

Dated: January 25, 2016
New York, New York

/s/ Norman S. Rosenbaum

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Counsel for the ResCap Liquidating Trust and the ResCap Borrower Claims Trust

EXHIBIT 1

Priore Declaration

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered
Shelley von Brincken,	)	Adv. Case No. 13-01436 (MG)
Plaintiff,	)	
v.	)	
GMAC Mortgage, LLC, or assignee, ETS Services, LLC, Ocwen Loan Servicing, LLC, and Does 1-20,	)	
Defendants.	)	

DECLARATION OF KATHY PRIORE WITH RESPECT TO THE JOINT MOTION OF RESCAP LIQUIDATING TRUST AND RESCAP BORROWER CLAIMS TRUST FOR (I) DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(6) AND (II) DISALLOWANCE OF PROOF OF CLAIM NUMBER 441 FILED BY PLAINTIFF

I, Kathy Priore, hereby declare as follows:

A. Declarant's Background and Qualifications

1. I serve as Associate Counsel for The ResCap Liquidating Trust (the "Liquidating Trust"), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al., and the Official Committee of Unsecured Creditors* [Docket No. 6030] confirmed in the above-captioned chapter 11 cases (the "Chapter 11 Cases"). During the Chapter 11 Cases, I served as Associate Counsel in the legal department at Residential Capital, LLC ("ResCap"), a limited liability company organized under the laws of

the state of Delaware and the parent of the other debtors in the above-captioned Chapter 11 Cases (collectively, the "Debtors"). I joined ResCap on May 1, 2008 as in-house litigation counsel. Prior to my in-house litigation counsel position, I held various roles within the legal department at ResCap.

2. In my role as Associate Counsel at ResCap, I was responsible for the management of residential mortgage-related litigation. In connection with ResCap's chapter 11 filing, I also assisted the Debtors and their professional advisors in connection with the administration of the Chapter 11 Cases, including the borrower litigation matters pending before this Court. In my current position as Associate Counsel to the Liquidating Trust, among my other duties, I continue to assist the Liquidating Trust in connection with the claims reconciliation process. I am authorized to submit this Declaration with respect to the *Joint Motion of ResCap Liquidating Trust and ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b) and FRCP 12(b)(6) and (II) Disallowance of Proof of Claim Number 441 Filed by Plaintiff* (the "Motion").[1]

3. In my current and former capacities as Associate Counsel to the Liquidating Trust and ResCap, I am intimately familiar with the Debtors' claims reconciliation process. Except as otherwise indicated, all statements in this Declaration are based on my familiarity with the Debtors' Books and Records (the "Books and Records"), as well as the Debtors' schedules of assets and liabilities and statements of financial affairs filed in these Chapter 11 Cases (collectively, the "Schedules"), my review and reconciliation of claims, and/or my review of relevant documents. I, or other Liquidating Trust personnel, have reviewed and analyzed the proof of claim forms and supporting documentation filed by Plaintiff. Since the

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

Plan went effective and the Liquidating Trust was established, I, along with other members of the Liquidating Trust, have continued the claims reconciliation process, including analyzing claims and determining the appropriate treatment of the same. In connection with such review and analysis, where applicable, I, or other Liquidating Trust personnel, together with professional advisors, have reviewed (i) information supplied or verified by former personnel in departments within the Debtors' various business units, (ii) the Books and Records, (iii) the Schedules, (iv) other filed proofs of claim, and/or (v) the official claims register maintained in the Debtors' Chapter 11 Cases.

4. Except as otherwise indicated, all facts set forth in this Declaration are based upon my familiarity with the Debtors' Books and Records, information learned from my review of relevant documents, and information I received through my discussions with other former members of the Debtors' management or other former employees of the Debtors and/or the Liquidating Trust's professionals and consultants. If I were called upon to testify, I could and would testify competently to the facts set forth in the Motion on that basis.

5. The Liquidating Trust's personnel have examined the Proof of Claim and the Amended Adversary Complaint and supplemental materials submitted by Plaintiff in support of the Proof of Claim and the Amended Adversary Complaint, as well as the Debtors' Books and Records in order to assess the allegations made in the Proof of Claim and Adversary Complaint. In addition, the Liquidating Trust reviewed documents filed in connection with the Debtors' prior litigation with Plaintiff and correspondence between Plaintiff and the Debtors.

B. General Bankruptcy Case Background

6. At the time the Debtors filed these Chapter 11 cases, Residential Capital, LLC ("ResCap") and GMACM were parties to a Consent Order dated April 13, 2011 with the

Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the "FRB Consent Order"). See Consent Order, annexed hereto as **Exhibit A**.

C. Origination and Foreclosure of Plaintiff's Loan

7. Plaintiff was a borrower under a mortgage loan (the "Loan") that was originated by Mortgageclose.com, Inc. ("Lender") on or about January 14, 2009. The Loan was evidenced by a note in the amount of $220,000.00 (the "Note"), which was secured by real property located at 14738 Wolf Rd., Grass Valley, California 95949 (the "Property") pursuant to a deed of Trust (the "Deed of Trust") executed contemporaneously with the Note. See Note and Deed of Trust, copies of which are annexed hereto as **Exhibits B** and **C**, respectively. Non-Debtor GMAC Bank purchased the loan from Lender. GMACM purchased the loan from GMAC Bank and transferred its interest to the Federal National Mortgage Association ("Fannie Mae").

8. As a result of Plaintiffs' continuing default under the Loan, GMACM, acting in its capacity as servicer on behalf of Fannie Mae, initiated a non-judicial foreclosure with respect to the Property. See Notice of Default and Election to Sell Under Deed of Trust, annexed hereto as **Exhibit D**. The trustee's sale occurred on August 31, 2010, where Fannie Mae was the successful bidder for the Property. See Trustee's Deed Upon Sale, annexed hereto as **Exhibit E**.

9. On February 15, 2013 servicing of the Property was transferred to Ocwen.

10. Upon information and belief, on September 20, 2013, Fannie Mae sold the Property to a third party, Wolf Creek Associates.

D. Plaintiff's Prior Litigation Against the Debtor Defendants

(i) Plaintiff's 2010 Action

11. On August 10, 2010, Plaintiff, acting *pro se*, filed a complaint in the California District Court, Case No. 2:10-cv-2153 (the "2010 Action"), against Lender and Debtor ETS asserting nonspecific claims arising out of allegations of predatory lending, fraud, and wrongful foreclosure. See Original Petition, annexed hereto as **Exhibit F**.

12. On September 1, 2010, Plaintiff filed an amended complaint adding GMACM as a defendant to the 2010 Action. See Amended Original Petition, annexed hereto as **Exhibit G**.

13. On February 16, 2011, Plaintiff filed a second amended complaint (the "Second Amended 2010 Complaint") in the 2010 Action with the assistance of counsel. See Second Amended Complaint, annexed hereto as **Exhibit H**.

14. On June 30, 2011, the California District Court entered an order (the "2010 Dismissal Order") dismissing all counts of the Second Amended 2010 Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). See Order Granting Defendants' Motion to Dismiss, annexed hereto as **Exhibit I**.

15. Plaintiff did not appeal the dismissal of the 2010 Action. See Docket Report, annexed hereto as **Exhibit J**.

(ii) Plaintiff's 2012 Action

16. On June 25, 2012, Plaintiff filed a complaint (the "FDCPA Complaint") in the California District Court, Case No. 2:12-cv-1689 (the "FDCPA Action"), against GMACM, MERS, Fannie Mae, and Fannie Mae's counsel in the Unlawful Detainer Action, Pite Duncan

LLP. See Complaint for Violations of the Fair Debt Collections Act under 15 U.S.C. § 1692, annexed hereto as **Exhibit K**.

17. On February 21, 2013, District Court dismissed the FDCPA Complaint on all counts against all defendants upon a finding that Plaintiff failed to show: (1) that the defendants were debt collectors within the meaning of the FDCPA, and (2) that the defendants engaged in debt collection activity.[2] See Order and Order & Findings and Recommendations annexed hereto as **Exhibits L** and **M**, respectively.

18. Plaintiff did not appeal the dismissal of the FDCPA Action. See Docket Report, annexed hereto as **Exhibit N**.

E. The Proof of Claim

19. On August 27, 2012, Plaintiff filed the Proof of Claim, asserting a secured claim against GMAC Mortgage in the amount of $186,940.72 (which was the amount Fannie Mae paid for the Property at the trustee's sale). See Proof of Claim, annexed hereto as **Exhibit O**.

F. Borrower Claims Procedures

20. On June 21, 2013, the Debtors sent Plaintiff a Request Letter pursuant to the procedures applicable to objections to claims filed by current or former borrowers set forth in the *Order Pursuant to Sections 105(a) of the Bankruptcy Code and Bankruptcy Rules 1009, 3007 and 9019(b) Approving (I) Claim Objection Procedures, (II) Borrower Claim Procedures, (III) Settlement Procedures, and (IV) Schedule Amendment Procedures* [Docket No. 3294].

[2] GMACM took the position that the FDCPA Action was stayed with respect to claims asserted against it in light of the pending Chapter 11 Cases, but also filed and joined in other parties' motions to dismiss the action. The magistrate judge took note of this apparent inconsistency, but determined that it need not resolve the inconsistency because the bases upon which Pite Duncan moved to dismiss the complaint applied equally to all defendants. See Order & Findings and Recommendations annexed hereto as **Exhibit M** at 3.

21. Plaintiff sent a response to the Request Letter, which was received by the Debtors on July 22, 2013. See *Clarification for the Basis of the Creditor Claim for Shelley von Brincken Claim #441*, annexed hereto as **Exhibit O**.

Dated: January 25, 2016

/s/ Kathy Priore
Kathy Priore
Associate Counsel for
The ResCap Liquidating Trust

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of ALLY FINANCIAL INC. Detroit, Michigan ALLY BANK Midvale, Utah RESIDENTIAL CAPITAL, LLC Minneapolis, Minnesota and GMAC MORTGAGE, LLC Fort Washington, Pennsylvania	FRB Docket No. 11-020-B-HC 11-020-B-DEO FDIC-11-123b

CONSENT ORDER

WHEREAS, Ally Financial Inc., Detroit, Michigan ("Ally Financial"), a registered bank holding company, indirectly owns and controls Ally Bank (f/k/a GMAC Bank), Midvale, Utah, a state nonmember bank, and numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC, Minneapolis, Minnesota ("ResCap"), and its direct and indirect subsidiaries, including GMAC Mortgage, LLC, Fort Washington, Pennsylvania ("GMAC Mortgage"), and its subsidiaries. Ally Financial, f/k/a GMAC LLC, became a bank holding company on December 24, 2008, following approval by the Board of Governors of the Federal Reserve System (the "Board of Governors") pursuant to section 3(a)(1) of the Bank Holding

Company Act (12 U.S.C. § 1842(a)(1)), and conversion of Ally Bank from an industrial loan company to a state-chartered insured nonmember bank;

WHEREAS, Ally Financial engages in the business of servicing residential mortgage loans through various indirect subsidiaries, including GMAC Mortgage and its subsidiaries (collectively, the "Mortgage Servicing Companies"). The Mortgage Servicing Companies service residential mortgage loans that are held in the portfolios of (a) Ally Bank and GMAC Mortgage; (b) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association (collectively, the "GSEs"); and (c) various investors, including securitization trusts pursuant to Pooling and Servicing Agreements and similar agreements (collectively, the "Servicing Portfolio"). The Mortgage Servicing Companies have substantial responsibilities with respect to the Servicing Portfolio for the initiation and handling of foreclosure proceedings, and loss mitigation activities ("Loss Mitigation" or "Loss Mitigation Activities" include activities related to special forbearances, repayment plans, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure);

WHEREAS, Ally Bank has entered into agreements with the Mortgage Servicing Companies with respect to the servicing of residential mortgage loans owned by Ally Bank, as well as sub-servicing agreements with respect to loans where Ally Bank retained servicing rights;

WHEREAS, the Mortgage Servicing Companies collectively are the fifth largest servicer of residential mortgages in the United States and service a portfolio of 2.5 million residential mortgage loans. During the recent financial crisis, a substantially larger number of residential mortgage loans became past due than in earlier years. Many of the past due mortgages have

resulted in foreclosure actions. From January 1, 2009 to December 31, 2010, the Mortgage Servicing Companies completed 89,998 foreclosure actions, representing less than 4 percent of the Servicing Portfolio over such time period;

WHEREAS, in connection with the process leading to certain foreclosures involving the Servicing Portfolio, the Mortgage Servicing Companies allegedly:

(a) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of the Mortgage Servicing Companies or employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such knowledge or review;

(b) Filed or caused to be filed in courts in various states and in connection with bankruptcy proceedings in federal courts or in the local land record offices, numerous affidavits and other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(c) Litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosures without always confirming that documentation of ownership was in order at the appropriate time, including confirming that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party;

(d) Failed to respond in a sufficient and timely manner to the increased level of foreclosures by increasing financial, staffing, and managerial resources to ensure that the Mortgage Servicing Companies adequately handled the foreclosure process; and failed to respond in a sufficient and timely manner to the increased level of Loss Mitigation Activities to ensure timely, effective and efficient communication with borrowers with respect to Loss Mitigation Activities and foreclosure activities; and

(e) Failed to have adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process, including sufficient oversight of outside counsel and other third-party providers handling foreclosure-related services with respect to the Servicing Portfolio.

WHEREAS, the practices set forth above allegedly constitute unsafe or unsound banking practices;

WHEREAS, as part of a horizontal review of various major residential mortgage servicers conducted by the Board of Governors, the Federal Deposit Insurance Corporation (the "FDIC"), the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, examiners from the Federal Reserve Bank of Chicago (the "Reserve Bank") and the FDIC have reviewed foreclosure-related processes at the Mortgage Servicing Companies;

WHEREAS, it is the common goal of the Board of Governors, the Reserve Bank, Ally Financial, ResCap, and the Mortgage Servicing Companies to ensure that the Mortgage Servicing Companies operate in a safe and sound manner and in compliance with the terms of mortgage loan documentation and related agreements with borrowers, all applicable state and federal laws (including the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act), rules, regulations, and court orders, as well as the Membership Rules of MERSCORP, Inc. and

MERS, Inc. (collectively, "MERS"), servicing guides with GSEs or investors, and other contractual obligations, including those with the Federal Housing Administration and those required by the Home Affordable Modification Program ("HAMP"), and loss share agreements with the Federal Deposit Insurance Corporation(collectively, "Legal Requirements");

WHEREAS, it is the common goal of the FDIC and Ally Bank to ensure that the residential mortgages owned or serviced by Ally Bank are serviced or sub-serviced in a safe and sound manner and in compliance with all Legal Requirements;

WHEREAS, after the conduct set forth above became known, Ally Financial, Ally Bank, ResCap, and the Mortgage Servicing Companies have been taking steps to remediate the filing of and reliance on inaccurate affidavits in foreclosure and bankruptcy proceedings;

WHEREAS, the boards of directors of Ally Financial, ResCap, and GMAC Mortgage, at duly constituted meetings, adopted resolutions authorizing and directing Michael A. Carpenter, Thomas Marano, and Steven M. Abreu to enter into this Consent Order to Cease and Desist (the ("Order") on behalf of Ally Financial, ResCap, and GMAC Mortgage, respectively, and consenting to compliance with each and every applicable provision of this Order by Ally Financial, ResCap, and GMAC Mortgage, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. §§ 1813(u) and 1818(b)(3)), and waiving any and all rights that Ally Financial, ResCap, and GMAC Mortgage may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of charges; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; (iv) contest the issuance of this Order by the Board of Governors; and (v) challenge or

contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof; and

WHEREAS, the board of directors of Ally Bank, at a duly constituted meeting adopted a resolution authorizing and directing Mark B. Hales to enter into this Order on behalf of Ally Bank and consenting to compliance with each and every applicable provision of this Order by Ally Bank and its institution-affiliated parties, as defined in section 3(u) of the FDI Act, and waiving any and all rights that Ally Bank may have pursuant to section 8 of the FDI Act, including, but not limited to: (i) the issuance of a notice of charges; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; (iv) contest the issuance of this Order by the FDIC; and (v) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof.

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and without this Order constituting an admission by Ally Financial, Ally Bank, ResCap, or GMAC Mortgage or its subsidiaries of any allegation made or implied by the Board of Governors or the FDIC in connection with this matter, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ordered by the Board of Governors that, pursuant to sections 8(b)(1) and (3) of the FDI Act (12 U.S.C. §§1818(b)(1) and 1818(b)(3)), Ally Financial, ResCap, GMAC Mortgage, and their institution-affiliated parties shall cease and desist and take affirmative action, and it is hereby ordered by the FDIC that, pursuant to section 8(b)(1) of the FDI Act (12 U.S.C. §§1818(b)(1)), Ally Bank and its institution-affiliated parties, shall cease and desist and take affirmative action, as follows:

Source of Strength

1. The board of directors of Ally Financial shall take appropriate steps to fully utilize Ally Financial's financial and managerial resources, pursuant to section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)), to serve as a source of strength to Ally Bank, including, but not limited to, taking steps to ensure that Ally Bank complies with the applicable provisions of this Order that is issued by the FDIC.

Board Oversight

2. Within 60 days of this Order, the boards of directors of Ally Financial and ResCap, for itself and on behalf of the Mortgage Servicing Companies shall submit to the Reserve Bank an acceptable written plan to strengthen the boards' oversight of the Mortgage Servicing Companies, including the boards' oversight of risk management, internal audit, and compliance programs concerning residential mortgage loan servicing, Loss Mitigation, and foreclosure activities conducted by the Mortgage Servicing Companies. The plan shall also describe the actions that the boards of directors will take to improve the Mortgage Servicing Companies' residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and a timeline for actions to be taken. The plan shall, at a minimum, address, consider, and include:

(a) Policies to be adopted by the board of directors of Ally Financial that are designed to ensure that Ally Financial's enterprise-wide risk management ("ERM") program provides proper risk management with respect to the Mortgage Servicing Companies' residential mortgage loan servicing, Loss Mitigation, and foreclosure activities particularly with respect to compliance with the Legal Requirements, and supervisory standards and guidance of the Board of Governors as they develop;

(b) policies and procedures adopted by Ally Financial to ensure that the ERM program provides proper risk management of independent contractors, consulting firms, law firms, or other third parties who are engaged to support residential mortgage loan servicing, Loss Mitigation, or foreclosure activities or operations, including their compliance with the Legal Requirements and Ally Financial's and GMAC Mortgage's internal policies and procedures, consistent with supervisory guidance of the Board of Governors;

(c) steps to ensure that Ally Financial's ERM, audit, and compliance programs have adequate levels and types of officers and staff dedicated to overseeing the Mortgage Servicing Companies' residential mortgage loan servicing, Loss Mitigation, and foreclosure activities, and that these programs have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order;

(d) steps to improve the information and reports that will be regularly reviewed by the board of directors or authorized committee of the board of directors of Ally Financial regarding residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, including, compliance risk assessments, and the status and results of measures taken, or to be taken, to remediate deficiencies in residential mortgage loan servicing, Loss Mitigation, and foreclosure activities, and to comply with this Order;

(e) funding for personnel, systems, and other resources as are needed to carry out the Mortgage Servicing Companies' residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations in full compliance with the Legal Requirements and the requirements of this Order, taking into consideration the current and expected volume of past due loans;

(f) funding for personnel, systems, and other resources as are needed to operate risk management and compliance programs that are safe and sound and that are commensurate with the risk profile of the Mortgage Servicing Companies;

(g) steps to ensure that the Mortgage Servicing Companies have adequate levels and types of officers and staff to carry out residential mortgage loan servicing, Loss Mitigation, and foreclosure activities in compliance with Legal Requirements and the requirements of this Order, and taking into account the size and complexity of the Servicing Portfolio; that they have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order; and a timetable for hiring any necessary additional officers and staff.

(h) periodic reviews of the adequacy of the levels and types of officers and staff to carry out residential mortgage loan servicing, Loss Mitigation, and foreclosure activities in light of changes in the Servicing Portfolio or the Legal Requirements. To conduct this review, the plan shall establish metrics to measure and ensure the adequacy of staffing levels relative to existing and future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, including the single point of contact as hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers;

(i) steps to ensure that the risk management, audit, and compliance programs for the Mortgage Servicing Companies have adequate levels and types of officers and staff and that they have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order, and a timetable for hiring any necessary additional officers and staff;

(j) workload reviews of residential mortgage loan servicing, Loss Mitigation, and foreclosure personnel who are responsible for handling individual loan issues (including single point of contact personnel), including an initial review within 90 days of this Order, and then annual reviews thereafter. Such reviews, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of paragraphs 2(g) and 5 of this Order. Promptly following completion of such reviews, the Mortgage Servicing Companies shall adjust workload levels to ensure compliance with the requirements of paragraphs 2(g) and 5 of this Order;

(k) policies to ensure that the risk management, audit, and compliance programs have the requisite authorities and status within the organization to effectively operate the programs, and that there is adequate coordination with respect to these programs to ensure that any problems or deficiencies that are identified in the Mortgage Servicing Companies' residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations are comprehensively reviewed and remedied; and

(l) steps to improve the information and reports that will be regularly reviewed by Ally Financial's and ResCap's boards of directors to assess the performance of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, as well as the risk management and compliance programs and associated functions including, compliance risk assessments, and the status and results of measures taken, or to be taken, to remediate mortgage servicing, Loss Mitigation, and foreclosure deficiencies, and to comply with this Order.

Foreclosure Review

3. (a) Within 45 days of this Order, GMAC Mortgage shall retain one or more independent consultant(s) acceptable to the Reserve Bank to conduct an independent review of certain residential mortgage foreclosure actions (including judicial and non-judicial foreclosures and related bankruptcy proceedings, and other related litigation) regarding individual borrowers with respect to the Servicing Portfolio. The review shall include actions or proceedings (including foreclosures that were in process or completed) for loans serviced by the Mortgage Servicing Companies, whether brought in the name of the Ally Bank, the Mortgage Servicing Companies, the investor, or any agent for the mortgage note holder (including MERS) that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period ("Foreclosure Review"). The purpose of the Foreclosure Review shall be to determine, at a minimum:

(i) whether, at the time the foreclosure action was initiated or the pleading or affidavit filed (including in bankruptcy proceedings and in defending suits brought by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or other similar status;

(ii) whether the foreclosure was in accordance with applicable state and federal laws, including but not limited to, the Servicemembers Civil Relief Act and the U.S. Bankruptcy Code;

(iii) whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the

amounts due, and compliance with notice periods) and post-sale confirmation were in accordance with the terms of the mortgage loan and state law requirements;

(iv) whether a foreclosure sale occurred when the borrower had requested a loan modification or other loss mitigation and the request was under consideration; when the loan was performing in accordance with a trial or permanent loan modification; or when the loan had not been in default for a sufficient period to authorize foreclosure pursuant to terms of the mortgage loan documentation and related agreements;

(v) whether any delinquent borrower's account was charged fees or penalties that were not permissible under the terms of the borrower's loan documents, state or federal law, or were otherwise unreasonable. For purposes of this Order, a fee or penalty is "otherwise unreasonable" if it was assessed: (i) for the purpose of protecting the secured party's interest in the mortgaged property, and the fee or penalty was assessed at a frequency or rate, was of a type or amount, or was for a purpose that was in fact not needed to protect the secured party's interest; (ii) for services performed and the fee charged was substantially in excess of the fair market value of the service; (iii) for services performed, and the services were not actually performed; or (iv) at an amount or rate that exceeds what is customarily charged in the market for such a fee or penalty, and the mortgage instruments or other documents executed by the borrower did not disclose the amount or rate that the lender or servicer would charge for such a fee or penalty;

(vi) whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of HAMP, if applicable, and consistent with the policies and procedures applicable to the Mortgage Servicing Companies' proprietary loan modifications or other Loss Mitigation programs, such that each borrower had an adequate

opportunity to apply for a Loss Mitigation option or program, any such application was handled appropriately, and a final decision was made on a reasoned basis and was communicated to the borrower before the foreclosure sale; and

(vii) whether any errors, misrepresentations, or other deficiencies identified in the Foreclosure Review resulted in financial injury to the borrower or the owner of the mortgage loan.

(b) The independent consultant(s) shall prepare a written report detailing the findings of the Foreclosure Review (the "Foreclosure Report"). GMAC Mortgage shall provide to the Reserve Bank a copy of the Foreclosure Report at the same time that the report is provided to it. Simultaneously, a copy of the portion of the Foreclosure Report that addresses Ally Bank's Servicing Portfolio shall be furnished to Ally Bank and the FDIC.

(c) Within 45 days of receipt of the Foreclosure Report, GMAC Mortgage shall submit to the Reserve Bank an acceptable plan to:

(i) remediate, as appropriate, errors, misrepresentations, or other deficiencies in any foreclosure filing or other proceeding;

(ii) reimburse or otherwise provide appropriate remediation to the borrower for any impermissible or otherwise unreasonable penalties, fees or expenses, or for other financial injury identified in paragraph 3 of this Order;

(iii) make appropriate adjustments for the account of Ally Bank, the GSEs, or any investor; and

(iv) take appropriate steps to remediate any foreclosure sale where the foreclosure was not authorized as described in paragraph 3.

(d) Within 60 days after the Reserve Bank accepts the plan described in paragraph 3(c), the Mortgage Servicing Companies shall make all reimbursement and remediation payments and provide all credits required by such plan, and provide the Reserve Bank with a report detailing such payments and credits.

4. Within 15 days of the engagement of the independent consultant(s) described in paragraph 3 of this Order, but prior to the commencement of the Foreclosure Review, GMAC Mortgage shall submit to the Reserve Bank for approval an engagement letter that sets forth:

(a) The methodology for conducting the Foreclosure Review, including: (i) a description of the information systems and documents to be reviewed, including the selection criteria for cases to be reviewed; (ii) the criteria for evaluating the reasonableness of fees and penalties under paragraph 3(a)(v); (iii) other procedures necessary to make the required determinations (such as through interviews of employees and third parties and a process for the receipt and review of borrower claims and complaints); and (iv) any proposed sampling techniques. In setting the scope and review methodology, the independent consultant may consider any work already done by Ally Financial, GMAC Mortgage, or other third-parties on behalf of Ally Financial or GMAC Mortgage. With respect to sampling techniques, the engagement letter shall contain a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on the results of initial sampling;

(b) the expertise and resources to be dedicated to the Foreclosure Review;

(c) completion of the Foreclosure Review and the Foreclosure Report within 120 days of the start of the engagement; and

(d) a written commitment that any workpapers associated with the Foreclosure Review will be made available to the Reserve Bank upon request.

Single Point of Contact

5. Within 60 days of this Order, GMAC Mortgage shall submit to the Reserve Bank an acceptable plan, along with a timeline for actions to be taken, for strengthening coordination of communications between the Mortgage Servicing Companies and borrowers, both oral and written, related to Loss Mitigation and foreclosure activities to ensure: (i) that communications are timely and effective, and are designed to avoid confusion to borrowers; (ii) continuity in the handling of borrowers' loan files during the Loss Mitigation and foreclosure processes by personnel knowledgeable about the borrower's situation; and (iii) that decisions concerning Loss Mitigation options or programs continue to be made and communicated in a timely fashion. Prior to submitting the plan, the Mortgage Servicing Companies shall conduct a review to determine: (i) whether processes involving past due mortgage loans or foreclosures overlap in such a way that they may impair or impede a borrower's efforts to effectively pursue a Loss Mitigation option or program, and (ii) that employee incentive compensation practices do not discourage Loss Mitigation. The plan shall, at a minimum, provide for:

(a) Measures to ensure that staff processing a borrower's Loss Mitigation request routinely communicates and coordinates with staff processing the foreclosure on the borrower's property;

(b) appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decisionmaking on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in HAMP;

(c) establishment of an accessible and reliable single point of contact for the borrower so that the borrower has access to an employee of the Mortgage Servicing Companies to obtain information throughout the Loss Mitigation and foreclosure processes;

(d) a requirement that written communications with the borrower identify by name the primary single point of contact along with one or more direct means of communication with the primary single point of contact, together with information about secondary points of contact in the event that the primary single point of contact is unavailable;

(e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation and foreclosure activities;

(f) procedures and controls to ensure that a final decision regarding a borrower's Loss Mitigation request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the trial or permanent modification and, if applicable, the net present value calculations utilized by the Mortgage Servicing Companies, and that involve the single point of contact within a reasonable time before any foreclosure sale occurs;

(g) procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis, (i) no foreclosure or further legal action predicate to foreclosure occurs, unless the borrower is past due on two or more payments post-dating the trial or permanent modification; and (ii) the single point of contact remains available to the borrower and continues to be referenced on all written communications with the borrower;

(h) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation process, denial of Loss Mitigation requests, the foreclosure process, or foreclosure activities that prevent a borrower from pursuing Loss Mitigation options, and a process for making borrowers aware of the complaint procedures;

(i) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;

(j) policies and procedures to consider loan modification or other Loss Mitigation Activities with respect to junior lien loans owned by Ally Financial, ResCap, the Mortgage Servicing Companies, or Ally Bank where the Mortgage Servicing Companies service the associated first lien mortgage and become aware that such first lien mortgage is delinquent or has been modified;

(k) policies and procedures to ensure that timely information about Loss Mitigation options is sent to the borrower in the event of a delinquency or default, including plain language notices about the pendency of loan modification and foreclosure proceedings; and

(l) policies and procedures to ensure that foreclosure and related documents provided to borrowers and third parties are appropriately maintained and tracked, and that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information.

Third Party Management

6. Within 60 days of this Order, GMAC Mortgage shall submit to the Reserve Bank acceptable policies and procedures for the outsourcing of any residential mortgage loan servicing, Loss Mitigation, or foreclosure functions, by the Mortgage Servicing Companies to any independent contractor, consulting firm, law firm, property manager, or other third party (including any subsidiary or affiliate of Ally Financial) (collectively, "Third-Party Providers"). Third-Party Providers include local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of owners of mortgages in the Servicing Portfolio ("Foreclosure Counsel"). The policies and procedures shall, at a minimum, address, consider, and include:

(a) Appropriate oversight of Third-Party Providers to ensure that they comply with the Legal Requirements, supervisory guidance of the Board of Governors, and GMAC Mortgage's policies and procedures;

(b) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical third-party services and business continuity of the Mortgage Servicing Companies, consistent with supervisory guidance of the Board of Governors, both to address short-term and long-term service disruptions and to ensure an orderly transition to new service providers should that become necessary;

(c) measures to ensure that all original records transferred by the Mortgage Servicing Companies to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the appropriate court or the loan is otherwise transferred to another party), and are returned to the Mortgage Servicing Companies or designated custodians at the conclusion of the

performed service, along with all other documents necessary for the Mortgage Servicing Companies' files;

(d) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of the Mortgage Servicing Companies or the owners of mortgages in the Servicing Portfolio in any judicial or non-judicial foreclosure proceeding, related bankruptcy proceeding, or in other foreclosure-related litigation, including, but not limited to, documentation sufficient to establish ownership of the note and right to foreclose at the time the foreclosure action is commenced;

(e) processes to perform appropriate due diligence on potential and current Third-Party Provider qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability; and measures to ensure the adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

(f) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to GMAC Mortgage foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party Provider performance failures;

(g) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements, and GMAC Mortgage's contractual obligations to GSEs and investors, and to ensure that foreclosures are conducted in a safe and sound manner;

(h) processes to review customer complaints about Third-Party Provider services;

(i) a review of fee structures for Third-Party Providers to ensure that the method of compensation considers the accuracy, completeness, and legal compliance of foreclosure filings and is not based solely on increased foreclosure volume or meeting processing timelines; and

(j) a periodic certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for the Mortgage Servicing Companies as qualified to serve as Third-Party Providers to the Mortgage Servicing Companies, including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

Compliance Program

7. Within 60 days of this Order, Ally Financial shall submit to the Reserve Bank an acceptable written plan to enhance its enterprise-wide compliance program ("ECP") with respect to its oversight of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations. The plan shall be based on an evaluation of the effectiveness of Ally Financial's current ECP in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and recommendations to strengthen the ECP in these areas. The plan shall, at a minimum, be designed to:

(a) Ensure that the fundamental elements of the ECP and any enhancements or revisions thereto, including a comprehensive annual risk assessment, encompass residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;

(b) ensure compliance with the Legal Requirements and supervisory guidance of the Board of Governors; and

(c) ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate new or changes to the Legal Requirements and supervisory guidance of the Board of Governors.

8. Within 60 days of this Order, GMAC Mortgage shall submit to the Reserve Bank an acceptable compliance program and timeline for implementation to ensure that the operations of the Mortgage Servicing Companies, including, but not limited to, residential mortgage loan servicing, Loss Mitigation, and foreclosure, comply with the Legal Requirements, as well as the Mortgage Servicing Companies' internal policies, procedures, and processes and are conducted in a safe and sound manner. The program shall, at a minimum, address, consider, and include:

(a) The duties and responsibilities of line of business staff, other staff, and Third-Party Providers regarding compliance;

(b) policies for developing and communicating compliance-related roles and responsibilities across the Mortgage Servicing Companies' organization and to Third-Party Providers;

(c) policies, procedures, and processes to ensure that the Mortgage Servicing Companies have the ability to locate and secure all documents, including original promissory notes, necessary to perform mortgage servicing, Loss Mitigation, and foreclosure functions and to comply with contractual obligations;

(d) compliance with supervisory guidance of the Board of Governors, including, but not limited to, the guidance entitled, "Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles," dated October 16, 2008 (SR 08-08/CA 08-11);

(e) compliance with Legal Requirements, including:

(i) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Mortgage Servicing Companies are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Mortgage Servicing Companies' books and records when the affidavit or declaration so states;

(ii) processes to ensure that affidavits filed in foreclosure proceedings and other foreclosure-related documents are executed and notarized in accordance with applicable state legal requirements, including jurat requirements;

(iii) processes to ensure that the Mortgage Servicing Companies have properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or are otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation; and

(iv) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower or claimable by the investor;

(f) policies and procedures to ensure that payments are credited in a prompt and timely manner; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and escrow before fees, and that any misapplication of borrower funds is corrected in a prompt and timely manner;

(g) compliance with contractual obligations to the owners of the mortgages in the Servicing Portfolio;

(h) compliance with the contractual limitations in the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges and expenses, and compliance with Legal Requirements concerning the imposition of fees, charges, and expenses;

(i) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmation are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;

(j) procedures to ensure compliance with bankruptcy law requirements, including a prohibition on collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order;

(k) the scope and frequency of independent testing for compliance with the Legal Requirements, supervisory guidance of the Board of Governors, and the requirements of the Mortgage Servicing Companies' internal policies, procedures, and processes by qualified parties with requisite knowledge and ability (which may include internal audit) who are independent of the Mortgage Servicing Companies' business lines and compliance function;

(l) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate new or changes to Legal Requirements and supervisory guidance of the Board of Governors; and

(m) the findings and conclusions of the independent consultant(s) engaged by GMAC Mortgage under paragraph 3 to review the Mortgage Servicing Companies' foreclosure processes.

Mortgage Electronic Registration System

9. Within 60 days of this Order, the GMAC Mortgage shall submit an acceptable plan to ensure appropriate controls and oversight of the Mortgage Servicing Companies' activities with respect to MERS and compliance with MERS' membership rules, terms, and conditions ("MERS Requirements") ("MERS Plan"). The MERS Plan shall include, at a minimum:

(a) Processes to ensure that all mortgage assignments and endorsements with respect to mortgage loans serviced or owned by the Mortgage Servicing Companies out of MERS' name are executed only by a certifying officer authorized by MERS and approved by the Mortgage Servicing Companies;

(b) processes to ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by the Mortgage Servicing Companies) are executed by a certifying officer authorized by MERS and approved by the Mortgage Servicing Companies;

(c) processes to ensure that the Mortgage Servicing Companies maintain up-to-date corporate resolutions from MERS for all Mortgage Servicing Companies employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers;

(d) processes to ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System;

(e) processes to ensure the accuracy and reliability of data reported to MERS, including monthly system-to-system reconciliations for all MERS mandatory reporting fields, and daily capture of all rejects/warnings reports associated with registrations, transfers, and status updates on open-item aging reports. Unresolved items must be maintained on open-item aging reports and tracked until resolution. The Mortgage Servicing Companies shall determine and report whether the foreclosures for loans serviced by the Mortgage Servicing Companies that are currently pending in MERS' name are accurate and how many are listed in error, and describe how and by when the data on the MERS system will be corrected;

(f) an appropriate MERS quality assurance workplan, which clearly describes all tests, test frequency, sampling methods, responsible parties, and the expected process for open-item follow-up, and includes an annual independent test of the control structure of the system-to-system reconciliation process, the reject/warning error correction process, and adherence to the MERS Plan; and

(g) inclusion of MERS in the Mortgage Servicing Companies' third-party vendor management process, which shall include a detailed analysis of potential vulnerabilities, including information security, business continuity, and vendor viability assessments.

Management Information Systems

10. Within 60 days of this Order, GMAC Mortgage shall submit to the Reserve Bank an acceptable plan and timeline for the review and remediation, as necessary, of the Mortgage Servicing Companies' management information systems ("MIS") for their residential mortgage loan servicing, Loss Mitigation, and foreclosure activities to ensure the timely delivery of complete and accurate information to permit effective decision-making. The plan shall, at a minimum, provide for:

(a) A description of the various MIS used or to be used by the Mortgage Servicing Companies;

(b) a timetable for completion of the review;

(c) a timetable for the remediation of any identified deficiencies; and

(d) new systems or enhancements to the MIS to:

(i) monitor compliance with the Legal Requirements, supervisory guidance of the Board of Governors, and the requirements of this Order;

(ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower;

(iii) ensure that the Loss Mitigation and foreclosure staffs have sufficient and timely access to information provided by the borrower regarding Loss Mitigation and foreclosure activities; and

(iv) ensure that the single point of contact has sufficient and timely access to information provided by the borrower regarding Loss Mitigation and foreclosure activities; and

(e) testing the integrity and accuracy of the new or enhanced MIS to ensure that reports generated by the system provide necessary information for adequate monitoring and quality controls.

Training

11. Within 60 days of this Order, GMAC Mortgage shall submit to the Reserve Bank an acceptable written plan, and timeline for implementation, to improve the training of all

appropriate officers and staff of the Mortgage Servicing Companies regarding the Legal Requirements, supervisory guidance of the Board of Governors, and the Mortgage Servicing Companies' internal policies and procedures regarding residential mortgage servicing, Loss Mitigation, and foreclosure, and the policies and procedures adopted regarding a single point of contact described in paragraph 5 of this Order. The plan shall also include:

(a) A requirement that training be conducted and documented no less frequently than annually; and

(b) procedures to timely inform appropriate officers and staff of any new or changes to the Legal Requirements and supervisory guidance of the Board of Governors related to residential mortgage loan servicing, Loss Mitigation, or foreclosure.

Risk Assessment

12. Within 10 days of this Order, Ally Financial and ResCap, for itself and on behalf of the Mortgage Servicing Companies, shall retain an independent consultant acceptable to the Reserve Bank to conduct a comprehensive assessment of the Mortgage Servicing Companies' risks, including, but not limited to, operational, compliance, transaction, legal, and reputational risks particularly in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure. The independent consultant shall prepare a written risk assessment and provide it to Ally Financial and ResCap within 90 days of this Order, and Ally Financial and ResCap shall provide it to the Reserve Bank at the same time that it is provided to Ally Financial and ResCap. The risk assessment shall, at a minimum, address, consider, and include:

(a) The scope and complexity of the Mortgage Servicing Companies' activities and operations regarding residential mortgage loan servicing, Loss Mitigation, and foreclosure, including functions outsourced to Third-Party Providers;

(b) an evaluation of risk exposures, taking into account risks inherent in the Mortgage Servicing Companies' business activities and in outsourcing to Third-Party Providers;

(c) an assessment of the effectiveness of established controls designed to mitigate each type of risk and identify residual risks; and

(d) recommendations for improving risk management.

13. Within 5 days of the engagement of the independent consultant described in paragraph 12 of this Order, but prior to the commencement of the comprehensive risk assessment, Ally Financial and ResCap shall submit to the Reserve Bank for approval an engagement letter that sets forth:

(a) The scope and methodology for conducting the risk assessment, including a detailed description of the areas to be reviewed;

(b) the expertise and resources to be dedicated to the risk assessment; and

(c) a commitment that any or workpapers associated with the risk assessment will be made available to the Reserve Bank upon request.

Risk Management

14. Within 60 days of submission of the comprehensive risk assessment conducted pursuant to paragraph 12 of this Order, Ally Financial shall submit to the Reserve Bank an acceptable written plan to enhance its ERM program with respect to its oversight of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations. The plan shall be based on an evaluation of the effectiveness of Ally Financial's current ERM program in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations, and recommendations to strengthen the risk management program in these areas. The plan shall, at a minimum, be designed to:

(a) Ensure that the fundamental elements of the risk management program and any enhancements or revisions thereto, including a comprehensive annual risk assessment, encompass residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;

(b) ensure that the risk management program complies with supervisory guidance of the Board of Governors, including, but not limited to, the guidance entitled, "Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles," dated October 16, 2008 (SR 08-08/CA 08-11); and

(c) establish limits for compliance, legal, and reputational risks and provide for regular review of risk limits by appropriate senior management and the board of directors or an authorized committee of the board of directors.

15. Within 60 days of submission of the comprehensive risk assessment conducted pursuant to paragraph 12 of this Order, Ally Financial and ResCap shall jointly submit to the Reserve Bank an acceptable, comprehensive risk management program for the Mortgage Servicing Companies. The program shall provide for the oversight by Ally Financial's senior risk managers and ResCap's boards of directors and senior management of the development and implementation of formalized policies and mitigation processes for all identified risks to the Mortgage Servicing Companies. The program shall, at a minimum, address, consider, and include:

(a) The structure and composition of ResCap's board risk management committees and a determination of the optimum structure and composition needed to provide adequate oversight of Mortgage Servicing Companies' firm-wide risk management;

(b) a detailed description of the responsibilities of (i) the line-of-business staff, compliance staff, and the legal department regarding risk assessment and management,

including, but not limited to, compliance and legal risks, and (ii) the internal audit department regarding the evaluation of the effectiveness of such risk assessment and management;

(c) written policies, procedures, and risk management standards;

(d) processes to adequately identify risk levels and trends;

(e) processes to adequately identify and control risks arising from incentive compensation programs;

(f) processes to document, measure, assess, and report key risk indicators;

(g) controls to mitigate risks;

(h) procedures for the escalation of significant matters related to risks to appropriate senior officers and board committees;

(i) the scope and frequency of comprehensive risk assessments;

(j) a formal method to ensure effective communication of established risk management policies, procedures, and standards to all appropriate business line and other staff;

(k) periodic testing of the effectiveness of the risk management program; and

(l) the findings and recommendations of the independent consultant described in paragraph 12 of this Order regarding risk management.

Audit

16. Within 60 days of this Order, Ally Financial shall submit to the Reserve Bank an acceptable written plan to enhance the internal audit program with respect to residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations. The plan shall be based on an evaluation of the effectiveness of Ally Financial's current internal audit program in the areas of residential mortgage loan servicing, Loss Mitigation, and foreclosure

activities and operations, and shall include recommendations to strengthen the internal audit program in these areas. The plan shall, at a minimum, be designed to:

(a) Ensure that the internal audit program encompasses residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;

(b) periodically review the effectiveness of the ECP and ERM with respect to residential mortgage loan servicing, Loss Mitigation, and foreclosure activities, and compliance with the Legal Requirements and supervisory guidance of the Board of Governors;

(c) ensure that adequate qualified staffing of the audit function is provided for residential mortgage loan servicing, Loss Mitigation, and foreclosure activities;

(d) ensure timely resolution of audit findings and follow-up reviews to ensure completion and effectiveness of corrective measures;

(e) ensure that comprehensive documentation, tracking, and reporting of the status and resolution of audit findings are submitted to Ally Financial's audit committee; and

(f) establish escalation procedures for resolving any differences of opinion between audit staff and management concerning audit exceptions and recommendations, with any disputes to be resolved by the audit committee.

17. Within 60 days of this Order, Ally Financial and ResCap shall submit to the Reserve Bank an acceptable enhanced written internal audit program to periodically review compliance with applicable Legal Requirements and supervisory guidance of the Board of Governors at the Mortgage Servicing Companies that shall, at a minimum, provide for:

(a) An annual written, risk-based audit plan approved by ResCap's board of directors that encompasses all appropriate areas of audit coverage;

(b) the scope and frequency of audits;

(c) the independence of the internal auditor, audit staff, and ResCap's audit committee;

(d) inclusion in the audit scope of reviews of internal controls, MIS, and compliance with GMAC Mortgage's internal policies, procedures, and processes, including, but not limited to, the Loss Mitigation and foreclosure processes;

(e) adequate testing and review of MIS used in servicing, Loss Mitigation, and foreclosure activities to ensure compliance with the Legal Requirements;

(f) controls to ensure that audits are completed on a timely basis in accordance with the approved audit plan;

(g) adequate staffing of the audit function by qualified staff;

(h) timely resolution of audit findings and follow-up reviews to ensure completion and effectiveness of corrective measures;

(i) comprehensive documentation, tracking, and reporting of the status and resolution of audit findings to ResCap's audit committee, at least quarterly; and

(j) establishment of escalation procedures for resolving any differences of opinion between audit staff and management concerning audit exceptions and recommendations, with any disputes to be resolved by ResCap's audit committee.

Servicing Management and Oversight

18. Within 60 days of this Order, Ally Bank shall implement a mortgage servicing management and oversight program which shall, at a minimum:

(a) Establish policies and procedures to create and maintain a reserve sufficient to cover identified servicing risks;

(b) establish policies and procedures, including, but not limited to, revising servicing guidelines and/or contractual arrangements, to ensure that any Third Party Provider performing a mortgage servicing, Loss Mitigation or foreclosure activity or operation for a second lien on its behalf, encourages and facilitates sustainable first lien modifications, within the terms of the Legal Requirements, by performing timely financial cost-benefit analysis, taking into account various economic and market factors such as the amount of potential equity in the property and the borrower's financial strength;

(c) establish policies and procedures for oversight and risk management of agreements with Third-Party Providers of servicing, Loss Mitigation or foreclosure activities or operations to Ally Bank, including, but not limited to, the Mortgage Servicing Companies, sufficient to ensure that mortgage servicing, Loss Mitigation or foreclosure activities and/or operations are performed in accordance with the Legal Requirements and this Order;

(d) establish policies and procedures for oversight and risk management of agreements with Third-Party Providers of servicing, Loss Mitigation or foreclosure activities or operations to Ally Bank, including, but not limited to, the Mortgage Servicing Companies, sufficient to ensure that such Third-Party Providers have adequate levels and types of officers and staff as well as sufficient funding for personnel, systems, including, but not limited to, MIS, training and other resources to perform mortgage servicing, Loss Mitigation or foreclosure activities and/or operations on behalf of Ally Bank in a manner that complies with the Legal Requirements, satisfactorily mitigates servicing risks, is safe and sound and appropriately complies with this Order;

(e) establish policies and procedures for oversight and risk management of agreements with Third-Party Providers of servicing, Loss Mitigation or foreclosure activities or

operations to Ally Bank, including, but not limited to, the Mortgage Servicing Companies, sufficient to ensure that Ally Bank is in compliance with the "Guidance for Managing Third-Party Risk" (FIL-44-2008, June 6, 2008);

(f) establish policies and procedures to enhance the information and reports regularly provided for review by the board of directors of Ally Bank regarding agreements or arrangements whereby any mortgage servicing, Loss Mitigation or foreclosure activity or operation is performed on its behalf by a Third-Party Provider, including, but not limited to, one or more of the Mortgage Servicing Companies, to include, at a minimum, compliance risk assessments, the reserve for mortgage servicing risks, as well as the status and results of measures taken, or to be taken, to remediate servicing, Loss Mitigation and foreclosure deficiencies and to comply with this Order; and

(g) establish policies and procedures to periodically determine and provide Ally Bank with adequate levels and types of officers and staff, systems, training and other resources for compliance with the oversight and risk management requirements of this Order.

Approval, Implementation, and Progress Reports

19. (a) GMAC Mortgage, Ally Financial, and ResCap, as applicable, shall submit written plans, programs, policies, procedures, and engagement letters that are acceptable to the Reserve Bank within the applicable time periods set forth in paragraphs 2, 3(c), 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17 of this Order. Independent consultants acceptable to the Reserve Bank shall be retained by GMAC Mortgage within the applicable periods set forth in paragraphs 3(a) and 12 of this Order.

(b) Within 10 days of approval by the Reserve Bank, GMAC Mortgage, Ally Financial, and ResCap, as applicable, shall adopt the approved plans, programs, policies,

and procedures. Upon adoption, GMAC Mortgage, Ally Financial, and ResCap, as applicable, shall implement the approved plans, programs, policies, and procedures, and thereafter fully comply with them.

(c) During the term of this Order, the approved plans, programs, policies, procedures, and engagement letters shall not be amended or rescinded without the prior written approval of the Reserve Bank.

(d) During the term of this Order, GMAC Mortgage, Ally Financial, and ResCap, as applicable, shall revise the approved plans, programs, policies, and procedures as necessary to incorporate new or changes to the Legal Requirements and supervisory guidance of the Board of Governors. The revised plans, programs, policies, and procedures shall be submitted to the Reserve Bank for approval at the same time as the progress reports described in paragraph 21 of this Order.

20. (a) Ally Bank shall submit a written program that is acceptable to the FDIC within the applicable time period set forth in paragraph 18 of this Order.

(b) Within 10 days of approval by FDIC, Ally Bank shall adopt the approved program. Upon adoption, Ally Bank shall implement the approved program, and thereafter fully comply with it.

(c) During the term of this Order, the approved program shall not be amended or rescinded without the prior written approval of the FDIC.

(d) During the term of this Order, Ally Bank shall revise the approved program as necessary to incorporate new or changes to the Legal Requirements and supervisory guidance of the FDIC. The revised plan shall be submitted to the FDIC for approval at the same time as the progress reports described in paragraph 23 of this Order.

21. Within 30 days after the end of each calendar quarter following the date of this Order, Ally Financial's and ResCap's, boards of directors shall jointly submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The Reserve Bank may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

22. Within 15 months after the date of this Order, Ally Financial, ResCap and GMAC Mortgage shall submit a validation report prepared by an independent third-party consultant with respect to compliance with the Order during the first year after the Order becomes effective. The independent third-party consultant shall be acceptable to the Reserve Bank, and shall be engaged not more than nine months after the effective date of this Order. The engagement letter retaining the independent third-party consultant shall be subject to the Reserve Bank's approval. At a minimum the validation report shall include the results of a testing program acceptable to the Reserve Bank that, among other things, will evaluate the effectiveness of the various programs, policies and procedures implemented as a result of this Order.

23. Within 30 days after the end of each calendar quarter following the date of this Order, Ally Bank's board of directors shall submit to the FDIC written progress reports detailing the form and manner of all actions taken to secure compliance with paragraph 18 of this Order and the results thereof. The FDIC may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

Notices

24. All communications regarding this Order shall be sent to:

(a) Mr. James W. Nelson
Senior Vice President
Supervision and Regulation Department
Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, Illinois 60604-1413

(b) Regional Director
Federal Deposit Insurance Corporation
New York Regional Office
350 Fifth Avenue
New York, NY 10118-0110

(c) Ms. Barbara A. Yastine
Chief Administrative Officer
Ally Financial Inc.
1177 Avenue of the Americas
New York, New York 10036

with copies to:

Mr. Daniel Soto
Chief Compliance Officer
Ally Financial Inc.
440 South Church Street
Charlotte, NC 28202

William B. Solomon, Jr., Esq.
General Counsel
Ally Financial Inc.
200 Renaissance Center
9th Floor
Detroit, MI 48265

(d) Mr. Thomas F. Marano
Chairman & Chief Executive Officer - ResCap
Residential Capital, LLC
1177 Avenue of the Americas
New York, NY 10036

with copies to:

Mr. Daniel Soto
Chief Compliance Officer
Ally Financial Inc.
440 South Church Street
Charlotte, NC 28202

Tammy P. Hamzehpour, Esq.
General Counsel - ResCap
1100 Virginia Drive
Fort Washington, PA 19034

(e) GMAC Mortgage, Inc.
c/o Mr. Thomas F. Marano
Chairman & Chief Executive Officer - ResCap
Residential Capital, LLC
1177 Avenue of the Americas
New York, NY 10036

with copies to:

Mr. Daniel Soto
Chief Compliance Officer
Ally Financial Inc.
440 South Church Street
Charlotte, NC 28202

Tammy P. Hamzehpour, Esq.
General Counsel - ResCap
1100 Virginia Drive
Fort Washington, PA 19034

(f) Ms. Barbara A. Yastine
Chair
Ally Bank
1177 Avenue of the Americas
New York, NY 10036

with copies to:

Mr. Daniel Soto
Chief Compliance Officer
Ally Financial Inc.
440 South Church Street
Charlotte, NC 28202

Hu Benton, Esq.
Ally Bank
5425 Wisconsin Avenue, Suite 600
Bethesda, MD 20815

Miscellaneous

25. The provisions of this Order shall be binding on Ally Financial, Ally Bank, ResCap, GMAC Mortgage and each of their institution-affiliated parties in their capacities as such, and their successors and assigns.

26. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank or the FDIC, as applicable.

27. Notwithstanding any provision of this Order, the Reserve Bank may, in its sole discretion, grant written extensions of time to Ally Financial, ResCap and GMAC Mortgage to comply with any provision of this Order, and the FDIC may in its sole discretion, grant written extensions of time to Ally Bank to comply with provisions 18 and 23 of this Order.

28. If Ally Financial, ResCap or GMAC Mortgage believes that compliance with any provision of paragraphs 5, 6, 8, or 9 of this Order would not be legally permissible or would require it to breach any existing contractual obligation to an investor, Ally Financial, ResCap or GMAC Mortgage, as applicable, may make a written submission to the Board of Governors and the Reserve Bank. The written submission shall include the following: (1) specific identification of the legal requirement or contractual or obligation that would be breached, and the likely

consequences of any such breach; (2) a complete description of all good faith efforts undertaken to secure a modification of the contractual obligation or a waiver of its applicability in order to avoid any conflict between the requirements of this Order and the contractual obligation; and (3) any alternative approaches to satisfying the intent of the provision of the Order involved that would not cause a breach of the legal requirement or contractual obligation. Any such submission shall include a detailed opinion of experienced counsel with respect to the asserted conflict between compliance with this Order and the legal requirement or contractual obligation, a copy of the contract involved, and such other information as is necessary to evaluate the submission. A submission pursuant to this paragraph shall be made no later than 30 days before the deadline for submitting an otherwise acceptable plan, policies and procedures, or program with respect to the applicable paragraph. Such a submission in no way relieves Ally Financial, ResCap, and GMAC Mortgage from fully complying with this Order, including the applicable paragraph. Following review of the submission, the Board of Governors, in its discretion, pursuant to authority delegated to the Director of the Division of Banking Supervision and Regulation, and the General Counsel, may modify this Order or may require that Ally Financial, ResCap or GMAC Mortgage, as applicable, comply with this Order.

29. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the FDIC, the Reserve Bank, or any other federal or state agency from taking any further or other action affecting Ally Financial, Ally Bank, ResCap, GMAC Mortgage, or any of their current or former institution-affiliated parties or their successors or assigns.

30. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Order.

By Order of the Board of Governors effective this 13th day of April, 2011.

By Order of the Federal Deposit Insurance Corporation effective this 13th day of April, 2011.

ALLY FINANCIAL INC.

By: /s/ Michael A. Carpenter
Michael A. Carpenter
Chief Executive Officer

ALLY BANK

By: /s/ Mark B. Hales
Mark B. Hales
Chief Executive Officer

RESIDENTIAL CAPITAL, LLC

By: /s/ Thomas Marano
Thomas Marano
Chairman & Chief Executive Officer

GMAC MORTGAGE, LLC

By: /s/ Steven M. Abreu
Steven M. Abreu
President

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By: /s/ Jennifer J. Johnson
Jennifer J. Johnson
Secretary of the Board

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ Daniel E. Frye
Daniel E. Frye
Acting Regional Director
New York Region

Exhibit B

[redacted]7759

MIN: [redacted]

NOTE

Loan Number: [redacted]0219

JANUARY 14, 2009 [Date] | ORANGE [City] | CALIFORNIA [State]

14738 WOLF ROAD, GRASS VALLEY, CALIFORNIA 95949
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 220,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on MARCH 1, 2009. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on FEBRUARY 1, 2039, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1855 WEST KATELLA AVENUE, SUITE 200, ORANGE, CALIFORNIA 92867

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 1,266.44

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit;

and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

SHELLEY VON BRINCKEN (Seal) -Borrower

PAY TO THE ORDER OF
GMAC MORTGAGE, LLC
WITHOUT RECOURSE (Seal) -Borrower

D. CHIODO
ASSISTANT SECRETARY
GMAC BANK

(Seal) -Borrower

(Seal) -Borrower

Pay to the order of
(Seal) -Borrower

Without Recourse:
David Chiodo
Assistant Secretary, agent for
Fannie Mae

PAY TO THE ORDER OF
Fannie Mae
WITHOUT RECOURSE (Seal) -Borrower

D. CHIODO
LIMITED SIGNING OFFICER
GMAC MORTGAGE, LLC f/k/a
GMAC MORTGAGE CORPORATION

[Sign Original Only]

see attached allonge

Allonge to Note

Loan Number: [redacted]0219 [redacted]759

Note Date: January 14, 2009

In Favor of:

MORTGAGECLOSE.COM, INC.

And Executed by

Borrower: SHELLEY VON BRINCKEN

Property: 14738 WOLF RD

GRASS VALLEY, CA 95949

Loan Amount: $220,000.00

Pay to the Order of

GMAC Bank

Without Recourse

MORTGAGECLOSE.COM, INC.

Authorized Signature:

Chau Lam - President of MortgageClose.com, Inc.

Exhibit C

18

RECORDING REQUESTED BY:
CALIFORNIA LAND TITLE COMPANY OF NEVADA COUNTY

AND WHEN RECORDED MAIL TO:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVE., SUITE 200
ORANGE, CA 92867

ORDER NO.: 105038-TO

Nevada County Recorder
Gregory J. Diaz
DOC- 2009-0001231-00
Acct 1-California Land Title Co.
Friday, JAN 23, 2009 08:00:00
REC $22.00|SBS $17.00|SSR $1.00
MIC $1.00|AUT $18.00|
Ttl Pd $59.00 Nbr-0000576689
ENM/EM/1-18

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

DOCUMENT TITLE

SEPARATE PAGE - PURSUANT TO GOVERNMENT CODE 27361.6

titlepg

Recording Requested By:
MORTGAGECLOSE.COM, INC.

And After Recording Return To:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVENUE, SUITE 200
ORANGE, CALIFORNIA 92867
Loan Number: 0810219

RECORDING REQUESTED
BY: OLD REPUBLIC TITLE
212300668 4-SE

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: [redacted]

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JANUARY 14, 2009, together with all Riders to this document.
(B) "Borrower" is SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.
(C) "Lender" is MORTGAGECLOSE.COM, INC.

Lender is a NEVADA CORPORATION organized and existing under the laws of NEVADA
Lender's address is 1855 WEST KATELLA AVENUE, SUITE 200, ORANGE, CALIFORNIA 92867

(D) "Trustee" is CALIFORNIA LAND TITLE COMPANY OF NV COUNTY
464 BRUNSWICK RD, GRASS VALLEY, CALIFORNIA 95945

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated JANUARY 14, 2009. The Note states that Borrower owes Lender TWO HUNDRED TWENTY THOUSAND AND 00/100 Dollars (U.S. $ 220,000.00) plus interest.

4

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2039 .

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Planned Unit Development Rider
☐ Balloon Rider	☐ Biweekly Payment Rider
☐ 1-4 Family Rider	☐ Second Home Rider
☐ Condominium Rider	☐ Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's

covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of NEVADA :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

LOT 1, AS SHOWN ON FINAL MAP NO.00-002 OF THE WOLF, FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF NEVADA, STATE OF CALIFORNIA, ON MAY 6, 2008, IN BOOK 8 OF SUBDIVISIONS, AT PAGE 178.
A.P.N.: 55-00-34

which currently has the address of 14738 WOLF ROAD

[Street]

GRASS VALLEY , California 95949 ("Property Address"):

[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not

obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender

shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether

or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires

otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action

required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

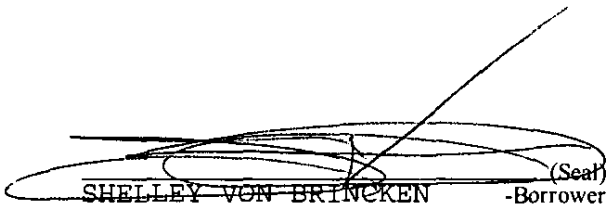
23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Borrower at the address set forth above. A copy of any Notice of Default and any Notice of Sale will be sent only to the address contained in this recorded request. If the Borrower's address changes, a new request must be recorded.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.



SHELLEY VON BRINCKEN (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Witness:

_____

Witness:

_____

[Space Below This Line For Acknowledgment]

State of California)
) ss.
County of Placer)

On 1-15-09 before me, K. Dean Notary public

personally appeared SHELLEY VON BRINCKEN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

K. DEAN
Commission # 1628882
Notary Public - California
Placer County
My Comm. Expires Dec 11, 2009

NOTARY SEAL

NOTARY SIGNATURE

K. Dean
(Typed Name of Notary)

Loan Number: [redacted]0219

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 14th day of JANUARY, 2009 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION
(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

14738 WOLF ROAD, GRASS VALLEY, CALIFORNIA 95949
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD

(the "Declaration"). The Property is a part of a planned unit development known as

THE WOLF
[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

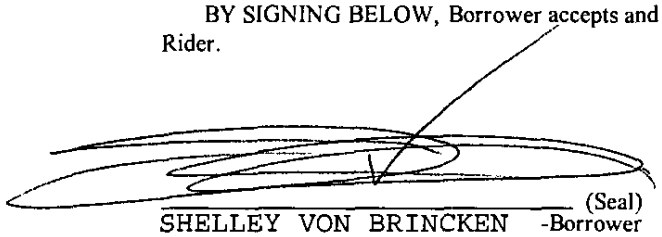
C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.



SHELLEY VON BRINCKEN (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Exhibit D

RECORDING REQUESTED BY:

Old Republic Default Management Services

WHEN RECORDED MAIL TO:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

This is to certify that the attached is a true and correct copy of the original recorded 4-28-10 as instrument No. 2010-9777 Official Records of Nevada County.

Recording Requested by: Old Republic Default Management Services 17.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No. : GM-242742-C Loan No.: [redacted]7759

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **$5,958.63** as of **4/27/2010**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things. (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
C/O ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

7113 9082 9401 2169 5959

Exhibit E

RECORDING REQUESTED BY:
Executive Trustee Services, LLC dba ETS Services, LLC

AND WHEN RECORDED MAIL TO:
GMAC MORTGAGE, LLC FKA
GMAC MORTGAGE CORPORATION
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034

Forward Tax Statements to the address given above

COPY of Document Recorded
at **Nevada** County Recorder
2010-0021600 **09/10/2010**
has not been compared with original.
Original will be returned when process has been completed.

Fee: **20.00** DTT: **0.00** Total **20.00**

SPACE ABOVE LINE FOR RECORDER'S USE

TS # **GM-242742-C**
LOAN # [redacted]**7759**
TITLE ORDER # **33-80132897**

INVESTOR #: **0000000000000**

TRUSTEE'S DEED UPON SALE

APN **55-060-68-000** TRANSFER TAX: **$00.00**
"THIS TRANSACTION IS EXEMPT FROM THE REQUIREMENTS OF THE REVENUE AND TAXATION CODE, SECTION 480.3"
The Grantee Herein **Was** The Foreclosing Beneficiary.
The Amount Of The Unpaid Debt was **$235,204.06**
The Amount Paid By The Grantee Was **$186,940.72**
Said Property Is In The City Of **GRASS VALLEY**, County of **Nevada**

Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee, (whereas so designated in the Deed of Trust hereunder
more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

FEDERAL NATIONAL MORTGAGE ASSOCIATION

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **Nevada**, State of California, described as follows:

See exhibit "A" attached hereto and made a part hereof

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY** as Trustor, dated **1/14/2009** of the Official Records in the office of the Recorder of **Nevada**, California under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on **1/23/2009** , instrument number **2009-0001231-00** (or Book , Page)
of Official records. Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

EXHIBIT "A"

GM-242742-C

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF NEVADA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

LOT 1, AS SHOWN UPON THE FINAL MAP NO. 00-002, "THE WOLF", AS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF NEVADA ON MAY 6, 2008, IN BOOK 8 OF SUBDIVISION MAPS, AT PAGE 178.

TRUSTEE'S DEED UPON SALE

Trustee's Deed
T.S.# **GM-242742-C**
Loan # [redacted]**7759**
Title Order # **33-80132897**

All requirements per California Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **8/31/2010**. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being **$186,940.72**, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, **Executive Trustee Services, LLC dba ETS Services, LLC**, as Trustee, has this day, caused its name
to be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws

Date: **9/3/2010**

Executive Trustee Services, LLC dba ETS Services, LLC

By: _____
Kathleen Gowen, Limited Signing Officer

State of California } S.S.
County of Los Angeles }
On **9/3/2010** before me, **Sally Beltran** Notary Public, personally appeared **Kathleen Gowen** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)
Sally Beltran

SALLY BELTRAN
Commission # 1777085
Notary Public - California
Los Angeles County
My Comm. Expires Oct 30, 2011

BOE-502-A (FRONT) REV. 8 (10-05) GM-242742-C

PRELIMINARY CHANGE OF OWNERSHIP REPORT

FOR RECORDER'S USE ONLY

[To be completed by transferee (buyer) prior to transfer of subject property in accordance with section 480.3 of the Revenue and Taxation Code.] A Preliminary Change of Ownership Report must be filed with each conveyance in the County Recorder's office for the county where the property is located; this particular form may be used in all 58 counties of California.

THIS REPORT IS NOT A PUBLIC DOCUMENT

SELLER/TRANSFEROR: **FEDERAL NATIONAL MORTGAGE ASSOCIATION**
BUYER/TRANSFEREE: **FEDERAL NATIONAL MORTGAGE ASSOCIATION**
ASSESSOR'S PARCEL NUMBER(S): 55-060-68-000
PROPERTY ADDRESS OR LOCATION: 14738 WOLF ROAD, GRASS VALLEY, CA 95949
MAIL TAX INFORMATION TO: Name FEDERAL NATIONAL MORTGAGE ASSOCIATION
Address C/O EXECUTIVE TRUSTEE SERVICES, 2255 NORTH ONTARIO STREET, SUITE 400, BURBANK, CA 91504
Phone Number (8 a.m-5 p.m.) (818) 260-1600

NOTICE: A lien for property taxes applies to your property on January 1 of each year for the taxes owing in the following fiscal year, July 1 through June 30. One-half of these taxes is due November 1, and one-half is due February 1. The first installment becomes delinquent on December 10, and the second installment becomes delinquent on April 10. One tax bill is mailed before November 1 to the owner of record. **You may be responsible for the current or upcoming property taxes even if you do not receive the tax bill.**

The property which you acquired may be subject to a supplemental assessment in an amount to be determined by the Nevada Assessor. For further information on your supplemental roll obligation, please call the Nevada Assessor at _____.

PART I: TRANSFER INFORMATION *(please answer all questions)*

YES	NO		
☐	☒	A.	Is this transfer solely between husband and wife (addition of a spouse, death of a spouse, divorce settlement, etc)?
☐	☒	B.	Is this transaction only a correction of the name(s) of the person(s) holding title to the property (for example, a name change upon marriage)? Please explain _____
☐	☒	C.	Is this document recorded to create, terminate, or reconvey a lender's interest in the property?
☐	☒	D.	Is this transaction recorded only as a requirement for financing purposes or to create, terminate, or reconvey a security interest (e.g., cosigner)? Please explain _____
☐	☒	E.	Is this document recorded to substitute a trustee of a trust, mortgage, or other similar document?
☐	☒	F.	Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants?
☐	☒	G.	Does this transfer return property to the person who created the joint tenancy (original transferor)?
		H.	Is this a transfer of property:
☐	☒		1. to a revocable trust that may be revoked by the transferor and is for the benefit of the ☐ transferor ☐ transferor's spouse?
☐	☒		2. to a trusts that may be revoked by the Creator/Grantor who is also a joint tenant, and which names the other joint tenant(s) as beneficiaries when the Creator/Grantor dies?
☐	☒		3. to an irrevocable trust for the benefit of the Creator/Grantor and/or Grantor's spouse?
☐	☒		4. to an irrevocable trust from which the property reverts to the Creator/Grantor within 12 years?
☐	☒	I.	If this property is subject to a lease, is the remaining lease term 35 years or more including written options?
☐	☒	*J.	Is this a transfer between ☐ parent(s) and child(ren)? ☐ or from grandparent(s) to grandchild(ren)?
☐	☒	*K.	Is this transaction to replace a principal residence by a person 55 years of age or older? Within the same county? ☐ Yes ☐ No
☐	☒	*L.	Is this transaction to replace a principal residence by a person who is severely disabled as defined by Revenue and Taxation Code section 69.5? Within the same county? ☐ Yes ☐ No
☐	☒	M.	Is this transfer solely between domestic partners currently registered with the California Secretary of State?

*If you checked yes to J, K or L, you may qualify for a property tax reassessment exclusion, which may result in lower taxes on your property. **If you do not file a claim, your property will be reassessed.**

Please provide any other information that will help the Assessor to understand the nature of the transfer.

If the conveying document constitutes and exclusion from a change in ownership as defined in section 62 of the Revenue and Taxation Code for any reason other than those listed above, set forth the specific exclusions claimed: _____.

Please answer all questions in each section. If a question does not apply, indicate with "N/A." Sign and date at bottom of second page.

PART II: OTHER TRANSFER INFORMATION

A. Date of transfer if other than recording date: 8/31/2010

B. Type of transfer *(please check appropriate box)*:

☐ Purchase ☒ Foreclosure ☐ Gift ☐ Trade or Exchange ☐ Merger, Stock, or Partnership Acquisition

☐ Contract of Sale – Date of Contract _____

☐ Inheritance – Date of Death _____ ☐ Other *(please explain)*: _____

☐ Creation of Lease ☐ Assignment of a Lease ☐ Termination of a Lease ☐ Sale/Leaseback

☐ Date lease began _____

☐ Original term in years (including written options) _____

☐ Remaining term in years (including written options) _____

Monthly Payment _____ Remaining Term _____

C. Was only a partial interest in the property transferred? ☐ Yes ☒ No

If **yes**, indicate the percentage transferred _____%.

BOE-502-A (BACK) REV. 8 (10-05)

Please answer, to the best of your knowledge, all applicable questions, then sign and date. If a question does not apply, indicate with "N/A."

PART III: PURCHASE PRICE AND TERMS OF SALE

A. CASH DOWN PAYMENT OR value of trade or exchange (excluding closing costs) Amount $ _____

B. FIRST DEED OF TRUST @ _____ % interest for _____ years. Pymts./Mo. = $ _____ (Prin. & Int. only) Amount $ _____
- ☐ FHA(_____ Discount Points) ☐ Fixed Rate ☐ New loan
- ☐ Conventional ☐ Variable Rate ☐ Assumed existing loan balance
- ☐ VA(_____ Discount Points) ☐ All inclusive D.T.($_____ Wrapped) ☐ Bank or savings & loan
- ☐ Cal-Vet ☐ Loan carried by seller ☐ Finance company

Balloon payment ☐ Yes ☐ No Due Date _____ Amount $ _____

C. SECOND DEED OF TRUST @ _____ % interest for _____ years. Pymts./Mo. = $ _____ (Prin. & Int. only) Amount $ _____
- ☐ Bank or savings & loan ☐ Fixed Rate ☐ New loan
- ☐ Loan carried by seller ☐ Variable Rate ☐ Assumed existing loan balance

Balloon payment ☐ Yes ☐ No Due Date _____ Amount $ _____

D. OTHER FINANCING: Is other financing involved not covered in (b) or (c) above? ☐ Yes ☐ No Amount $ _____
Type _____ @ _____ % interest for _____ years. Pymts./Mo. = $ _____ (Prin. & Int. only)
- ☐ Bank or savings & loan ☐ Fixed Rate ☐ New loan
- ☐ Loan carried by seller ☐ Variable Rate ☐ Assumed existing loan balance

Balloon payment ☐ Yes ☐ No Due Date _____ Amount $ _____

E. WAS AN IMPROVEMENT BOND ASSUMED BY THE BUYER ☐ Yes ☐ No Outstanding Balance: Amount $ _____

F. TOTAL PURCHASE PRICE *(or acquisition price, if traded or exchanged, include real estate commission if paid)*

TOTAL ITEMS A THROUGH E $

G. PROPERTY PURCHASED ☐ Through a broker ☐ Direct from seller ☐ From a family member ☐ Other *(please explain)*: _____

If purchased through a broker, provide broker's name and phone number: _____

Please explain special terms, seller concessions, or financing and any other information that would help the Assessor understand the purchase price and terms of sale: _____

PART IV: PROPERTY INFORMATION

A. TYPE OF PROPERTY TRANSFERRED:
- ☒ Single-family residence
- ☐ Multiple-family residence (no. of units: _____)
- ☐ Commercial/Industrial
- ☐ Other (Description: i.e., timber, mineral, water rights, etc. _____)
- ☐ Agricultural
- ☐ Co-op/Own-your-own
- ☐ Condominium
- ☐ Timeshare
- ☐ Manufactured home
- ☐ Unimproved lot

B. IS THIS PROPERTY INTENDED AS YOUR PRINCIPAL RESIDENCE? ☐ Yes ☒ No
If **yes**, enter date of occupancy _____ (month) / _____ (day), 20_____ (year) or intended occupancy _____ (month) / _____ (day), 20_____ (year)

C. IS PERSONAL PROPERTY INCLUDED IN PURCHASE PRICE (i.e., furniture, farm equipment, machinery, etc.) (other than a manufactured home subject to local property tax)? ☐ Yes ☒ No
If **yes**, enter the value of the personal property included in the purchase price $ _____ *(Attach itemized list of personal property.)*

D. IS A MANUFACTURED HOME INCLUDED IN PURCHASE PRICE? ☐ Yes ☒No
If **yes**, how much of the purchase price is allocated to the manufactured home? $ _____
Is the manufactured home subject to local property tax? ☐ Yes ☐ No What is the decal number? _____

E. DOES THE PROPERTY PRODUCE INCOME? ☐ Yes ☒ No If **yes**, is the income from:
☐ Lease/Rent ☐Contract ☐ Mineral rights ☐ Other *(please explain)*: _____

F. WHAT WAS THE CONDITION OF THE PROPERTY AT THE TIME OF SALE?
☐ Good ☐ Average ☐ Fair ☐ Poor
Please explain the physical condition of the property and provide any other information (such as restrictions, etc.) that would assist the Assessor in determining the value of the property:

CERTIFICATION

OWNERSHIP TYPE	(☐)
Proprietorship	☐
Partnership	☐
Corporation	☐
Other _____	☐

I certify that the foregoing is true, correct and complete to the best of my knowledge and belief. This declaration is binding on each and every co-owner and/or partner.

NAME OF NEW OWNER/CORPORATE OFFICER		TITLE
CANDY HERZOG		Limited Signing Officer
SIGNATURE OF NEW OWNER/CORPORATE OFFICER		DATE
NAME OF ENTITY *(typed or printed)*		FEDERAL EMPLOYER ID NUMBER
EXECUTIVE TRUSTEE SERVICES		[redacted]3943
ADDRESS *(typed or printed)* 2255 North Ontario Street, Suite 400 Burbank California 91504-3120	E-MAIL ADDRESS *(optional)*	DATE 8/31/2010

(NOTE: The Assessor may contact you for additional information.)

If a document evidencing a change of ownership is presented to the recorder for recordation without the concurrent filing of a preliminary change of ownership report, the recorder may charge an additional recording fee of twenty dollars ($20).

Exhibit F

FILED
AUG 11 2010
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

Shelley von Brincken
14738 Wolf Rd
Grass Valley CA 95949

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Shelley von Brincken

Plaintiff,

vs.

MORTGAGECLOSE.COM INC.

Defendant

Executive Trust Services dba ETS Services, LLC

Defendant

Case # 2:10-CV-2153 JAM KJN PS

ORIGINAL PETITION

Date: 8/10/10

Comes now Shelley von Brincken , hereinafter referred to as "Petitioner," and moves the court for relief as herein requested:

PARTIES

Petitioner is Shelley von Brincken , 14738 Wolf Rd Grass Valley CA 95949. Currently Known Defendant(s) are/is: MORTGAGECLOSE.COM INC. , 1855 WEST KATELLA AVE,SUITE 200 ORANGE,CA 92867, Executive Trust Services dba ETS Services, LLC LLC 2255 N. Ontario St, Ste 400, Burbank, CA 91504 by and through its attorney.

STATEMENT OF CAUSE

Petitioner, entered into a consumer contract for the refinance of a primary residence located at 14738 Wolf Rd, Grass Valley CA 95949, hereinafter referred to as the "property."

Defendants, acting in concert and collusion with others, induced Petitioner to enter into a predatory loan agreement with Defendant.

Defendants committed numerous acts of fraud against Petitioner in furtherance of a carefully crafted scheme intended to defraud Petitioner.

Defendants failed to make proper notices to Petitioner that would have given Petitioner warning of the types of tactics used by Defendants to defraud Petitioner.

Defendants charged false fees to Petitioner at settlement.

Defendants used the above referenced false fees to compensate agents of Petitioner in order to induce said agents to breach their fiduciary duty to Petitioner.

Defendant's attorney caused to be initiated collection procedures, knowing said collection procedures in the instant action were frivolous as lender is estopped from collection procedures, under authority of Uniform Commercial Code 3-501, subsequent to the request by Petitioner for the production of the original promissory note alleged to create a debt.

IN BRIEF

(Non-factual Statement of Posture and Position)

It is not the intent of Petitioner to indict the entire industry. It is just that Plaintiff will be making a number of allegations that, outside the context of the current condition of the real estate industry, may seem somewhat outrageous and counter-intuitive.

When Petitioner accuses ordinary individuals of acting in concert and collusion with an ongoing criminal conspiracy, it tends to trigger an incredulous response as it is unreasonable to consider that all Agents, loan agents, appraisers, and other ordinary people, just doing what they have been trained to do, are out to swindle the poor unsuspecting borrower.

The facts Petitioner is prepared to prove are that Petitioner has been harmed by fraud committed by people acting in concert and collusion, one with the other. Petitioner has no reason to believe that the Agent, loan officer, appraiser, and others were consciously aware that what they were doing was part of an ongoing criminal conspiracy, only that it was, and they, at the very least, kept themselves negligently uninformed of the wrongs they were perpetrating. Petitioner maintains the real culprit is the system itself, including the courts, for failure to strictly enforce the consumer protection laws.

CAREFULLY CRAFTED CRIMINAL CONNIVANCE

(General State of the Real Estate Industry)

THE BEST OF INTENTIONS

Prior to the 1980's and 1990's ample government protections were in place to protect consumers and the lending industry from precisely the disaster we now experience. During President Clinton's administration, under the guise of making housing available to the poor, primary protections were relaxed which had the effect of releasing the unscrupulous on the unwary.

Prior to deregulation in the 1980's, lenders created loans for which they held and assumed the risk. Consequently, Americans were engaged in safe and stable home mortgages. With the protections removed, the unscrupulous lenders swooped in and, instead of making loans available to the poor, used the opportunity to convince the unsophisticated American public to do something that had been traditionally taboo; home buyers were convinced to speculate with their homes, their most important investment.

MORTGAGECLOSE.COM INC. , Ameriquest, Countrywide, and many others swooped in and convinced Americans to sell their homes, get out of their safe mortgage agreements, and speculate with the equity they had gained

by purchasing homes they could not afford. Lenders created loans intended to fail as, under the newly crafted system, the Lender profited more from a mortgage default than from a stable loan.

Companies cropped up who called themselves banks when, in fact, they were only either subsidiaries of banks, or unaffiliated companies that were operated for the purpose of creating and selling promissory notes. As will be demonstrated, these companies then profited from the failure of the underlying loans.

HOW IT WORKS

Briefly, how it works is this, the Lender would secure a large loan from a large bank, convert that loan into 20 and 30 year mortgages and then sell the promise to pay to an investor.

People would set up mortgage companies buy securing a large loan from one of the major banks, then convert that loan into 20 and 30 year mortgages. In order to accomplish this an Agent would contract with a seller to find a buyer, bring both seller and buyer to a lender who would secure the title from the seller using the borrowed bank funds for that purpose, and then trade the title to the buyer in exchange for a promissory note.

The lender then creates a 20 or 30 year mortgage with money the lender must repay within 6 months. As soon as the closing is consummated, the promissory note is sold to an investor pool.

Using the instant case as an example, a 220,000.00 note at 5.9140% interest over 30 years will produce $180,455.33 The lender can then offer to the investor the security instrument (promissory note) at say 50% of it's future value. The investor will, over the life of the note, less approximately 3.00% servicing fees, realize $233,152.81 . The lender can then pay back the bank

and retain a handsome profit in the amount of $27,574.64. The lender, however, is not done with the deal.

The lender signed over the promissory note to the investor at the time of the trade, but did not sign over the lien document (mortgage or deed of trust). The State of Kansas Supreme Court addressed this issue and stated that such a transaction was certainly legal. However, it created a fatal flaw as the holder of the lien document, at time of sale of the security instrument, received consideration in excess of the lien amount. Since the lien holder received consideration, he could not be harmed. Therefore the lien became an unenforceable document.

This begs the question: if keeping the lien would render it void, why would the lender not simply transfer the lien with the promissory note? The reason is because the lender will hold the lien for three years, file an Internal Revenue Service Form 1099a, claim the full amount of the lien as abandoned funds, and deduct the full amount from the lender's tax liability. The lender, by this maneuver, gets consideration a second time. And still the lender is not done profiting from the deal.

After sale of the promissory note, the lender remains as the servicer for the investor. The lender will receive 3% of each payment the lender collects and renders to the investor pool. However, if the payment is late, the lender is allowed to assess an extra 5% and keep that amount. Also, if the loan defaults, the lender stands to gain thousands for handling the foreclosure. The lender stands to profit more from a note that is overly expensive, than from a good stable loan. And where, you may ask, does all this profit come from? It comes from the equity the borrower had built up in the home. And still the lender is not finished profiting from the deal.

Another nail was driven in the American financial coffin when on the last day Congress was in session in 2000 when restrictions that had been in place

since the economic collapse of 1907 were removed. Until 1907 investors were allowed to bet on stocks without actually buying them. This unbridled speculation led directly to an economic collapse. As a result the legislature banned the practice, until the year 2000. In 2000 the unscrupulous lenders got their way on the last day of the congressional session. Congress removed the restriction banning derivatives and again allowed the practice, this time taking only 8 years to crash the stock market. This practice allowed the lender to profit further from the loan by betting on the failure of the security instrument he had just sold to the unwary investor, thus furthering the purpose of the lender to profit from both the borrower (consumer) and the investor.

The failure of so many loans recently resulted in a seven hundred and fifty billion dollar bailout at the expense of the taxpayer. The unsuspecting consumer was lulled into accepting the pronouncements of the lenders, appraisers, underwriters, and trustees as all were acting under the guise of government regulation and, therefore, the borrower had reason to expect good and fair dealings from all. Unfortunately, the regulations in place to protect the consumer from just this kind of abuse were simply being ignored.

The loan origination fee from the HUD1 settlement statement is the finder's fee paid for the referral of the client to the lender by a person acting as an agent for the borrower. Hereinafter, the person or entity who receives any portion of the yield spread premium, or a commission of any kind consequent to securing the loan agreement through from the borrower will be referred to as "Agent." The fee, authorized by the consumer protection law is restricted to 1% of the principal of the note. It was intended that the Agent, when seeking out a lender for the borrower, would seek the best deal for his client rather than who would pay him the most. That was the intent, but not the reality. The reality is that Agents never come away from the table with less

than 2% or 3% of the principal. This is accomplished by undisclosed fees to the Agent in order to induce the Agent to breach his fiduciary duty to the borrower and convince the borrower to accept a more expensive loan product than the borrower qualifies for. This will generate more profits for the lender and, consequently, for the Agent.

It is a common practice for lenders to coerce appraisers to give a higher appraisal than is the fair market price. This allows the lender to increase the cost of the loan product and give the impression that the borrower is justified in making the purchase.

The lender then charges the borrower an underwriting fee in order to convince the borrower that someone with knowledge has gone over the conditions of the note and certified that they meet all legal criteria. The trustee, at closing, participates actively in the deception of the borrower by placing undue stress on the borrower to sign the large stack of paperwork without reading it. The trustee is, after all, to be trusted and has been paid to insure the transaction. This trust is systematically violated for the purpose of taking unfair advantage of the borrower. The entire loan process is a carefully crafted contrive connivance designed and intended to induce the unsophisticated borrower into accepting a loan product that is beyond the borrowers means to repay. With all this, it should be a surprise to no one that this country is having a real estate crisis.

PETITIONER WILL PROVE THE FOLLOWING

Petitioner is prepared to prove, by a preponderance of evidence that:

- Lender has no legal standing to bring collection or foreclosure claims against the property;
- Lender is not a real party in interest in any contract which can claim a collateral interest in the property;

- even if Lender were to prove up a contract to which Lender had standing to enforce against Petitioner, no valid lien exists which would give Lender a claim against the property;
- even if Lender were to prove up a contract to which Lender had standing to enforce against Petitioner, said contract was fraudulent in its creation as endorsement was secured by acts of negligence, common law fraud, fraud by non-disclosure, fraud in the inducement, fraud in the execution, usury, and breaches of contractual and fiduciary obligations by Mortgagee or "Trustee" on the Deed of Trust, "Mortgage Agents," "Loan Originators," "Loan Seller," "Mortgage Aggregator," "Trustee of Pooled Assets," "Trustee or officers of Structured Investment Vehicle," "Investment Banker," "Trustee of Special Purpose Vehicle/Issuer of Certificates of 'Asset-Backed Certificates,'" "Seller of 'Asset-Backed' Certificates (shares or bonds)," "Special Servicer" and Trustee, respectively, of certain mortgage loans pooled together in a trust fund;
- Defendants have concocted a carefully crafted connivance wherein Lender conspired with Agents, et al, to strip Petitioner of Petitioner's equity in the property by inducing Plaintiff to enter into a predatory loan inflated loan product;
- Lender received unjust enrichment in the amount of 5% of each payment made late to Lender while Lender and Lender's assigns acted as servicer of the note;

- Lender and Lender's assigns, who acted as servicer in place of Lender, profited by handling the foreclosure process on a contract Lender designed to have a high probability of default;
- Lender intended to defraud Investor by converting the promissory note into a security instrument and selling same to Investor;
- Lender intended to defraud Investor and the taxpayers of the United States by withholding the lien document from the sale of the promissory note in order that Lender could then hold the lien for three years, then prepare and file Internal Revenue Form 1099a and falsely claim the full lien amount as abandoned funds and deduct same from Lender's income tax obligation;
- Lender defrauded backers of derivatives by betting on the failure of the promissory note the lender designed to default;
- participant Defendants, et al, in the securitization scheme described herein have devised business plans to reap millions of dollars in profits at the expense of Petitioner and others similarly situated.

PETITIONER SEEKS REMEDY

In addition to seeking compensatory, consequential and other damages, Petitioner seeks declaratory relief as to what (if any) party, entity or individual or group thereof is the owner of the promissory note executed at the time of the loan closing, and whether the Deed of Trust (Mortgage) secures any obligation of the Petitioner, and a Mandatory Injunction requiring re-conveyance of the subject property to the Petitioner or, in the alternative a Final Judgment granting Petitioner Quiet Title in the subject property.

PETITIONER HAS BEEN HARMED

Petitioner has suffered significant harm and detriment as a result of the actions of Defendants.

Such harm and detriment includes economic and non-economic damages, and injuries to Petitioner's mental and emotional health and strength, all to be shown according to proof at trial.

In addition, Petitioner will suffer grievous and irreparable further harm and detriment unless the equitable relief requested herein is granted.

STATEMENT OF CLAIM

DEFENDANTS LACK STANDING

No evidence of Contractual Obligation

Defendants claim a controversy based on a contractual violation by Petitioner but have failed to produce said contract. Even if Defendants produced evidence of the existence of said contract in the form of an allegedly accurate photocopy of said document, a copy is only hearsay evidence that a contract actually existed at one point in time. A copy, considering the present state of technology, could be easily altered. As Lender only created one original and that original was left in the custody of Lender, it was imperative that Lender protect said instrument.

In as much as the Lender is required to present the original on demand of Petitioner, there can be no presumption of regularity when the original is not so produced. In as much as Lender has refused Petitioner's request of the chain of custody of the security instrument in question by refusing to identify all current and past real parties in interest, there is no way to follow said chain of custody to insure, by verified testimony, that no alterations to the original provisions in the contract have been made. Therefore, the alleged copy of the original is only

hearsay evidence that an original document at one time existed. Petitioner maintains that, absent production of admissible evidence of a contractual obligation on the part of Petitioner, Defendants are without standing to invoke the subject matter jurisdiction of the court.

No Proper Evidence of Agency

Defendants claim agency to represent the principal in a contractual agreement involving Petitioner, however, Defendants have failed to provide any evidence of said agency other than a pronouncement that agency has been assigned by some person, the true identity and capacity of whom has not been established. Defendants can hardly claim to be agents of a principal then refuse to identify said principal. All claims of agency are made from the mouth of the agent with no attempt to provide admissible evidence from the principal.

Absent proof of agency, Defendants lack standing to invoke the subject matter jurisdiction of the court.

Special Purpose Vehicle

Since the entity now claiming agency to represent the holder of the security instrument is not the original lender, Petitioner has reason to believe that the promissory note, upon consummation of the contract, was converted to a security and sold into a special purpose vehicle and now resides in a Real Estate Mortgage Investment Conduit (REMIC) as defined by the Internal Revenue Code and as such, cannot be removed from the REMIC as such would be a prohibited transaction. If the mortgage was part of a special purpose vehicle and was removed on consideration of foreclosure, the real party in interest would necessarily be the trustee of the special purpose vehicle. Nothing in the pleadings of Defendants indicates the existence of a special purpose vehicle, and the lack of a

proper chain of custody documentation gives Petitioner cause to believe defendant is not the proper agent of the real party in interest.

CRIMINAL CONSPIRACY AND THEFT

Defendants, by and through Defendant's Agents, conspired with other Defendants, et al, toward a criminal conspiracy to defraud Petitioner. Said conspiracy but are not limited to acts of negligence, breach of fiduciary duty, common law fraud, fraud by non-disclosure, and tortuous acts of conspiracy and theft, to include but not limited to, the assessment of improper fees to Petitioner by Lender, which were then used to fund the improper payment of commission fees to Agent in order to induce Agent to violate Agent's fiduciary duty to Petitioner.

AGENT PRACTICED UP-SELLING

By and through the above alleged conspiracy, Agent practiced up-selling to Petitioner. In so doing, Agent violated the trust relationship actively cultivated by Agent and supported by fact that Agent was licensed by the state. Agent further defrauded Petitioner by failing to disclose Agent's conspiratorial relationship to Lender, Agent violated Agent's fiduciary duty to Petitioner and the duty to provide fair and honest services, through a series of carefully crafted connivances, wherein Agent proactively made knowingly false and misleading statements of alleged fact to Petitioner, and by giving partial disclosure of facts intended to directly mislead Petitioner for the purpose of inducing Petitioner to make decisions concerning the acceptance of a loan product offered by the Lender. Said loan product was more expensive than Petitioner could legally afford. Agent acted with full knowledge that Petitioner would have made a different decision had Agent given complete disclosure.

FRAUDULENT INDUCEMENT

Lender maliciously induced Petitioner to accept a loan product, Lender knew, or should have known, Petitioner could not afford in order to unjustly enrich Lender.

EXTRA PROFIT ON SALE OF PREDATORY LOAN PRODUCT

Said more expensive loan product was calculated to produce a higher return when sold as a security to an investor who was already waiting to purchase the loan as soon as it could be consummated.

Extra Commission for Late Payments

Lender acted with deliberate malice in order to induce Petitioner to enter into a loan agreement that Lender intended Petitioner would have difficulty paying. The industry standard payment to the servicer for servicing a mortgage note is 3% of the amount collected. However, if the borrower is late on payments, a 5% late fee is added and this fee is retained by the servicer. Thereby, the Lender stands to receive more than double the regular commission on collections if the borrower pays late.

Extra Income for Handling Foreclosure

Lender acted with deliberate malice in order to induce petitioner to enter into a loan agreement on which Lender intended petitioner to default. In case of default, the Lender, acting as servicer, receives considerable funds for handling and executing the foreclosure process.

Credit Default Swap Gambling

Lender, after deliberately creating a loan intended to default is now in a position to bet on credit default swap, commonly referred to as a derivative as addressed more fully below. Since Lender designed the loan to fail, betting on said failure is essentially a sure thing.

LENDER ATTEMPTING TO FRAUDULENTLY COLLECT ON VOID LIEN

Lender sold the security instrument after closing and received consideration in an amount in excess of the lien held by Lender. Since Lender retained the lien document upon the sale of the security instrument, Lender separated the lien from said security instrument, creating a fatal and irreparable flaw.

When Lender received consideration while still holding the lien and said consideration was in excess of the amount of the lien, Lender was in a position such that he could not be harmed and could not gain standing to enforce the lien. The lien was, thereby, rendered void.

Since the separation of the lien from the security instrument creates such a considerable concern, said separation certainly begs a question: "Why would the Lender retain the lien when selling the security instrument?"

When you follow the money the answer is clear. The Lender will hold the lien for three years, then file an IRS Form 1099a and claim the full amount of the lien as abandoned funds and deduct the full amount from Lender's tax liability, thereby, receiving consideration a second time.

Later, in the expected eventuality of default by petitioner, Lender then claimed to transfer the lien to the holder of the security, however, the lien once satisfied, does not gain authority just because the holder, after receiving consideration, decides to transfer it to someone else.

LENDER PROFIT BY CREDIT DEFAULT SWAP DERIVATIVES

Lender further stood to profit by credit default swaps in the derivatives market, by way of inside information that Lender had as a result of creating the faulty loans sure to default. Lender was then free to invest on the bet that said loan would default and stood to receive unjust enrichment a third time. This credit default

swap derivative market scheme is almost totally responsible for the stock market disaster we now experience as it was responsible for the stock market crash in 1907.

LENDER CHARGED FALSE FEES

Lender charged fees to Petitioner that were in violation of the limitations imposed by the Real Estate Settlement Procedures Act as said fees were simply contrived and not paid to a third party vendor.

Lender charged other fees that were a normal part of doing business and should have been included in the finance charge.

Below is a listing of the fees charged at settlement. Neither at settlement, nor at any other time did Lender or Trustee provide documentation to show that the fees herein listed were valid, necessary, reasonable, and proper to charge Petitioner.

803	Appraisal	$196.00
808	Underwriting Fee	$1,095.00
901	Interest from 01/22/09 to 02/01/09	$343.75
902	Mortgage Insurance Premium	$838.00
1101	Settlement fee	$705.00
1106	Notary fee	$100.00
1108	Title Insurance	$951.50
1109	Lenders Coverage	$429.00
1110	Owner's Coverage	$1,045.00
1111	Environmental Protection Lien	$25.00
1112	Upkeep Assessment fee	$25.00
1201	Recording Fee	$59.00
1202	City/county tax/stamp	$302.00

Debtor is unable to determine whether or not the above fees are valid in accordance with the restrictions provided by the various consumer protection laws. Therefore, please provide; a complete billing from each vendor who provided the above listed services; the complete contact information for each vendor who provided a billed service; clearly stipulate as to the specific service performed; a

showing that said service was necessary; a showing that the cost of said service is reasonable; a showing of why said service is not a regular cost of doing business that should rightly be included in the finance charge.

The above charges are hereby disputed and deemed unreasonable until such time as said charges have been demonstrated to be reasonable, necessary, and in accordance with the limitations and restrictions included in any and all laws, rules, and regulations intended to protect the consumer.

In the event lender fails to properly document the above charges, borrower will consider same as false charges. The effect of the above amounts that borrower would pay over the life of the note will be an overpayment of $80,272.12 This amount will be reduced by the amount of items above when said items are fully documented.

RESPA PENALTY

From a cursory examination of the records, with the few available, the apparent RESPA violations are as follows: Good Faith Estimate not within limits, No HUD-1 Booklet, Truth In Lending Statement not within limits compared to Note, Truth in Lending Statement not timely presented, HUD-1 not presented at least one day before closing, No Holder Rule Notice in Note, No 1st Payment Letter.

The closing documents included no signed and dated : Financial Privacy Act Disclosure; Equal Credit Reporting Act Disclosure; notice of right to receive appraisal report; servicing disclosure statement; borrower's Certification of Authorization; notice of credit score; RESPA servicing disclosure letter; loan discount fee disclosure; business insurance company arrangement disclosure; notice of right to rescind.

The courts have held that the borrower does not have to show harm to claim a violation of the Real Estate Settlement Procedures Act, as the Act was intended to insure strict compliance. And, in as much as the courts are directed to assess a

penalty of no less than two hundred dollars and no more than two thousand, considering the large number enumerated here, it is reasonable to consider that the court will assess the maximum amount for each violation.

Since the courts have held that the penalty for a violation of RESPA accrues at consummation of the note, borrower has calculated that, the number of violations found in a cursory examination of the note, if deducted from the principal, would result in an overpayment on the part of the borrower, over the life of the note, of $156,511.44.

If the violation penalty amounts for each of the unsupported fees listed above are included, the amount by which the borrower would be defrauded is $168,523.68 Adding in RESPA penalties for all the unsupported settlement fees along with the TILA/Note variance, it appears that lender intended to defraud borrower in the amount of $405,307.24

LENDER CONSPIRED WITH APPRAISER

Lender, in furtherance of the above referenced conspiracy, conspired with appraiser for the purpose of preparing an appraisal with a falsely stated price, in violation of appraiser's fiduciary duty to Petitioner and appraiser's duty to provide fair and honest services, for the purpose of inducing Petitioner to enter into a loan product that was fraudulent toward the interests of Petitioner.

LENDER CONSPIRED WITH TRUSTEE

Lender conspired with the trust Agent at closing to create a condition of stress for the specific purpose of inducing Petitioner to sign documents without allowing time for Petitioner to read and fully understand what was being signed.

The above referenced closing procedure was a carefully crafted connivance, designed and intended to induce Petitioner, through shame and trickery, in violation of trustee's fiduciary duty to Petitioner and the duty to provide fair and honest services, to sign documents that Petitioner did not have opportunity to read

and fully understand, thereby, denying Petitioner full disclosure as required by various consumer protection statutes.

DECEPTIVE ADVERTISING AND OTHER UNFAIR BUSINESS PRACTICES

In the manner in which Defendants have carried on their business enterprises, they have engaged in a variety of unfair and unlawful business practices prohibited by *15 USC Section 45* et seq. (Deceptive Practices Act).

Such conduct comprises a pattern of business activity within the meaning of such statutes, and has directly and proximately caused Petitioner to suffer economic and non-economic harm and detriment in an amount to be shown according to proof at trial of this matter.

EQUITABLE TOLLING FOR TILA AND RESPA

The Limitations Period for Petitioners' Damages Claims under TILA and RESPA should be Equitably Tolled due to the DEFENDANTS' Misrepresentations and Failure to Disclose.

Any claims for statutory and other money damages under the Truth in Lending Act *(15 U.S.C. § 1601,* et. seq.) and under the Real Estate Settlement Procedures Act *(12 U.S.C. § 2601* et. seq.) are subject to a one-year limitations period; however, such claims are subject to the equitable tolling doctrine. The Ninth Circuit has interpreted the TILA limitations period in § 1640(e) as subject to equitable tolling. In *King v. California, 784 F.2d 910 (9th Cir.1986),* the court held that given the remedial purpose of TILA, the limitations period should run from the date of consummation of the transaction, but that "the doctrine of equitable tolling may, in appropriate circumstances, suspend the limitations period until the borrower discovers or has reasonable opportunity to discover the fraud or nondisclosures that

form the basis of the TILA action." *King v. California, 784 F.2d 910, 915 9th* Cir. 1986).

Likewise, while the Ninth Circuit has not taken up the question whether *12 U.S.C. § 2614,* the anti-kickback provision of **RESPA,** is subject to equitable tolling, other Courts have, and hold that such limitations period may be equitably tolled. The Court of Appeals for the District of Columbia held that § 2614 imposes a strictly jurisdictional limitation, *Hardin v. City Title & Escrow Co., 797 F.2d 1037, 1039-40 (D.C. Cir. 1986),* while the Seventh Circuit came to the opposite conclusion. *Lawyers Title Ins. Corp. v. Dearborn Title Corp., 118 F.3d 1157, 1164 (7th Cir. 1997).* District courts have largely come down on the side of the Seventh Circuit in holding that the one-year limitations period in § 2614 is subject to equitable tolling. See, e.g., *Kerby v. Mortgage Funding Corp., 992 F.Supp. 787, 791-98 (D.Md.1998); Moll v. U.S. Life Title Ins. Co., 700 F.Supp. 1284, 1286-89 (S.D.N.Y.1988).* Importantly, the Ninth Circuit, as noted above, has interpreted the TILA limitations period in *15 U.S.C. § 1640* as subject to equitable tolling; the language of the two provisions is nearly identical. *King v. California, 784 F.2d at 914.* While not of precedential value, this Court has previously found both the TILA and **RESPA** limitations periods to be subject to equitable tolling. *Blaylock v. First American Title Ins. Co., 504 F.Supp.2d 1091,* (W.D. Wash. 2007). 1106-07.

The Ninth Circuit has explained that the doctrine of equitable tolling "focuses on excusable delay by the Petitioner," and inquires whether "a reasonable Petitioner would ... have known of the existence of a possible claim within the limitations period." *Johnson v. Henderson, 314 F.3d 409, 414 (9th Cir.2002), Santa Maria v. Pacific Bell, 202 F.3d 1170, 1178 (9th Cir.2000).* Equitable tolling focuses on the reasonableness of the Petitioner's delay and does not depend on any wrongful conduct by the Defendants. Santa Maria. at 1178.

BUSINESS PRACTICES CONCERNING DISREGARDING OF UNDERWRITING STANDARDS

Traditionally, Lenders required borrowers seeking mortgage loans to document their income and assets by, for example, providing W-2 statements, tax returns, bank statements, documents evidencing title, employment information, and other information and documentation that could be analyzed and investigated for its truthfulness, accuracy, and to determine the borrower's ability to repay a particular loan over both the short and long term. Defendants deviated from and disregarded these standards, particularly with regard to its riskier and more profitable loan products.

Low-Documentation/No-Documentation Loans.

Driven by its desire for market share and a perceived need to maintain competitiveness with the likes of Countrywide, Defendants began to introduce an ever increasing variety of low and no documentation loan products, including the HARMs and HELOCs described hereinabove, and began to deviate from and ease its underwriting criteria, and then to grant liberal exceptions to the already eased underwriting standards to the point of disregarding such standards. This quickened the loan origination process, allowing for the generation of more and more loans which could then be resold and/or securitized in the secondary market.

Defendants marketed no-documentation/low-documentation loan programs that included HARMs and HELOCs, among others, in which loans were given based on the borrower's "stated income" or "stated assets" (SISA) neither of which were verified. Employment was verbally confirmed, if at all, but not further investigated, and income, if it was even considered as a factor, was to be roughly consistent with incomes in the types of jobs in which the borrower was employed. When borrowers were requested to document their income, they were able to do so through information that was less reliable than in a full-documentation loan.

For stated income loans, it became standard practice for loan processors, loan officers and underwriters to rely on www.salary.com to see if a stated income was reasonable. Such stated income loans, emphasizing loan origination from a profitability standpoint at the expense of determining the ability of the borrower to repay the loan from an underwriting standpoint, encouraged the overstating and/or fabrication of income.

Easing of Underwriting Standards

In order to produce more loans that could be resold in the secondary mortgage market, Defendants also relaxed, and often disregarded, traditional underwriting standards used to separate acceptable from unacceptable risk. Examples of such relaxed standards were reducing the base FICO score needed for a SISA loan.

Other underwriting standards that Defendants relaxed included qualifying interest rates (the rate used to determine whether borrowers can afford the loan), loan to value ratios (the amount of loan(s) compared to the appraised/sale price of the property, whichever is lower), and debt-to-income ratios (the amount of monthly income compared to monthly debt service payments and other monthly payment obligations.

With respect to HARMS, Defendants underwrote loans without regard to the borrower's long-term financial circumstances, approving the loan based on the initial fixed rate without taking into account whether the borrower could afford the substantially higher payment that would inevitably be required during the remaining term of the loan.

With respect to HELOCs, Defendants underwrote and approved such loans based only on the borrower's ability to afford the interest-only payment during the initial draw period of the loan, rather than on the borrower's ability to afford the subsequent, fully amortized principal and interest payments.

As Defendants pushed to expand market share, they eased other basic underwriting standards. For example, higher loan-to-value (LTV) and combined loan-to-value (CLTV) ratios were allowed. Likewise, higher debt-to-income (DTI) ratios were allowed. At the same time that they eased underwriting standards the Defendants also were encouraging consumers to go further into debt in order to supply the very lucrative aftermarket of mortgage backed securities. The relaxed underwriting standards created the aftermarket supply they needed. As a result, the Defendants made it easy for the unwary consumer to take on more debt than he could afford by encouraging unsound financial practices, all the while knowing defaults would occur more and more frequently as the credit ratios of citizens reached the limit of the new relaxed underwriting standards.

Defendants knew, or in the exercise of reasonable care should have known, from its own underwriting guidelines industry standards that it was accumulating and selling/reselling risky loans that were likely to end up in default. However, as the pressure mounted to increase market share and originate more loans, Defendants began to grant "exceptions" even to its relaxed underwriting guidelines. Such was the environment that loan officers and underwriters were, from time to time, placed in the position of having to justify why they did not approve a loan that failed to meet underwriting criteria.

Risk Layering

Defendants compromised its underwriting even further by risk layering, i.e. combining high risk loans with one or more relaxed underwriting standards.

Defendants knew, or in the exercise of reasonable care should have known, that layered risk would increase the likelihood of default. Among the risk layering Defendants engaged in were approving HARM loans with little to no down payment, little to no documentation, and high DTI/LTV/CLTV ratios. Despite such

knowledge, Defendants combined these very risk factors in the loans it promoted to borrowers.

Loan officers and mortgage Agents aided and abetted this scheme by working closely with other mortgage Lenders/mortgage bankers to increase loan originations, knowing or having reason to believe that Defendants and other mortgage Lenders/mortgage bankers with whom they did business ignored basic established underwriting standards and acted to mislead the borrower, all to the detriment of the borrower and the consumer of loan products..

Petitioner is informed and believe, and on that basis allege, that Defendants, and each of them, engaged and/or actively participated in, authorized, ratified, or had knowledge of, all of the business practices described above in paragraphs 30-42 of this Complaint

UNJUST ENRICHMENT

Petitioner is informed and believes that each and all of the Defendants received a benefit at Petitioner's expense, including but not limited to the following: To the Agent, commissions, yield spread premiums, spurious fees and charges, and other "back end" payments in amounts to be proved at trial; To the originating Lender, commissions, incentive bonuses, resale premiums, surcharges and other "back end" payments in amounts to be proved at trial; To the investors, resale premiums, and high rates of return; To the servicers including EMS, servicing fees, percentages of payment proceeds, charges, and other "back end" payments in amounts to be proved at trial; To all participants, the expectation of future revenues from charges, penalties and fees paid by Petitioner when the unaffordable LOAN was foreclosed or refinanced.

By their misrepresentations, omissions and other wrongful acts alleged heretofore, Defendants, and each of them, were unjustly enriched at the expense of Petitioner,

and Petitioner was unjustly deprived, and is entitled to restitution in the amount of $405,307.24

CLAIM TO QUIET TITLE.

Petitioner properly averred a claim to quiet title. Petitioner included both the street address, and the Assessor's Parcel Number for the property. Petitioner has set forth facts concerning the title interests of the subject property. Moreover, as shown above, Petitioner's claims for rescission and fraud are meritorious. As such, Petitioner's bases for quiet title are meritorious as well.

Defendants have no title, estate, lien, or interest in the Subject Property in that the purported power of sale contained in the Deed of Trust is of no force or effect because Defendants' security interest in the Subject Property has been rendered void and that the Defendants are not the holder in due course of the Promissory Note. Moreover, because Petitioner properly pled all Defendants' involvement in a fraudulent scheme, all Defendants are liable for the acts of its co-conspirators,

> "a Petitioner is entitled to damages from those Defendants who concur in the tortuous scheme with knowledge of its unlawful purpose." *Wyatt v. Union Mortgage Co., 24 Cal. 3d 773, 157 Cal. Rptr. 392, 598 P.2d 45 (1979); Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 143 Cal. App. 4th 1284, 50 Cal. Rptr. 3d 27 (1st Dist. 2006); Kidron v. Movie Acquisition Corp., 40 Cal. App. 4th 1571, 47 Cal. Rptr. 2d 752 (2d Dist. 1995).*

SUFFICIENCY OF PLEADING

Petitioner has sufficiently pled that relief can be granted on each and every one of the Complaint's causes of action. A complaint should not be dismissed "unless it appears beyond doubt that the Petitioner can prove no set of facts in support of Petitioner claim which would entitle Petitioner to relief." *Housley v. U.S. (9th Cir.*

Nev. 1994) 35 F.3d 400, 401. "All allegations of material fact in the complaint are taken as true and construed in the light most favorable to Petitioner." *Argabright v. United States, 35 F.3d 1476, 1479 (9th Cir. 1996).*

Attendant, the Complaint includes a "short, plain statement, of the basis for relief." Fed. Rule Civ. Proc. 8(a). The Complaint contains cognizable legal theories, sufficient facts to support cognizable legal theories, and seeks remedies to which Petitioner is entitled. *Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988); King v. California, 784 F.2d 910, 913 (9th Cir. 1986).* Moreover, the legal conclusions in the Complaint can and should be drawn from the facts alleged, and, in turn, the court should accept them as such. *Clegg v. Cult Awareness Network, 18 F.3d 752* (9th Cir, 1994). Lastly, Petitioner's complaint contains claims and has a probable validity of proving a "set of facts" in support of their claim entitling them to relief. *Housley v. U.S. (9th Cir. Nev. 1994) 35 F.3d 400, 401.* Therefore, relief as requested herein should be granted.

CAUSES OF ACTION

BREACH OF FIDUCIARY DUTY

Defendants Agent, appraiser, trustee, Lender, et al, and each of them, owed Petitioner a fiduciary duty of care with respect to the mortgage loan transactions and related title activities involving the Trust Property.

Defendants breached their duties to Petitioner by, *inter alia,* the conduct described above. Such breaches included, but were not limited to, ensuring their own and Petitioners' compliance with all applicable laws governing the loan transactions in which they were involved, including but not limited to, TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under.

Defendant's breaches of said duties were a direct and proximate cause of economic and non-economic harm and detriment to Petitioner(s).

Petitioner did suffer economic, non-economic harm, and detriment as a result of such conduct, all to be shown according to proof at trial of this matter.

CAUSE OF ACTION - NEGLIGENCE/NEGLIGENCE PER SE

Defendants owed a general duty of care with respect to Petitioners, particularly concerning their duty to properly perform due diligence as to the loans and related transactional issues described hereinabove.

In addition, Defendants owed a duty of care under TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under to, among other things, provide proper disclosures concerning the terms and conditions of the loans they marketed, to refrain from marketing loans they knew or should have known that borrowers could not afford or maintain, and to avoid paying undue compensation such as "yield spread premiums" to mortgage Agents and loan officers.

Defendants knew or in the exercise of reasonable care should have known, that the loan transactions involving Petitioner and other persons similarly situated were defective, unlawful, violative of federal and state laws and regulations, and would subject Petitioner to economic and non-economic harm and other detriment.

Petitioner is among the class of persons that TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under were intended and designed to protect, and the conduct alleged against Defendants is the type of conduct and harm which the referenced statutes and regulations were designed to deter.

As a direct and proximate result of Defendant's negligence, Petitioner suffered economic and non-economic harm in an amount to be shown according to proof at trial.

AGENT: COMMON LAW FRAUD

If any Agents' misrepresentations made herein were not intentional, said misrepresentations were negligent. When the Agents made the representations alleged herein, he/she/it had no reasonable ground for believing them to be true.

Agents made these representations with the intention of inducing Petitioner to act in reliance on these representations in the manner hereafter alleged, or with the expectation that Petitioner would so act.

Petitioner is informed and believes that Agent et al, facilitated, aided and abetted various Agents in their negligent misrepresentation, and that various Agents were negligent in not implementing procedures such as underwriting standards oversight that would have prevented various Agents from facilitating the irresponsible and wrongful misrepresentations of various Agents to Defendants.

Petitioner is informed and believes that Agent acted in concert and collusion with others named herein in promulgating false representations to cause Petitioner to enter into the LOAN without knowledge or understanding of the terms thereof.

As a proximate result of the negligent misrepresentations of Agents as herein alleged, the Petitioner sustained damages, including monetary loss, emotional distress, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Agents' breach of duty and all other actions as alleged herein, Defendants has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Petitioner's damage in an amount to be established at trial.

PETITIONER PROPERLY AVERRED A CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

Petitioner properly pled Defendants violated the breach of implied covenant of good faith and fair dealing. "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Price v. Wells Fargo Bank, 213 Cal.App.3d 465, 478, 261 Cal. Rptr. 735 (1989);* Rest.2d Contracts § 205. A mortgage Agent has fiduciary duties. *Wyatt v. Union Mortgage Co., (1979) 24 Cal. 3d. 773.* Further, In *Jonathan Neil & Associates, Inc. v Jones, (2004) 33 Cal. 4th 917,* the court stated:

In the area of insurance contracts the covenant of good faith and fair dealing has taken on a particular significance, in part because of the special relationship between the insurer and the insured. The insurer, when determining whether to settle a claim, must give at least as much consideration to the welfare of its insured as it gives to its own interests. . . The standard is premised on the insurer's obligation to protect the insured's interests . . . *Id. at 937.*

Likewise, there is a special relationship between an Agent and borrower. "A person who provides Agency services to a borrower in a covered loan transaction by soliciting Lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer...this fiduciary duty [is owed] to the consumer regardless of whom else the Agent may be acting as an Agent for . . . The fiduciary duty of the Agent is to deal with the consumer in *good faith.* If the *Agent knew or should have known that the Borrower will or has a likelihood of defaulting ... they have a fiduciary duty to the borrower not* to place them in that loan." (California Department of Real Estate, *Section 8: Fiduciary Responsibility,* www.dre.ca.gov). [*Emphasis Added*].

All Defendants, willfully breached their implied covenant of good faith and fair dealing with Petitioner when Defendants: (1) Failed to provide all of the proper

disclosures; (2) Failed to provide accurate Right to Cancel Notices; (3) Placed Petitioner into Petitioner's current loan product without regard for other more affordable products; (4) Placed Petitioner into a loan without following proper underwriting standards; (5) Failed to disclose to Petitioner that Petitioner was going to default because of the loan being unaffordable; (6) Failed to perform valid and /or properly documented substitutions and assignments so that Petitioner could ascertain Petitioner rights and duties; and (7) Failed to respond in good faith to Petitioner's request for documentation of the servicing of Petitioner's loan and the existence and content of relevant documents. Additionally, Defendants breached their implied covenant of good faith and fair dealing with Petitioner when Defendants initiated foreclosure proceedings even without the right under an alleged power of sale because the purported assignment was not recorded and by willfully and knowingly financially profiting from their malfeasance. Therefore, due to the special relationship inherent in a real estate transaction between Agent and borrower, *and* all Defendants' participation in the conspiracy, the Motion to Dismiss should be denied.

CAUSE OF ACTION VIOLATION OF TRUTH IN LENDING ACT 15 U.S.C. §1601 ET SEQ

Petitioner hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

Petitioner is informed and believes that Defendant's violation of the provisions of law rendered the credit transaction null and void, invalidates Defendant's claimed interest in the Subject Property, and entitles Petitioner to damages as proven at trial.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The conduct committed by Defendants, driven as it was by profit at the expense of increasingly highly leveraged and vulnerable consumers who placed their faith and trust in the superior knowledge and position of Defendants, was extreme and outrageous and not to be tolerated by civilized society.

Defendants either knew that their conduct would cause Petitioner to suffer severe emotional distress, or acted in conscious and/or reckless disregard of the probability that such distress would occur.

Petitioner did in fact suffer severe emotional distress as an actual and proximate result of the conduct of Defendants as described hereinabove.

As a result of such severe emotional distress, Petitioner suffered economic and non economic harm and detriment, all to be shown according to proof at trial of this matter.

Petitioner demands that Defendants provide Petitioner with release of lien on the lien signed by Petitioner and secure to Petitioner quite title;
Petitioner demands Defendants disgorge themselves of all enrichment received from Petitioner as payments to Defendants based on the fraudulently secured promissory note in an amount to be calculated by Defendants and verified to Petitioner;
Petitioner further demands that Defendants pay to Petitioner an amount equal to treble the amount Defendants intended to defraud Petitioner of which amount Petitioner calculated to be equal to $1,215,921.72

PRAYER

WHEREFORE, Petitioner prays for judgment against the named Defendants, and each of them, as follows:

For an emergency restraining order enjoining lender and any successor in interest from foreclosing on Petitioner's Property pending adjudication of Petitioner's claims set forth herein;

For a permanent injunction enjoining Defendants from engaging in the fraudulent, deceptive, predatory and negligent acts and practices alleged herein;

For quiet title to Property;

For rescission of the loan contract and restitution by Defendants to Petitioner according to proof at trial;

For disgorgement of all amounts wrongfully acquired by Defendants according to proof at trial;

For actual monetary damages in the amount $405,307.24;

For pain and suffering due to extreme mental anguish in an amount to be determined at trial.

For pre-judgment and post-judgment interest according to proof at trial;

For punitive damages according to proof at trial in an amount equal to $1,215,921.72.

For attorney's fees and costs as provided by statute; and,

For such other relief as the Court deems just and proper.

Respectfully Submitted,

Shelley von Brincken

Exhibit G

FILED
SEP -1 2010 KJN
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

Shelley von Brincken n
14738 Wolf Rd
Grass Valley CA 95949

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Shelley von Brincken

Plaintiff,

vs.

MORTGAGECLOSE.COM INC.

Defendant

Executive Trust Services dba ETS Services, LLC

Defendant

GMAC Mortgage, LLC

Defendant

Case # 2:10-cv-02153-JAM-KJN

AMENDED ORIGINAL PETITION

Date: 9-1-10

Notice to the court: The only amendment made by Plaintiff is the inclusion of another defendant. The trustee sale notice provided to Plaintiff only included Mortgageclose.com, inc and ETS services. Unbeknownst to Plaintiff, GMAC Mortgage, LLC is now claiming that they are the moving party, though the trustee deed sale fails to name them.

Comes now Shelley von Brincken , hereinafter referred to as "Petitioner," and moves the court for relief as herein requested:

PARTIES

Petitioner is Shelley von Brincken , 14738 Wolf Rd Grass Valley CA 95949.
Currently Known Defendant(s) are/is: MORTGAGECLOSE.COM INC. , 1855

WEST KATELLA AVE,SUITE 200 ORANGE,CA 92867, Executive Trust Services dba ETS Services, LLC LLC 2255 N. Ontario St, Ste 400, Burbank, CA 91504 , and GMAC Mortgage, LLC, 3451 Hammond Ave, P.O. Box 780 Waterloo, IA 50704 by and through its attorney

STATEMENT OF CAUSE

Petitioner, entered into a consumer contract for the refinance of a primary residence located at 14738 Wolf Rd, Grass Valley CA 95949, hereinafter referred to as the "property."

Defendants, acting in concert and collusion with others, induced Petitioner to enter into a predatory loan agreement with Defendant.

Defendants committed numerous acts of fraud against Petitioner in furtherance of a carefully crafted scheme intended to defraud Petitioner.

Defendants failed to make proper notices to Petitioner that would have given Petitioner warning of the types of tactics used by Defendants to defraud Petitioner.

Defendants charged false fees to Petitioner at settlement.

Defendants used the above referenced false fees to compensate agents of Petitioner in order to induce said agents to breach their fiduciary duty to Petitioner.

Defendant's attorney caused to be initiated collection procedures, knowing said collection procedures in the instant action were frivolous as lender is estopped from collection procedures, under authority of Uniform Commercial Code 3-501, subsequent to the request by Petitioner for the production of the original promissory note alleged to create a debt.

IN BRIEF

(Non-factual Statement of Posture and Position)

It is not the intent of Petitioner to indict the entire industry. It is just that Plaintiff will be making a number of allegations that, outside the context of

the current condition of the real estate industry, may seem somewhat outrageous and counter-intuitive.

When Petitioner accuses ordinary individuals of acting in concert and collusion with an ongoing criminal conspiracy, it tends to trigger an incredulous response as it is unreasonable to consider that all Agents, loan agents, appraisers, and other ordinary people, just doing what they have been trained to do, are out to swindle the poor unsuspecting borrower.

The facts Petitioner is prepared to prove are that Petitioner has been harmed by fraud committed by people acting in concert and collusion, one with the other. Petitioner has no reason to believe that the Agent, loan officer, appraiser, and others were consciously aware that what they were doing was part of an ongoing criminal conspiracy, only that it was, and they, at the very least, kept themselves negligently uninformed of the wrongs they were perpetrating. Petitioner maintains the real culprit is the system itself, including the courts, for failure to strictly enforce the consumer protection laws.

CAREFULLY CRAFTED CRIMINAL CONNIVANCE

(General State of the Real Estate Industry)

THE BEST OF INTENTIONS

Prior to the 1980's and 1990's ample government protections were in place to protect consumers and the lending industry from precisely the disaster we now experience. During President Clinton's administration, under the guise of making housing available to the poor, primary protections were relaxed which had the effect of releasing the unscrupulous on the unwary.

Prior to deregulation in the 1980's, lenders created loans for which they held and assumed the risk. Consequently, Americans were engaged in safe and stable home mortgages. With the protections removed, the unscrupulous

lenders swooped in and, instead of making loans available to the poor, used the opportunity to convince the unsophisticated American public to do something that had been traditionally taboo; home buyers were convinced to speculate with their homes, their most important investment.

MORTGAGECLOSE.COM INC. , Ameriquest, Countrywide, and many others swooped in and convinced Americans to sell their homes, get out of their safe mortgage agreements, and speculate with the equity they had gained by purchasing homes they could not afford. Lenders created loans intended to fail as, under the newly crafted system, the Lender profited more from a mortgage default than from a stable loan.

Companies cropped up who called themselves banks when, in fact, they were only either subsidiaries of banks, or unaffiliated companies that were operated for the purpose of creating and selling promissory notes. As will be demonstrated, these companies then profited from the failure of the underlying loans.

HOW IT WORKS

Briefly, how it works is this, the Lender would secure a large loan from a large bank, convert that loan into 20 and 30 year mortgages and then sell the promise to pay to an investor.

People would set up mortgage companies buy securing a large loan from one of the major banks, then convert that loan into 20 and 30 year mortgages. In order to accomplish this an Agent would contract with a seller to find a buyer, bring both seller and buyer to a lender who would secure the title from the seller using the borrowed bank funds for that purpose, and then trade the title to the buyer in exchange for a promissory note.

The lender then creates a 20 or 30 year mortgage with money the lender must repay within 6 months. As soon as the closing is consummated, the promissory note is sold to an investor pool.

Using the instant case as an example, a 220,000.00 note at 5.9140% interest over 30 years will produce $180,455.33 The lender can then offer to the investor the security instrument (promissory note) at say 50% of it's future value. The investor will, over the life of the note, less approximately 3.00% servicing fees, realize $233,152.81 . The lender can then pay back the bank and retain a handsome profit in the amount of $27,574.64. The lender, however, is not done with the deal.

The lender signed over the promissory note to the investor at the time of the trade, but did not sign over the lien document (mortgage or deed of trust). The State of Kansas Supreme Court addressed this issue and stated that such a transaction was certainly legal. However, it created a fatal flaw as the holder of the lien document, at time of sale of the security instrument, received consideration in excess of the lien amount. Since the lien holder received consideration, he could not be harmed. Therefore the lien became an unenforceable document.

This begs the question: if keeping the lien would render it void, why would the lender not simply transfer the lien with the promissory note? The reason is because the lender will hold the lien for three years, file an Internal Revenue Service Form 1099a, claim the full amount of the lien as abandoned funds, and deduct the full amount from the lender's tax liability. The lender, by this maneuver, gets consideration a second time. And still the lender is not done profiting from the deal.

After sale of the promissory note, the lender remains as the servicer for the investor. The lender will receive 3% of each payment the lender collects and renders to the investor pool. However, if the payment is late, the lender is

allowed to assess an extra 5% and keep that amount. Also, if the loan defaults, the lender stands to gain thousands for handling the foreclosure. The lender stands to profit more from a note that is overly expensive, than from a good stable loan. And where, you may ask, does all this profit come from? It comes from the equity the borrower had built up in the home. And still the lender is not finished profiting from the deal.

Another nail was driven in the American financial coffin when on the last day Congress was in session in 2000 when restrictions that had been in place since the economic collapse of 1907 were removed. Until 1907 investors were allowed to bet on stocks without actually buying them. This unbridled speculation led directly to an economic collapse. As a result the legislature banned the practice, until the year 2000. In 2000 the unscrupulous lenders got their way on the last day of the congressional session. Congress removed the restriction banning derivatives and again allowed the practice, this time taking only 8 years to crash the stock market. This practice allowed the lender to profit further from the loan by betting on the failure of the security instrument he had just sold to the unwary investor, thus furthering the purpose of the lender to profit from both the borrower (consumer) and the investor.

The failure of so many loans recently resulted in a seven hundred and fifty billion dollar bailout at the expense of the taxpayer. The unsuspecting consumer was lulled into accepting the pronouncements of the lenders, appraisers, underwriters, and trustees as all were acting under the guise of government regulation and, therefore, the borrower had reason to expect good and fair dealings from all. Unfortunately, the regulations in place to protect the consumer from just this kind of abuse were simply being ignored.

The loan origination fee from the HUD1 settlement statement is the finder's fee paid for the referral of the client to the lender by a person acting as an

agent for the borrower. Hereinafter, the person or entity who receives any portion of the yield spread premium, or a commission of any kind consequent to securing the loan agreement through from the borrower will be referred to as "Agent." The fee, authorized by the consumer protection law is restricted to 1% of the principal of the note. It was intended that the Agent, when seeking out a lender for the borrower, would seek the best deal for his client rather than who would pay him the most. That was the intent, but not the reality. The reality is that Agents never come away from the table with less than 2% or 3% of the principal. This is accomplished by undisclosed fees to the Agent in order to induce the Agent to breach his fiduciary duty to the borrower and convince the borrower to accept a more expensive loan product than the borrower qualifies for. This will generate more profits for the lender and, consequently, for the Agent.

It is a common practice for lenders to coerce appraisers to give a higher appraisal than is the fair market price. This allows the lender to increase the cost of the loan product and give the impression that the borrower is justified in making the purchase.

The lender then charges the borrower an underwriting fee in order to convince the borrower that someone with knowledge has gone over the conditions of the note and certified that they meet all legal criteria. The trustee, at closing, participates actively in the deception of the borrower by placing undue stress on the borrower to sign the large stack of paperwork without reading it. The trustee is, after all, to be trusted and has been paid to insure the transaction. This trust is systematically violated for the purpose of taking unfair advantage of the borrower. The entire loan process is a carefully crafted contrive connivance designed and intended to induce the unsophisticated borrower into accepting a loan product that is beyond the

borrowers means to repay. With all this, it should be a surprise to no one that this country is having a real estate crisis.

PETITIONER WILL PROVE THE FOLLOWING

Petitioner is prepared to prove, by a preponderance of evidence that:

- Lender has no legal standing to bring collection or foreclosure claims against the property;
- Lender is not a real party in interest in any contract which can claim a collateral interest in the property;
- even if Lender were to prove up a contract to which Lender had standing to enforce against Petitioner, no valid lien exists which would give Lender a claim against the property;
- even if Lender were to prove up a contract to which Lender had standing to enforce against Petitioner, said contract was fraudulent in its creation as endorsement was secured by acts of negligence, common law fraud, fraud by non-disclosure, fraud in the inducement, fraud in the execution, usury, and breaches of contractual and fiduciary obligations by Mortgagee or "Trustee" on the Deed of Trust, "Mortgage Agents," "Loan Originators," "Loan Seller," "Mortgage Aggregator," "Trustee of Pooled Assets," "Trustee or officers of Structured Investment Vehicle," "Investment Banker," "Trustee of Special Purpose Vehicle/Issuer of Certificates of 'Asset-Backed Certificates,'" "Seller of 'Asset-Backed' Certificates (shares or bonds)," "Special Servicer" and Trustee, respectively, of certain mortgage loans pooled together in a trust fund;

- Defendants have concocted a carefully crafted connivance wherein Lender conspired with Agents, et al, to strip Petitioner of Petitioner's equity in the property by inducing Plaintiff to enter into a predatory loan inflated loan product;
- Lender received unjust enrichment in the amount of 5% of each payment made late to Lender while Lender and Lender's assigns acted as servicer of the note;
- Lender and Lender's assigns, who acted as servicer in place of Lender, profited by handling the foreclosure process on a contract Lender designed to have a high probability of default;
- Lender intended to defraud Investor by converting the promissory note into a security instrument and selling same to Investor;
- Lender intended to defraud Investor and the taxpayers of the United States by withholding the lien document from the sale of the promissory note in order that Lender could then hold the lien for three years, then prepare and file Internal Revenue Form 1099a and falsely claim the full lien amount as abandoned funds and deduct same from Lender's income tax obligation;
- Lender defrauded backers of derivatives by betting on the failure of the promissory note the lender designed to default;
- participant Defendants, et al, in the securitization scheme described herein have devised business plans to reap millions of dollars in profits at the expense of Petitioner and others similarly situated.

PETITIONER SEEKS REMEDY

In addition to seeking compensatory, consequential and other damages, Petitioner seeks declaratory relief as to what (if any) party, entity or individual or group thereof is the owner of the promissory note executed at the time of the loan closing, and whether the Deed of Trust (Mortgage) secures any obligation of the Petitioner, and a Mandatory Injunction requiring re-conveyance of the subject property to the Petitioner or, in the alternative a Final Judgment granting Petitioner Quiet Title in the subject property.

PETITIONER HAS BEEN HARMED

Petitioner has suffered significant harm and detriment as a result of the actions of Defendants.

Such harm and detriment includes economic and non-economic damages, and injuries to Petitioner's mental and emotional health and strength, all to be shown according to proof at trial.

In addition, Petitioner will suffer grievous and irreparable further harm and detriment unless the equitable relief requested herein is granted.

STATEMENT OF CLAIM

DEFENDANTS LACK STANDING

No evidence of Contractual Obligation

Defendants claim a controversy based on a contractual violation by Petitioner but have failed to produce said contract. Even if Defendants produced evidence of the existence of said contract in the form of an allegedly accurate photocopy of said document, a copy is only hearsay evidence that a contract actually existed at one point in time. A copy, considering the present state of technology, could be easily altered. As Lender only created one original and that original was left in the custody of Lender, it was imperative that Lender protect said instrument.

In as much as the Lender is required to present the original on demand of Petitioner, there can be no presumption of regularity when the original is not so produced. In as much as Lender has refused Petitioner's request of the chain of custody of the security instrument in question by refusing to identify all current and past real parties in interest, there is no way to follow said chain of custody to insure, by verified testimony, that no alterations to the original provisions in the contract have been made. Therefore, the alleged copy of the original is only hearsay evidence that an original document at one time existed. Petitioner maintains that, absent production of admissible evidence of a contractual obligation on the part of Petitioner, Defendants are without standing to invoke the subject matter jurisdiction of the court.

No Proper Evidence of Agency

Defendants claim agency to represent the principal in a contractual agreement involving Petitioner, however, Defendants have failed to provide any evidence of said agency other than a pronouncement that agency has been assigned by some person, the true identity and capacity of whom has not been established. Defendants can hardly claim to be agents of a principal then refuse to identify said principal. All claims of agency are made from the mouth of the agent with no attempt to provide admissible evidence from the principal.

Absent proof of agency, Defendants lack standing to invoke the subject matter jurisdiction of the court.

Special Purpose Vehicle

Since the entity now claiming agency to represent the holder of the security instrument is not the original lender, Petitioner has reason to believe that the promissory note, upon consummation of the contract, was converted to a security

and sold into a special purpose vehicle and now resides in a Real Estate Mortgage Investment Conduit (REMIC) as defined by the Internal Revenue Code and as such, cannot be removed from the REMIC as such would be a prohibited transaction. If the mortgage was part of a special purpose vehicle and was removed on consideration of foreclosure, the real party in interest would necessarily be the trustee of the special purpose vehicle. Nothing in the pleadings of Defendants indicates the existence of a special purpose vehicle, and the lack of a proper chain of custody documentation gives Petitioner cause to believe defendant is not the proper agent of the real party in interest.

CRIMINAL CONSPIRACY AND THEFT

Defendants, by and through Defendant's Agents, conspired with other Defendants, et al, toward a criminal conspiracy to defraud Petitioner. Said conspiracy but are not limited to acts of negligence, breach of fiduciary duty, common law fraud, fraud by non-disclosure, and tortuous acts of conspiracy and theft, to include but not limited to, the assessment of improper fees to Petitioner by Lender, which were then used to fund the improper payment of commission fees to Agent in order to induce Agent to violate Agent's fiduciary duty to Petitioner.

AGENT PRACTICED UP-SELLING

By and through the above alleged conspiracy, Agent practiced up-selling to Petitioner. In so doing, Agent violated the trust relationship actively cultivated by Agent and supported by fact that Agent was licensed by the state. Agent further defrauded Petitioner by failing to disclose Agent's conspiratorial relationship to Lender, Agent violated Agent's fiduciary duty to Petitioner and the duty to provide fair and honest services, through a series of carefully crafted connivances, wherein Agent proactively made knowingly false and misleading statements of alleged fact to Petitioner, and by giving partial disclosure of facts intended to

directly mislead Petitioner for the purpose of inducing Petitioner to make decisions concerning the acceptance of a loan product offered by the Lender. Said loan product was more expensive than Petitioner could legally afford. Agent acted with full knowledge that Petitioner would have made a different decision had Agent given complete disclosure.

FRAUDULENT INDUCEMENT

Lender maliciously induced Petitioner to accept a loan product, Lender knew, or should have known, Petitioner could not afford in order to unjustly enrich Lender.

EXTRA PROFIT ON SALE OF PREDATORY LOAN PRODUCT

Said more expensive loan product was calculated to produce a higher return when sold as a security to an investor who was already waiting to purchase the loan as soon as it could be consummated.

Extra Commission for Late Payments

Lender acted with deliberate malice in order to induce Petitioner to enter into a loan agreement that Lender intended Petitioner would have difficulty paying. The industry standard payment to the servicer for servicing a mortgage note is 3% of the amount collected. However, if the borrower is late on payments, a 5% late fee is added and this fee is retained by the servicer. Thereby, the Lender stands to receive more than double the regular commission on collections if the borrower pays late.

Extra Income for Handling Foreclosure

Lender acted with deliberate malice in order to induce petitioner to enter into a loan agreement on which Lender intended petitioner to default. In case of default, the Lender, acting as servicer, receives considerable funds for handling and executing the foreclosure process.

Credit Default Swap Gambling

Lender, after deliberately creating a loan intended to default is now in a position to bet on credit default swap, commonly referred to as a derivative as addressed more fully below. Since Lender designed the loan to fail, betting on said failure is essentially a sure thing.

LENDER ATTEMPTING TO FRAUDULENTLY COLLECT ON VOID LIEN

Lender sold the security instrument after closing and received consideration in an amount in excess of the lien held by Lender. Since Lender retained the lien document upon the sale of the security instrument, Lender separated the lien from said security instrument, creating a fatal and irreparable flaw.

When Lender received consideration while still holding the lien and said consideration was in excess of the amount of the lien, Lender was in a position such that he could not be harmed and could not gain standing to enforce the lien. The lien was, thereby, rendered void.

Since the separation of the lien from the security instrument creates such a considerable concern, said separation certainly begs a question: "Why would the Lender retain the lien when selling the security instrument?"

When you follow the money the answer is clear. The Lender will hold the lien for three years, then file an IRS Form 1099a and claim the full amount of the lien as abandoned funds and deduct the full amount from Lender's tax liability, thereby, receiving consideration a second time.

Later, in the expected eventuality of default by petitioner, Lender then claimed to transfer the lien to the holder of the security, however, the lien once satisfied, does not gain authority just because the holder, after receiving consideration, decides to transfer it to someone else.

LENDER PROFIT BY CREDIT DEFAULT SWAP DERIVATIVES

Lender further stood to profit by credit default swaps in the derivatives market, by way of inside information that Lender had as a result of creating the faulty loans sure to default. Lender was then free to invest on the bet that said loan would default and stood to receive unjust enrichment a third time. This credit default swap derivative market scheme is almost totally responsible for the stock market disaster we now experience as it was responsible for the stock market crash in 1907.

LENDER CHARGED FALSE FEES

Lender charged fees to Petitioner that were in violation of the limitations imposed by the Real Estate Settlement Procedures Act as said fees were simply contrived and not paid to a third party vendor.

Lender charged other fees that were a normal part of doing business and should have been included in the finance charge.

Below is a listing of the fees charged at settlement. Neither at settlement, nor at any other time did Lender or Trustee provide documentation to show that the fees herein listed were valid, necessary, reasonable, and proper to charge Petitioner.

803	Appraisal	$196.00
808	Underwriting Fee	$1,095.00
901	Interest from 01/22/09 to 02/01/09	$343.75
902	Mortgage Insurance Premium	$838.00
1101	Settlement fee	$705.00
1106	Notary fee	$100.00
1108	Title Insurance	$951.50
1109	Lenders Coverage	$429.00
1110	Owner's Coverage	$1,045.00
1111	Environmental Protection Lien	$25.00
1112	Upkeep Assessment fee	$25.00
1201	Recording Fee	$59.00
1202	City/county tax/stamp	$302.00

Debtor is unable to determine whether or not the above fees are valid in accordance with the restrictions provided by the various consumer protection laws. Therefore, please provide; a complete billing from each vendor who provided the above listed services; the complete contact information for each vendor who provided a billed service; clearly stipulate as to the specific service performed; a showing that said service was necessary; a showing that the cost of said service is reasonable; a showing of why said service is not a regular cost of doing business that should rightly be included in the finance charge.

The above charges are hereby disputed and deemed unreasonable until such time as said charges have been demonstrated to be reasonable, necessary, and in accordance with the limitations and restrictions included in any and all laws, rules, and regulations intended to protect the consumer.

In the event lender fails to properly document the above charges, borrower will consider same as false charges. The effect of the above amounts that borrower would pay over the life of the note will be an overpayment of $80,272.12 This amount will be reduced by the amount of items above when said items are fully documented.

RESPA PENALTY

From a cursory examination of the records, with the few available, the apparent RESPA violations are as follows: Good Faith Estimate not within limits, No HUD-1 Booklet, Truth In Lending Statement not within limits compared to Note, Truth in Lending Statement not timely presented, HUD-1 not presented at least one day before closing, No Holder Rule Notice in Note, No 1st Payment Letter.

The closing documents included no signed and dated : Financial Privacy Act Disclosure; Equal Credit Reporting Act Disclosure; notice of right to receive appraisal report; servicing disclosure statement; borrower's Certification of Authorization; notice of credit score; RESPA servicing disclosure letter; loan

discount fee disclosure; business insurance company arrangement disclosure; notice of right to rescind.

The courts have held that the borrower does not have to show harm to claim a violation of the Real Estate Settlement Procedures Act, as the Act was intended to insure strict compliance. And, in as much as the courts are directed to assess a penalty of no less than two hundred dollars and no more than two thousand, considering the large number enumerated here, it is reasonable to consider that the court will assess the maximum amount for each violation.

Since the courts have held that the penalty for a violation of RESPA accrues at consummation of the note, borrower has calculated that, the number of violations found in a cursory examination of the note, if deducted from the principal, would result in an overpayment on the part of the borrower, over the life of the note, of $156,511.44.

If the violation penalty amounts for each of the unsupported fees listed above are included, the amount by which the borrower would be defrauded is $168,523.68 Adding in RESPA penalties for all the unsupported settlement fees along with the TILA/Note variance, it appears that lender intended to defraud borrower in the amount of $405,307.24

LENDER CONSPIRED WITH APPRAISER

Lender, in furtherance of the above referenced conspiracy, conspired with appraiser for the purpose of preparing an appraisal with a falsely stated price, in violation of appraiser's fiduciary duty to Petitioner and appraiser's duty to provide fair and honest services, for the purpose of inducing Petitioner to enter into a loan product that was fraudulent toward the interests of Petitioner.

LENDER CONSPIRED WITH TRUSTEE

Lender conspired with the trust Agent at closing to create a condition of stress for the specific purpose of inducing Petitioner to sign documents without allowing time for Petitioner to read and fully understand what was being signed.

The above referenced closing procedure was a carefully crafted connivance, designed and intended to induce Petitioner, through shame and trickery, in violation of trustee's fiduciary duty to Petitioner and the duty to provide fair and honest services, to sign documents that Petitioner did not have opportunity to read and fully understand, thereby, denying Petitioner full disclosure as required by various consumer protection statutes.

DECEPTIVE ADVERTISING AND OTHER UNFAIR BUSINESS PRACTICES

In the manner in which Defendants have carried on their business enterprises, they have engaged in a variety of unfair and unlawful business practices prohibited by *15 USC Section 45* et seq. (Deceptive Practices Act).

Such conduct comprises a pattern of business activity within the meaning of such statutes, and has directly and proximately caused Petitioner to suffer economic and non-economic harm and detriment in an amount to be shown according to proof at trial of this matter.

EQUITABLE TOLLING FOR TILA AND RESPA

The Limitations Period for Petitioners' Damages Claims under TILA and RESPA should be Equitably Tolled due to the DEFENDANTS' Misrepresentations and Failure to Disclose.

Any claims for statutory and other money damages under the Truth in Lending Act *(15 U.S.C. § 1601,* et. seq.) and under the Real Estate Settlement Procedures Act *(12 U.S.C. § 2601* et. seq.) are subject to a one-year limitations period; however,

such claims are subject to the equitable tolling doctrine. The Ninth Circuit has interpreted the TILA limitations period in § 1640(e) as subject to equitable tolling. In *King v. California, 784 F.2d 910 (9th Cir.1986),* the court held that given the remedial purpose of TILA, the limitations period should run from the date of consummation of the transaction, but that "the doctrine of equitable tolling may, in appropriate circumstances, suspend the limitations period until the borrower discovers or has reasonable opportunity to discover the fraud or nondisclosures that form the basis of the TILA action." *King v. California, 784 F.2d 910, 915 9th* Cir. 1986).

Likewise, while the Ninth Circuit has not taken up the question whether *12 U.S.C. § 2614,* the anti-kickback provision of **RESPA,** is subject to equitable tolling, other Courts have, and hold that such limitations period may be equitably tolled. The Court of Appeals for the District of Columbia held that § 2614 imposes a strictly jurisdictional limitation, *Hardin v. City Title & Escrow Co., 797 F.2d 1037, 1039-40 (D.C. Cir. 1986),* while the Seventh Circuit came to the opposite conclusion. *Lawyers Title Ins. Corp. v. Dearborn Title Corp., 118 F.3d 1157, 1164 (7th Cir. 1997).* District courts have largely come down on the side of the Seventh Circuit in holding that the one-year limitations period in § 2614 is subject to equitable tolling. See, e.g., *Kerby v. Mortgage Funding Corp., 992 F.Supp. 787, 791-98 (D.Md.1998); Moll v. U.S. Life Title Ins. Co., 700 F.Supp. 1284, 1286-89 (S.D.N.Y.1988).* Importantly, the Ninth Circuit, as noted above, has interpreted the TILA limitations period in *15 U.S.C. § 1640* as subject to equitable tolling; the language of the two provisions is nearly identical. *King v. California, 784 F.2d at 914.* While not of precedential value, this Court has previously found both the TILA and **RESPA** limitations periods to be subject to equitable tolling. *Blaylock v. First American Title Ins. Co., 504 F.Supp.2d 1091,* (W.D. Wash. 2007). 1106-07.

The Ninth Circuit has explained that the doctrine of equitable tolling "focuses on excusable delay by the Petitioner," and inquires whether "a reasonable Petitioner would ... have known of the existence of a possible claim within the limitations period." *Johnson v. Henderson, 314 F.3d 409, 414 (9th Cir.2002), Santa Maria v. Pacific Bell, 202 F.3d 1170, 1178 (9th Cir.2000).* Equitable tolling focuses on the reasonableness of the Petitioner's delay and does not depend on any wrongful conduct by the Defendants. Santa Maria. at 1178.

BUSINESS PRACTICES CONCERNING DISREGARDING OF UNDERWRITING STANDARDS

Traditionally, Lenders required borrowers seeking mortgage loans to document their income and assets by, for example, providing W-2 statements, tax returns, bank statements, documents evidencing title, employment information, and other information and documentation that could be analyzed and investigated for its truthfulness, accuracy, and to determine the borrower's ability to repay a particular loan over both the short and long term. Defendants deviated from and disregarded these standards, particularly with regard to its riskier and more profitable loan products.

Low-Documentation/No-Documentation Loans.

Driven by its desire for market share and a perceived need to maintain competitiveness with the likes of Countrywide, Defendants began to introduce an ever increasing variety of low and no documentation loan products, including the HARMs and HELOCs described hereinabove, and began to deviate from and ease its underwriting criteria, and then to grant liberal exceptions to the already eased underwriting standards to the point of disregarding such standards. This quickened the loan origination process, allowing for the generation of more and more loans which could then be resold and/or securitized in the secondary market.

Defendants marketed no-documentation/low-documentation loan programs that included HARMs and HELOCs, among others, in which loans were given based on the borrower's "stated income" or "stated assets" (SISA) neither of which were verified. Employment was verbally confirmed, if at all, but not further investigated, and income, if it was even considered as a factor, was to be roughly consistent with incomes in the types of jobs in which the borrower was employed. When borrowers were requested to document their income, they were able to do so through information that was less reliable than in a full-documentation loan.

For stated income loans, it became standard practice for loan processors, loan officers and underwriters to rely on www.salary.com to see if a stated income was reasonable. Such stated income loans, emphasizing loan origination from a profitability standpoint at the expense of determining the ability of the borrower to repay the loan from an underwriting standpoint, encouraged the overstating and/or fabrication of income.

Easing of Underwriting Standards

In order to produce more loans that could be resold in the secondary mortgage market, Defendants also relaxed, and often disregarded, traditional underwriting standards used to separate acceptable from unacceptable risk. Examples of such relaxed standards were reducing the base FICO score needed for a SISA loan.

Other underwriting standards that Defendants relaxed included qualifying interest rates (the rate used to determine whether borrowers can afford the loan), loan to value ratios (the amount of loan(s) compared to the appraised/sale price of the property, whichever is lower), and debt-to-income ratios (the amount of monthly income compared to monthly debt service payments and other monthly payment obligations.

With respect to HARMS, Defendants underwrote loans without regard to the borrower's long-term financial circumstances, approving the loan based on the

initial fixed rate without taking into account whether the borrower could afford the substantially higher payment that would inevitably be required during the remaining term of the loan.

With respect to HELOCs, Defendants underwrote and approved such loans based only on the borrower's ability to afford the interest-only payment during the initial draw period of the loan, rather than on the borrower's ability to afford the subsequent, fully amortized principal and interest payments.

As Defendants pushed to expand market share, they eased other basic underwriting standards. For example, higher loan-to-value (LTV) and combined loan-to-value (CLTV) ratios were allowed. Likewise, higher debt-to-income (DTI) ratios were allowed. At the same time that they eased underwriting standards the Defendants also were encouraging consumers to go further into debt in order to supply the very lucrative aftermarket of mortgage backed securities. The relaxed underwriting standards created the aftermarket supply they needed. As a result, the Defendants made it easy for the unwary consumer to take on more debt than he could afford by encouraging unsound financial practices, all the while knowing defaults would occur more and more frequently as the credit ratios of citizens reached the limit of the new relaxed underwriting standards.

Defendants knew, or in the exercise of reasonable care should have known, from its own underwriting guidelines industry standards that it was accumulating and selling/reselling risky loans that were likely to end up in default. However, as the pressure mounted to increase market share and originate more loans, Defendants began to grant "exceptions" even to its relaxed underwriting guidelines. Such was the environment that loan officers and underwriters were, from time to time, placed in the position of having to justify why they did not approve a loan that failed to meet underwriting criteria.

Risk Layering

Defendants compromised its underwriting even further by risk layering, i.e. combining high risk loans with one or more relaxed underwriting standards.

Defendants knew, or in the exercise of reasonable care should have known, that layered risk would increase the likelihood of default. Among the risk layering Defendants engaged in were approving HARM loans with little to no down payment, little to no documentation, and high DTI/LTV/CLTV ratios. Despite such knowledge, Defendants combined these very risk factors in the loans it promoted to borrowers.

Loan officers and mortgage Agents aided and abetted this scheme by working closely with other mortgage Lenders/mortgage bankers to increase loan originations, knowing or having reason to believe that Defendants and other mortgage Lenders/mortgage bankers with whom they did business ignored basic established underwriting standards and acted to mislead the borrower, all to the detriment of the borrower and the consumer of loan products..

Petitioner is informed and believe, and on that basis allege, that Defendants, and each of them, engaged and/or actively participated in, authorized, ratified, or had knowledge of, all of the business practices described above in paragraphs 30-42 of this Complaint

UNJUST ENRICHMENT

Petitioner is informed and believes that each and all of the Defendants received a benefit at Petitioner's expense, including but not limited to the following: To the Agent, commissions, yield spread premiums, spurious fees and charges, and other "back end" payments in amounts to be proved at trial; To the originating Lender, commissions, incentive bonuses, resale premiums, surcharges and other "back end" payments in amounts to be proved at trial; To the investors, resale premiums, and high rates of return; To the servicers including EMS, servicing fees, percentages of

payment proceeds, charges, and other "back end" payments in amounts to be proved at trial; To all participants, the expectation of future revenues from charges, penalties and fees paid by Petitioner when the unaffordable LOAN was foreclosed or refinanced.

By their misrepresentations, omissions and other wrongful acts alleged heretofore, Defendants, and each of them, were unjustly enriched at the expense of Petitioner, and Petitioner was unjustly deprived, and is entitled to restitution in the amount of $405,307.24

CLAIM TO QUIET TITLE.

Petitioner properly averred a claim to quiet title. Petitioner included both the street address, and the Assessor's Parcel Number for the property. Petitioner has set forth facts concerning the title interests of the subject property. Moreover, as shown above, Petitioner's claims for rescission and fraud are meritorious. As such, Petitioner's bases for quiet title are meritorious as well.

Defendants have no title, estate, lien, or interest in the Subject Property in that the purported power of sale contained in the Deed of Trust is of no force or effect because Defendants' security interest in the Subject Property has been rendered void and that the Defendants are not the holder in due course of the Promissory Note. Moreover, because Petitioner properly pled all Defendants' involvement in a fraudulent scheme, all Defendants are liable for the acts of its co-conspirators,

> "a Petitioner is entitled to damages from those Defendants who concur in the tortuous scheme with knowledge of its unlawful purpose." *Wyatt v. Union Mortgage Co., 24 Cal. 3d 773, 157 Cal. Rptr. 392, 598 P.2d 45 (1979); Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 143 Cal. App. 4th 1284, 50 Cal. Rptr. 3d 27 (1st Dist. 2006); Kidron v. Movie Acquisition Corp., 40 Cal. App. 4th 1571, 47 Cal. Rptr. 2d 752 (2d Dist. 1995).*

SUFFICIENCY OF PLEADING

Petitioner has sufficiently pled that relief can be granted on each and every one of the Complaint's causes of action. A complaint should not be dismissed "unless it appears beyond doubt that the Petitioner can prove no set of facts in support of Petitioner claim which would entitle Petitioner to relief." *Housley v. U.S. (9th Cir. Nev. 1994) 35 F.3d 400, 401.* "All allegations of material fact in the complaint are taken as true and construed in the light most favorable to Petitioner." *Argabright v. United States, 35 F.3d 1476, 1479 (9th Cir. 1996).*

Attendant, the Complaint includes a "short, plain statement, of the basis for relief." Fed. Rule Civ. Proc. 8(a). The Complaint contains cognizable legal theories, sufficient facts to support cognizable legal theories, and seeks remedies to which Petitioner is entitled. *Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988); King v. California, 784 F.2d 910, 913 (9th Cir. 1986).* Moreover, the legal conclusions in the Complaint can and should be drawn from the facts alleged, and, in turn, the court should accept them as such. *Clegg v. Cult Awareness Network, 18 F.3d 752* (9th Cir, 1994). Lastly, Petitioner's complaint contains claims and has a probable validity of proving a "set of facts" in support of their claim entitling them to relief. *Housley v. U.S. (9th Cir. Nev. 1994) 35 F.3d 400, 401.* Therefore, relief as requested herein should be granted.

CAUSES OF ACTION

BREACH OF FIDUCIARY DUTY

Defendants Agent, appraiser, trustee, Lender, et al, and each of them, owed Petitioner a fiduciary duty of care with respect to the mortgage loan transactions and related title activities involving the Trust Property.

Defendants breached their duties to Petitioner by, *inter alia,* the conduct described above. Such breaches included, but were not limited to, ensuring their own and Petitioners' compliance with all applicable laws governing the loan transactions in

which they were involved, including but not limited to, TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under.

Defendant's breaches of said duties were a direct and proximate cause of economic and non-economic harm and detriment to Petitioner(s).

Petitioner did suffer economic, non-economic harm, and detriment as a result of such conduct, all to be shown according to proof at trial of this matter.

CAUSE OF ACTION - NEGLIGENCE/NEGLIGENCE PER SE

Defendants owed a general duty of care with respect to Petitioners, particularly concerning their duty to properly perform due diligence as to the loans and related transactional issues described hereinabove.

In addition, Defendants owed a duty of care under TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under to, among other things, provide proper disclosures concerning the terms and conditions of the loans they marketed, to refrain from marketing loans they knew or should have known that borrowers could not afford or maintain, and to avoid paying undue compensation such as "yield spread premiums" to mortgage Agents and loan officers.

Defendants knew or in the exercise of reasonable care should have known, that the loan transactions involving Petitioner and other persons similarly situated were defective, unlawful, violative of federal and state laws and regulations, and would subject Petitioner to economic and non-economic harm and other detriment.

Petitioner is among the class of persons that TILA, HOEPA, **RESPA** and the Regulations X and Z promulgated there under were intended and designed to protect, and the conduct alleged against Defendants is the type of conduct and harm which the referenced statutes and regulations were designed to deter.

As a direct and proximate result of Defendant's negligence, Petitioner suffered economic and non-economic harm in an amount to be shown according to proof at trial.

AGENT: COMMON LAW FRAUD

If any Agents' misrepresentations made herein were not intentional, said misrepresentations were negligent. When the Agents made the representations alleged herein, he/she/it had no reasonable ground for believing them to be true.

Agents made these representations with the intention of inducing Petitioner to act in reliance on these representations in the manner hereafter alleged, or with the expectation that Petitioner would so act.

Petitioner is informed and believes that Agent et al, facilitated, aided and abetted various Agents in their negligent misrepresentation, and that various Agents were negligent in not implementing procedures such as underwriting standards oversight that would have prevented various Agents from facilitating the irresponsible and wrongful misrepresentations of various Agents to Defendants.

Petitioner is informed and believes that Agent acted in concert and collusion with others named herein in promulgating false representations to cause Petitioner to enter into the LOAN without knowledge or understanding of the terms thereof.

As a proximate result of the negligent misrepresentations of Agents as herein alleged, the Petitioner sustained damages, including monetary loss, emotional distress, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Agents' breach of duty and all other actions as alleged herein, Defendants has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Petitioner's damage in an amount to be established at trial.

PETITIONER PROPERLY AVERRED A CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

Petitioner properly pled Defendants violated the breach of implied covenant of good faith and fair dealing. "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Price v. Wells Fargo Bank, 213 Cal.App.3d 465, 478, 261 Cal. Rptr. 735 (1989);* Rest.2d Contracts § 205. A mortgage Agent has fiduciary duties. *Wyatt v. Union Mortgage Co., (1979) 24 Cal. 3d. 773.* Further, In *Jonathan Neil & Associates, Inc. v Jones, (2004) 33 Cal. 4th 917,* the court stated:

In the area of insurance contracts the covenant of good faith and fair dealing has taken on a particular significance, in part because of the special relationship between the insurer and the insured. The insurer, when determining whether to settle a claim, must give at least as much consideration to the welfare of its insured as it gives to its own interests. . . The standard is premised on the insurer's obligation to protect the insured's interests . . . *Id. at 937.*

Likewise, there is a special relationship between an Agent and borrower. "A person who provides Agency services to a borrower in a covered loan transaction by soliciting Lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer...this fiduciary duty [is owed] to the consumer regardless of whom else the Agent may be acting as an Agent for . . . The fiduciary duty of the Agent is to deal with the consumer in *good faith.* If the *Agent knew or should have known that the Borrower will or has a likelihood of defaulting ... they have a fiduciary duty to the borrower not* to place them in that loan." (California Department of Real Estate, *Section 8: Fiduciary Responsibility,* www.dre.ca.gov). [*Emphasis Added*].

All Defendants, willfully breached their implied covenant of good faith and fair dealing with Petitioner when Defendants: (1) Failed to provide all of the proper

disclosures; (2) Failed to provide accurate Right to Cancel Notices; (3) Placed Petitioner into Petitioner's current loan product without regard for other more affordable products; (4) Placed Petitioner into a loan without following proper underwriting standards; (5) Failed to disclose to Petitioner that Petitioner was going to default because of the loan being unaffordable; (6) Failed to perform valid and /or properly documented substitutions and assignments so that Petitioner could ascertain Petitioner rights and duties; and (7) Failed to respond in good faith to Petitioner's request for documentation of the servicing of Petitioner's loan and the existence and content of relevant documents. Additionally, Defendants breached their implied covenant of good faith and fair dealing with Petitioner when Defendants initiated foreclosure proceedings even without the right under an alleged power of sale because the purported assignment was not recorded and by willfully and knowingly financially profiting from their malfeasance. Therefore, due to the special relationship inherent in a real estate transaction between Agent and borrower, *and* all Defendants' participation in the conspiracy, the Motion to Dismiss should be denied.

CAUSE OF ACTION VIOLATION OF TRUTH IN LENDING ACT 15 U.S.C. §1601 ET SEQ

Petitioner hereby incorporates by reference, re-pleads and re-alleges each and every allegation contained in all of the paragraphs of the General Allegations and Facts Common to All Causes of Action as though the same were set forth herein.

Petitioner is informed and believes that Defendant's violation of the provisions of law rendered the credit transaction null and void, invalidates Defendant's claimed interest in the Subject Property, and entitles Petitioner to damages as proven at trial.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The conduct committed by Defendants, driven as it was by profit at the expense of increasingly highly leveraged and vulnerable consumers who placed their faith and trust in the superior knowledge and position of Defendants, was extreme and outrageous and not to be tolerated by civilized society.

Defendants either knew that their conduct would cause Petitioner to suffer severe emotional distress, or acted in conscious and/or reckless disregard of the probability that such distress would occur.

Petitioner did in fact suffer severe emotional distress as an actual and proximate result of the conduct of Defendants as described hereinabove.

As a result of such severe emotional distress, Petitioner suffered economic and non economic harm and detriment, all to be shown according to proof at trial of this matter.

Petitioner demands that Defendants provide Petitioner with release of lien on the lien signed by Petitioner and secure to Petitioner quite title;
Petitioner demands Defendants disgorge themselves of all enrichment received from Petitioner as payments to Defendants based on the fraudulently secured promissory note in an amount to be calculated by Defendants and verified to Petitioner;
Petitioner further demands that Defendants pay to Petitioner an amount equal to treble the amount Defendants intended to defraud Petitioner of which amount Petitioner calculated to be equal to $1,215,921.72

PRAYER

WHEREFORE, Petitioner prays for judgment against the named Defendants, and each of them, as follows:

For an emergency restraining order enjoining lender and any successor in interest from foreclosing on Petitioner's Property pending adjudication of Petitioner's claims set forth herein;

For a permanent injunction enjoining Defendants from engaging in the fraudulent, deceptive, predatory and negligent acts and practices alleged herein;

For quiet title to Property;

For rescission of the loan contract and restitution by Defendants to Petitioner according to proof at trial;

For disgorgement of all amounts wrongfully acquired by Defendants according to proof at trial;

For actual monetary damages in the amount $405,307.24;

For pain and suffering due to extreme mental anguish in an amount to be determined at trial.

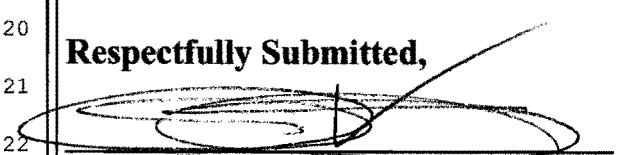
For pre-judgment and post-judgment interest according to proof at trial;

For punitive damages according to proof at trial in an amount equal to $1,215,921.72.

For attorney's fees and costs as provided by statute; and,

For such other relief as the Court deems just and proper.

Respectfully Submitted,



Shelley von Brincken

Exhibit H

31

Holly S. Burgess (SBN 104757)
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530-889-8900
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Attorney for Plaintiff
SHELLEY von BRINCKEN

THE UNITED STATES DISTRICT COURT

THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SHELLEY von BRINCKEN, Plaintiff, vs. MORTGAGECLOSE.COM, INC.; CALIFORNIA LAND COMPANY OF NEVADA COUNTY; EXECUTIVE TRUSTEE SERVICES, dba ETS SERVICES, LLC; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; GMAC MORTGAGE, INC.; and DOES 1-20, inclusive, Defendants.	**CASE NO: 2:10-CV-02153-JAM-KJN** **SECOND AMENDED COMPLAINT FOR:** 1. VIOLATION OF HOMEOWNERS EQUITY PROTECTION ACT; 2. VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT; 3. VIOLATIONS OF TRUTH IN LENDING ACT; 4. VIOLATIONS OF FAIR CREDIT REPORTING ACT; 5. FRAUDULENT MISREPRESENTATION; 6. BREACH OF FIDUCIARY DUTIES; 7. UNJUST ENRICHMENT; 8. CIVIL CONSPIRACY; 9. CIVIL RICO VIOLATIONS; 10. QUIET TITLE 11. USURY AND FRAUD; 12. WRONGFUL FORECLOSURE; 13. BREACH OF SECURITY INSTRUMENT **PLAINTIFF DEMANDS A JURY TRIAL**

PARTIES

1. Plaintiff is SHELLEY von BRINCKEN ("Plaintiff" or "von BRINCKEN"), an individual who is the owner of 14738 Wolf Road, Grass Valley, California, 95949 ("the Subject

Property"). The legal description of the Subject Property is fully described in **Exhibit "A"**, attached hereto and incorporated herein by reference, APN: 55-060-34

2. Defendant, MORTGAGECLOSE.COM, INC. ("MORTGAGECLOSE") is a corporation, incorporated in Pennsylvania, whose address is 635 Swedesford Road, Malvern, PA 19355, and was engaged in business as a bank and/or a private lender, and/or servicer of mortgage loans in the county of Nevada, California.

3. Defendant GMAC MORTGAGE, LLC, ("GMAC") is a wholly owned subsidiary of Ally Financial Inc., whose corporate headquarters is in Fort Washington, PA, and on information and belief, at all times mentioned in this Complaint was engaged in the business of title insurance, banking services, including foreclosure, and acting as trustee for banks, mortgage holders and lien holders in the county of Nevada, California.

4. Defendant, EXECUTIVE TRUSTEE SERVICES, dba ETS SERVICES, LLC ("ETS") a division of GMAC Mortgage, LLC, on information and belief, at all times mentioned in this Complaint was engaged in the business of banking services, including foreclosure, and involved in the acquisition, purchase, sale, securitization, and servicing of residential mortgages in the county of Nevada, California.

5. Defendant CALIFORNIA LAND COMPANY OF NEVADA COUNTY ("CALIFORNIA LAND") is a California corporation, whose business address is 464 Brunswick Road, Grass Valley, CA 95945, and who on information and belief, at all times mentioned in this Complaint was engaged in the business of title insurance, banking services, including foreclosure, and acting as trustee for banks, mortgage holders and lien holders in the county of Nevada, California.

6. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS") at all times relevant herein was incorporated in the state of Delaware, with its principal place of business in Reston, Virginia. MERS was conducting business including, but not limited to, operating a database, assigning mortgages (specifically including an attempt to assign the subject

mortgage herein) in violation of California Corporations Code section 191(d).

7. Defendant FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FNMA"), commonly referred to as "Fannie Mae," is a stockholder-owned corporation, charted as a government sponsored enterprise.

8. Defendant FANNIE MAE GUARANTEED PASS-THROUGH CERTIFICATES SERIES 2007-036 ("FANNIE MAE TRUST"), is an unregistered entity in California, based on information and belief, was at all relevant times mentioned herein, was a pooling and servicing trust of mortgages, in which the subject mortgage and property were placed. Based on information and belief, FANNIE MAE TRUST is or was the holder of the subject mortgage note.

9. Defendants DOES 1-10 are believed to be the current beneficiaries of the Deed of Trust, if the lien has not been extinguished by operation of law.

10. Plaintiff does not know the true names, capacities, or basis of liability of Defendants sued as Doe 1 through Doe 20. Each fictitiously named Defendant is in some manner liable to Plaintiff, claims some right, title, or interest in the Subject Property, or both.

11. At all times relevant to this Complaint, each of the Defendants was the agent or employee of each of the remaining Defendants, and was acting within the course and scope of such agency or employment.

12. Plaintiff does not know the true names, capacities, or basis for liability of Defendants sued as Doe 1 through Doe 10, i.e., the Beneficiaries. Each fictitiously named Defendant is in some manner liable to Plaintiff, claims some right, title, or interest in the Subject Property, or both.

13. At all times relevant to this Complaint, each of the Defendants was the agent or employee of each of the remaining Defendants, and was acting within the course and scope of such agency or employment.

JURISDICTION

14. Pursuant to 28 U.S.C.A. §1331, this court has original jurisdiction based on the laws of the United States, as alleged herein.

15. Pursuant to 28 U.S.C. §1367(a), this court has supplemental jurisdiction over the related state court claims.

FACTS COMMON TO ALL CAUSES OF ACTION

16. Not only is the Plaintiff the victim of fraud, unlawful and predatory lending and an underlying conspiracy to commit fraud, but Ms. BRINCKEN is also facing the pending loss of her home through foreclosure initiated and advanced by Defendants in violation of the notice and standing requirements of California foreclosure law.

17. In addition, the challenged foreclosure is based upon a Deed of Trust and a Note in the mortgage that is no longer held by the same entity or party. Further, the foreclosure is based upon a Deed of Trust that was flawed at the date of origination of the loan. The "lender" on the Deed of Trust, MORTGAGECLOSE was not the actual lender or source of the monies that funded the loan. The money to fund the loan came from investors. MORTGAGECLOSE acted merely as a broker for the purpose of obtaining Plaintiff's signature on loan documents and, therefore, MORTGAGECLOSE was merely the servicer of the loan, but never the lender or owner of the beneficial interest in the Deed of Trust or the obligation purportedly secured thereby. MERS was named as nominee of the "Lender" MORTGAGECLOSE and as beneficiary on the Deed of Trust, but MERS was not the true beneficiary; and the "Lender," on whose behalf MERS was named as "nominee," was not the true lender.

In this case, foreclosure and a Trustee's Deed Upon Sale have been filed. The foreclosing entity ETS filing the foreclosure is a third party and has no pecuniary interest in the mortgage loan. The entity lacks standing and the capacity to foreclose. The entity has no firsthand knowledge of the loan, no authority to testify or file affidavits as to the validity of the loan documents or the existence of the loan. The entity has no legal authority to draft mortgage assignments relating to the loan. The foreclosing entity and its agents regularly commit perjury in relation to their testimony.

17. MORTGAGECLOSE, the lender on the original Promissory Note was not the lender. On information and belief, the "lender" MORTGAGECLOSE did not actually loan Plaintiff any money. The true originators of the loan immediately and simultaneously securitized (allegedly) the note through the means of conversion of an Article III negotiable Instrument (U.C.C.) into Article IX (U.C.C.), non-negotiable paper. The beneficial interest in the Note was never in the lender. In this

case ETS has declared a default and is not in privity with the lender. The true owner (s) or beneficiary(s) of the mortgage loan has not declared a default, cannot declare a default under its Trust Agreement, and does not have an interest in the Note that allows for any remedial actions to be undertaken by the Beneficial Interest Holder(s).

18. The obligations reflected by the Note (allegedly secured by MERS's assignment of the MORTGAGECLOSE Deed of Trust to ETS and ETS's assignment of the Deed of Trust to FNMA as trustee for FANNIE MAE TRUST) have been satisfied in whole or in part because the investors who furnish the funding for these loans have been paid to the degree that extinguishments of the debts has occurred with the result that there exist no obligations on which to base any foreclosure on the property owned by Plaintiff. Defendants have and continue to cloud the title and illegally collect payments and attempt to foreclose upon the property of the Plaintiff when they do not have lawful rights to foreclose, and are not holders-in-due-course of the notes.

19. The mortgage loan assigned to MERS, as nominee, is, at most, an unsecured debt. The only parties entitled to collect on the unsecured debt would be the holder-in-due-course and beneficial owner(s) of the original Promissory Note (the original "Lender of Record"), ***if*** the asset is still booked as an asset and has not been sold and de-recognized as an asset under FASB 140. Those unknown parties have not come forward in this case.

20. Certain individuals, who were the employees of the Servicer, ETS, executed and notarized forged documents as to the ownership of the loan. The affiants have committed counts of fraud, perjury and forgery of the mortgage loan.

21. Defendant ETS, represented itself as a "Trustee" coming to Court and are actually not common law Trustees, rather, they are special Corporate Trustees with limited ministerial duties. These rights, duties and obligations do not include any remedial actions as they relate to the assets of the REMIC Trust. The Servicers, like ETS, are merely administrative entities, under limited power of attorney, who collect the mortgage payments and escrow funds. The Servicer has no greater power than its' Principal, the Trustee, and lacks the authority to bring any action on behalf of the REMIC Trust. The Trust participants have executed Trust Agreements, under oath, with the Security Exchange Commission ("SEC"), and the Internal Revenue Service ("IRS"), as mortgage asset "pass-

through" entities wherein they can never own or manage the mortgage loan assets in the REMIC Trust. This allows them to qualify as a Tax Free Real Estate Mortgage Investment Conduit ("REMIC") rather than an ordinary Real Estate Investment Trust ("REIT"). As long as the Trust is a qualified REMIC, no income tax will be charged to the beneficial certificateholders.

22. Importantly, the "Trustee" or custodian, must have the mortgages recorded in the investors name as the beneficiaries of the Trust within 90 days of the "closing date" *(IRS Rule 860D (a)(4))*, as defined within the REMIC Trust Agreement. Every mortgage in the Trust should have been publicly recorded in Nevada County where the property is located with a mortgage in the name of this Trust, which would have had to been recorded in this case in 2009. No such recording exists in the Nevada County records.

23. The Promissory Note was never conveyed pursuant to the Trust mandates and the mortgages were never conveyed or recorded pursuant to the proper chain of custody and Assignment within the Trust Agreement(s).

24. In this scenario, even if the foreclosing entity produces a copy of a note, or even an alleged original, the mortgage loan was not conveyed into the Trust under the requirements of the prospectus for the Trust or the REMIC requirements of the IRS. Mere possession of an Instrument does not confer the status of a person entitled to enforce the Instrument.

25. Consequentially, the end result is that the required Trust asset, or any part thereof (mortgage note or security interest), was not legally transferred to the Trust to allow the Trust to ever be considered a "holder" of a mortgage loan. Neither the "Trust" nor the Servicers, GMAC or ETS, would ever be entitled to bring a foreclosure or declaratory action. The Trust will never have standing or be a real party in interest before this Court.

26. The transfer of mortgage loans into the Trust in which the Trustee after the "**cut off date**" (in this case 2007), destroys the Trust's REMIC tax exempt status, and this Trust would owe millions of dollars to the IRS and the State of California as the income would be taxed at one hundred percent (100%), if the Court were to find in favor of the Defendant(s). Subsequent to the "cut-off date" listed in the prospectus, whereby the mortgage notes and security for these notes had

to be identified, and the Note and Mortgages transferred, within 90 days, and thereafter, the pool is permanently closed to future transfers of mortgage assets.

27. Defendants fraudulently conveyed Plaintiff's mortgage loan, which was fraudulently recorded on or about January 23, 2009, in an attempt to transfer a Mortgage Assignment into a REMIC after that REMIC's "cut off" and "closing dates".

28. Therefore, the lack of lawful acquisition of Plaintiff's mortgage loan violates the prospectus presented to the investors and the IRS REMIC requirements.

29. Plaintiff signed a Promissory Note and Mortgage. She was unknowingly converting her property into an alleged asset of a Trust, while her credit and signature was used to sell securities, the profits of which were to used to fund the predatory "loan", (unbeknownst to Debtor, the loan papers were processed with an inflated appraisal and inflated income) without her consent or knowledge of the terms and conditions of the contract. Under the controlling Trust documents, a percentage of the homeowner's monthly payment stream was used as a guarantee. This guarantee and payment under the guarantee has resulted in accounting documents that Plaintiff believes show all payments have been made on Plaintiff's alleged obligation. A portion of Plaintiff's monthly mortgage payment was used to insure and pay her alleged obligation without her knowledge or consent and the payment is believed to be current. California Commercial Code §3602(a) and UCC 3-602(a) provide that an obligation paid is an obligation extinguished. Plaintiff was never informed of the nature of the scheme. She was deliberately induced into signing a Negotiable Instrument which was never intended as such, but intended as collateral for the sale of securities. Under the terms of the typical Pooling and Servicing Agreement ("PSA"), her mortgage obligation has been paid. Her alleged "default" is a fiction.

30. The fact that this "loan" was actually the proceeds from the sale of securities, and not a loan as it is defined under the laws of California, was a "material disclosure" which was deliberately and intentionally undisclosed. The failure to disclose the identity of the true lender at closing was also a "material disclosure"; the nature of which would make the deed of trust void under California contract law.

31. As required by SEC, this Trust has a PSA and must be publicly filed. The only purpose for the PSA is for the administration and distribution of funds to the investors and the obligation of the so called Trustee in administering the Trust. The investors who put up money for the Trust and who received the securities certificates or Bonds, are purported to not be parties to the PSA. However, under the Step Transaction Doctrine, as adopted by the Courts, these transactions are interdependent of one another and interrelated and, therefore, fall under the scope of a "single transaction", as defined by the Doctrine. The Borrowers and the Investors are the true Principals to the transaction, with the only financial and pecuniary interest in the transaction(s).

32. The PSA merely sets forth what happens after the mortgages are bundled together. However, the PSA also sets forth a ***Cut Off Date***. The Cut off date is the date on which all mortgage loans in the Trust must be identified and set out in the SEC required list of mortgage loans.

33. Like the cut off date, this Trust had a ***Closing Date***. The Closing Date is the date that the individually identified mortgages were to be transferred through the Custodian for the benefit of the investors. The Trust Custodian must certify that for each mortgage loan, the Trust Custodian has possession of the original Promissory Note, all original endorsements and assignments transferring the Note and proof that the ownership of the Note has been lawfully transferred for the benefit of the investors. Further proof of the ownership of a mortgage loan is required by a public recording of the Mortgage or Assignment of the mortgage itself. This MUST have occurred by the closing date.

34. In this case, based upon information and belief, Plaintiff believes the Trust was actually closed before the loan was finalized in late December 2009.

35. Whoever claims to be acting on behalf of the Trust and claims that it has acquired the loan from MORTGAGECLOSE, was not the party in the original Deed of Trust. The multiple transfers of title of the mortgage loan between the originator, MORTGAGECLOSE, The REIT Trust, the Depositor and the REMIC Trust is simply ignored as it can never be proved or shown to the Court. Chain of Mortgage assignment is broken as the assignees in the chain of title were never the mortgagee of record under a Mortgage Assignment and have absolutely no legal tie to the investors in the Trust.

36. The assignment of Plaintiff's mortgage was signed and notarized many years after the actual date of the "loan" and the date listed with the SEC and IRS as the "Closing" of the REMIC. In this case, if found to be true, this Trust has been operating illegally as a tax exempt REMIC.

37. On or about January 23, 2009, Plaintiff executed a written DEED of TRUST and security instrument, with MORTGAGECLOSE as the lender and CALIFORNIA LAND as the trustee. A copy of the DEED of TRUST is attached as **Exhibit "B"** and incorporated herein by reference. The DEED of TRUST and Security Instrument has never been transferred from MORTGAGECLOSE, to the foreclosing entity, ETS or GMAC. Plaintiff is informed and believes the Deed of Trust has been transferred to an unknown entity at the time of execution in January 2009, or was transferred to other unnamed entities and that the parties claiming a right or beneficial interest in the Deed of Trust, in fact have not legitimate claims, as more fully explored below, in the TWELFTH CAUSE OF ACTION for WRONGFUL FORECLOSURE.

38. All Defendants, if any of the Defendants has any interest in the Note and Deed of Trust (referred to collectively as "Mortgage"), are responsible and liable herein for all the actions of its predecessor-in-interest, the owner of the subject mortgage loan and the servicer/agent.

Chain of Title Problems

39. The chain of title is hopelessly confused and convoluted, with multiple entities claiming a pecuniary interest in the Subject Property. At the time of the Notice of Default, the recorded interests contradict the assertion that MERS or FNMA for FANNIE MAE TRUST was the foreclosing beneficiary, and reveal a slew of other illegal actions. Starting from the beginning, the chain of recordation is as follows:

DATE	DOCUMENT	PARTIES	
Dated 1/14/2009	**NOTE** **Loan #0810219** **[Attached as Exhibit "B"]**	Lender: Borrower:	Mortgageclose.Com, Inc. (NV) Shelley Von Brincken

DATE	DOCUMENT	PARTIES	
Dated 1/14/2009	**NOTE Loan #0810219** **[Attached as Exhibit "B"]**	Lender: Borrower:	Mortgageclose.Com, Inc. (NV) Shelley Von Brincken
Filed: 1/23/2009	**DEED OF TRUST $220,000** **[Attached as Exhibit "B"]**	Lender/Beneficiary: Borrower/Trustor: Trustee: Nominee/beneficiary:	Mortgageclose.Com, Inc. (NV) Shelley Von Brincken California Land Title Company MERS
not filed Dated: 3/1/2009	**Notice of Assignment, Sale or Transfer of Servicing Rights** Loan #0810219 **[Attached as Exhibit "C"]**	Servicer: New Servicer: Borrower:	Mortgageclose.Com, Inc. [unnamed] Shelley Von Brincken
Dated: 3/17/2010	**Borrower's Qualified Written Request** **[Attached as Exhibit "D"]**	Borrower/Affiant: Servicer/Addressee:	Shelley Von Brincken GMAC Mortgage
Dated: 3/30/2010	**GMAC's First Response to Borrower's Qualified Written Request** **[Attached as Exhibit "E"]**	Borrower/Affiant: SubServicer/Sender: Master Servicer: Loan owner:	Shelley Von Brincken GMAC Mortgage FNMA FNMA
Dated: 4/16/2010	**Borrower's Notice of Exercising Right to Cancel "Rescission Letter"** **[Attached as Exhibit "F"]**	Borrower/Affiant: Addressees:	Shelley Von Brincken Mortgageclose.com; GMAC Mortgage; California Land Title Company; MERS

DATE	DOCUMENT	PARTIES	
Filed: 4/28/2010	**SUBSTITUTION OF TRUSTEE** **[Attached as Exhibit "G"]**	Trustor: Orig Trustee: Orig Beneficiary: New Trustee: Signer: DATE:	Shelley Von Brincken California Land Title Company of NV County MERS as nominee for Mortgageclose.Com, Inc. Executive Trustee Services, LLC dba ETS Services, LLC MERS Donna Fitton, Assistant Secretary 4/27/2010
Filed: 4/28/2010	**NOTICE OF DEFAULT & ELECTION TO SELL UNDER DEED OF TRUST** ***** NO Notarized Declaration of Compliance ***** **[Attached as Exhibit "H"]**	Trustor: Beneficiary: Contact to stop foreclosure undersigned: DATE signed:	Shelley Von Brincken unnamed MERS c/o ETS Services, LLC ETS Services, LLC as Agent for beneficiary By Maricela Miseroy, Trustee Sale Officer 4/27/2010
Dated: 5/4/2010	**GMAC's Second Response to Borrower's Qualified Written Request** **[Attached as Exhibit "I"]**	Borrower/Affiant: SubServicer/Sender: Master Servicer: Loan owner:	Shelley Von Brincken GMAC Mortgage FNMA FNMA
Dated 5/5/2010	**DEBT VALIDATION NOTICE** **[Attached as Exhibit "J"]**	Creditor: Sender:	MERS ETS Services, LLC
Filed: 8/6/2010	**NOTICE OF TRUSTEE'S SALE Loan #0602227759** Sale Date: August 19, 2010 **[Attached as Exhibit "K"]**	Trustor: Trustee: Signer: DATE:	Shelley Von Brincken ETS Services, LLC ETS Services, LLC Ileanna Petersen, Trustee Sale Officer 7/28/2010

DATE	DOCUMENT	PARTIES	
Filed: 8/11/2010	**LIS PENDENS** **[Attached as Exhibit "L"]**	Plaintiff: Defendants:	Shelley Von Brincken Mortgageclose.Com, Inc.; Executive Trustee Services, LLC dba ETS Services, LLC
Filed: 9/10/2010	**TRUSTEE'S DEED UPON SALE & Acknowledgement of COMPLIANCE** **Sold on 8/31/2010** **Sale price $186,904.72** **Loan #0602227759** **[Attached as Exhibit "M"]**	Grantor Grantee: Trustee: Trustor: Acknowledgement Signer: DATE:	Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee "The Foreclosing Beneficiary" Federal National Mortgage Association (FNMA) Executive Trustee Services, LLC dba ETS Services, LLC Shelley Von Brincken Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee By Kathleen Gowen, Limited Signing Officer 9/3/2010
Dated 10/27/2010	**Letter** to advise **borrower** that **Fannie Mae is current owner of borrower's LOAN** and **GMAC is the LOAN servicer** **[Attached as Exhibit "N"]**	Borrower: Beneficiary: Servicer:	Shelley Von Brincken Fannie Mae (FNMA) GMAC Mortgage, LLC

40. On or about March 1, 2009 Defendant MORTGAGECLOSE provided Plaintiff with a Notice of Assignment, Sale or Transfer of Servicing Rights dated January 14, 2009 ("Notice of Assignment"). The Notice of Assignment states that MORTGAGECLOSE is the servicer of Plaintiff's mortgage loan, not the beneficiary. It further states that it is transferring the servicing of mortgage loan to a new servicer, however, the new servicer's name was not provided. This is contrary to the Deed of Trust, paragraph 20 that requires written notice that states the name and address of the new servicer. This indicative of Defendants' pattern of breaches and nondisclosure of

required information.

41. On or about March 17, 2010, Plaintiff sent a Qualified Written Request ("QWR") to Defendant GMAC regarding her mortgage loan. GMAC sent a reply dated March 30, 2010, stating that it is the subservicer of her account and that FNMA is both the Master Servicer and the owner of Plaintiff's mortgage. However, contrary to California Civil Code Section §2932.5, no assignment of the security interest from the purported Lender Mortgageclose.Com to FNMA was ever "duly acknowledged and recorded" in California. Compliance with this code is required in other for an assignee to have the power of to sell Plaintiff's property. Thus, FNMA wrongly foreclosed and ordered the sale of Plaintiff's Property. A copy of GMAC's March 30, 2010 reply letter is attached as **Exhibit "C".**

42. To further contradict Defendants' assertions, Defendant GMAC sent a second reply to Plaintiff's QWR, dated May 4, 2010. The reply is addressed to Plaintiff von BRINCKEN, but bears the greeting "Dear Ms. Gottesburen." This second reply, contrary to Defendant GMAC's first reply, states on page 2, item #6 that Plaintiff's Loan is registered with MERS and "therefore, there are no assignments." A copy of GMAC's May 4, 2010 reply letter is attached as **Exhibit "G".**

Defendant GMAC's second reply letter also answers most of Plaintiff's questions with the statement: "Subject to business and trade practices which are proprietary and confidential." This further demonstrates Defendants' pattern of nondisclosure of required information.

43. On or about April 16, 2010, Plaintiff sent a letter to the purported Lenders of her mortgage loan and their agents (Mortgageclose, GMAC, California Land, and MERS) to advise them that she was exercising her right to rescind the loan "Plaintiff's Rescission Letter"). Plaintiff's letter also advised Defendants that they violated TILA by failing to provide her with a "Notice of Right to Cancel." Plaintiff's Rescission Letter detailed her claims against the Defendants. Plaintiff further advised Defendants that their omission extended the deadline by which the Lender must accept a valid offer to rescind the loan, to three years after the consummation of the loan. The loan was consummated on or about January 14, 2009, and Plaintiff sent her Rescission Letter on or about April 16, 2009. Thus, Plaintiff timely sent her Rescission Letter to Defendants. Plaintiff's rescission pursuant to 12 C.F.R. § 226.23(d)(1) caused Defendants' security interest to become void and

Plaintiff is not liable for any amount. Plaintiff's Letter is attached as **Exhibit "D".**

44. Defendants neither responded nor took possession of Plaintiff's tender within 20 calendar days as required by 12 C.F.R. § 226.23(d)(3). Thus, Plaintiff may keep the Subject Property without further obligation, as provided by 12 C.F.R. § 226.23(d)(3).

45. The Notice of Default (NOD), recorded on April 28, 2010, signed By "Maricela Miseroy, Trustee Sale Officer", without stating any corporate *signatory* capacity as required by Corporations Code 313 whatsoever. The NOD was signed by ETS, which purports to be an agent "for the beneficiary" who is unnamed. Additionally, there is no notarized Declaration of Compliance attached to the NOD as required by California Civil Code 2923.5. As the NOD is non-compliant with California law, it is therefore invalid, should be stricken from the Official Records, the document expunged, and the Sale of the Subject Property should be set aside by the court. The NOD is attached as **Exhibit "F".**

46. The Debt Validation Notice (dated May 5, 2010) alleges that MERS is the creditor to whom Plaintiff owes the debt under the Note and Deed of Trust. Again, this is contrary to GMAC's first reply letter and to the Trustee's Deed Upon Sale, which purport that FNMA is the beneficiary of Plaintiff's mortgage loan. However, neither MERS nor FNMA were validly assigned a security interest in Plaintiff's mortgage loan.

47. Notice of Trustee's Sale, filed dated September 3, 2010, is also fatally defective. It was signed by ETS, citing that it received a written Declaration of Default from the original beneficial interest holder under the Deed of Trust. This was false as the NOD was filed by OLD REPUBLIC DEFAULT MANAGEMENT SERVICES, when MORTGAGECLOSE was the original lender and beneficial interest holder. (See **Exhibit F** Notice of Default). The Notice is utterly void, ultra vires, powerless and without legal validity, for the reasons stated already. The Notice of Trustee's Sale is attached as **Exhibit "I".**

Separate Failure to Resolve Prior to Sale

48. Plaintiff called the purported lender/servicer of the subject mortgage to advise about her financial situation and to request assistance in the form of a repayment plan or other

modification relief designed to avoid foreclosure and the loss of her home.

49. Despite Plaintiff's efforts, the purported lender/servicer failed, refused and/or neglected to work with Plaintiff in any reasonable way to avoid foreclosure during the time of her financial difficulties.

50. Instead, the purported lender/servicer secretly was transferring the Deed of Trust and then has attempted to foreclose, without notice to Plaintiff.

51. The purported lender/servicer failed, refused and/or neglected to disclose to Plaintiff what options were available to the Plaintiff, to avoid foreclosure and the loss of her home.

52. As a result, Plaintiff was not provided with the specialized assistance and default loan servicing that the lender/servicer was obligated to provide that comported with Plaintiff's ability to pay and that served to assist Plaintiff in her efforts to avoid the default and the acceleration of the subject mortgage debt and foreclosure.

53. Defendant failed, refused and/or neglected to evaluate the particular circumstances surrounding Plaintiff's claimed default; failed to evaluate Plaintiff or the subject property; failed to determine Plaintiff's capacity to pay the monthly payment or a modified payment amount; failed to ascertain the reason for Plaintiff's claimed default, or the extent of Plaintiff's interest in keeping the Subject Property.

54. The Defendants failed, refused and/or neglected to give this Plaintiff the opportunity to cooperate in resolving the debt.

55. The Defendants purposefully deceived Plaintiff that the Mortgage modification was proceeding as planned and deceptively and purposefully wrongfully foreclosed on Plaintiff's property.

FIRST CAUSE OF ACTION

Violations of the Home Ownership Equity Protection Act

(As to All Defendants and DOES)

56. Plaintiff reaffirms and re-alleges the above paragraphs 1 through 52 herein above as if set forth more fully herein below.

57. In 1994, Congress enacted the Home Ownership Equity Protection Act, (HOEPA) which is codified at 15 USC §1639 et. seq. With the intention of protecting homeowners from predatory

lending practices targeted at vulnerable consumers. HOEPA requires lenders to make certain disclosures and prohibits certain terms from being included in home loans. In the event of noncompliance, HOEPA imposes civil liability for precision and statutory and actual damages.

58. Plaintiff is a "consumer" and each Defendant is a "creditor" as defined by HOEPA. In the mortgage loan transaction at issue here, Plaintiff was required to pay excessive fees, expenses, and costs which exceeded more than 10% of the amount financed.

59. Pursuant to HOEPA and specifically 15 USC §1639 (A.) (1), each Defendant is required to make certain disclosures to Plaintiff which are to be made conspicuously and in writing no later than three (3) days prior to the closing.

60. In the transaction at issue, Defendants are required to make the following disclosures to Plaintiff by no later than three (3) days prior to said closing:

> "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it, and if you do not meet your obligation under the loan."

61. Defendants violated HOEPA to help up by numerous acts and material omissions, including but not limited to:

A. Failing to make the foregoing disclosures in the conspicuous fashion;

B. Engaging in a pattern and practice of extending credit to Plaintiff without regard to her ability to pay and violation of 15 USC§ 1639

62. By virtue of the Defendants' multiple violations of HOEPA, Plaintiff has a legal right to resend the consumer credit transaction the subject of this action pursuant to 15 USC§1635. This complaint is to be construed, for these purposes, as formal and public notice of Plaintiff's notice and precision of the mortgage and note.

63. Defendants further violated HOEPA by failing to make an additional disclosure, including but not limited to, Plaintiff's not receiving the required disclosure of the right to rescind the transactions;

64. Defendants failed to provide accurate TILA disclosures and understated the amount being financed.

65. As a direct consequence of, and in connection with, Plaintiff's legal and lawful exercise of her right of rescission, the true "owner" is required, within twenty (20) days of the notice of rescission, to:

A. Desist from making any claims for finance charges in the transaction;

B. Return all monies paid by Plaintiff in connection with the transaction to the Plaintiff;

C. Satisfy all security interests, including mortgages, which were required in the transaction.

66. Upon the true "lender's" full performance of its obligations under HOEPA, Plaintiff shall tender all sums to which the true lender is entitled.

67. Based on Defendants HOEPA violations, each of the Defendants is liable to the Plaintiff for the following, which Plaintiff demands as a relief:

A. Rescission of the mortgage loan transaction;

B. Termination of the mortgage and security interest in the property the subject of the mortgage loan documents created in the transactions;

C. Return of any money or property paid by Plaintiff including all payment made in connection with the transaction;

D. The amount of money equal to twice the finance charge in connection with the transactions;

E. Relinquishment of the right to retain any proceeds; and

F. Actual damages in an amount to be determined at trial, including, attorney's fees.

68. Because it is not clear who was actually in interest at the time of the actions described below, Plaintiff alleges this Cause of Action in the alternative against each of the possible parties at fault. Unless otherwise indicated, allegations will be lodged against "Defendant Actually in Interest, If

any" for the purposes of this pleading, which will be amended upon discovery of which Defendant, on information and belief, if it was one of the defendants named.

69. This Cause of Action is pled in the alternative to the more likely allegation that the Note has become an ownerless "phantom note" and litigation is necessary to determine who, if anyone has any right, under what transfer agreement, if any.

70. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November of 2009. Any applicable statute of limitations should run from this date.

SECOND CAUSE OF ACTION
Violations of Real Estate Settlement Procedures Act
(As to All Defendants and DOES)

71. Plaintiff reaffirms and re-alleges paragraphs 1 through 70 herein as if specifically set forth herein below.

72. As mortgage lenders, Defendants are subject to the provisions of the Real Estate Settlement Procedures Act ("RESPA"), 12 USC §2601 et. seq.

73. In violation of 12 USC §2607 and in connection with the mortgage loan to Plaintiff, Defendants accepted charges for the rendering of real estate services which were in fact charges for other than services actually performed.

74. As a result of the Defendants violations of RESPA, Defendants are liable to Plaintiff in an amount equal to three (3) times the amount of charges paid by Plaintiff for "settlement services" pursuant to 12 USC §2607 (d) (2).

75. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November of 2009. Any applicable statute of limitations should run from this date.

THIRD CAUSE OF ACTION
Violations of Truth In Lending Act
(As to All Defendants and DOES)

76. Plaintiff reaffirms and re-allege paragraphs 1 through 75 above herein as if set forth fully below.

77. Defendants failed to include and disclose certain charges in the finance charge shown on the TILA statement, which charges were imposed on Plaintiff incident to the extension of credit to Plaintiff and were required to be disclosed pursuant to 15 USC §1605 and Regulation Z §226.4, thus resulting in an improper disclosure of financial charges in violation of 15 USC §1601 et seq., Regulation Z §226.18(d). Such undisclosed charges included some identified on the settlement statement listing the amount financed which is different from the sum listed in the original Note.

78. By calculating the annual percentage rate ("APR") based upon improperly calculated and disclosed amounts, Defendants are in violation of 15 USC §1601 et seq., Regulation Z §226.18 (c), 18(d), and 22.D

79. Defendants' failure to provide the required disclosures provides Plaintiff with the right to rescind the transaction, and Plaintiff, through this public complaint which is intended to be construed for purposes of this claim as a formal notice of rescission, hereby elects to rescind the transaction.

80. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

FOURTH CAUSE OF ACTION
Violations Of Fair Credit Reporting Act
(As to All Defendants and DOES)

81. Plaintiff reaffirms and re-alleges paragraphs 1 through 80 above as if set forth fully herein below.

82. At all times material, Defendants qualified as a provider of information to the Credit Reporting Agencies, including but not limited to Experian, Equifax and Trans Union, under the fair credit reporting act. Defendants wrongfully, improperly, and illegally reported negative information as to the Plaintiff to one or more credit reporting agencies, resulting in Plaintiff's having negative information on her credit reports and the lowering of her FICO scores.

A. The negative information included but was not limited to an excessive amount of debt into which Plaintiff was tricked into seed into signing;

B. Notwithstanding the above, Plaintiff has paid each and every payment on time

from the time of the closing of the loan and until Plaintiff's default.

83. Pursuant to 15 USC §1681 (s) (2) (b), Plaintiff is entitled to maintain a private cause of action against Defendants for an award of damages in an amount to be proven at the time of trial for all violations of The Fair Credit Reporting Act which caused actual damages to Plaintiff, including emotional distress and humiliation.

84. Plaintiff is entitled to recover damages from Defendants for negligent non-compliance with The Fair Credit Reporting Act pursuant to 15 USC§1681(n)(a)(2) in an amount to be proven at the time of trial.

85. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November of 2009. Any applicable statute of limitations should run from this date.

FIFTH CAUSE OF ACTION

Fraudulent Misrepresentation

(As to All Defendants and DOES)

86. Plaintiffs reaffirm and re-allege paragraphs 1 through 85 above as if set forth fully herein below.

87. Defendants knowingly and intentionally concealed material information from Plaintiff which is required by federal and state statutes and regulations to be disclosed to the Plaintiff both before and after closing.

88. Defendants also materially misrepresented material information to Plaintiff with Defendants' full knowledge that their affirmative representations were false, fraudulent, and misrepresented the truth at the time said representations were made.

89. Under the circumstances, the Defendants' material omissions of material misrepresentations were malicious.

90. Plaintiff, not being an investment banker, securities dealer, mortgage lender, or mortgage broker, reasonably relied upon the representations of the Defendants in agreeing to execute the mortgage loan documents.

91. Had Plaintiff known of the falsity of Defendants' representations, Plaintiff would not have entered into the transaction that is the subject of this action.

92. As a direct and proximate cause of Defendants' material omissions and material misrepresentations, Plaintiff has suffered damages, all according to proof at trial.

93. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November of 2009. Any applicable statute of limitations should run from this date.

SIXTH CAUSE OF ACTION

Breach Of Fiduciary Duty

(As to All Defendants and DOES)

94. Plaintiff reaffirms and re-alleges paragraphs 1 through 94 above as if set forth fully herein below.

95. Defendants, by their actions and contracting to provide mortgage loan services and a loan program to Plaintiff [which was not only to be best suited to Plaintiff] given her income and expenses, but by which Plaintiff would also be able to satisfy her obligations without risk of losing her home, were "fiduciaries" in which Plaintiff reposed trust and confidence, especially given that Plaintiff was not and is not an investment banker, securities dealer, mortgage lender or mortgage broker.

96. Defendants breached their fiduciary duties to Plaintiff by fraudulently inducing Plaintiff to enter into a mortgage transaction which was contrary to Plaintiff's stated intentions; contrary to the Plaintiff's interest; and contrary to Plaintiff's preservation of her home.

97. As a direct and proximate result of the Defendants' breaches of their fiduciary duties, Plaintiff has suffered damages.

98. Under the totality of the circumstances, the Defendants' actions were willful, wanton, intentional, and with a callous and reckless disregard for the rights of Plaintiff justifying an award of not only actual compensatory damages, but also exemplary punitive damages to serve as a deterrent not only as to future conduct of the named Defendants herein, but also to other persons or entities with similar inclination.

99. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

SEVENTH CAUSE OF ACTION

Unjust Enrichment

(As to All Defendants and DOES)

100. Plaintiffs reaffirm and re-allege paragraphs 1 through 100 above as if set forth fully herein below.

101. Defendants had an implied contract with Plaintiff to ensure Plaintiff understood all fees which would be paid to the Defendants to obtain credit on Plaintiff's behalf and not to charge any fees that were not related to the settlement of the loan and without full disclosure to Plaintiff.

102. Defendants cannot, in good conscience and equity, retain the benefits from their actions of charging a higher interest rate, fees, rebates, kickbacks, profits (including, but not limited to, from the resale of mortgages and notes using Plaintiff's identity, credit score and reputation without consent, right, justification or excuse as part of an illegal enterprise scheme) and gains and yield spread premium fees ("YSP") unrelated to the settlement services provided at closing.

103. Defendants have been unjustly enriched at the expense of Plaintiff, and maintenance of the enrichment would be contrary to the rules and principles of equity.

104. Defendants have also been additionally enriched to the receipt of payment from third parties, including but not limited to, investors, insurers, the United States Department of the Treasury, the United States Federal Reserve, the FDIC and other banks.

105. Plaintiff demands restitution from the Defendants in the form of actual damages, exemplary damages, and attorney's fees.

106. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

EIGHTH CAUSE OF ACTION

Civil Conspiracy

(As to All Defendants and DOES)

107. Plaintiffs reaffirm and re-allege paragraphs 1 through 106 above as if set forth fully herein below.

108. In connection with the application for and the consummation of the mortgage loan the

subject of this action, Defendants agreed, between and among themselves, to engage in actions in a course of conduct designed to further an illegal act or accomplish a legal act by an unlawful means, and to commit one or more overt act in furtherance of the conspiracy to defraud Plaintiff, including but not limited to, the commencement of foreclosure.

109. Defendants agreed between and among themselves to engage in the conspiracy to defraud for the common purpose of accruing economic gains for themselves at the expense of and detriment to Plaintiff.

110. The acts of the Defendants were committed intentionally, willfully, wantonly, and with reckless disregard for the rights of Plaintiff.

111. As a direct and proximate result of the actions of the Defendants in combination resulting in fraud and breaches of fiduciary duties, Plaintiff has suffered damages, all according to proof at trial.

112. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

NINTH CAUSE OF ACTION
Civil RICO Violations
(As to All Defendants and DOES)

113. Plaintiff reaffirms and re-alleges paragraphs 1 through 112 above as if set forth fully herein below.

114. Defendants and each of them participated in the conspiracy, the subject of this action, which has existed from date of application to the present, with the injuries and damages resulting therefrom being continuous.

115. Defendants' actions and use of multiple corporate entities, multiple parties, and concerted and predetermined acts and conduct specifically designed to defraud Plaintiff constitutes an "enterprise," with the aim and objective of the enterprise being to perpetuate a fraud upon the Plaintiff through the use of intentional nondisclosure, material misrepresentation, and creation of the fraudulent loan documents.

116. Each of the Defendants is an "enterprise Defendant."

117. As a direct result of the actions of the Defendants, Plaintiff has suffered and continues to suffer damages.

118. Whenever references are made in this complaint to any act of any Defendants, that allegation shall mean that each Defendant acted individually and jointly with the other Defendants.

119. Any allegation about acts of any corporate or other business Defendant means that the corporation or other business did the acts alleged to its officers, directors, employees, agents and/or representatives while they were acting within the actual or ostensible scope of their authority.

120. At all times each Defendant committed the acts, Defendant directed others to commit the acts, or permitted others to commit the acts alleged in this complaint.

121. Additionally, some or all of the Defendants acted as the agent of the other Defendants, and all of the Defendants acted within the scope of their agency or is acting as an agent of another.

122. At all relevant times, each Defendant knew or realized that the other Defendants were engaging in or plan to engage in the violations of law alleged in the complaint. Knowing or realizing that at the Defendants were in gauging and are planning to engage in unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and thereby aided and abetted the other Defendants in the unlawful conduct.

123. At all relevant times, Defendants have engaged in a conspiracy, common enterprise, and common course of conduct, the purpose of which is to engage in the violations of law alleged in the complaint. This conspiracy, common enterprise, and common course of conduct continue to the present.

124. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

TENTH CAUSE OF ACTION

Quiet Title

(As to All Defendants and DOES)

125. Plaintiff reaffirms and re-alleges paragraphs 1 through 124 above as if set forth fully

herein below.

126. Plaintiff has sent or has caused to be sent notice of her intent to rescind the subject loan transaction, but only sent those notices to the entities that have been disclosed. Hence, without this action, neither the rescission nor the reconveyance which Plaintiff is entitled to file gives Plaintiff full and clear title to the Subject Property.

127. The real party in interest on the lender's side may be the owner of the asset-backed security issued by the servicing and pooling vendor, the insurer through some claim equitable interests, or the Federal Government through the United States Department of the Treasury or the Federal Reserve. The security is a "securitized" bond deriving its value from the underlying mortgages, of which the subject mortgage is one. Thus Plaintiff is entitled to quiet title against Defendants, clearing title of the purported subject mortgage encumbrance.

128. Plaintiff is informed and believes and thereon alleges that each of the Defendants claim an interest in the Subject Property.

129. However, Defendants' claims are without any right whatsoever, and said Defendants have no legal or equitable rights, claim, or interest in the Subject Property.

130. Plaintiff therefore seeks a declaration that the title to the Subject Property is vested in Plaintiff alone and that the Defendants herein, and each of them, be declared to have no estate, right, title or interest in the Subject Property and that said Defendants, and each of them, be forever enjoined from asserting any estate, right, title or interest in the Subject Property adverse to the Plaintiff herein.

131. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

ELEVENTH

Usury and Fraud

(As to All Defendants and DOES)

132. Plaintiff reaffirms and re-alleges the above paragraphs 1 through 131 above as if set forth fully herein below.

133. Plaintiff is informed and believes that the subject loan, notes, and mortgage were structured so as to create the appearance of a higher value of real property than the actual fair market value.

134. Defendants disguised the transaction to create the appearance of the lender being a properly chartered and registered financial institution, authorized to do business and to enter into the subject transaction, when in fact the real party in interest was not disclosed to Plaintiff, and neither were the various fees, rebates, refunds, kickbacks, profits and gains of the various parties who participated in this unlawful scheme.

135. Said real party in interest, i.e. the source of funding for the loan and the person to whom the note was transmitted or eventually "assigned" was neither a financial institution nor an entity nor person authorized, chartered or register to do business in the state, nor to act as banking, lending or other financial institution anywhere else.

136. As such, this fraudulent scheme (which was in actuality a plan to trick Plaintiff into signing what would become a negotiable security used to sell unregulated securities under fraudulent and changed terms from the original notes) was in fact a sham to use Plaintiff's interest in the real property to collect interest in excess of the legal rate.

137. The transaction of all the loan of money pursuant to a written agreement, and as such, subject to the rate limitation set forth under state and federal law. The "formula break" a reference to end these laws was exceeded by a factor in excess of 10 contrary to the applicable law and contrary to the requirements for disclosure under TILA and HOEPA.

138. Under applicable law Plaintiff is also entitled to demand that a permanent injunction be entered against the Defendants:

A. Preventing them from taking any action or making any report in furtherance of collection on this alleged debt which was usurious;

B. Requiring the records custodian of the county in which the alleged mortgage and other instruments are recorded to remove same from the record;

C. Allowing the filing of said order in the office of the clerk of the property records where the Subject Property, "loan transaction" and any other documents relating to this

transaction are located; and

D. Dissolving any lis pendens or notice of pendency relating to the Defendants' purported claim.

TWELFTH CAUSE OF ACTION
Wrongful Foreclosure
(As to All Defendants and DOES)

139. Plaintiff reaffirms and re-alleges the above paragraphs 1 through 138 above as if set forth fully herein below.

140. Plaintiff brings this cause of action against all parties who had an apparent hand in the wrongful acts as set forth and described as to each of them below. Furthermore, their participation seems to be a joint effort to hold each accountable for the actions of the rest.

141. California Civil Code Section 2924 mandates that a non-judicial trustee's sale "SHALL NOT TAKE PLACE" unless it is done on behalf of the beneficiary of a deed of trust securing a note and certain technical procedures are met.

142. California Civil Code Section 2924(g) allows the obligee on the note required by Section 2924 to make a "credit bid" at a foreclosure sale, thereby taking title without actually paying any money whatsoever for the Trustee to convey title to the property.

143. Defendants in this case had a duty to Plaintiff to follow the laws, including the foreclosure laws.

144. Defendants are not the beneficiaries of the mortgage at the time of the scheduled sale. Defendants are acting as a Trustee of a REMIC Loan Pool Trust pursuant to a Pooling and Servicing Agreement (PSA). The PSA under which Defendants purport to be acting is a public record kept by the Securities and Exchange Commission, whose website EDGAR.com contains the provisions of the PSA.

145. If the truth is that the Note was separated from the Deed of Trust and transferred to the loan pool, then Under Civil Code Section 2936, the Right Title and Interest to the Deed of Trust followed the Note on that date, and any subsequent purported Assignment is a lie, its declaration a fraud, and its true legal effect null notwithstanding recordation. Any beneficiary was divested of

interest upon the transfer of the Note under California Law and lacked power to assign any interest. Thus any attempt to foreclose on the Subject Property was null and void under California Law and should be prevented from occurring.

146. Due to Defendants' actions, Plaintiff has been damaged, both financially and is being deprived of her residence, which is a unique asset to him. Plaintiff demands damages for these harms and a permanent injunction against Defendants, to prevent her from being evicted from her home.

147. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

THIRTEENTH CAUSE OF ACTION
Breach of Trust Instrument
As to All Defendants and DOES)

148. Plaintiff reaffirms and re-alleges the above paragraphs 1 through 147 above as if set forth fully herein below.

149. The Deed of Trust is the document which allows a non-judicial foreclosure to proceed and gives Power of Sale to the duly appointed Trustee. Per the Deed of Trust, only the Lender can invoke the foreclosure (See, Deed of Trust, **Exhibit "B",** paragraph 22). Per Deed of Trust paragraph 24, the Lender may appoint a trustee. The Substitution of Trustee in this case is void, due to fraud, and was not executed in compliance with California Civil Code§2934(a). The Substitution of Trustee was invalid also because it was not executed by the Lender, per requirement of the Deed of Trust. The duly appointed Trustee under the Deed of Trust as of the recording of the Notice of Default on April 27, 2010 was CALIFORNIA LAND. ETS was never effectively substituted as trustee. (See, Substitution of Trustee, **Exhibit "E").**

150. A non-judicial foreclosure sale under the power-of-sale in a deed of trust or mortgage, on the other hand, must be conducted in strict compliance with its provisions and applicable statutory law. A trustee's powers and rights are limited to those set forth in the deed of trust and laws applicable thereto.

151. The notice of acceleration and notice to cure given to borrower pursuant to Section 22 and the notice of acceleration given to borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

152. When there is an agreement between the Beneficiary and Trustor, such as the Condition Precedent expressed in Paragraph 20 of the Deed of Trust, a Foreclosure cannot take place before the condition is satisfied. If the Beneficiary fails to carry out its obligation, a subsequent foreclosure is invalid. Defendants have not complied with any expressed provisions of the Deed of Trust, have speciously trespassed upon the Deed of Trust and Plaintiff's property, and the foreclosure and impending sale must be rendered void and rescinded under California Civil Code § 3513. Any one may waive the advantage of a law intended solely for her benefit. But a law established for a public reason cannot be contravened by a private agreement. California Civil Code § 3514. One must so use her own rights as not to infringe upon the rights of another. All the acts of Defendants as described in this Complaint are a breach of the security instrument, the Deed of Trust.

153. Plaintiff first learned of the actions of Defendants, including their failure to disclose and the fraud committed upon her in November 2009. Any applicable statute of limitations should run from this date.

WHEREFORE, Plaintiff prays this court to enter judgment against Defendants and each of them, as follows:

1. For an order compelling said Defendants, and each of them, to transfer or release legal title and any alleged encumbrances thereon, and possession of the subject property to the Plaintiff herein;

2. For a declaration and determination that Plaintiff is the rightful holder of title to the Subject Property and that Defendants herein, and each of them, be declared to have no estate, right, title or interest in said property;

3. For a judgment forever enjoining said Defendants, and each of them, from claiming any estate, right, title or interest in the subject property;

4. For a declaration that the foreclosure which was instituted be deemed and declared illegal and void, and that further proceedings in connection with the foreclosure be enjoined;

5. For attorney's fees according to statutes;

6. For actual, compensatory and punitive damages;

7. For costs of the suit herein incurred;

8. For such other further relief as the court may deem just and proper.

Dated: February 16, 2011.

Respectfully submitted,

LAW OFFICES OF HOLLY S. BURGESS

By: **/s/ Holly S. Burgess** /

HOLLY S. BURGESS
Attorney for Plaintiff, SHELLEY von BRINCKEN

VERIFICATION

I, SHELLEY von BRINCKEN, declare as follows:

I have read the foregoing Second Amended Complaint: for 1)Violation of Homeowners Equity Protection Act; 2)Violations of Real Estate Settlement Procedures Act; 3)Violations of Truth in Lending Act; 4)Violations of Fair Credit Reporting Act; 5)Fraudulent Misrepresentation; 6) Breach of Fiduciary Duties; 7)Unjust Enrichment; 8)Civil Conspiracy; 9)Civil RICO Violations; 10) Quiet Title; 11)Usury and Fraud; 12)Wrongful Foreclosure; 13)Breach of Security Instrument.

Except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this verification was executed this 16 day of Feb, 2011, at Placer County, California.



SHELLEY von BRINCKEN

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Attorney for Plaintiff
SHELLEY von BRINCKEN

THE UNITED STATES DISTRICT COURT

THE EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

SHELLEY von BRINCKEN, Plaintiff, vs. MORTGAGECLOSE.COM, INC., EXECUTIVE TRUSTEE SERVICES, dba ETS SERVICES, LLC, GMAC MORTGAGE, INC., and DOES 1-20, inclusive, Defendants.	**CASE NO: 2:10-CV-02153-JAM-KJN** **EXHIBITS TO SECOND AMENDED COMPLAINT**

EXHIBIT INDEX:

Exhibit A:	Legal Description
Exhibit B:	Note dated January 14, 2009 and Deed of Trust recorded January 23, 2009
Exhibit C:	Notice of Assignment, Sale or Transfer of Servicing Rights dated March 1, 2009
Exhibit D:	Borrower's Qualified Written Request dated March 17, 2010
Exhibit E:	GMAC's First Response to Borrower's Qualified Written Request dated March 30, 2010
Exhibit F:	Borrower's Notice of Exercising Right to Cancel "Rescission Letter" dated April 16, 2010
Exhibit G:	Substitution of Trustee recorded April 28, 2010
Exhibit H:	Notice of Default recorded April 28, 2010

Exhibit I: GMAC's Second Response to Borrower's Qualified Written Request dated May 4, 2010

Exhibit J: Debt Validation Notice dated May 5, 2010

Exhibit K: Notice of Trustee's Sale recorded August 6, 2010

Exhibit L: Lis Pendens filed August 11, 2010

Exhibit M: Trustee's Deed Upon Sale recorded September 10, 2010

Exhibit N: Letter (with copy of Note) to advise borrower that Fannie Mae is current owner of borrower's loan and GMAC is the loan servicer

Attached hereto and incorporated herein by this reference are Exhibits A through N of Plaintiff's Second Amended Complaint.

Dated: February 16, 2011

LAW OFFICES OF HOLLY S. BURGESS

By: /s/ Holly S. Burgess
HOLLY S. BURGESS

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "A"

EXHIBIT "A"

GM-242742-C

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF NEVADA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

LOT 1, AS SHOWN UPON THE FINAL MAP NO. 00-002, "THE WOLF", AS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF NEVADA ON MAY 6, 2008, IN BOOK 8 OF SUBDIVISION MAPS, AT PAGE 178.

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "B"

MIN: [redacted] **NOTE** Loan Number: [redacted]0219

JANUARY 14, 2009 [Date] ORANGE [City] CALIFORNIA [State]

14738 WOLF ROAD, GRASS VALLEY, CALIFORNIA 95949
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 220,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on MARCH 1, 2009. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on FEBRUARY 1, 2039, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1855 WEST KATELLA AVENUE, SUITE 200, ORANGE, CALIFORNIA 92867

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 1,266.44

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit;

WE HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT
DocMagic eSigning 800-649-1362 www.docmagic.com

X _____

and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

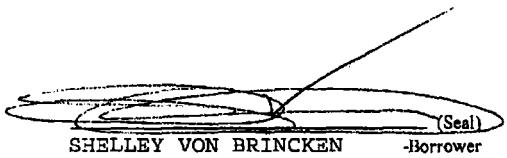
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



SHELLEY VON BRINCKEN (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Von Brincken [redacted] 219 [redacted] 4759

18

RECORDING REQUESTED BY:
CALIFORNIA LAND TITLE COMPANY OF NEVADA COUNTY

AND WHEN RECORDED MAIL TO:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVE., SUITE 200
ORANGE, CA 92867

ORDER NO.: 105038-TO

Nevada County Recorder
Gregory J. Diaz
DOC- 2009-0001231-00
Acct 1-California Land Title Co.
Friday, JAN 23, 2009 08:00:00
REC $22.00 SBS $17.00 SSR $1.00
MIC $1.00 AUT $18.00
Ttl Pd $59.00 Nbr-0000576689
ENM/EM/1-18

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

DOCUMENT TITLE

SEPARATE PAGE - PURSUANT TO GOVERNMENT CODE 27361.6

titlepg

Recording Requested By:
MORTGAGECLOSE.COM, INC.

And After Recording Return To:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVENUE, SUITE 200
ORANGE, CALIFORNIA 92867
Loan Number: [redacted]0219

RECORDING REQUESTED
BY: OLD REPUBLIC TITLE
21230066 84-SE

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: [redacted]

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16

(A) "Security Instrument" means this document, which is dated JANUARY 14, 2009, together with all Riders to this document.
(B) "Borrower" is SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.
(C) "Lender" is MORTGAGECLOSE.COM, INC.

Lender is a NEVADA CORPORATION organized and existing under the laws of NEVADA
Lender's address is 1855 WEST KATELLA AVENUE, SUITE 200, ORANGE, CALIFORNIA 92867

(D) "Trustee" is CALIFORNIA LAND TITLE COMPANY OF NV COUNTY
464 BRUNSWICK RD, GRASS VALLEY, CALIFORNIA 95945

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated JANUARY 14, 2009
The Note states that Borrower owes Lender TWO HUNDRED TWENTY THOUSAND AND 00/100 Dollars (U.S. $ 220,000.00) plus interest.

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2039.

(G) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(H) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Planned Unit Development Rider
☐ Balloon Rider	☐ Biweekly Payment Rider
☐ 1-4 Family Rider	☐ Second Home Rider
☐ Condominium Rider	☐ Other(s) [specify]

(J) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) **"Escrow Items"** means those items that are described in Section 3.

(N) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) **"Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's

covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY [Type of Recording Jurisdiction] of NEVADA [Name of Recording Jurisdiction]

LOT 1, AS SHOWN ON FINAL MAP NO.00-002 OF THE WOLF, FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF NEVADA, STATE OF CALIFORNIA, ON MAY 6, 2008, IN BOOK 8 OF SUBDIVISIONS, AT PAGE 178.
A.P.N.: 55-00-34

which currently has the address of 14738 WOLF ROAD [Street]

GRASS VALLEY [City], California 95949 [Zip Code] ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not

obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender

shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether

or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires

otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action

required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

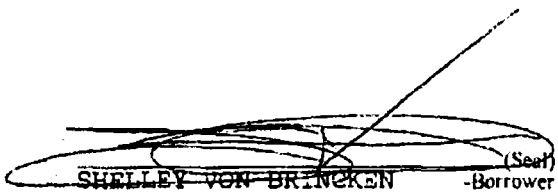
23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Borrower at the address set forth above. A copy of any Notice of Default and any Notice of Sale will be sent only to the address contained in this recorded request. If the Borrower's address changes, a new request must be recorded.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.



SHELLEY VON BRINCKEN (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Witness:

Witness:

[Space Below This Line For Acknowledgment]

State of California)
) ss.
County of Placer)

On 1-15-09 before me, K. Dean Notary public

personally appeared SHELLEY VON BRINCKEN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

K. DEAN
Commission # 1628882
Notary Public - California
Placer County
My Comm. Expires Dec 11, 2009

NOTARY SEAL

NOTARY SIGNATURE

K. Dean
(Typed Name of Notary)

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "C"

Loan Number: [redacted]0219

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from MORTGAGECLOSE.COM, INC.
to
effective 03/01/09

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. In this case, all necessary information is combined in this one notice.

Your present servicer is MORTGAGECLOSE.COM, INC.
If you have any questions relating to the transfer of servicing from your present servicer call (714 453-0220
between 8:30 a.m. and 5:00 p.m. on the following days: MONDAY - FRIDAY
This is a ☐ toll-free or ☒ collect call number.

Your new servicer will be

The business address for your new servicer is:

The ☐ toll-free or ☐ collect call telephone number of your new servicer is
If you have any questions relating to the transfer of servicing to your new servicer call
at between a.m.
and p.m. on the following days:

The date that your present servicer will stop accepting payments from you is 03/01/09
The date that your new servicer will start accepting payments from you is
Send all payments due on or after that date to your new servicer.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605).

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

BORROWER ACKNOWLEDGMENT

I/We have read this disclosure form, and understand its contents, as evidenced by my/our loan signature(s) below.

Borrower SHELLEY VON BRINCKEN Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVENUE, SUITE 200
ORANGE, CALIFORNIA 92867

Loan Number: [redacted]0219

LOAN SERVICING DISCLOSURE STATEMENT

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED. FEDERAL LAW GIVES YOU CERTAIN RELATED RIGHTS. IF YOUR LOAN IS MADE, SAVE THIS STATEMENT WITH YOUR LOAN DOCUMENTS. SIGN THE ACKNOWLEDGMENT AT THE END OF THIS STATEMENT ONLY IF YOU UNDERSTAND ITS CONTENTS.

Because you are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. § 2601 et seq.) you have certain rights under that Federal Law.

This statement tells you about those rights. It also tells you what the chances are that the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest and escrow account payments, if any. If your loan servicer changes, there are certain procedures that must be followed. This statement generally explains those procedures.

TRANSFER PRACTICES AND REQUIREMENTS

If the servicing of your loan is assigned, sold, or transferred to a new servicer, you must be given written notice of that transfer. The present loan servicer must send you notice in writing of the assignment, sale or transfer of the servicing not less than 15 days before the effective date of the transfer. The new loan servicer must also send you notice within 15 days after the effective date of the transfer. The present servicer and the new servicer may combine this information in one notice, so long as the notice is sent to you 15 days before the effective date of transfer. The 15 day period is not applicable if a notice of prospective transfer is provided to you at settlement. The law allows a delay in the time (not more than 30 days after a transfer) for servicers to notify you upon the occurrence of certain business emergencies.

Notices must contain certain information. They must contain the effective date of the transfer of the servicing of your loan to the new servicer, and the name, address, and toll-free or collect-call telephone number of the new servicer, and toll-free or collect-call telephone numbers of a person or department for both your present servicer and your new servicer to answer your questions about the transfer of servicing. During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

COMPLAINT RESOLUTION

Section 6 of RESPA (12 U.S.C. § 2605) gives you certain consumer rights, **whether or not your loan servicing is transferred.** If you send a "qualified written request" to your servicer, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and the information regarding your request. Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, or must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

A Business Day is any day in which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

DAMAGES AND COSTS

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section.

SERVICING TRANSFER ESTIMATED BY LENDER

1. The following is the best estimate of what will happen to the servicing of your mortgage loan:
   _____ We are able to service your loan and presently intend to do so
   XX We do not service mortgage loans and we presently intend to assign, sell, or transfer the servicing of your mortgage loan. You will be informed about your servicer.
2. For all the first lien mortgage loans that we make in the 12-month period after your mortgage loan is funded, we estimate that the percentage of mortgage loans for which we will transfer servicing is between: 76 - 100%
   This is only our best estimate and it is not binding. Business conditions or other circumstances may affect our future transferring decisions.
3. This is our record of transferring the servicing of the mortgage loans we have made in the past:

YEAR	PERCENTAGE OF LOANS TRANSFERRED
2006	100.00%
2007	100.00%
2008	100.00%

This information ☒ does ☐ does not include assignments, sales or transfers to affiliates or subsidiaries.

MORTGAGECLOSE.COM, INC.

_____ JANUARY 14, 2009
Lender's Authorized Representative Date

ACKNOWLEDGMENT OF MORTGAGE APPLICANT

I/We have read this disclosure form and understand its contents, as evidenced by my/our signature(s) below. I/We understand that this acknowledgment is a required part of the mortgage loan application



Applicant's Signature Date
SHELLEY VON BRINCKEN

Applicant's Signature Date

Applicant's Signature Date

Applicant's Signature Date

Applicant's Signature Date

Applicant's Signature Date

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "D"

RESPA QUALIFIED WRITTEN REQUEST, COMPLAINT, DISPUTE OF DEBT & VALIDATION OF DEBT LETTER, TILA REQUEST

This letter is a "Qualified Written Request" in compliance with and under the Real Estate Settlement Procedures act 12 U.S.C Section 2605(e) and Regulation X at 24 C.F.R. 3500. and the Gramm Leach Bliley Act.

To: GMAC Mortgage LLC
3451 Hammond Ave.
Waterloo, Iowa 50704-0780

On behalf of: SHELLEY VON BRINCKEN
Property location: 14738 Wolf Rd., Grass Valley, Ca 95949
Account Number: [redacted]7759

To whom it may concern,

I am writing to you to complain about the accounting and servicing of this mortgage and of my need for understanding and clarification of various sale, transfer, funding source, transactions, legal and beneficial ownership, actions, payments, analyses, debits, credits, reversals, and records related to the servicing of said loan from its inception to the present date.

I am disputing the validity of the current debt you I owe, under the FDCPA. To independently validate this debt, I need to conduct a complete exam, audit, review and accounting of said mortgage loan from its inception until the present date. Upon receipt of this letter, please refrain from reporting any negative credit information to any credit reporting agencies until you respond to my "requests."

I hereby demand absolute 1st hand evidence from you of the original uncertified or certified security regarding account number [redacted]**7759**. In the event you do not supply me with the very security it will be a positive confirmation on your part that you never really created and owned one. I also hereby demand that a chain of transfer from you to wherever the security is now, be promptly sent to me as well. Absent the actual evidence of the security I have no choice but to dispute the validity of your lawful ownership, funding, entitlement right, and the current debt you allege the client owes. By debt I am referring to the principal balance you claim said client owes; the calculated monthly payment, calculated escrow payment, and any fees claimed to be owed by you or any trust or entity you may service or subservice for.

I also request that you conduct your own investigation and audit of the account since its inception to "validate" the debt you claim said client owes you, is accurate to the penny. Please do not rely on previous servicers or originators assurances or indemnity agreements and refuse to conduct a full audit and investigation of this account.

I understand that potential abuses by you or previous servicers could have deceptively, wrongfully, unlawfully, and/or illegally brought forth some or all of the below listed:

Increased the amounts of monthly payments;
Increased the principal balance allegedly owed;
Increased escrow payments;
Increased the amounts applied and attributed toward interest on this account;
Decreased the proper amounts applied and attributed toward principal on this account; and/or
Assessed, charged, and/or collected fees, expenses and misc. charges said client is NOT legally obligated to pay under this mortgage, note, and/or Deed of Trust.

I want to insure that I have not been the victim of such predatory practices. To insure this, said client has authorized a thorough review, examination, accounting and audit of this mortgage by predatory lending experts. This exam and audit will review said mortgage loan file from the date of its initial contact, application and the origination of said loan to the present date written above.

Again this is a "Qualified Written Request" under the Real Estate Settlement Procedures Act, codified as Title 12 section 2605 (e)(1)(B) and reg. X section 3500.21(f)2 of the United States Code. As well as a request under Truth In Lending Act [TILA] 15 U.S.C. section 1601, et seq. RESPA provides substantial penalties and fines for non-compliance or answers to my questions provided in this letter within sixty [60] days of its receipt.

In order to conduct this examination and audit, I need to have full and immediate disclosure including copies of all pertinent information regarding said loan. The documents requested and answers to questions are needed by my counsel and the predatory lending experts' retained to insure that this loan:

- Was originated in lawful compliance with all federal and state laws, regulations including, but not limited to Title 62 of the Revised Statutes, RESPA, TILA, Fair Debt Collection act, HOEPA and other laws;
- That any sale or transfer of this account or monetary instrument, was conducted in accordance with proper laws and was a lawful sale with complete disclosure to all parties with an interest;
- That the claimed holder in due course of the monetary instrument/Deed of Trust/asset is holding such note in compliance with statutes, State and Federal laws and is entitled to the benefits of the clients payments;
- That all appropriate, good faith, and reasonable disclosures of transfers, sales, Power of Attorney, monetary instrument ownership, entitlements, full disclosure of actual funding source, terms, costs, commissions, rebates, kickbacks, fees etc. were and still are properly disclosed to said client;
- That each servicer and sub-servicer of this mortgage has serviced said mortgage in accordance with the terms of said mortgage, promissory note and/or deed of trust;
- That each servicer and sub-servicer of this mortgage has serviced this mortgage in compliance with local, state and federal statutes, laws and regulations;
- That this mortgage account has properly been credited, debited, adjusted, amortized and charged correctly;
- That interest and principal have been properly calculated and applied to this loan;
- That the principal balance has been properly calculated, amortized and accounted for;

- That no charges, fees or expenses, not obligated by client in any agreement, have been charged or assessed to or collected on this account:

In order to validate alleged debt and audit this account, I need copies of all pertinent documents to be provided and answers, certified, in writing, to various servicing questions to be sent to:

Shelley von Brincken
14738 Wolf Road
Grass Valley, CA. [95949]
Phone: (530)-268-8777

For each record kept on computer or in any other electronic file or format, please provide a paper copy of "all" information in each field or record in each computer system, program or database used by you that contains any information on this account or said client.

As such, please send to me, at the address above, copies of the documents requested below as soon as possible. Please provide me copies of:

1. All data, information, notations, text, figures and information contained in your mortgage servicing and accounting computer systems including, but not limited to GMAC's CPI system, any system by GMAC or any other similar mortgage servicing software used by you, any servicers, or sub-servicer of this mortgage account from the inception of said loan to the current date.

2. Any and all "Pool Agreement(s)" including this account

3. All descriptions and legends of all Codes used in your mortgage servicing and accounting system so that the examiners, auditors and experts retained to audit and review said mortgage account may properly conduct their work.

4. All purchase and sale of mortgage agreements, sale or transfer of servicing rights or other similar agreement related to any assignment, purchase or sale of this mortgage loan or servicing rights by you, any broker, affiliate company, parent company, servicers, bank, government sponsored enterprise, sub-servicers, mortgage broker, mortgage banker or any holder of any right related to this mortgage, promissory note and deed of trust from the inception of said loan to the present date.

5. All prospectus' related to the sale or transfer of this note, deed of trust, mortgage and servicing rights or other similar agreement related to any assignment, purchase or sale of this mortgage loan or servicing rights by you, any broker, affiliate company, parent company, servicers, bank, government sponsored enterprise, sub-servicers, mortgage broker, mortgage banker or any holder of any right related to this mortgage, promissory note and deed of trust from the inception of said loan to the present date.

6. All assignments, transfers, alonges, or other document evidencing a transfer, sale or assignment of this mortgage, deed of trust, promissory note or other document that secures payment by said client to their obligation in this account from the inception of said loan to the present date.

7. All deeds in lieu, modifications to this mortgage, promissory note or deed of trust from the inception of said loan to the present date.

8. The front and back of each and every canceled check, money order, draft, debit or credit notice issued to any servicer of this account for payment of any monthly payment, other payment, escrow charge, fee or expense on this account.

9. All escrow analyses conducted on this account from the inception of said loan until up to present date:

10. The front and back of each and every canceled check, draft or debit notice issued for payment of closing costs, fees and expenses listed on clients disclosure statement including, but not limited to, appraisal fees, inspection fees, title searches, title insurance fees, credit life insurance premiums, hazard insurance premiums, commissions, attorney fees, points, etc.

11. Front and back copies of all payment receipts, checks, money orders, drafts, automatic debits and written evidence of payments made by said client or by others on this account.

12. All letters, statements and documents sent to client by your company:

13. All letters, statements and documents sent to client by agents, attorneys or representatives of your company:

14. All letters, statements and documents sent to client by previous servicers, sub-servicers or others in your loan file or in your control or possession or in the control or possession of any affiliate, parent company, agent, sub-servicer, servicer, attorney or other representative of your company.

15. All letters, statements and documents contained in said loan file or imaged by you, any servicer or sub-servicers of this mortgage from the inception of said loan to present date.

16. All electronic transfers, assignments, sales of this note, mortgage, deed of trust or other security instrument.

17. All copies of property inspection reports, appraisals, BPOs and reports done on said property.

18. All invoices for each charge such as inspection fees, BPOs, appraisal fees, attorney fees, insurance, taxes, assessments or any expense which has been charged to this mortgage account from the inception of said loan to the present date.

19. All checks used to pay invoices for each charged such as inspection fees, BPOs, appraisal fees, attorney fees, insurance, taxes, assessments or any expense which has been charged to this mortgage account from the inception of said loan to the present date.

20. All agreements, contracts and understandings with vendors that have been paid for any charge on this account from the inception of said loan to the present date.

21. All loan servicing records, payment payoffs, payoff calculations, ARM audits, interest rate adjustments, payment records, transaction histories, loan histories, accounting records, ledgers, and documents that relate to the accounting of this loan from the inception of said loan until present date?

22. All loan servicing "transaction" records, ledgers, registers and similar items detailing how this loan has been serviced from the from the inception of said loan until present date?

Further, in order to conduct the audit and review of this account, and to determine all proper amounts due, we need the following answers to questions concerning the servicing and accounting of this mortgage account from

its inception to the present date. Accordingly, please provide me, certified, in writing, the answers to the questions listed below.

LOAN ACCOUNTING & SERVICING SYSTEMS

1) Please identify for me each loan accounting and servicing system used by you and any sub-servicer or previous servicer from the inception of said loan to the present date?

2) For each loan accounting and servicing system identified by you and any sub-servicer or previous servicer from the inception of said loan to the present date, please provide the name and address of the company or party that designed and sold the system?

3) For each loan accounting and servicing system used by you and any sub-servicer or previous servicer from the inception of said loan to the present date, please provide the complete transaction code list for each system.

DEBITS & CREDITS

1) In a spreadsheet form or in letter form in a columnar format, please detail for me each and every credit on this account and the date such credit was posted to my account as well as the date any credit was received.

2) In a spreadsheet form or in letter form in a columnar format, please detail for me each and every debit on this account and the date such credit was posted to this account as well as the date any debit was received.

3) For each debit or credit listed, please provide the definition for each corresponding transaction code you utilize?

4) For each transaction code, please provide me with the master transaction code list used by you or previous servicers.

MORTGAGE & ASSIGNMENTS

1) Has each sale, transfer or assignment of this mortgage or promissory note or any other instrument executed by said client to secure alleged debt been recorded in the county property records in the county and state in which this property is located from the inception of said loan to the present date? Yes or No?

2) If no, why?

3) Have any sales, transfers or assignments of this mortgage or promissory note or any other instrument executed to secure alleged debt been recorded in any electronic fashion such as MERS or other internal or external system from the inception of said loan to the present date? Yes or No?

4) If yes, please detail for us the names of each seller, purchaser, assignor, assignee or any holder in due course to any right or obligation of any note, mortgage, deed, or security instrument executed securing the obligation on this account that was not recorded in the county records where this property is located.

ATTORNEY FEES

1) For purposes of the questions below dealing with attorney fees, please consider the terms "attorney fees" and "legal fees" to be one in the same.

2) Have attorney fees ever been assessed to this account from the inception of said loan to the present date?

3) If yes, please detail each separate assessment of attorney fees to this account from the inception of said loan to the present date and the date of such assessment to this account?

4) Have attorney fees ever been charged to this account from the inception of said loan to the present date?

5) If yes, please detail each separate charge of attorney fees to this account from the inception of said loan to the present date and the date of such charge to this account?

6) Have attorney fees ever been collected from this account from the inception of said loan to the present date?

7) If yes, please detail each separate collection of attorney fees from this account from the inception of said loan to the present date and the date of such collection from this account?

8) Please provide for me the name and address of each attorney or law firm that has been paid any fees or expenses related to this account from the inception of said loan to the present date?

9) Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement the client signed, or authorized the assessment or collection of attorney fees?

10) Please detail and list for me in writing each separate attorney fee assessed to this account and for which corresponding payment period or month such late fee was assessed from the inception of said loan to present date.

11) Please detail and list for me in writing each separate attorney fee collected from this account and for which corresponding payment period or month such late fee was collected from the inception of said loan to present date.

12) Please detail and list for me in writing any adjustments in attorney fees assessed and on what date such adjustment was made and the reasons for such adjustment.

13) Please detail and list for me in writing any adjustments in attorney fees collected and on what date such adjustment were made and the reasons for such adjustment.

14) Has interest been charged on any attorney fee assessed or charged to this account? Yes or No?

15) Is interest allowed to be assessed or charged on attorney fees charged or assessed to this account? Yes or No?

16) How much in total attorney fees have been assessed to this account from the inception of said loan until present date? $_____

17) How much in total attorney fees have been collected on this account from the inception of said loan until present date? $_____

SUSPENSE/UNAPPLIED ACCOUNTS

1) For purposes of this section, please treat the term "suspense account" and "unapplied account" as one in the same.

2) Has there been any suspense or unapplied account transactions on this account from the inception of said loan until present date?

3) If yes, why? If no, please skip the questions in this section dealing with suspense and unapplied accounts.

4) In a spreadsheet or in letterform in a columnar format, please detail for me each and every transaction, both debits and credits that has occurred on this account from the inception of said loan until present date?

LATE FEES

1) For purposes of my questions below dealing with late fees, please consider the terms "late fees" and "late charges" to be one in the same.

2) Have you reported the collection of late fees on this account as interest in any statement to client or to the IRS? Yes or No?

3) Has any previous servicer or sub-servicer of this mortgage reported the collection of late fees on this account as interest in any statement to client or to the IRS? Yes or No?

4) Do you consider the payment of late fees as liquidated damages to you for not receiving clients' payment on time? Yes or No?

5) Are late fees considered interest? Yes or No?

6) Please detail for me in writing what expenses and damages you incurred for any payment client may have made that was late.

7) Were any of these expenses or damages charged or assessed to this account in any other way? Yes or No?

8) If yes, please describe what expenses or charges were charged or assessed to this account?

9) Please describe for me in writing what expenses you or others undertook due to any payment client made which was late?

10) Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement client signed or authorized the assessment or collection of late fees?

11) Please detail and list for me in writing each separate late fee assessed to this account and for which corresponding payment period or month such late fee was assessed from the inception of said loan to present date.

12) Please detail and list for me in writing each separate late fee collected from this account and for which corresponding payment period or month such late fee was collected from the inception of said loan to present date.

13) Please detail and list for me in writing any adjustments in late fees assessed and on what date such adjustment was made and the reasons for such adjustment.

14) Has interest been charged on any late fee assessed or charged to this account? Yes or No?

15) Is interest allowed to be assessed or charged on late fees charged or assessed to this account? Yes or No?

16) Have any late charges been assessed to this account? Yes or No?

17) If yes, how much in total late charges have been assessed to this account from the inception of said loan until present date? $_____

18) Please provide me with the exact months or payment dates you or other previous servicers of this account claim the client has been late with a payment from the inception of said loan to the present date.

19) Have late charges been collected on this account from the inception of said loan until present date? Yes or No?

20) If yes, how much in total late charges have been collected on this account from the inception of said loan until present date? $_____

PROPERTY INSPECTIONS

1) For purposes of this section "property inspection" and "inspection fee" refer to any inspection of this property by any source and any related fee or expense charged for such inspection.

2) Have any property inspections been conducted on this property from the inception of said loan until the present date?

3) If your answer is no, you can skip the rest of these questions in this section concerning property inspections?

4) If yes, please tell me the date of each property inspection conducted on this property that is the secured interest for this mortgage, deed or note?

5) Please tell me the price charged for each property inspection?

6) Please tell me the date of each property inspection?

7) Please tell me the name and address of each company and person who conducted each property inspection on this property?

8) Please tell me why property inspections were conducted on this property?

9) Please tell me how property inspections are beneficial to the client.

10) Please tell me how property inspections are protective of this property.

11) Please explain to me your policy on property inspections.

12) Do you consider the payment of inspection fees as a cost of collection? Yes or No?

13) If yes, why?

14) Do you use property inspections to collect debts? Yes or No?

15) Have you used any portion of the property inspection process on this property to collect a debt or inform the client of a debt, payment or obligation he/she owes?

16) If yes, please answer when and why?

17) Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement signed or authorized the assessment or collection of property inspection fees?

18) Have you labeled in any record or document sent to client a property inspection as a misc. advance? Yes or No?

19) If yes, why?

20) Have you labeled in any record or document sent to client a property inspection as a legal fee or attorney fee? Yes or No?

21) If yes, why?

22) Please detail and list for me in writing each separate inspection fee assessed to this account and for which corresponding payment period or month such fee was assessed from the inception of said loan to present date.

23) Please detail and list for me in writing each separate inspection fee collected from this account and for which corresponding payment period or month such fee was collected from the inception of said loan to present date.

24) Please detail and list for me in writing any adjustments in inspection fees assessed and on what date such adjustment was made and the reasons for such adjustment.

25) Please detail and list for me in writing any adjustments in inspection fees collected and on what date such adjustment was made and the reasons for such adjustment.

26) Has interest been charged on any inspection fees assessed or charged to this account? Yes or No?

27) If yes, when and how much was charged?

28) Is interest allowed to be assessed or charged on inspection fees charged or assessed to this account? Yes or No?

29) How much in total inspection fees have been assessed to this account from the inception of said loan until present date? $_____

30) How much in total inspection fees have been collected on this account from the inception of said loan until present date? $_____

BPO FEES

1) Have any BPOs [Broker's Price Opinions] been conducted on this property?

2) If yes, please tell me the date of each BPO conducted on this property that is the secured interest for the clients mortgage, deed or note?

3) Please tell me the price of each BPO?

4) Please tell me who conducted each BPO?

5) Please tell me why BPOs were conducted on this property

6) Please tell me how BPOs are beneficial to the client.

7) Please tell me how BPOs are protective of this property.

8) Please explain to me your policy on BPOs.

9) Have any BPO fees been assessed to this account? Yes or No?

10) If yes, how much in total BPO fees have been assessed to this account? $_____

11) Have any BPO fees been charged to this account? Yes or No?

12) If yes, how much in total BPO fees have been charged to this account? $_____

13) Please tell me specifically what clause, paragraph and sentence in said note, mortgage or deed of trust or any agreement client has executed allows you to assess, charge or collect a BPO fee from client.

SERVICING RELATED QUESTIONS

For each of the following questions listed below, please provide me with a detailed explanation in writing that answers each question:

In addition, I need the following answers to questions concerning the servicing of this mortgage account from its inception to the present date. Accordingly, can you please provide me, certified, in writing, the answers to the questions listed below:

1) Did the originator of this loan have any financing agreements or contracts with your company?

2) Did the originator of this loan have a warehouse loan agreement or contract with your company?

3) Did the originator of this loan receive any compensation, fee, commission, payment, rebate or other financial consideration from your company or any affiliate of your company for handling, processing, originating or administering this loan? If yes, please describe and itemize each and every form of compensation, fee, commission, payment, rebate or other financial consideration paid to the originator of this loan by your company or any affiliate.

4) Please identify for me where the originals of the entire loan file are currently located and how they are being stored, kept and protected?

5) Where is the "original" promissory note, or mortgage signed by the client located? Please describe its physical location and anyone holding this note as a custodian or trustee if applicable.

6) Where is the "original" deed of trust signed by the client located? Please describe its physical location and anyone holding this note as a custodian or trustee if applicable.

7) Since the inception of this loan, has there been any assignment of client's promissory note or mortgage to any other party? If the answer is yes, would you kindly identify the names and addresses of each and every individual, party, bank, trust or entity that has received such assignment?

8) Since the inception of this loan, has there been any assignment of this deed of trust to any other party? If the answer is yes, would you kindly identify the names and addresses of each and every individual, party, bank, trust or entity that has received such assignment?

9) Since the inception of this loan, has there been any sale or assignment of servicing rights to this mortgage loan to any other party? If the answer is yes, would you kindly identify the names and addresses of each and every individual, party, bank, trust or entity that has received such assignment or sale?

10) Since the inception of this loan, has any sub-servicer serviced any portion of this mortgage loan? If the answer is yes, would you kindly identify the names and addresses of each and every individual, party, bank, trust or entity that has sub-serviced this mortgage loan.

11) Has this mortgage loan been made a part of any mortgage pool since the inception of said loan? If yes, please identify for us each and every loan mortgage pool that this mortgage has been a part of from the inception of said loan to the present date.

12) Has each and every assignment of this mortgage or promissory note been recorded in the county land records where the property associated with this mortgage loan is located?

13) Has there been any "electronic" assignment of this mortgage with MERS or any other computer mortgage registry service or computer program? If yes, please identify the name and address of each and every individual,

14) Have there been any "investors" who have participated in any mortgage backed security, collateral mortgage obligation or other mortgage security instrument that this mortgage loan has ever been a part of from the inception of this mortgage to the present date? If yes, please identify the name and address of each and every individual, entity, organization or

15) Please identify for me the parties and their addresses to all sales contracts, servicing agreements, assignments, alonges, transfers, indemnification agreements, recourse agreements and any agreement related to said loan from its inception to the current date written above.

16) Please provide me with copies of all sales contracts, servicing agreements, assignments, alonges, transfers, indemnification agreements, recourse agreements and any agreement related to this loan from its inception to the current date written above.

Documents:

1. Provide validity and proof of debt and the name of the original creditor.
2. Provide the loan sale and/or Servicing Agreement for this transaction.
3. Provide the underwriting guidelines used to determine loan program affordability.
4. Provide all signed closing and disclosure documents in your possession including the residential loan applications signed by the borrower(s) for this transaction.
5. Provide the final HUD-1 Settlement Statement.
6. Provide a signed and executes copy of the mortgage and note.
7. Provide the completed appraisal used for this transaction.
8. Provide a copy of Borrowers' credit report or certification of credit report date.
9. Provide proof of mailing for all disclosures on this transaction.
10. Provide the Lender closing instructions to the settlement agent.
11. Provide the income documentation used for this transaction.
12. Provide a breakdown of all payments received to date from lender since the inception of this mortgage loan, detaining amounts applied to principal and/or interest.
13. Provide an accounting detailing all late fees. Negative amortization and any/all costs associated with this transaction.
14. Provide a copy of the Broker/Lender Agreement for this transaction.
15. Provide a complete detailed breakdown regarding escrows.
16. Provide a copy of all disbursements (to include all 3rd party invoices) at settlement.
17. Provide a copy of Lenders Private Mortgage Insurance policy, if used for this transaction.

DECEPTIVE LENDING PRACTICES STATED HEREIN- violations of the TRUTH IN LENDING ACT- THE REAL ESTATE SETTLEMENT PROCEDURES ACT- FDIC- UNFAIR or DECEPTIVE TRADE PRACTICES FDIC 15 U.S.C. 45(A) (FTC Act Section 5)

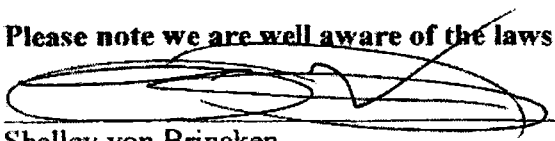
Complainant SHELLEY VON BRINCKEN entered into a mortgage transaction with GMAC MORTGAGE LLC. on or about January 14, 2009 and said client's current mortgagee is GMAC MORTGAGE LLC.

The borrower has authorized our group to file complaints with the appropriate regulatory groups including, but not limited to, the office of Thrift Supervision, Federal Trade Commission (FTC), Federal Reserve Board, Office of Consumer and Regulatory Affairs, Office of the Comptroller of the Currency, Office of Thrift Supervision and State Banking Department(s). (CA) California Department of Financial Institutions, California Dept. Of Justice-Office of the Attorney General and California Office of Administrative law. Dept. of Financial Institutions. The borrowers were advised to allow the lenders the established time by RESPA to review and investigate the facts contained herein and any reasonable time (requested) as necessary prior to filing complaints regarding the Deceptive Lending Practices. Predatory Loan Practices stated herein to the regulatory agencies listed within this Qualified Written Request. The borrowers were also advised to continue making monthly loan payments during this process.

Please provide us with the documents we have requested and a detailed answer to each of our questions within the required lawful time frame. Upon receipt of the documents and answers, an exam and audit will be conducted that may lead to a further document request and answers to questions under an additional QWR letter.

Copies of this Qualified Written Request, Validation of Debt, request for accounting and legal records, Dispute of Debt letter is being sent to HUD, all relevant state and federal regulators; local predatory lending task forces; other consumer advocates; my congressman and various class action law firms and lawyers referred to us.

Please note we are well aware of the laws and of our rights under them.



3-17-10

Shelley von Brincken

cc; Office of Thrift Supervision
1700 "G" Street
Washington D.C. 20552

cc; Federal Trade Commission
Consumer Response Center
600 Pennsylvania Ave. NW
Washington, D.C. 20580

cc; Dept. of Consumer & Regulatory Affairs
941 North Capitol Street NE
Washington, D.C. 20002

cc; Office of the Comptroller of the Currency
1301 McKinney Street Suite#3450
Houston, TX. 77010-9050

cc; California Dept. of Financial Institutions
45 Fremont Street Suite#1700
San Francisco, Ca. 94105-2219

cc; California Attorney General
Attn: Edmund G. Brown Jr.
P. O. Box 944255
Sacramento, Ca 94244-2550.

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "E"

GMAC Mortgage

March 30, 2010

Shelley Von Brincken
14738 Wolf Road
Grass Valley CA 95949

RE: Account Number [redacted]7759
Property Address 14738 Wolf Road
Grass Valley CA 95949

Dear Shelley Von Brincken:

Please be advised that this letter serves as our response to your Qualified Written Request ("QWR") for information regarding the above-referenced GMAC Mortgage account dated March 17, 2010 and received in our office on March 22, 2010. In your correspondence, you request detailed information and documentation regarding nearly every aspect of the mortgage loan transaction, beginning with its origination.

In response to your inquiry, GMAC Mortgage has enclosed a copy of the account's payment history as required by the Real Estate Settlement Procedures Act ("RESPA").

Because your letter appears to be questioning nearly every aspect of the loan transaction, it is difficult for GMAC Mortgage to identify any specific concern(s) you have regarding the servicing of the account. Nevertheless, in an effort to be responsive to your request, copies of pertinent documentation GMAC Mortgage has in its records are enclosed.

- Note
- Deed of Trust/Mortgage
- HUD-I Settlement Statement

The current Master Servicer is: Fannie Mae. The Loan is currently owned by: Fannie Mae, 3900 Wisconsin Avenue NW, Washington, DC 20016-2892, phone number 1-800-732-6643. However, the Loan is currently being subserviced by GMAC Mortgage, LLC and all legal inquiries should be directed to the subservicer.

GMAC Mortgage

If after reviewing this information, you have any specific questions or concerns regarding the mortgage loan servicing of this account, please contact Customer Care at 1-800-766-4622 between the hours of 6:00 am to 10:00 pm CT Monday through Friday and 9:00 am to 1:00 pm CT on Saturday.

If you have any other questions, please contact Customer Care at 1-800-766-4622 between the hours of 6:00 am to 10:00 pm CT Monday through Friday and 9:00 am to 1:00 pm CT on Saturday.

Customer Care
Loan Servicing

DV

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "F"

From:
SHELLEY VON BRINCKEN
14738 WOLF ROAD
GRASS VALLEY, CA 95949

Date: **April 16, 2010**

To/Respondents:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVE, SUITE 200
ORANGE, CA 92867

GMAC MORTGAGE, LLC
3451 HAMMOND AVE
Waterllo, Ia 50704

CALIFORNIA LAND TITLE COMPANY OF NEVADA COUNTY
464 BRUNSWICK RD.
GRASS VALLEY, CA 95945

MERS (Mortgage Electronic Registration Systems Inc.)
P.O. BOX 2026
FLINT, MI 48501-2026

Re: Original Loan No. [redacted]**0219** APN: **55-00-34**
Commonly Known Address: **14738 WOLF ROAD, GRASS VALLEY, CA 95949**
Deed of Trust Record No: **2009000123100** Recorded Date: **JANUARY 23, 2009**

Notice of Right to Cancel

Notice to Agent is Notice to Principal
Notice to Principal is Notice to Agent

Parties: SHELLEY VON BRINCKEN (Alleged Borrower(s) hereinafter **Borrower(s)**) – and, **MORTGAGECLOSE.COM, INC./ GAMC MORTGAGE, LLC/ CALIFORNIA LAND TITLE COMPANY OF NEVADA COUNTY** (Alleged Lenders) hereinafter **Lender(s)**

Attention: All above named Respondents.

This communication will serve as my ***Notice of Right to Cancel*** dated MONTH DAY, 2010. TILA (Truth in Lending Act, 15 USC §1601 et seq; 12 CFR Part 226) allows three (3) years to review Disclosure Documents. The referenced 'Three Day Right to Cancel' must have a trigger to begin. That trigger, is when the Lender has provided the Borrower with ALL of the required Disclosures under TILA, and that the same are true, complete, accurate, and timely provided.

Being as the entire purported loan/mortgage process and Deed of Trust referenced herein and throughout, was obtained by wrongful acts of fraud, fraudulent inducement, concealment, and fraudulent misrepresentation, the borrower has other recourse, right, and cause of action under numerous state and federal statutes. Acts of fraud taint/void everything it touches as the US Supreme Court has declared: "***There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.***" (United States v. Throckmorton, 98 U.S. 61) In further support of the aforementioned wrongful acts, you will please find the attached 'Affidavits of **SHELLEY VON BRINCKEN**' referenced as Attachment/Exhibit – B; and, the attached Addendum - C, all of which are made a part hereto, and incorporated herein in their entirety, the same of which contain important matters

of record that have thus far remained unanswered. unrebutted, and uncontroverted by all Respondents listed above.

To this date, Lender has never provided Borrower with true, complete, accurate or timely documents as required. ONLY AFTER such provision has been done, can the '3 DAY RIGHT TO CANCEL' period begin. If the required full Disclosure(s) have not been provided, then the period in which to Cancel is extended for up to three (3) years, OR until Lender moves to foreclose. The records thus far evidence, that **Borrower** has requested to cancel within the stipulated three year time period, while still waiting to receive all Truth-in-Lending disclosures as required by Federal Law, the same of which have never been received.

A close perusal and audit of Borrower's mortgage/loan documents has revealed certain Disclosure Violations; and, that the Borrower has the remedial right and remedy (UCC 1-201 (32) (34)), inter alia, to invoke their Right of Rescission (ROR) as further evidenced by the original NOTICE OF RIGHT TO CANCEL. You will also please find Borrower's signed and dated NOTICE to the Lender(s), Successor(s) and Beneficiary as stated on the NOTICE OF RIGHT TO CANCEL, if provided in the loan package. If such Notice was not provided, **this written Notice of communication is provided in lieu thereof**.

After sufficient NOTICE has been given to Lender, the Lender is required by Federal Law to CANCEL any lien(s) and to CANCEL any security interest on the Borrower's property within twenty (20) days. The Lender must also return any money, interest, fee, and/or property to Borrower, as well as any money/funds given to any persons or other fiction in law/entity in connection with said transaction.

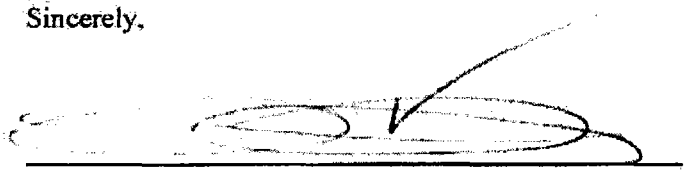
In accordance with both State and Federal law or until the Lender complies, Borrower may retain the proceeds of the transaction. If it should be 'impractical' or 'unfair' for the Borrower to return the property when gross discrepancies, fraud, or other wrongful acts are discovered - then he/she/they may offer its 'Reasonable Value'.

In the event the Lender should fail or refuse to take possession of the property or return the borrower's money offer within twenty (20) days . . . **Borrower** may then regain/acquire all rights to clear title and re-conveyance under Federal Law and provisions of TILA.

Additionally, Borrower has the right to offer Lender a Reasonable Value. **However**, the penalty that a bank can face for violations of TILA and other State and Federal law can be as much as triple damages . . . i.e., triple the amount of the interest the bank stood to fraudulently make off of the mortgage/loan transaction. Therefore, the borrowers hereby in good faith make the following offer: Borrowers will forgive **MORTGAGECLOSE.COM, INC.S**, et.al., any liability incurred by its wrongful actions, provided **MORTGAGECLOSE.COM, INC.S**, et.al. rightfully forgive Borrowers the full amount of mortgage/credit **MORTGAGECLOSE.COM, INC.S**, et.al. fraudulently allege to have given. In addition. Borrowers make the one time demand of $4,536,000.00 for any loss, damage, and injury they have sustained; and, that **MORTGAGECLOSE.COM, INC.S**, et.al., also immediately remove all/any negative comments on Borrower's credit report attributed to this transaction.

Any default, failures, or non-compliance on the Lender's part to perform as herein directed within twenty (20) days of receipt shall constitute this Notice of Right to Cancel as valid and fully agreed/accepted pursuant to the terms and conditions as set forth herein.

Sincerely,



SHELLEY VON BRINCKEN

ACKNOWLEDGEMENT

State of California)
)ss
County of Placer)

On 04/16/2010 before me, S. Perry, notary public

Personally appeared SHELLEY VON BRINCKEN who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by/his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature _____ (Seal)



Attachment/Exhibit - B

AFFIDAVIT

of SHELLEY VON BRINCKEN
Security Instrument dated: JANUARY 14. 2009
Deed of Trust Record Nos. 2009000123100

State of California)
) Scilicet
County of Nevada)

> "Indeed, No more than [such affidavits are] necessary to make the prima facie case." United States v. Kis, 658 F.2nd, 526, 536 (7th Cir. 1981); Cert Denied, 50 U.S. L.W. 2169; S. Ct. March 22. 1982

Comes now SHELLEY VON BRINCKEN, (hereinafter "affiant") a sentient, living woman, being first duly sworn/affirmed – and does depose, say, declare, and affirm by affiant's signature that I am over the age of 18 years and have first hand personal knowledge of the following statements and affirm the same are true and correct to the best of affiant's knowledge and belief, to wit:

1.) That, affiant was induced to believe by certain officers/employees of MORTGAGECLOSE.COM. INC/ GMAC MORTGAGE, LLC. (hereinafter; bank/bank's/lender) and further by the bank's advertising, that said bank had money of its own to loan to affiant and others.

2.) That, affiant took the bank up on its offer to loan affiant its' money, and affiant did sign a promissory note/mortgage dated JANUARY 14. 2009.

3.) That, the bank did also induce affiant to sign a "security agreement/instrument" dated JANUARY 14, 2009, granting the bank a secured interest and lien in/on certain personal property of affiant currently held/owned or otherwise acquired. The bank caused affiant to believe this "security agreement/instrument" was necessary for the bank to protect and insure its valuable and lawful 'consideration', i.e., the loaning of its money to affiant as advertised and promised.

4.) That, the bank did further induce affiant into signing a Deed of Trust the bank and/or its cohorts created, dated JANUARY 14, 2009 wherein the bank did cause other undeserving third parties to obtain a lien against, a security interest in, and complete control over the affiant's personal property. Again, the

bank led affiant to believe this Deed of Trust/assignment was necessary to further secure the bank's valuable, lawful, consideration against any potential 'risk or loss' regarding loaning the affiant its money.

5.) That prior to the affiant signing any of the bank's required financial documents, and forever thereafter, none of the bank's officers/employees have ever fully described and categorized all of the underlying, undisclosed particulars, details, and principles of law regarding the bank's entire purported '*loan*' process, including, but not limited to, just exactly where the '*money*' was coming from to fund the note/mortgage, how it was obtained/created, and by whom.

6.) That, by and through the affiant's signing of all the aforesaid financial instruments, the bank caused affiant to believe that a binding, lawful contract was created between the bank, its agents, assigns, and affiant.

7.) That prior to, and at the time of affiant signing all the bank's required financial instruments as instructed, affiant was very unlearned and unsophisticated in such banking and financial matters, including a total lack of knowledge of all the various underlying, undisclosed details, particulars - and legal consequences pertaining to the same. To the contrary, the unsophisticated affiant relied wholly and entirely upon the bank having 'clean hands', operating in 'good faith', and providing affiant with full, complete, and truthful disclosure of the entire financial transaction(s).

8.) That, regardless of any funds secretly or covertly obtained by the bank (via affiant's note/mortgage) while said bank acts as a for-profit business with and through the US Treasury for the purpose to access and thereby expand the credit of this affiant's individual treasury account while at all times failing to disclose the use of this affiant's negotiable paper (i.e. affiant's note/mortgage) while trading as a for-profit entity on the bond and securities market through any of its interagency cohorts/institutions such as Fannie Mae, Freddie Mac, or otherwise; while also apparently failing to file IRS Form 1099OID (Original Issue Discount) on each of the herein referenced transactions and thereby send a copy of said form to affiant for his tax records. It has been established that this affiant as well as other Americans have, out of necessity and the related remedy attaching thereto having its origin out of HJR-192, are in fact the only substantive "source" and consumer to sponsor virtually ALL credit that issues for commercial purposes. Said credit being necessary for the Treasury to have access to a valid source of credit to monetize and thereby disburse to the federal reserve banks for various and sundry federal projects while accounting for all such credit/funding entered into circulation through the aforesaid federal reserve banks. The nature of

Attachment/Exhibit - B

such funding has been verified by the U.S. Department of Treasury as emanating by and through the UCC Contract Trust Account of the named trust/entity SHELLEY VON BRINCKEN, bearing UCC CONTRACT TRUST ACCOUNT No. [redacted] and Treasury noted Exemption from Levy No. 555110000, to include such other similar individual trusts as may exist.

IN CONCLUSION - Due to other research, further understanding, and for all of the reasons set forth above and throughout this affidavit (to include the document entitled "Addendum-C") all of which the affiant incorporates herein in its entirety – has caused affiant to believe ALL notes/mortgage/Deed of Trust or other instruments entered into by the affiant between the bank/lender and any/all of its agents, assigns, and beneficiaries have no legal force or binding affect, and the same are in fact - **Null** and **Void**.

Further affiant sayeth naught,

Date: 4-16-10

Affiant's signature

ACKNOWLEDGEMENT

State of California)
)ss
County of Placer)

On 04/16/2010 before me. S. Perry, notary public

Personally appeared Shelley von Brincken who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by/his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature S. Perry (Seal)

S PERRY
COMM. # 1841157
NOTARY PUBLIC - CALIFORNIA
PLACER COUNTY
MY COMM. EXP. MAR. 29, 2011

Addendum – "C"

ADDENDUM TO - RIGHT TO CANCEL
RE: UNCONTROVERTED MATTERS OF RECORD, Et Seq.
Original Loan Nos. [redacted]**0219**; APN: **55-00-34**
Commonly Known Address: **14738 WOLF ROAD, GRASS VALLEY, CA [95949]**
Deed of Trust Record: **2009000123100** – Recorded **JANUARY 23, 2009**

1.) That, at no time prior to the signing of 'loan' documents and to this date, did **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** nor any of its officers/employees fully and completely describe and categorize all of the underlying particulars, details, and principles of law regarding **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** entire purported '*loan*' process, including **just exactly** where the '*money*' was coming from to fund the note/mortgage, how it was obtained/created, and by whom.

2.) That, at no time prior to the signing of any '*loan*' documents and to this date, did **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** and its officers/employees ever disclose to **SHELLEY VON BRINCKEN** the fact that the funding of the note/mortgage was being created/obtained by and through **SHELLEY VON BRINCKEN'S** signature on **SHELLEY VON BRINCKEN'S** note, the same of which **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** later arbitrarily and deceitfully claimed as its own, and then either sold, bargained, traded, or collateralized the same for its own benefit and use. **SHELLEY VON BRINCKEN** has good cause to believe that the foregoing wrongful acts evidence **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** never put up, nor used, any money of its own to fund the note/mortgage instrument as it promised; Nor, has **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** and its officers/employees ever denied or rebutted any of the determinations set forth above.

3.) That, by and through **SHELLEY VON BRINCKEN'S** signing of notes, mortgages, Deeds of Trust, and/or security instruments, **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** led **SHELLEY VON BRINCKEN** to believe that a binding, lawful contract/agreement was created between **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** (to include its agents, assigns, and beneficiaries) and **SHELLEY VON BRINCKEN.**

4.) That prior to, and at the time of signing all **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.'S** required financial instruments as instructed, **SHELLEY VON BRINCKEN** was very unlearned and unsophisticated in such banking and financial matters, including lacking any knowledge of all the various underlying details, particulars, and legal consequences pertaining to the same. To the contrary, **SHELLEY**

VON BRINCKEN relied wholly upon **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** having 'clean hands', operating in 'good faith', and providing **SHELLEY VON BRINCKEN** with full, complete, and truthful disclosure of the entire financial transaction(s).

5.) That, following the aforesaid financial transactions concerning **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.**, Barbara Louise Anderson did further study and research the above particulars regarding **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.'S** *loan* process. and can reasonably conclude that **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** did not in fact operate with clean hands or in good faith, nor did **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** provide full, complete, and truthful disclosure of its underlying, undisclosed. secret intents. To the contrary, a close perusal and audit of **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.'S** internal accounting records provide sufficient evidence to support the following conclusions:

a.) That **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** used acts of, but not limited to, fraudulent inducement, fraudulent misrepresentation, and fraudulent intent in its advertising and claim to have loaned its *money* to **SHELLEY VON BRINCKEN**

b.) That **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC** . did not fulfill its original promise/agreement to lend Barbara Louise Anderson its own money; **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** did not sacrifice/contribute anything of intrinsic value or incur any risk/loss in the formation or outcome of the transactions; and, **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** therefore did not sacrifice nor contribute any valuable, lawful consideration; and thereby could not and did not suffer any loss, damage, or injury.

c.) That **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** arbitrarily and discretely stole **SHELLEY VON BRINCKEN'S** note/mortgage, claimed it as its own, and converted the same to a negotiable instrument for **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** sole benefit, use, and gain;

d.) That **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** further compounded its predatory, wrongful, and fraudulent actions by inducing **SHELLEY VON BRINCKEN** to sign a Deed of Trust, thereby granting additional third parties undeserving control, benefit, and interest in **SHELLEY VON BRINCKEN'S** personal property (i.e. his house) all under the guise of '*necessity*';

e.) That the notes/mortgage/Deed of Trust/Security Instrument created by **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.**, its agents, and assigns and

signed only by **SHELLEY VON BRINCKEN** does not constitute a lawful binding contract/agreement due to **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.'S** acts of misfeasance, malfeasance, and nonfeasance as more particularly outlined above; and, that any such purported 'contract/agreement' would be unconscionable and is void.

f.) As confirmed above and throughout, **SHELLEY VON BRINCKEN** was never provided full, complete, and truthful disclosure regarding all financial instruments **SHELLEY VON BRINCKEN** was compelled to sign, nor were they fully or otherwise apprised of the *true nature* and exact particulars of **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** entire *loan* process. Without being fully and truthfully informed as to all the details of the purported '*loan*' and the underlying disingenuous '*intentions*' of the lender, there could not be, and was not, a 'meeting of the minds'. The law of contracts and the courts addresses this issue repeatedly, as per this example: "*The 'meeting of the minds' required to make a contract is not based on **secret purpose or intention** on the part of one of the parties, stored away in his mind and **not brought to the attention of the other party**, but must be based on purpose and intention which **has been made known** or which from all the circumstances should be known*", McClintock v Skelly Oil Co., 232 MoApp. 1204, 114 S.W. 2nd 181, 189. (emphasis added)

g.) That, **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** also may have compelled **SHELLEY VON BRINCKEN** into procuring Mortgage Insurance on **SHELLEY VON BRINCKEN'S** property making **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** the beneficiary of the same, while **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** knew full well that it had not put up any valuable nor lawful consideration into **SHELLEY VON BRINCKEN'S** note, could not possibly incur any loss, was undeserving of any such insurance benefit, and was wrongfully instilling yet another unjust financial burden on **SHELLEY VON BRINCKEN**. As with the theft of **SHELLEY VON BRINCKEN'S** note, courts of law throughout the United States consider any such wrongful and deceitful actions as fraudulent inducement, fraudulent misrepresentation, and unjust enrichment, to name a few.

h.) **SHELLEY VON BRINCKEN** did spend additional time researching several particulars regarding **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.'S** entire *loan* process as outlined above, and became further perplexed. If **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** /lender had indeed given full, complete, and truthful disclosure regarding all elements of its loan process as set forth above and throughout; and, did in fact provide valuable, bona fide consideration; and, did in fact believe **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** did create a lawful, binding

contract with **SHELLEY VON BRINCKEN**/borrower - then why didn't **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.'S** officers/representatives sign their name on the contract/note? The same applies to the Deed of Trust or Mortgage. If **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** /lender knew it was not involved in any manner of fraudulent inducement, misrepresentation, concealment, or unjust enrichment, and did in fact have a bona fide legal contract with the borrowers/**SHELLEY VON BRINCKEN** sufficient to prevail in a foreclosure action if need be; then, why did **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** /lender feel it necessary to have a deed of trust created – wherein the **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** /lender did cause complete control of the purported '*loan*/note' to be turned over to an undeserving third party, and again never put their signature to the instrument? In consideration of all the above statements and findings, it is only reasonable to conclude that **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** /lender knew full well that it had defrauded **SHELLEY VON BRINCKEN**/borrower from the outset as to the true nature and undisclosed rudiments of the entire *loan* process, and was not receptive to further implicating and/or incriminating itself by signing its name to documents that **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** /lender knew were founded upon fraud, lies, unfulfilled promises, secret intentions, inducement, entrapment, and unjust enrichment.

6.) To this date, **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** nor any of its agents, assigns, or beneficiaries, have provided any **bona fide**, tangible evidence that ANY of them are in FACT the **bona fide** holder in due course (nor even a holder of value) and **bona fide** owner of the promissory note in question, all of which would be absolutely necessary in order to initiate ANY form of collection action or foreclosure proceeding. **Again**, it is an **incontrovertible fact** that the original promissory note in question is, and always was, the property of **SHELLEY VON BRINCKEN**, and the same **did not** knowingly or otherwise assign, transfer, or give it away for another's personal benefit and gain – all to the loss and detriment of **SHELLEY VON BRINCKEN**. Any reasonable person would conclude such an action as being ludicrous and unconscionable. Furthermore, it is against the law for one to fraudulently obtain or steal another's property, claim it as their own, and then further bargain, assign, or sell the same to obtain an unjust enrichment, benefit, and gain for themselves – all at a loss and detriment to the lawful, bona fide owner.

IN CONCLUSION, **MORTGAGECLOSE.COM, INC/ GMAC MORTGAGE, LLC.** nor any of its officers, agents, assigns, or beneficiaries have provided any evidence in contradiction to the matters set forth above and throughout. **Accordingly**, the record shall establish that all aforesaid facts, statements,

determinations and related Attachment/Exhibit-B sworn Affidavits of borrower (which is incorporated herein in their entirety) are entirely true and correct and remain unanswered, unrebutted, and uncontroverted.

SHELLEY VON BRINCKEN

ACKNOWLEDGEMENT

State of California)
)ss
County of Placer)

On 04/16/2010 before me, S. Perry, notary public

Personally appeared SHELLEY VON BRINCKEN who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by/his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature S. Perry (Seal)



ASSERVATION OF MAILING

I, S. Perry do hereby solemnly declare and affirm by my signature below, that on 04/16/2010 ~~2009~~. I did cause to be delivered by Federal Express private courier and/or First Class Certified US Mail, a true and correct copy of the following documents: Notice of Right to Cancel; Affidavit of 'Shelley Von Brincken'-Attachment/Exhibit-B; and, Addendum-C, to the parties and locations listed below:

Date: 4/16/2010 By: S. Perry

MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVE, SUITE 200
ORANGE, CA 92867
US Certified Mail Tracking No. 7010 0290 0002 5531 4744

GMAC MORTGAGE, LLC
3451 HAMMOND AVE
Waterllo, Ia 50704
US Certified Mail Tracking No. 7010 0290 0002 5531 4751

CALIFORNIA LAND TITLE COMPANY OF NEVADA COUNTY
464 BRUNSWICK RD.
GRASS VALLEY, CA 95945
US Certified Mail Tracking No. 7010 0290 0002 5531 4737

MERS (Mortgage Electronic Registration Systems Inc.)
P.O. BOX 2026
FLINT, MI 48501-2026
US Certified Mail Tracking No. 7010 0290 0002 5531 4720

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
ORANGE CA 92867

Postage	$ $1.05	0603
Certified Fee	$2.80	11
Return Receipt Fee (Endorsement Required)	$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ $6.15	04/16/2010

Sent To: [illegible]
Street, Apt. No.; or PO Box No. 1633 W. KATELLA AVE # 200
City, State, ZIP+4 ORANGE CA 92704

7010 0290 0002 5531 4744

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
WATERLOO IA 50704

Postage	$ $1.05	0603
Certified Fee	$2.80	11
Return Receipt Fee (Endorsement Required)	$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ $6.15	04/16/2010

Sent To: EMAC Mortgage LLC
Street, Apt. No.; or PO Box No. 3451 HAMMOND AVE
City, State, ZIP+4 WATERLOO IOWA 50704-0130

7010 0290 0002 5531 4751

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
FLINT MI 48501

Postage	$ $1.05	0603
Certified Fee	$2.80	11
Return Receipt Fee (Endorsement Required)	$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ $6.15	04/16/2010

Sent To: MERS
Street, Apt. No.; or PO Box No. PO Box 2026
City, State, ZIP+4 FLINT MI 48501-2026

7010 0290 0002 5531 4737

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
GRASS VALLEY CA 95945

Postage	$ $1.05	0603
Certified Fee	$2.80	11
Return Receipt Fee (Endorsement Required)	$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ $6.15	04/16/2010

Sent To: California Land Title Co of Nev County
Street, Apt. No.; or PO Box No. 464 BRUNSWICK RD
City, State, ZIP+4 GRASS VALLEY CA 95945

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GMAC MORTGAGE LLC
3451 HAMMOND AVE
WATERLOO IOWA
50704 0780

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Greg Caya ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. 7010 0290 0002 5531 4751

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MortgageClose.com, Inc
1855 West Katella Ave
Suite 200
ORANGE, CA
92867

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) Erin Plumb C. Date of Delivery 4/21/10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. 7010 0290 0002 5531 4744

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MERS
P.O. Box 2026
FLINT, MI 48501-2026

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Elaine K Cruse ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
24478

D. Is delivery address different from item 1? ☒ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2 7010 0290 0002 5531 4720

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "G"

RECORDING REQUESTED BY:
Recording Requested by
Title Court Service

Old Republic Default Management Services
When Recorded Mail To:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

Nevada County Recorder
Gregory J. Diaz
Document#: 20100009776
Wednesday April 28 2010, at 12:08:00 PM
Rec Fee:$14.00
Paid: $14.00
Recorded By:JR
Title Court Services

TS NO : GM-[redacted]-C
LOAN NO : [redacted]7759

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY was the original Trustor, **CALIFORNIA LAND TITLE COMPANY OF NV COUNTY** was the original Trustee, and **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION** was the original Beneficiary under that certain Deed of Trust dated **1/14/2009** and recorded on **1/23/2009** as Instrument No. **2009-0001231-00**, in Book , Page of Official Records of **Nevada** County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute **Executive Trustee Services, LLC dba ETS Services, LLC**, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated : 4/27/2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

DONNA FITTON, ASSISTANT SECRETARY

State of California} ss.
County of Los Angeles }

On 4/27/2010 before me, Dee C. Ortega Notary Public, personally appeared Donna Fitton who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)
Dee C. Ortega

DEE C. ORTEGA
Commission # 1672751
Notary Public - California
Los Angeles County
My Comm. Expires Jun 5, 2010

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "H"

RECORDING REQUESTED BY:

Old Republic Default Management Services

WHEN RECORDED MAIL TO:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

TS No. : GM-242742-C Loan No.: [redacted]7759

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice)

This amount is **$5,958.63** as of **4/27/2010** and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
C/O ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

TS NO.: GM-242742-C LOAN NO.: [redacted]769

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That Executive Trustee Services, LLC dba ETS Services, LLC is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 1/14/2009 , executed by SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY, as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION, as beneficiary, recorded 1/23/2009, as Instrument No. 2009-0001231-00, in Book , Page , of Official Records in the Office of the Recorder of Nevada County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

including ONE NOTE FOR THE ORIGINAL sum of $220,000.00 ; that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of

Installment of Principal and Interest plus impounds and/or advances which became due on 1/1/2010 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated: 4/27/2010

ETS Services, LLC as Agent for Beneficiary

BY:_____

Maricela Miseroy
TRUSTEE SALE OFFICER

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "I"

GMAC Mortgage

May 4, 2010

Shelley von Brincken
14738 Wolf Road
Grass Valley CA 95949

RE: Account Number [redacted]7759
Property Address 14738 Wolf Road
Grass Valley CA 95949

Dear Ms. Gottesburen:

This letter is in response to your letter received in our office for response on April 19, 2010. Specifically, this is in response to your Qualified Written Request ("QWR").

The letter questions nearly every aspect of the loan transaction and appears to be based on a form letter that is not tailored to this loans particular circumstances, and as a result it is difficult for us to identify any specific concern you may have regarding GMAC Mortgage LLC's ("GMACM") servicing of the loan. Nevertheless, in an effort to be responsive to the request, we have enclosed copies of the documentation on the loan that we have in our records. If after reviewing these records, you have any particular questions or concerns relating to GMACM's servicing of the account, we will be pleased to discuss them with you in further detail.

As you may be aware, Section XI of the Real Estate Settlement Procedures Act ("RESPA") pertains to the servicing of mortgage loans and the administration of escrow accounts. Specifically, RESPA states, "If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period." Continuing, RESPA provides that the servicer shall investigate, correct (where appropriate), and respond "not later than 60 days" after receipt of the borrower's QWR.

Enclosed please find the following:

- Payment history
- Note
- Deed of Trust
- HUD-1 Settlement Statement

The following responses are in the same order as the inquiries in the QWR:

1. Subject to business and trade practices which are proprietary and confidential.
2. Subject to business and trade practices which are proprietary and confidential.
3. See enclosed transaction code list.
4. Subject to business and trade practices which are proprietary and confidential.
5. Subject to business and trade practices which are proprietary and confidential.

Account Number [redacted]7759
Shelley von Brinck[redacted]
May 4, 2010

6. The loan is registered with MERS, MIN #[redacted]; therefore, there are no assignments. The loan originated January 14, 2009 with Mortgageclose.com Inc and was immediately transferred to GMAC Mortgage, LLC for servicing.
7. Not applicable.
8. Subject to business and trade practices which are proprietary and confidential.
9. See enclosed escrow analysis. The account is not escrowed at this time.
10. Does not pertain to the servicing of the account.
11. You will need to contact your financial institution for copies of the front and back of checks or payments issued.
12. See enclosed letters and available statements.
13. See enclosed letters.
14. RESPA does not require we provide documentation from a previous servicer.
15. See enclosed letters.
16. See response to item 6.
17. Subject to business and trade practices which are proprietary and confidential.
18. Subject to business and trade practices which are proprietary and confidential.
19. Subject to business and trade practices which are proprietary and confidential.
20. Subject to business and trade practices which are proprietary and confidential.
21. See enclosed payment history and transaction code list.
22. See response to item 21.

LOAN ACCOUNTING & SERVICING SYSTEMS

1-3. Subject to business and trade practices which are proprietary and confidential.

DEBITS & CREDITS

1-3. This information is detailed in the enclosed payment history and transaction code list.

MORTGAGE & ASSIGNMENTS

1-4. The information requested is not related to the servicing of the account.

ATTORNEY FEES

1. No response is required to this item.
2. No attorney fees have been assessed to the account.
3-17. Not applicable as no attorney fees have been assessed or paid from the account. The questions concerning how or why these fees can be assessed is outlined in the enclosed Deed of Trust.

SUSPENSE/UNAPPLIED ACCOUNTS

1. No response is required to this item.
2-4. This information is detailed in the enclosed history.

LATE FEES

1. No response is required to this item.
2-20. This information is detailed in the enclosed history. The questions concerning how or why

Account Number [redacted]7759
Shelley von Brincken
May 4, 2010

these fees are assessed is outlined in the enclosed Note and Deed of Trust. RESPA does not require we respond on items from a previous servicer.

PROPERTY INSPECTIONS

1. No response is required to this item.
2-30. This information is detailed in the enclosed history. The questions concerning how or why these fees are assessed is outlined in the enclosed Note and Deed of Trust.

BPO FEES

1-13. No fees for a Broker's Price Opinion has been assessed to the account. This information is detailed in the enclosed history. The questions concerning how or why these fees may be assessed is outlined in the enclosed Note and Deed of Trust.

SERVICING RELATED QUESTIONS

1-16. Subject to business and trade practices which are proprietary and confidential.

Documents:

1. See enclosed Note, Deed of Trust, HUD-I Settlement Statement and Payment History confirming validation of debt on the above-referenced account.
2. Subject to business and trade practices which are proprietary and confidential.
3. Does not pertain to the servicing of the account.
4. Does not pertain to the servicing of the account.
5. See enclosed HUD-I Settlement Statement.
6. See enclosed Note and Deed of Trust.
7. See enclosed appraisal.
8. Does not pertain to the servicing of the account.
9. Does not pertain to the servicing of the account.
10. Does not pertain to the servicing of the account.
11. Does not pertain to the servicing of the account.
12. See enclosed payment history and transaction code key.
13. See enclosed payment history for all late charges assessed to the account. The account is not a negative amortizing loan.
14. Subject to business and trade practices which are proprietary and confidential.
15. See enclosed payment history and transaction code key.
16. Does not pertain to the servicing of the account.
17. Does not pertain to the servicing of the account.

Omissions or silence do not constitute GMACM's consent of or agreement with the statements contained in the document. GMACM has responded to the provisions it is required to as provided by law. It views all other non-servicing related questions as extraneous and an abuse of the statute by counsel in an attempt to obtain information outside of formal discovery.

If you are experiencing a financial hardship, you may be eligible for a workout option (repayment agreement, modification, etc). In order to be considered, you will need to complete and return the enclosed financial analysis form with the requested documentation. Upon receipt of this information, the account will be reviewed to determine what, if any, options may be available to you.

Account Number [redacted]7759
Shelley von Brincken
May 4, 2010

We believe the foregoing to be responsive to your inquiries. If you have any further questions, please contact Customer Care at 1-800-766-4622 between the hours of 6:00 am to 10:00 pm CT Monday through Friday and 9:00 am to 1:00 pm CT on Saturday.

Customer Care
Loan Servicing

Enclosures

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "J"

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

Date: 5/5/2010

T.S. Number: GM-242742-C
Loan Number: [redacted]7759

DEBT VALIDATION NOTICE

1. **The enclosed document relates to a debt owed to the current creditor:**

   MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

   You may send us a written request for the name and address of the original creditor, if different from the current creditor, and we will obtain and mail the information to you.

2. **As of 4/27/2010 the total delinquency owed was $5,958.63, but this amount will increase until the delinquency has been fully cured.**

3. **As of 5/5/2010, the amount required to pay the entire debt in full was $223,386.69, but this amount will increase daily until the debt has been fully paid.**

4. **You may dispute the validity of this debt, or any portion thereof, within thirty (30) days after receiving this notice. Otherwise, we will assume that the debt is valid.**

5. **If you notify us in writing that you dispute all or any portion of this debt within thirty (30) days after receiving this notice, we will obtain and mail to you verification of the debt, or a copy of any judgement against you.**

WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE



Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "K"

J

Nevada County Recorder
Gregory J. Diaz
Document#: 20100018242
Friday August 06 2010, at 01:09:31 PM
Rec Fee:$17.00
Paid: $17.00
Recorded By:KP

RECORDING REQUESTED BY
ETS Services, LLC

AND WHEN RECORDED MAIL TO:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

T.S. No. CM-242742-C
Loan No. [redacted]7759

SPACE ABOVE THIS LINE FOR RECORDER'S Use

NOTICE OF TRUSTEE'S SALE 33-80132897

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 1/14/2009. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

TRUSTOR: **SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY**
Recorded **1/23/2009** as Instrument No. **2009-0001231-00** in Book , page of
Official Records in the office of the Recorder of **Nevada** County, California.
Date of Sale: **8/19/2010** at **12:30 PM**
Place of Sale: **At the Main Entrance to the Courthouse, 201 Church St, Nevada City, California**
Property Address is purported to be: **14738 WOLF ROAD**
GRASS VALLEY, CA 95949
APN #: **55-060-68-000**

The total amount secured by said instrument as of the time of initial publication of this notice is **$229,689.00**, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Pursuant to California Civil Code §2923.54 the undersigned, on behalf of the beneficiary, loan servicer or authorized agent, declares as follows:

[1] The mortgage loan servicer has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.53 that is current and valid on the date the notice of sale is filed;
[2] The timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or 2923.55.

T.S No. GM-242742-C
Loan No [redacted]759

Date 7/28/2010

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
Sale Line: 714-730-2727

Ileanna Petersen, TRUSTEE SALE OFFICER

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "L"

Nevada County Recorder
Gregory J. Diaz
Document# 20100019517
Thursday August 19 2010 at 03:24:00 PM
Rec Fee:$26.00 CCF:$1.00
Paid: $27.00 CP

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Shelley von Brincken
14738 Wolf Road
Grass Valley, Ca 95949

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

UNITED STATES DISRICT COURT
EASTERN DISTRICT OF CALIFORNIA

2 1 0 - C . 2 1 5 3 JAM ETB(PS)

SHELLEY VON BRINCKEN,

PLAINTIFF,

vs.

MORTGAECLOSE.COM, LLC. 1855 WEST KATELLA AVE , SUIT 200, ORANGE, CA 92867

EXCUTIVE TRUST SERVICES dba ETS SERVICES, LLC, 2255 N. ONTARIO ST, SUIT 400, BURBANK, CA 91504

and DOES 1 – 30;

Defendants.

Case No.:

NOTICE OF PENDENCY ACTION

Notice is given that the above-entitled action was filed in the above-entitled court on

ORIGINAL
FILED
AUG 11 2010
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Shelley von Brincken
14738 Wolf Road
Grass Valley, Ca 95949

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

UNITED STATES DISRICT COURT
EASTERN DISTRICT OF CALIFORNIA

2 1 0 - - 2 1 5 3 JAM EFB(PS)

SHELLEY VON BRINCKEN.

PLAINTIFF,

vs.

MORTGAECLOSE.COM, LLC. 1855 WEST KATELLA AVE . SUIT 200. ORANGE, CA 92867

EXCUTIVE TRUST SERVICES dba ETS SERVICES, LLC, 2255 N. ONTARIO ST, SUIT 400, BURBANK, CA 91504

and DOES 1 – 30;

Defendants.

Case No.:

NOTICE OF PENDENCY ACTION

Notice is given that the above-entitled action was filed in the above-entitled court on

August 11, 2010 by SHELLEY VON BRINCKEN, Plaintiff, against **MORTGAECLOSE.COM, LLC.** 1855 West Katella Ave , Suite 200, Orange, Ca 92867, **EXCUTIVE TRUST SERVICES dba ETS SERVICES, LLC.** 2255 N. Ontario St, Suite 400, Burbank, Ca 91504

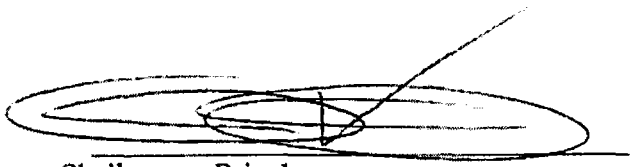
The action affects title to specific real property or the right to possession of that specific real property in the complaint or cross-complaint or as the case may be in the action.

The specific real property affected by the action is located in the City of Grass Valley, County of Nevada, State of California, and is described as follows:

Lot 1, as shown on Final Map no. 00-002 of The Wolf, Filed in the Office of the County Recorder, County of Nevada, State of California, on May 6, 2008 in Book 8 of subdivisions, at page 178.

More commonly known as: 714738 Wolf Road, Grass Valley, Ca. 95949

Dated: August 11, 2010



Shelley von Brincken

ACKNOWLEDGMENT

UNITED STATES DISRTICT COURT
EASTERN DIVSION OF CALIFORNIA

On April 2010 before me. R. Hill, a notary public, personally appeared Shelley Ann Parker who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity on the instrument the person. or the entity upon behalf of which the person acted, executed the instrument.

I certified under penalty of perjury under the laws of the state of California that the forgoing is true and correct.

R. HILL
Commission # 1847753
Notary Public - California
Nevada County
My Comm. Expires Jun 3, 2013

[Signature. printed name. and title of notary public or other officer administering oath] [Seal]

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "M"

3

RECORDING REQUESTED BY:
Executive Trustee Services, LLC dba ETS Services, LLC

AND WHEN RECORDED MAIL TO:
GMAC MORTGAGE, LLC FKA
GMAC MORTGAGE CORPORATION
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034

Forward Tax Statements to
the address given above

Nevada County Recorder
Gregory J. Diaz
Document# 20100021600
Friday September 10 2010, at 01:35:13 PM
Rec Fee:$20.00
Paid: $20.00
Recorded By:KP

SPACE ABOVE LINE FOR RECORDER'S USE

TS # **GM-242742-C**
LOAN # [redacted]**7759**
TITLE ORDER # **33-80132897**

INVESTOR #: **0000000000000**

TRUSTEE'S DEED UPON SALE

APN **55-060-68-000** TRANSFER TAX: **$00.00**
"THIS TRANSACTION IS EXEMPT FROM THE REQUIREMENTS OF THE REVENUE AND TAXATION CODE, SECTION 480.3"
The Grantee Herein Was The Foreclosing Beneficiary.
The Amount Of The Unpaid Debt was $235,204.06
The Amount Paid By The Grantee Was $186,940.72
Said Property Is In The City Of **GRASS VALLEY**, County of **Nevada**

Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee, (whereas so designated in the Deed of Trust hereunder
more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

FEDERAL NATIONAL MORTGAGE ASSOCIATION

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **Nevada**, State of California, described as follows:

See exhibit "A" attached hereto and made a part hereof

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY** as Trustor, dated **1/14/2009** of the Official Records in the office of the Recorder of **Nevada**, California under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on **1/23/2009** , instrument number **2009-0001231-00** (or Book , Page)
of Official records. Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

EXHIBIT "A"

GM-242742-C

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF NEVADA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

LOT 1, AS SHOWN UPON THE FINAL MAP NO. 00-002, "THE WOLF", AS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF NEVADA ON MAY 6, 2008, IN BOOK 8 OF SUBDIVISION MAPS, AT PAGE 178.

TRUSTEE'S DEED UPON SALE

Trustee's Deed
T.S.# GM-242742-C
Loan # [redacted]7759
Title Order # 33-80132897

All requirements per California Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on **8/31/2010**. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being **$186,940.72**, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, **Executive Trustee Services, LLC dba ETS Services, LLC**, as Trustee, has this day, caused its name
to be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws

Date: **9/3/2010**

Executive Trustee Services, LLC dba ETS Services, LLC

By: Kathleen Gowen
Kathleen Gowen, Limited Signing Officer

State of California } **S.S.**
County of Los Angeles }
On **9/3/2010** before me, **Sally Beltran** Notary Public, personally appeared **Kathleen Gowen** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sally Beltran (Seal)
Sally Beltran

SALLY BELTRAN
Commission # 1777085
Notary Public - California
Los Angeles County
My Comm Expires Oct 30, 2011

Shelley Von Brincken vs. Mortgageclose.com, Inc., et al.
USDC Eastern District of California Case No. 2:10-CV-02153

SECOND AMENDED COMPLAINT

EXHIBIT "N"

GMAC Mortgage

October 27, 2010

Shelley Von Brincken
14738 Wolf Road
Grass Valley CA 95949

RE: Account Number: [redacted]7759
Property Address 14738 Wolf Road
Grass Valley CA 95949

Dear Shelley Von Brincken:

This is in response to your recent letter received in our offices on October 21, 2010 in which you requested your mortgage Note and the identity of the owner of your loan.

GMAC Mortgage disputes the claims made in your letter relating to our foreclosure process. We are committed to preserving the integrity of the foreclosure process and have taken all steps necessary to ensure that all applicable foreclosure requirements are being met.

The requirements for enforcement of a mortgage loan agreement depend on state law and possession of an original note is not necessarily a requirement. Nevertheless, we are providing you a copy of the original Note as a courtesy (see enclosed). Failure to provide you with the original Note does not relinquish your responsibility for repayment of the debt or our rights to collect payment.

The current owner of your loan is Fannie Mae, 3900 Wisconsin Avenue NW, Washington, DC 20016-2892, phone number 1-800-732-6643. GMAC Mortgage; LLC is currently servicing your account, however, and all inquiries should be directed to our office.

Please be aware failure to remit payments can have serious consequences including damage to your credit and possible foreclosure. We understand that no one enters into a loan agreement expecting to have difficulty making payments. Life changes and unexpected hardships can suddenly, and without warning, impact even those who are generally always prepared. We are committed to working with you to identify solutions and find innovative ways to address your particular situation. If you need assistance with your payments, please complete the financial analysis forms available on our website at www.gmacmortgage.com, to determine your eligibility for assistance.

If you have any further questions, please contact Customer Care at 1-800-766-4622 between the hours of 6:00 am to 10:00 pm CT Monday through Friday and 9:00 am to 1:00 pm CT on Saturday.

Customer Care
Loan Servicing

Enclosure
BD

Exhibit I

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHELLEY VON BRINCKEN, Plaintiff, v. MORTGAGECLOSE.COM, INC.; CALIFORNIA LAND COMPANY OF NEVADA COUNTY; EXECUTIVE TRUSTEE SERVICES, dba ETS SERVICES, LLC; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; GMAC MORTGAGE, INC.; and DOES 1-20, inclusive, Defendants.	Case No. 2:10-CV-2153-JAM-KJN ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on Defendants' GMAC Mortgage, LLC, Executive Trustee Services, and Mortgage Electronic Registration Systems, Inc.'s (collectively "Defendants") Motion to Dismiss (Doc. #65) Plaintiff Shelley Von Brincken's ("Plaintiff") Second Amended Complaint ("SAC") (Doc. #62) for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(6). Plaintiff opposes the motion (Doc. #67). Defendant Mortgageclose.com, Inc. joined in the Motion to Dismiss (Doc. #66). Plaintiff did not oppose the joinder, accordingly the Court will

consider Mortgageclose.com, Inc. as joined in the motion to dismiss with Defendants. The motion was set for hearing on May 4, 2011, but ordered submitted on the briefs without oral argument.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff borrowed $220,000.00 on January 14, 2009 from Mortgageclose.com, Inc. On the same date she signed a deed of trust securing the properly located 14738 Wolf Rd., Grass Valley, California, as security for the loan. Plaintiff subsequently defaulted on the loan, and a Notice of Default was recorded on April 27, 2011. Thereafter, a Notice of Trustee's Sale was recorded on July 28, 2010, and the property was sold and Trustee's Deed Upon Sale recorded on September 3, 2010. Prior to the Sale on August 11, 2010, Plaintiff filed a Notice of Pendency of Action (Doc. #3) and filed an unsuccessful motion for a Temporary Restraining Order (Doc. #9).

Plaintiff alleges that she is the victim of fraud, predatory lending, and an unlawful foreclosure. Plaintiff was previously pro se, but acquired counsel, who filed the SAC. The SAC alleges problems with the chain of title and the Deed of Trust. Plaintiff further alleges that the purported lender/servicer failed, refused or neglected to work with her to avoid foreclosure. Defendants contend that despite Plaintiffs slew of general allegations about the mortgage banking industry, Plaintiff fails to state a claim against Defendants.

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

II. OPINION

A. Legal Standard

A party may move to dismiss an action for failure to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(6). In considering a motion to dismiss, the court must accept the allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1975), overruled on other grounds by Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that are mere "legal conclusions," however, are not entitled to the assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009), citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, a plaintiff needs to plead "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. Dismissal is appropriate where the plaintiff fails to state a claim supportable by a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

Upon granting a motion to dismiss for failure to state a claim, the court has discretion to allow leave to amend the complaint pursuant to Federal Rules of Civil Procedure 15(a). "Absent prejudice, or a strong showing of any [other relevant] factor[], there exists a presumption under Rule 15(a) in favor of granting leave to amend." Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear . . . that the complaint could not be saved by amendment." Id.

Generally, the court may not consider material beyond the pleadings in ruling on a motion to dismiss for failure to state a claim. There are two exceptions: when material is attached to the complaint or relied on by the complaint, or when the court takes judicial notice of matters of public record, provided the facts are not subject to reasonable dispute. Sherman v. Stryker Corp., 2009 WL 2241664 at *2 (C.D. Cal. Mar. 30, 2009) (internal citations omitted). In this case, Plaintiff has attached Exhibits A-N (Doc. #62, Ex. 1) to the SAC. Plaintiff relies on these documents in her Complaint (several of which are also public record as they are recorded documents), and Defendants do not object to the Court considering the attached documents. Accordingly, the Court will consider documents A-N in ruling on the motion to dismiss.

B. Claims for Relief

1. Violation of the Home Ownership Equity Protection Act

Plaintiff alleges that Defendants have violated the Homeownership Equity Protection Act ("HOEPA"), 15 U.S.C. § 1639. The SAC seeks rescission and damages under HOEPA. The SAC lumps all the defendants together and does not specifically identify the defendant(s) to whom her allegations pertain. Defendants argue that Plaintiff fails to state a claim for violation of HOEPA, because her claim is barred by the statute of limitations and the SAC does not sufficiently allege that her loan falls under HOEPA. However, Defendants only attack the portion of Plaintiff's claim seeking damages, and not her claim for rescission.

HOEPA is an amendment to the Truth in Lending Act ("TILA"), and therefore is governed by the same remedial scheme and statutes

of limitations as TILA. Hensley v. Bank of New York Mellon, 2010 WL 5418862, *4 (E.D. Cal. Dec. 23, 2010); Wadhwa v. Aurora Loan Services, LLC, 2011 WL 1601593, *2 (E.D. Cal. April 27, 2011). The statute of limitations for TILA damages claim is one year from the occurrence of a violation. 15 U.S.C. § 1640(e). Under 15 U.S.C. § 1635(f), TILA rescission claims shall expire three years after the date of consummation of the transaction, or upon sale of the property, whichever occurs first. The limitations period runs from the date of consummation of the transaction. Wadhwa, supra (citing King v. California, 784 F.2d 910, 915 (9th Cir. 1986).

> The doctrine of equitable tolling may, in the appropriate circumstance, suspend the limitation period until the borrower discovers or had reasonable opportunity to discover the fraud or nondisclosures that form the basis of the TILA action. While the applicability of the equitable tolling doctrine often depends on matters outside the pleadings, dismissal may be appropriate when a plaintiff fails to allege facts suggesting that he did not have a reasonable opportunity to discover the violation.

Wadhwa, 2011 WL 1601593 at *2 (internal citations omitted).

Here, the loan was issued on January 14, 2009, and Plaintiff filed her complaint on August 11, 2010, more than one year later. Plaintiff has included the cursory allegation throughout the SAC that she did not learn of any violations until November 2009, and thus any applicable statute of limitation should run from this date. However, the SAC offers no factual support for Plaintiff's allegation that she was unable to compare the allegedly improper disclosure in the loan documents with the required disclosures under HOEPA, nor does she explain why she could not have learned of the alleged violations within the statutory period. See, e.g., Wadhwa, 2011 WL 1601593,at *2-3 (declining to apply equitable

tolling where plaintiffs did not allege why they could not compare disclosure forms or discover the violation during the statutory period). Accordingly, the statute of limitations for Plaintiff's HOEPA damages claim has run, and the Court does not find from the SAC's conclusory tolling allegation that equitable tolling applies. While Plaintiff's HOEPA claim for rescission is timely, Plaintiff has failed to tender the full amount of the loan or alleged ability to tender. See e.g. Little v. Accent Conservatory and Sunroom Designs, 2011 WL 2215816, *3 (S.D. Cal. June 7, 2011). As when alleging a claim for rescission under TILA, plaintiffs must make an offer of complete tender before seeking rescission of the loan. Id.

Additionally, Defendants argue that Plaintiff has not shown that HOEPA applies to her loan. A loan is subject to HOEPA if the loan's annual percentage rate at consummation exceeds by more than ten percent the applicable yield on treasury securities, or the total points and fees payable by the consumer at or before closing exceeds eight percent of the total loan amount or $400.00, whichever is greater. 15 U.S.C. § 1602(aa)(1)(3); 12 C.F.R. §226.32(a)(1). A HOEPA claim that fails to allege facts showing that the plaintiff's loan satisfies one of the tests cannot withstand a motion to dismiss. Rendon v. Countrywide Home Loans, Inc., 2009 WL 3126400, *9 (E.D. Cal. 2009). The SAC states that Plaintiff was required to pay excessive fees that exceeded ten percent of the amount financed. Taking this allegation as true, as the Court is required, Plaintiff has sufficiently alleged that HOEPA may apply to her loan. However, because her claim for damages is barred by the statute of limitations, and she has not sufficiently alleged tender so as to maintain her claim for

rescission, the HOEPA claim is dismissed in its entirety.

2. Violation of the Real Estate Settlement Procedures Act

Plaintiff alleges that Defendants violated the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607, because Defendants "accepted charges for the rendering of real estate services which were in fact charges for other than services actually performed." SAC ¶71. Defendants argue that the RESPA claim is barred by the one year statute of limitations and fails to state a claim.

> The primary ill that section 2607 is designed to remedy is the potential for unnecessarily high settlement charges caused by kickbacks, fee-splitting, and other practices that suppress price competition for settlement services. This ill occurs, if at all, when the plaintiff pays for the tainted service, typically at the closing. 12 U.S.C. § 2614 provides that a section 2607 claim may be brought within 1 year from the date of the occurrence of the violation. Barring extenuating circumstances, the date of the occurrence of the violation is the date on which the loan closed.

Solano v. America's Servicing Company, 2011 WL 1669735, *3 (E.D. Cal. May 3, 2011) (internal citations omitted).

In this case, Plaintiff's loan was made on January 14, 2009. Thus, her current claim is barred by the statute of limitations. As discussed above, neither the SAC nor Plaintiff's opposition brief discuss why she could not have discovered the alleged violation within the one-year statutory period. Therefore, Plaintiff has not shown that equitable tolling applies to her claim. Moreover, the claim itself is devoid of factual support for her conclusory allegation that Defendants violated RESPA, and is thus insufficient to state a claim against Defendants. Because

Plaintiff lumps all Defendants together, it is unclear against whom she intends to bring the claim. Defendants note in their reply brief that none of them were the original lenders on the loan, therefore none of them were involved at the time that the alleged violations occurred. Accordingly, the RESPA claim is dismissed.

3. Violation of the Truth in Lending Act

Plaintiff alleges that Defendants violated TILA, 15 U.S.C. § 1601, et seq., by failing to disclose certain charges in the finance charge shown on the TILA statement. Plaintiff seeks rescission and alleges that the SAC serves as formal notice of her intent to rescind her loan under TILA. Defendants assert that Plaintiff cannot state a claim for rescission under TILA, without first alleging that she can tender the amount due on the loan. To the extent that Plaintiff seeks damages, Defendants argue damages are barred by the one year statute of limitations.

The statute of limitations for rescission under TILA is three years. Accordingly, Plaintiff's claim for rescission is timely. However, as discussed in the HOEPA claim, her claim for damages under TILA is barred, as the statute of limitations has run and she has not made sufficient allegations as to why equitable tolling should apply. Further, Defendants are correct that Plaintiff must allege tender in order to bring her claim for rescission, and she has not done so. (See, e.g., Rose v. American Home Mortg. Servicing, Inc., 2011 WL 2074938, at *2 (E.D. Cal. May 25, 2011). A tender must be one of full performance and must be unconditional to be valid. Solano, 2011 WL 1669735, at *8. Plaintiff's allegation that she offered to tender in the letter of rescission (Ex. F. to the SAC), conditioned on receiving approximately 4

million dollars in damages from Defendants, is not sufficient. Accordingly, the claim for TILA rescission and damages is dismissed.

4. Violation of the Fair Credit Reporting Act

Plaintiff alleges that Defendants violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 by reporting negative information about Plaintiff to the major credit reporting agencies. Defendants argue that Plaintiff has not properly alleged a violation of the FRCA and therefore fails to state a claim against Defendants.

There is a private right of action for violations of section 1681(S)(2()(b) of the FRCA. Matracia v. JP Morgan Chase Bank, 2011 WL 1833092, *3 (E.D. Cal. May 12, 2011). However, to succeed on such a claim, a plaintiff must allege that she had a dispute with a credit reporting agency regarding the accuracy of an account, that the credit reporting agency notified the furnisher of the information, and that the furnisher failed to take the remedial measures outlined in the statute. Id. Here, Plaintiff fails to allege any of these facts. Accordingly, the FRCA claim is dismissed.

5. Fraudulent Misrepresentation

Plaintiff alleges that Defendants fraudulently concealed and misrepresented information about her loan, before and after closing. Defendants assert that Plaintiff's allegations do not meet the heightened pleading standard for claims of fraud.

Rule 9(b)'s heightened pleading standard applies to averments of fraud in all civil cases, regardless of whether or not fraud is an essential element of the claim. Rule 9(b) proves that in

alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. The required specificity includes the time, place and specific content of the false representations as well as the identities of the parties to the misrepresentations. Further, in alleging fraud against multiple defendants, Rule 9(b) does not allow a complaint to merely lump multiple defendants together but requires plaintiff to differentiate her allegations when suing more than one defendant." Solano, 2011 WL 1669735, *5-6 (internal citations omitted).

As the SAC does not differentiate between the named defendants, and is not plead with the specificity required by Rule 9(b), Plaintiff's claim for fraudulent misrepresentation is dismissed.

6. Breach of Fiduciary Duty

Plaintiff alleges that Defendants breached their fiduciary duty by inducing Plaintiff to enter into a mortgage that was contrary to Plaintiff's intentions and interests. Defendants move to dismiss for failure to prove that a fiduciary relationship existed.

To state a claim for breach of fiduciary duty, a plaintiff must allege: (1) the existence of a fiduciary relationship; (2) the breach of that relationship; and (3) damage proximately caused thereby. Solano, supra, at *6. As a general rule, a loan transaction is an at arms length transaction and there is no fiduciary relationship between the borrower and lender. Further, loan servicers typically do not have a fiduciary relationship with borrowers. Id. The allegations in the SAC that Defendants breached their fiduciary duty are identical to allegations of

breach of fiduciary duty previously dismissed in Solano, 2011 WL 1669735 at *6. As the allegations in the SAC do not show that these defendants are indeed fiduciaries to Plaintiff, the claim for Breach of Fiduciary Duty is dismissed.

7. Unjust Enrichment

Plaintiff alleges that Defendants have been unjustly enriched by receiving fees and benefits from the loan transaction, at the expense of Plaintiff. Defendants move to dismiss this claim, asserting that that Plaintiff cannot bring a claim for unjust enrichment, and has not shown any wrongful act by Defendants. Under California law, it is well settled that an action based upon an implied-in-fact contract or quasi-contract cannot lie where there exists between the parties a valid express contract covering the same subject matter. Solano, 2011 WL 1669735 at *7. Because the SAC alleges the existence of an express contract between the parties that governed the loan transaction, she cannot bring a claim for unjust enrichment based on an alleged implied contract covering the same loan transaction. Accordingly, the claim for unjust enrichment is dismissed.

8. Civil Conspiracy

Plaintiff alleges that Defendants engaged in a conspiracy to further illegal acts in the course of the loan transaction. Defendants move to dismiss this claim, arguing that there is no independent claim for civil conspiracy under California law.

Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration. Standing alone, a conspiracy

does no harm and engenders no tort liability. It must be activated by the commission of an actual tort. Further, to allege a civil conspiracy to defraud, a complaint must meet the particularity requirement of Rule 9(b). Solano, supra at *10. Accordingly, as Plaintiff does not set forth the basis for her claim of conspiracy, and as this Court is dismissing all other claims in the SAC upon which her conspiracy claim could possibly be based, the civil conspiracy claim is dismissed.

9. Civil RICO Violations

Plaintiff alleges that Defendants participate in a RICO conspiracy to defraud her. Defendants move to dismiss this claim, arguing that it is not plead with particularity, Plaintiff has not plead any facts to support her allegation of a RICO conspiracy, and has not alleged that Defendants engaged in pattern of activities affecting interstate commerce. To properly plead a RICO violation for civil damages, a plaintiff must show that defendants, through two or more acts constituting a pattern, participated in an activity affecting interstate commerce. McAnelly v. PNC Mortgage, 2011 WL 318575, *3 (E.D. Cal. Feb. 1, 2011). As Plaintiff has raised only conclusory allegations without any factual support, and has failed to allege the essential elements of a RICO claim, her RICO conspiracy claim is dismissed.

10. Quiet Title

Plaintiff brings a claim to quiet title to the property, seeking full and clear title. Defendants move to dismiss the claim because Plaintiff has not tendered the amount she owes. "Under California law, it is well settled that a mortgagor cannot quiet his title against the mortgagee without paying the debt secured."

Solano, 2011 WL 1669735 at *8. Therefore, to maintain a quiet title claim a plaintiff is required to allege tender of the proceeds of the loan at the pleading stage. A tender must be one of full performance and must be unconditional to be valid. Id. As previously discussed, Plaintiff has not sufficiently alleged tender. Accordingly, the claim to quiet title is dismissed.

11. Usury and Fraud

Plaintiff alleges that Defendants have committed usury and fraud. Defendants move to dismiss, arguing that Plaintiff lumps all Defendants together, fails to plead with particularity and has not set forth the basis for her usury claim. Under California law, the elements of a fraud claims are (1) misrepresentation; (2) knowledge of falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. Solano, 2011 WL1669735 at *9. A claim for fraud in federal court must satisfy Rule 9(b)'s heightened pleading requirements. Id. The elements of a usury claim are (1) the transaction must be a loan or forbearance; (2) the interest to be paid must exceed the statutory maximum; (3) the loan an interest must be absolutely repayable by the borrower; and (4) the lender must have a willful intent to enter into a usurious transaction. A loan that charges an interest rate greater than 10 percent per annum is usurious. Id. As Plaintiff has failed to plead her claim with the required particularity, and has not set forth any facts to support her claim for usury and fraud, the claim is dismissed.

12. Wrongful Foreclosure

Plaintiff alleges that Defendant wrongfully foreclosed on her property, because Defendants are not the beneficiaries of the

mortgage. Defendants contend that Plaintiff must fully tender before she can challenge the foreclosure sale. To state a wrongful foreclosure claim, a plaintiff must allege a credible tender of the amount of the secured debt. Solano, supra, at *10. As discussed above, tender must be one of full performance and must be unconditional to be valid. Plaintiff makes no such unconditional tender in the SAC, accordingly, the motion to dismiss this claim is granted.

13. Breach of Trust Instrument

Lastly, Plaintiff brings a claim captioned "Breach of Trust Instrument" in which she alleges that the security instrument was breached. Defendants move to dismiss alleging that Plaintiff's claim is vague, and that plaintiff has not set facts showing wrongful acts or damages to support her claim. Identical allegations were dismissed as conclusory, vague and insufficient to inform each defendant of its liability for breach of the security instrument in Matracia v. JP Morgan Chase Bank, 2011 WL 1833092, at*6 (E.D. Cal. May 12, 2011) (dismissing a complaint brought by Plaintiff's counsel). This Court likewise finds that Plaintiff has failed to state claim for breach of the security instrument, and the claim is dismissed.

III. ORDER

Plaintiff has already amended her complaint twice and has yet to properly plead her claims. Thus it is clear that none of the claims can be saved by further amendment. Accordingly, all of the claims in the SAC are dismissed with prejudice.

IT IS SO ORDERED.

Dated: June 30, 2011

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

Exhibit J

2:10-cv-02153-JAM-KJN Von Brincken v. Mortgageclose.com Inc. et al
John A. Mendez, presiding
Kendall J. Newman, referral
Date filed: 08/11/2010
Date terminated: 06/30/2011
Date of last filing: 06/30/2011

History

Doc. No.	Dates	Description
	Filed & Entered: 08/11/2010	CAED Receipt
	Docket Text: RECEIPT number #CAE200028690 $350.00 by Shelley Von Brincken on 8/11/2010. (Matson, R)	
	Filed & Entered: 08/11/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: [7] Civil New Case Documents for JAM, [6] Summons served on Shelley Von Brincken. (Duong, D)	
	Filed & Entered: 08/11/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: [8] Clerk's Notice of Docket Correction served on Shelley Von Brincken. (Matson, R)	
1	*Filed & Entered:* 08/11/2010	Complaint
	Docket Text: COMPLAINT against All Defendants by Shelley Von Brincken. (Attachments: # (1) Civil Cover Sheet)(Duong, D) (Main Document 1 replaced on 8/11/2010) (Matson, R). (Attachment 1 replaced on 8/11/2010) (Matson, R).	
2	*Filed & Entered:* 08/11/2010 *Terminated:* 08/12/2010	Motion for Miscellaneous Relief
	Docket Text: MOTION for RESTRAINING ORDER by Shelley Von Brincken. (Attachments: # (1) Memorandum)(Matson, R) (Main Document 2 replaced on 8/11/2010) (Matson, R). (Attachment 1 replaced on 8/11/2010) (Matson, R).	
3	*Filed & Entered:* 08/11/2010	Notice of Lis Pendens
	Docket Text: NOTICE of PENDENCY OF ACTION by Shelley Von Brincken. (Matson, R) (Main Document 3 replaced on 8/11/2010) (Matson, R).	
4	*Filed & Entered:* 08/11/2010 *Terminated:* 08/12/2010	Motion for Preliminary Injunction
	Docket Text: MOTION for TEMPORARY INJUNCTION by Shelley Von Brincken. (Duong, D) (Matson, R). (Main Document 4 replaced on 8/11/2010) (Matson, R).	
5	*Filed & Entered:* 08/11/2010	Notice - Other
	Docket Text: NOTICE of TRO Checklist by Shelley Von Brincken re [2] MOTION for RESTRAINING ORDER. (Matson, R) (Main Document 5 replaced on 8/11/2010) (Matson, R).	
6	*Filed & Entered:* 08/11/2010	Summons

	Docket Text: SUMMONS ISSUED as to *Executive Trust Services, Mortgageclose.com Inc.* with answer to complaint due within *21* days. Attorney *Shelley Von Brincken* *14738 Wolf Road* *Grass Valley, CA 95949*. (Duong, D)		
7	*Filed & Entered:*	08/11/2010	Civil New Case Documents for JAM
	Docket Text: CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 2/17/2011 at 10:00 AM in Courtroom 25 (KJN) before Magistrate Judge Kendall J. Newman. (Attachments: # (1) Consent Form) (Duong, D)		
8	*Filed & Entered:*	08/11/2010	Clerk's Notice of Docket Correction
	Docket Text: CLERK'S NOTICE of DOCKET CORRECTION: When the action was filed the Clerk's Office inadvertently wrote the case number as 2:10-cv-2153 JAM EFB (PS); the correct case number is 2:10-cv-2153 JAM KJN (PS). (Matson, R)		
9	*Filed & Entered:*	08/12/2010	Minute Order
	Docket Text: MINUTE ORDER: TRO denied. (Pro Se plaintiff served via USPS) (Vine, H)		
10	*Filed:* *Entered:*	08/20/2010 08/23/2010	Summons Returned Executed
	Docket Text: SUMMONS RETURNED EXECUTED: Executive Trust Services served on 8/12/2010. (Kaminski, H)		
11	*Filed:* *Entered:*	08/20/2010 08/23/2010	Summons Returned Executed
	Docket Text: SUMMONS RETURNED EXECUTED: Mortgageclose.com Inc. served on 8/12/2010. (Kaminski, H)		
12	*Filed:* *Entered:*	09/01/2010 09/02/2010	Amended Complaint
	Docket Text: FIRST AMENDED COMPLAINT against all Defendants by Shelley Von Brincken. (Zignago, K.)		
13	*Filed:* *Entered:*	09/08/2010 09/09/2010	Request for Entry of Default
	Docket Text: REQUEST FOR ENTRY OF DEFAULT as to Executive Trust Services, and Mortgageclose.com Inc., by Shelley Von Brincken. (Kastilahn, A)		
	Filed & Entered:	09/09/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: [14] Clerk's Entry of Default served on Shelley Von Brincken. (Kastilahn, A)		
14	*Filed & Entered:*	09/09/2010	Clerk's Entry of Default
	Docket Text: CLERK'S ENTRY OF DEFAULT as to *Executive Trust Services, and Mortgageclose.com Inc.* (Kastilahn, A)		
16	*Filed:* *Entered:*	09/13/2010 09/14/2010	Summons Returned Executed
	Docket Text: SUMMONS RETURNED EXECUTED: GMAC Mortgage, LLC served on 9/2/2010. (Mena-Sanchez, L)		
	Filed & Entered:	09/14/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: [15] Summons served on Shelley Von Brincken. (Matson, R)		
15	*Filed & Entered:*	09/14/2010	Summons

	Docket Text: SUMMONS ISSUED as to *GMAC Mortgage, LLC* with answer to complaint due within *21* days. Attorney *Shelley von Bricken* *14738 Wolf Road* *Grass Valley, CA 95949*. (Matson, R)		
17	*Filed:* 09/15/2010 *Entered:* 09/16/2010	Summons Returned Executed	
	Docket Text: SUMMONS RETURNED EXECUTED: Executive Trust Services served and Mortgageclose.com Inc. served on 9/8/2010.(Mena-Sanchez, L)		
18	*Filed & Entered:* 09/20/2010 *Terminated:* 09/20/2010	Findings and Recommendations (Motion)	
	Docket Text: [Disregard - Counsel to refile] MOTION to VACATE amending [14] Clerk's Entry of Default *Notice of Motion and Motion for Relief from Default; Memo of Points and Authorities, Dec of Samuel G Broyles Jr.* by Mortgageclose.com Inc.. Attorney Broyles, Samuel G added. Motion Hearing set for 11/4/2010 at 10:00 AM in Courtroom 25 (KJN) before Magistrate Judge Kendall J. Newman. (Broyles, Samuel) Modified on 9/20/2010 (Owen, K).		
19	*Filed & Entered:* 09/20/2010 *Terminated:* 11/04/2010	Motion to Vacate	
	Docket Text: MOTION for RELIEF from [14] Clerk's Entry of Default by Mortgageclose.com Inc. Motion Hearing set for 11/04/10 at 10:00 AM in Courtroom 25 (KJN) before Magistrate Judge Kendall J. Newman. (Attachments: # (1) Certificate of Service)(Broyles, Samuel) Modified on 11/2/2010 (Benson, A.).		
20	*Filed & Entered:* 09/23/2010 *Terminated:* 01/11/2011	Motion to Dismiss	
	Docket Text: MOTION to DISMISS by GMAC Mortgage, LLC. Attorney Barilovits, Philip added. Motion Hearing set for 11/17/2010 at 09:30 AM in Courtroom 6 (JAM) before Judge John A. Mendez. (Attachments: # (1) Proposed Order)(Barilovits, Philip)		
21	*Filed & Entered:* 09/23/2010	Request for Judicial Notice	
	Docket Text: REQUEST for JUDICIAL NOTICE by GMAC Mortgage, LLC in re [20] Motion to Dismiss,. (Attachments: # (1) Exhibit A - Deed of Trust, # (2) Exhibit B - Notice of Default, # (3) Exhibit C - Notice of Trustee's Sale, # (4) Exhibit D - Trustee's Deed Upon Sale)(Barilovits, Philip)		
	Filed & Entered: 09/24/2010	Service by Mail	
	Docket Text: SERVICE BY MAIL: [22] Minute Order served on Shelley Von Brincken. (Streeter, J)		
22	*Filed & Entered:* 09/24/2010	Minute Order	
	Docket Text: MINUTE ORDER (TEXT ONLY) by Relief CRD Judy Streeter for Judge John A. Mendez on 09/24/2010: The Court is in receipt of Defendant's Motion to Dismiss [20]. The Motion, as filed, is defective. Defendant is directED to comply with local rule 302(c)(21) and 230 (a) and re-notice the motion for one of the following law and motion dates before Magistrate Judge Kendall J. Newman: 11/4/2010 or 11/18/2010 at 10:00 a.m. in courtroom #25. Accordingly, the 11/17/2010 hearing date before Judge John A. Mendez is VACATED. (Streeter, J)		
23	*Filed & Entered:* 09/29/2010	Notice - Other	
	Docket Text: AMENDED NOTICE of MOTION re [20] Motion to Dismiss by GMAC Mortgage, LLC. Motion Hearing reset for 11/18/10 at 10:00 AM before Kendall J. Newman in Courtroom 25. (Barilovits, Philip) Modified on 10/1/2010 (Owen, K).		

24	*Filed:* *Entered:*	10/21/2010 10/22/2010	Reply to Response to Motion
	Docket Text: REPLY by Shelley Von Brincken to RESPONSE to [20] MOTION to DISMISS. (Williams, D)		
	Filed & Entered:	10/27/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: Minute Order [25] served on Shelley Von Brincken. (Schultz, C)		
25	*Filed & Entered:*	10/27/2010	Minute Order
	Docket Text: MINUTE ORDER issued by Courtroom Deputy C. Schultz for Magistrate Judge Kendall J. Newman on 10/27/2010 ORDERING that the hearing on Defendant's Motion to Dismiss [20] set for 11/18/2010 is VACATED and RESET for 12/2/2010 at 10:00 AM in Courtroom 25 before Magistrate Judge Kendall J. Newman. (Schultz, C)		
26	*Filed & Entered:*	10/29/2010	Application
	Docket Text: APPLICATION for Telephonic Appearance by Mortgageclose.com Inc. re [19] Motion for Relief from Clerk's Entry of Default. (Attachments: # (1) Proposed Order)(Broyles, Samuel) Modified on 11/2/2010 (Benson, A.).		
27	*Filed & Entered:*	10/29/2010	Proposed Order
	Docket Text: PROPOSED ORDER re [26] Application for Telephonic Appearance by Mortgageclose.com Inc.. (Broyles, Samuel) Modified on 11/2/2010 (Benson, A.).		
28	*Filed & Entered:*	10/29/2010	Declaration
	Docket Text: AMENDED CERTIFICATE OF SERVICE [26] Application. (Broyles, Samuel) Modified on 11/2/2010 (Benson, A.).		
29	*Filed & Entered:*	10/29/2010	Declaration
	Docket Text: AMENDED CERTIFICATE OF SERVICE re [27] Proposed Order . (Broyles, Samuel) Modified on 11/2/2010 (Benson, A.).		
30	*Filed & Entered:* *Terminated:*	11/01/2010 01/11/2011	Motion to Set Aside
	Docket Text: MOTION to SET ASIDE [14] Clerk's Entry of Default by Executive Trust Services. Attorney Barilovits, Philip added. (Barilovits, Philip) Modified on 11/2/2010 (Benson, A.).		
31	*Filed & Entered:*	11/01/2010	Declaration
	Docket Text: DECLARATION of Philip Barilovits in support of [30] Motion to Set Aside [14] Clerk's Entry of Default. (Attachments: # (1) Exhibit A)(Barilovits, Philip)		
32	*Filed & Entered:*	11/01/2010	Certificate of Service
	Docket Text: CERTIFICATE of SERVICE by Executive Trust Services re [30] Motion to Set Aside. (Barilovits, Philip) Modified on 11/2/2010 (Benson, A.).		
	Filed & Entered:	11/02/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: Minute Order [33] served on Shelley Von Brincken. (Schultz, C)		
	Filed & Entered:	11/02/2010	Service by Mail
	Docket Text: SERVICE BY MAIL: [34] Order served on Shelley Von Brincken. (Zignago, K.)		
33	*Filed & Entered:*	11/02/2010	Minute Order

	Docket Text: MINUTE ORDER issued by Courtroom Deputy C. Schultz for Magistrate Judge Kendall J. Newman on 11/2/2010 ORDERING that the hearing on Defendant's Motion to Dismiss [20] set for 12/2/2010 is VACATED and RESET for 12/9/2010 at 10:00 AM in Courtroom 25 before Magistrate Judge Kendall J. Newman.(Schultz, C)		
34	*Filed & Entered:*	11/02/2010	Order
	Docket Text: ORDER signed by Magistrate Judge Kendall J. Newman on 11/1/2010 GRANTING application for telephonic appearance on its [19] motion for relief from the clerk's entry of default on 11/4/2010. (Zignago, K.)		
35	*Filed & Entered:*	11/03/2010	Notice - Other
	Docket Text: NOTICE OF WITHDRAWAL *of opposition to request for relief from default* by Shelley Von Brincken. Attorney Burgess, Holly S. added. (Burgess, Holly) (Main Document [35] replaced on 11/3/2010) (Schultz, C). Modified on 11/4/2010 (Reader, L).		
36	*Filed & Entered:*	11/03/2010	Notice - Other
	Docket Text: NOTICE *Substitution of Attorneys* by Shelley Von Brincken. (Burgess, Holly)		
37	*Filed & Entered:*	11/04/2010	Motion Hearing
	Docket Text: MINUTES for MOTION HEARING held before Magistrate Judge Kendall J. Newman on 11/4/2010. Ms. Burgess advised the court she is appearing as retained counsel on behalf of Shelley Von Brincken. After hearing from the parties, and in light of plaintiff's notice of withdrawal of opposition [35] to defendant MotgageClose.com, Inc.'s motion to set aside the clerk's entry of default [19], the Court ORDERED that the clerk's entry of default [14] is SET ASIDE as to defendant MotgageClose.com, Inc. On or before 11/18/2010, plaintiff's counsel shall file a stipulation and proposed order granting plaintiff leave to file a second amended complaint and the attached proposed second amended complaint, or a brief statement regarding why such a stipulation could not be reached or an amended pleading filed. To the extent possible, the parties shall also file on or before 11/18/2010, a brief status report addressing how the parties intend to proceed in this matter, which may be used to assist the court in scheduling dates in this case. Plaintiff's Counsel, Holly Burgess, present by telephone. Defendant's Counsel, Samuel Broyles Jr., present by telephone. Court Reporter/E.C.R.O.: CD. (Text Only) (Schultz, C)		
38	*Filed & Entered:*	11/05/2010	Order
	Docket Text: ORDER signed by Magistrate Judge Kendall J. Newman on 11/4/2010 ORDERING This matter shall is REFERRED the US District Judge assigned to this action. All dates pending before the undersigned, including the hearings on the [20] pending motion to dismiss and [30] motion for relief from entry of default presently set for hearing on 12/9/2010, before the undersigned, are VACATED and shall be RE-NOTICED for hearing before the US District Judge assigned to this action on an available date before the District Judge; and Henceforth the caption on documents filed in this action shall be 2:10-cv-02153 JAM KJN. (Reader, L)		
39	*Filed & Entered:*	11/12/2010	Notice to Reschedule Hearing on Motion
	Docket Text: NOTICE to RESCHEDULE HEARING on as to [20] Motion to Dismiss. Hearing RESET for 01/26/11 at 09:30 AM in Courtroom 6 (JAM) before Judge John A. Mendez. (Barilovits, Philip) Modified on 11/12/2010 (Benson, A.).		
40	*Filed & Entered:*	11/12/2010	Notice to Reschedule Hearing on Motion
	Docket Text: NOTICE to RESCHEDULE HEARING on [30] Motion to Set Aside [14] Clerk's Entry of Default : Motion Hearing set for 1/26/2011 at 09:30 AM in Courtroom 6 (JAM) before Judge John A. Mendez. (Barilovits, Philip)		
41	*Filed & Entered:*	11/18/2010	Status Report

	Docket Text: STATUS REPORT by Shelley Von Brincken. (Burgess, Holly)		
42	*Filed & Entered:* 11/22/2010 *Terminated:* 01/11/2011	Motion to Withdraw as Attorney	
	Docket Text: MOTION to WITHDRAW as ATTORNEY by Samuel G. Broyles, Jr., Esq. and Kathleen Hateley, Esq. for Mortgageclose.com Inc. Motion Hearing set for 1/26/2011 at 09:30 AM in Courtroom 6 (JAM) before Judge John A. Mendez. (Attachments: # (1) Proposed Order) (Broyles, Samuel)		
43	*Filed & Entered:* 11/22/2010	Proposed Order	
	Docket Text: PROPOSED ORDER on motion to withdraw as attorneys of record re [42] MOTION to WITHDRAW as ATTORNEY *by Samuel G. Broyles, Jr., Esq. and Kathleen Hateley, Esq. (Broyles, Samuel) Modified on 11/23/2010 (Duong, D).*		
44	*Filed & Entered:* 11/30/2010	Notice - Other	
	Docket Text: NOTICE *OF REMOVAL* by Shelley Von Brincken. (Burgess, Holly)		
45	*Filed & Entered:* 11/30/2010	Certificate of Service	
	Docket Text: CERTIFICATE of SERVICE by Shelley Von Brincken. (Burgess, Holly)		
46	*Filed & Entered:* 12/02/2010	Stipulation	
	Docket Text: STIPULATION *and Proposed Order* by Shelley Von Brincken. (Burgess, Holly)		
47	*Filed & Entered:* 12/06/2010	Stipulation and Order	
	Docket Text: STIPULATION and ORDER signed by Judge John A. Mendez on 12/3/2010 [46] ORDERING that the foregoing Stipulation for leave to file a Second Amended Complaint by Plaintiff be deemed effective as a Court Order. (Reader, L)		
48	*Filed & Entered:* 01/06/2011	Notice - Other	
	Docket Text: NOTICE *of Change of Address* by Shelley Von Brincken. (Burgess, Holly)		
49	*Filed & Entered:* 01/06/2011	Certificate of Service	
	Docket Text: CERTIFICATE of SERVICE by Shelley Von Brincken [48] Notice of Change of Address. (Burgess, Holly) Modified on 1/7/2011 (Duong, D).		
	Filed & Entered: 01/11/2011	Service by Mail	
	Docket Text: SERVICE BY MAIL: [50] Certified copy of Remand Order mailed to Nevada County Superior Court. (Carlos, K)		
50	*Filed & Entered:* 01/11/2011	Order	
	Docket Text: REMAND ORDER signed by Judge John A. Mendez on 1/10/11 ORDERING the Unlawful Detainer [44] REMANDED to Nevada County Superior Court (C 10-229). Copy of remand order sent to other court. (Carlos, K)		
51	*Filed & Entered:* 01/12/2011	Notice - Other	
	Docket Text: CLERK'S NOTICE: this case was closed in error and is now reopened. Order [50] remanded the unlawful detainer [44] ONLY to the Nevada County Superior Court. (Carlos, K)		
53	*Filed & Entered:* 01/20/2011	Certificate of Service	
	Docket Text: CERTIFICATE of SERVICE by Shelley Von Brincken re [7] Civil New Case Documents for JAM. (Burgess, Holly)		
54	*Filed & Entered:* 01/24/2011	Minute Order	
	Docket Text: MINUTE ORDER: The hearing on the motion(s) now calendared for January 26, 2011 are ordered submitted without appearance and without argument pursuant to Local Rule 230		

	(g).If the Court subsequently concludes that oral argument is necessary, a hearing will be set and the parties notified accordingly. (TEXT ENTRY ONLY)(Vine, H)		
55	*Filed & Entered:*	01/24/2011	Declaration
	Docket Text: PROOF OF SERVICE re [42] MOTION to WITHDRAW as ATTORNEY *by Samuel G. Broyles, Jr., Esq. and Kathleen Hateley, Esq.*. (Broyles, Samuel) Modified on 1/25/2011 (Kaminski, H).		
56	*Filed & Entered:*	01/25/2011	Minute Order
	Docket Text: MINUTE ORDER: The Court has reviewed the Motion to Withdraw as Attorneys of Record, (Doc. 42), by Samuel G. Broyles, Jr. and Kathleen Hateley, attorneys of record for defendant Mortgageclose.com, Inc. The motion is DENIED. A corporation must be represented by counsel. See CE Resources, Inc. v. Magellan Group, LLC, 2009 WL 3367489 (E.D. Cal. Oct. 14, 2009). The denial is without prejudice for re-filing at such time when substitute counsel is retained for Mortgageclose.com, Inc. IT IS SO ORDERED. (TEXT ENTRY ONLY) (Vine, H)		
57	*Filed & Entered:*	02/08/2011	Minute Order
	Docket Text: MINUTE ORDER: In light of the parties stipulation and order (Doc. 47) allowing Plaintiff leave to file a Second Amended Complaint, the pending motion to dismiss (Doc. 20) and motion to set aside entry of default (Doc. 30) are MOOT. The entry of default (Doc. 14) is deemed set aside. IT IS SO ORDERED. (TEXT ENTRY ONLY) (Vine, H)		
58	*Filed & Entered:*	02/10/2011	Status Report
	Docket Text: STATUS REPORT by Mortgageclose.com Inc.. (Broyles, Samuel)		
59	*Filed & Entered:*	02/10/2011	Status Report
	Docket Text: STATUS REPORT by Shelley Von Brincken. (Burgess, Holly)		
60	*Filed & Entered:*	02/10/2011	Certificate of Service
	Docket Text: CERTIFICATE of SERVICE by Shelley Von Brincken re [59] Status Report. (Burgess, Holly)		
61	*Filed & Entered:*	02/15/2011	Minute Order
	Docket Text: MINUTE ORDER: Order requiring joint status report. (Vine, H)		
62	*Filed & Entered:*	02/16/2011	Amended Complaint
	Docket Text: SECOND AMENDED COMPLAINT against Executive Trust Services, GMAC Mortgage, LLC, Mortgageclose.com Inc. by Shelley Von Brincken. (Attachments: # (1) Exhibit, # (2) Certificate of Service)(Burgess, Holly)		
	Filed & Entered:	02/17/2011	Add and Terminate Parties
	Docket Text: PARTY UPDATE: California Land Company of Nevada County and Mortgage Electronic Information Systems, Inc., added per [62] Second Amended Complaint. (Benson, A.)		
63	*Filed & Entered:*	02/17/2011	Summons
	Docket Text: SUMMONS ISSUED as to *California Land Company of Nevada County, Mortgage Electronic Information Systems, Inc.,* with answer to complaint due within *21* days. Attorney *Holly S. Burgess* *Law Offices of Holly S. Burgess* *680 Auburn Folsom Road, Ste. 109* *Auburn, CA 95603*. (Benson, A.)		
64	*Filed & Entered:*	03/03/2011	Clerk's Notice of Docket Correction
	Docket Text: CLERK'S NOTICE re [50] Order, Case Remanded served on plaintiff Shelley Von Brincken, 14738 Wolf Rd., Grass Valley, CA 95949 at the request of Nevada Superior court. (TEXT ONLY ENTRY)(Waggoner, D)		

	Filed & Entered:	03/07/2011	Motion to Dismiss
	Terminated:	06/30/2011	
65	*Docket Text:* MOTION to DISMISS by Executive Trust Services, GMAC Mortgage, LLC. Motion Hearing set for 5/4/2011 at 09:30 AM in Courtroom 6 (JAM) before Judge John A. Mendez. (Barilovits, Philip)		
	Filed & Entered:	03/07/2011	Joinder
66	*Docket Text:* JOINDER by Mortgageclose.com Inc. in re [65] MOTION to DISMISS filed by Executive Trust Services, GMAC Mortgage, LLC. (Broyles, Samuel)		
	Filed & Entered:	04/20/2011	Opposition to Motion
67	*Docket Text:* OPPOSITION by Shelley Von Brincken to [65] MOTION to DISMISS. (Burgess, Holly)		
	Filed & Entered:	04/21/2011	Certificate of Service
68	*Docket Text:* CERTIFICATE of SERVICE by Shelley Von Brincken re [67] Opposition to Motion. (Burgess, Holly)		
	Filed & Entered:	04/27/2011	Request
69	*Docket Text:* REQUEST for *Telephonic Appearance* by Executive Trust Services, GMAC Mortgage, LLC, Mortgage Electronic Information Systems, Inc., re [65] MOTION to DISMISS filed by Executive Trust Services, GMAC Mortgage, LLC. Attorney Barilovits, Philip added. (Barilovits, Philip)		
	Filed & Entered:	04/28/2011	Reply
70	*Docket Text:* REPLY by Executive Trust Services, GMAC Mortgage, LLC, Mortgage Electronic Information Systems, Inc., to RESPONSE to [67] Opposition to Motion. (Barilovits, Philip) Modified on 5/2/2011 (Zignago, K.).		
	Filed & Entered:	04/28/2011	Notice - Other
71	*Docket Text:* NOTICE *of Intent to submit on filed paperwork* by Mortgageclose.com Inc. re [65] MOTION to DISMISS. (Broyles, Samuel)		
	Filed & Entered:	04/28/2011	Request
72	*Docket Text:* REQUEST for Telephonic Appearance at GMAC's etc [65] Motion to Dismiss Second Amended Complaint by Mortgageclose.com Inc.. (Broyles, Samuel) Modified on 5/2/2011 (Zignago, K.).		
	Filed & Entered:	04/28/2011	Minute Order
73	*Docket Text:* MINUTE ORDER: The hearing on the motion(s) now calendared for May 4, 2011 are ordered submitted without appearance and without argument pursuant to Local Rule 230 (g).If the Court subsequently concludes that oral argument is necessary, a hearing will be set and the parties notified accordingly. (TEXT ENTRY ONLY) (Vine, H)		
	Filed & Entered:	06/30/2011	Order
74	*Docket Text:* ORDER signed by Judge John A. Mendez on 6/30/11 ORDERING that all of the claims in the Second Amended Complaint are dismissed with prejudice. CASE CLOSED. (Becknal, R)		
	Filed & Entered:	06/30/2011	Judgment
75	*Docket Text:* JUDGMENT dated *6/30/11* pursuant to order signed by Judge John A. Mendez on 6/30/11. (Becknal, R)		

PACER Service Center

Transaction Receipt

01/19/2016 10:53:28

PACER Login:	mf1354:2923879:3945828	**Client Code:**	73304-0000019-14078
Description:	History/Documents	**Search Criteria:**	2:10-cv-02153-JAM-KJN
Billable Pages:	6	**Cost:**	0.60

Exhibit K

John Von Brincken
Shelley Von Brincken
14738 Wolf Road
Grass Valley, California 95949
530-268-8777

Without an Attorney in Pro Persona

FILED
JUN 25 2012
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELLEY VON BRINCKEN,
Plaintiff,

vs.

GMAC MORTGAGE, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC, FEDERAL NATIONAL MORTGAGE ASSOCIATION, THE LAW OFFICES OF PITE DUNCAN, LLP.,

Defendants.

Case No.:

2:12-CV-1689 GEB CKD PS

COMPLAINT FOR VIOLATIONS OF THE FAIR DEBT COLLECTIONS ACT UNDER 15 U.S.C. §1692

JURISDICTION AND VENUE

1. This is an action for damages for violation of the provisions of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. The jurisdiction of this court is invoked under 15 U.S.C. § 1692k (d) and 28 U.S.C. §§ 1331, 1337.

2. The plaintiff in this action is an individual who resides at 14738 Wolf Road, Grass Valley, California 95949 and who is a citizen of the United States and resident of the State of California.

3. Defendants GMAC MORTGAGE, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC, FEDERAL NATIONAL MORTGAGE ASSOCIATION, and THE LAW

OFFICES OF PITE DUNCAN, LLP., business in the State of California, have substantial contacts with the State of California, particularly as relates to the actions and omissions that gave rise to the claims asserted in this complaint, so that it is proper for this court to exercise jurisdiction over these defendants. This defendant may be served with process by serving GMAC MORTGAGE, herein after as "GMAC"; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., herein after as "MERS"; FEDERAL NATIONAL MORTGAGE ASSOCIATION, herein after as "FNMA"; THE LAW OFFICES OF PITE DUNCAN, LLP., herein after "PITE" and are located at the following address(s), 1100 VIRGINIA DRIVE, FORT WASHINGTON, PA. 19034 (GMAC); 3300 S.W. 34TH AVENUE, SUITE 101, OCALA, FL. 34474 (MERS); 3900 WISCONSIN AVE., WASHINGTON, DC 20016 (FNMA); 4375 JUTLAND DRIVE, SUITE 200, SAN DIEGO, CA. 92117 (PITE).

4. As more fully explained below, the action involves a debt relating to real property that was made in City of Grass Valley, State of California and is to be performed there. The complaint further alleges that Defendant "PITE", who violated the Act by wanton disregard for settlement offers before and after tender. Actions of this Defendant were intentional and willfully and caused intentionally to delayed the Plaintiff from settling the debt properly; and allowing other third parties to create new debts from the old and forcibly attempting to collect.

CLAIM FOR RELIEF

5. Plaintiff is a "consumer" within the meaning of 15 U.S.C. § 1692a (3).

6. Defendant(s) are a "debt collector" within the meaning of 15 U.S.C. § 1692a (6).

7. On January 6, 2012 Trustee for the Plaintiff, wrote to defendant(s) (GMAC) and (FNMA) whereby requesting an offer in compromise and a request to enter into a composition agreement

regarding a debt related to real property of Plaintiff to which has now gone dormant and unaddressed marked as Exhibit "1".

8. On April 5, 2012 Plaintiff notified Defendants and additionally requested estoppel and authorization to negotiate the debt attached as Exhibit "2".

9. On or about April 9th Plaintiff notified the Defendant(s) regarding security of payment for the debt. Defendant(s) have compromised further communication with plaintiff. The letter is attached to this complaint and incorporated by reference in it as Exhibit "3."

10. The following day on April 10, 2012, Defendants responded to the communication sent the previous day increasing the amount of the debt owed as a Non-Refundable deposit for the Defendant to even communicate or negotiate settlement with Plaintiff which is unconscionable and overreaching, further, unreasonable. Affixed hereto as Exhibit "4"

11. On April 10, 2012, plaintiff received a correspondence from defendant stating that defendant demanded payment of a specified debt allegedly owing to defendant "FNMA" in essence is a violation of 28 U.S.C. §1692f(7) the same day as above.

12. On October 18, 2010, defendant (PITE) initially contacted plaintiff in connection with a debt owed to (FNMA) which violates 28 U.S.C. §1692g. During this initial contact, defendant did not supply plaintiff with the information required by 15 U.S.C. § 1692g.

13. Plaintiff has paid the debt by administrative setoff prior to levy of property connected to the monetary obligation "consumer debt". See Exhibit "5" attached and incorporated hereto for convenience of the parties.

14. More than Ninety (90) days have passed since this initial communication.

15. Defendant(s) have not, as of yet, supplied plaintiff with a written notice containing the information required by 15 U.S.C. § 1692g.

16. Defendant's violations of this statute have caused plaintiff to suffer actual damages in the amount of $440,000.00…

17. Plaintiff also claims additional damages in the amount of $10,000.00 times three one fine per party.

PRAYER

Plaintiff demands judgment against defendant as follows:

A. Actual damages in the sum of $440,000.00, together with interest.

B. Additional damages in the sum of $40,000.00.

C. Costs of this action and attorney's fees.

D. Any other relief that may be just.

Date: 6/25/2012

Respectfully Submitted,

Shelley Von Brincken
14738 Wolf Road
Grass Valley, California 95949

VERIFICATION

I, SHELLEY C VON BRINCKEN, am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

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

Date: 6/25/2012

Respectfully Submitted,

Shelley Von Brincken
14738 Wolf Road
Grass Valley, California 95949

[EXHIBIT] No. 1

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC

From: HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC
P.O. BOX 330-279
BROOKLYN, NY 11233
347-413-8193

Date: 1/6/2012

To: GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA. 19034

Re: Offer to Compromise and Enter into Composition Agreement

Loan No.: [redacted]7759

Property Address: 14738 WOLF ROAD, GRASS VALLEY, CA. 95949

Dear Lender/Servicer:

In the interests of bringing the case of a defaulted mortgage obligation to a speedy and just conclusion, I have been authorized to administrate all financial affairs for the borrower as they relate to real property of SHELLEY VON BRINCKEN and further to make a proposed settlement offer to your company to settle and satisfy the account for closure. Please, consult with your officers, directors, investors, assigns that Borrower wishes to give a settlement offer of full consideration to any party deemed to prove appropriate. Please do not hesitate to contact my office with your response within fourteen (14) days from receipt of this letter.

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC is a creditor of SHELLEY VON BRINCKEN in the amount of $220,000.00 by reason of a certain assignment between the parties delivered to the Borrower.

Because Borrowers have represented that they are insolvent and unable to pay in full this amount and debts due to other creditors, HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC offers to accept a reasonable percent of the above-mentioned indebtedness in full settlement and satisfaction of the indebtedness, provided that this offer is expressly conditioned upon the agreement being entered into with GMAC MORTGAGE, LLC dealing with a certain mortgage loan comprising one hundred percent of the total amount of debt owed by debtor.

This offer shall remain open until February 5th 2012, the date specified below for acceptance of this offer, to permit SHELLEY VON BRINCKEN to obtain similar agreements from other creditors and to make the payment stated within this offer. The Borrower may accept this offer by making the specified payment to HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC and providing proof of acceptance of this settlement by other creditors at a meeting with HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC and GMAC MORTGAGE, LLC o/b/o MORTGAGECLOSE.COM, INC. and CALIFORNIA LAND TITLE COMPANY OF NV COUNTY to be held at the company's discretion.

This letter is in good faith effort to resolve the dispute privately without litigation.

As administrator for the borrower SHELLEY VON BRINCKEN, I urge you to take this proposal of intent to make a settlement offer to satisfy any obligations or liabilities the borrower may have to your Company for a ledgering account; in the spirit in which it is offered.

I will look forward to your affirmative response.

Very truly yours,

Dennis J Huelbig Jr., Agent for Borrowers
Duly Authorized Administrator

[EXHIBIT] No. 2

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC

Mail Tracking No.: 7010 0290 0000 4251 3893 **April 5, 2012**

REQUEST FOR MORTGAGE LOAN ESTOPPEL AND AUTHORIZATION

From: HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC
o/b/o SHELLEY VON BRINCKEN
P.O. BOX 330279
BROOKLYN, NY 11233

To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
o/b/o FEDERAL NATIONAL MORTGAGE ASSOCIATION
2255 NORTH ONTARIO STREET, SUITE 400
BURBANK, CA. 91504

RE: Loan Number: [redacted]7759

Secured Property Address: 14738 WOLF ROAD, GRASS VALLEY, CA. 95949

Borrower's Social Security Number: [redacted]3837

Please let this serve as a formal written request pursuant to California Codes of Civil Procedure Section 760.020, for an estoppel letter setting forth the payoff and reinstatement amount for the unpaid principal balance (including late fees, charges, and other miscellaneous fees), interest due, and the per diem rate for the above-referenced mortgage loan. Please forward the estoppel letter by mail or telefacsimile to the following address and or fax number:

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC.
AGENT DENNIS HUELBIG for Borrowers
P.O. POX 330279
BROOKLYN, NY 11233
347-413-8193
321-445-5422

We also authorize the lender to discuss any aspect of this loan with any employee or agent of the above-referenced title company, including, but not limited to:

Thank you for your prompt attention to this matter.

Sincerely,

HDPC ACQUISITION & SETTLEMENT INITIATIVE, LLC
AGENT DENNIS HUELBIG

Enclosures:

Cc: HDPC BANK & TRUST CO., 219 Thomas S. Boyland St., Suite 3R, Brooklyn, NY 11233

Cc: FEDERAL NATIONAL MORTGAGE ASSOCIATION; 3900 WISCONSIN AVE. NW WASHINGTON, DC 20016

Acct. Ref.: 2011-AQ-90000014

Mail Tracking No.: 7010 0290 0000 4251 3893

[EXHIBIT] No. 3

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC

We urge you to take Notice as to the foregoing authority in proceeding against your firm. Time is of the essences and resolution is imperative or we will have no other choice than to proceed with the appropriate Federal and Local State agencies to enforce its rights under a "bona fide" agreement between the (Borrower) and Agent, Trustee and Attorney-in-Fact. Please govern yourselves accordingly.

PRESENTMENT

Be it known, that the person signing below, a duly empowered Agent and Attorney-in-fact for the Borrowers fiscal responsibilities, a third party and not a party to the matter, at the request of SHELLEY VON BRINKEN, did present on January 4, 2012 by U.S. Mail No. 7010 0290 0002 5531 4874 attached with a request as to an Offer to Compromise and Settlement addressed to:

GMAC MORTGAGE, LLC
GMAC MORTGAGE CORPORATION
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA. 19034

Hereinafter referred to as "Borrower" requesting to offer settlement or in the alternative a reasonable stipulation, the time limit having elapsed for acceptance thereof and providing validation and information, this was refused upon multiple attempts and diligent effort.

PROTEST

Whereupon, the Authorized Agent below, for the purposes and reason of Dishonor and Non-Response does publicly and solemnly certify the dishonor as against all parties it may concern for liability equivalent to the face value of the instrument and the claim of debt, and all costs, damages and interest incurred, or hereafter incurred, by reason of non-performance thereof and **stipulate therein**.

NOTICE

The undersigned Agent certifies that on the ____day of _____, 2012, this Notice of Dishonor was sent to the Debt Collector by depositing said document in the United States Mail, Certified Mail No. 7010 0290 0000 4251 4074 with Return Receipt Requested.

TESTIMONY

In testimony of the above, I have hereunto signed my name and attached the Company's official seal of incorporation as a duly authorized representative for Borrower.

Kindly acknowledge receipt on the duplicate copy hereof for our record. {*Seal*}

We await your early reply.

By: _____

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC
AGENT DENNIS HUELBIG
P.O. Box 330-279
Brooklyn, NY 11233
888-254-6987 Office
321-445-5422 Fax
Enclosures:

Cc: HDPC BANK & TRUST CO., 219 Thomas S. Boyland St., Suite 3R, Brooklyn, NY 11233

Acct. Ref.: 2011-AQ-90000014

This paper transmission, along with any attachments, contains information from the HDPC Acquisitions & Settlement Initiative, LLC., which may be confidential or privileged, or protected from disclosure. Recipients should not file copies of this letter with publicly accessible records. The information contained therein is intended solely for the addressee(s). Access to this e-mail by anyone else is unauthorized. If you are not the intended recipient and have received this e-mail in error, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited; the sender should be notified immediately, and the original message and all copies should be destroyed. By reading the message and any attachments, the recipient accepts full responsibility for taking protective action against such code. HDPC Acquisitions & Settlement Initiative, LLC. is not liable for any loss or damage arising from this message.

HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC

Mail Tracking No.: [redacted]
7010 0290 0000 4251 4074

April 19, 2012

From: HDPC ACQUISITIONS & SETTLEMENT INITIATIVE, LLC
P.O. BOX 330-279
BROOKLYN, NY 11233
347-413-8193

To: FEDERAL NATIONAL MORTGAGE ASSOCIATION k/n/a (FNMA)
3900 WISCONSIN AVE
NW WASHINGTON, DC. 20016

RE: NOTICE OF DISHONOR AND NON-ACCEPTANCE

Sirs,

PLEASE TAKE NOTICE that an International Bill of Exchange for settlement and set-off of a "Note" a valid debt instrument drawn on the U.S. Treasury Account No. [redacted]617 at the Federal Reserve Bank Cleveland Branch on SHELLEY VON BRINCKEN of 14738 WOLF RD. GRASS VALLEY, CA. to pay $220,000.00 on 4/10/2012, to FEDERAL NATIONAL MORTGAGE ASSOCIATION of 3900 WISCONSIN AVE., NW WASHINGTON, DC. 20016 were presented by SHELLEY VON BRINCKEN who is the present holder of said account at the U.S. Treasury/ Federal Reserve Cleveland Branch to (FNMA) for acceptance of credit issued by the SHELLEY VON BRINCKEN on April 10, 2012. FNMA refused to accept the draft; therefore, the undersigned looks to you for payment, including all interest for non-acceptance of the aforementioned presentment and tender by acquisition by Federal Acquisition Regulation.

The International Bill of Exchange is legal tender as a national bank note, or note of a National Banking Association, by legal and or statutory definition (UCC 4-105; 12 C.F.R. §§ 229.2; 210.2, 12 U.S.C. §1813), issued under Authority of the United States Code 31 U.S.C. §392, 5103, which originally defines this as a statutory legal tender obligation of THE UNITED STATES, and is issued in accordance with 31 U.S.C. 3123 and relevant determinations by the 73rd Congress 1st Session (48 Stat. 113) June 5, 1933 which establishes and provide for its issuance as "Public Policy" in remedy for discharge of equity interest recovery on that portion of the public debt to its Principals, and Sureties bearing Obligations of the UNITED STATES.

The National Debt is defined as *"mortgages on the wealth and income of the people of a country"* (Encyclopedia Britannica, 1959.) On December 23, 1913, Congress had passed "An Act to provide for the establishment of Federal Reserve banks, to furnish an elastic currency, to afford a means of rediscounting commercial paper, to establish a more effective supervision of the banking in the United States, and for other purposes. The act is commonly known as "The Federal Reserve Act" the purposes of enactment was to authorize "hypothecation" of obligations including "United States bonds or other securities which Federal Reserve Banks are authorized to hold" under Section 14(a): 12 U.S.C.; Ch.6, 38 Stat. 251 Sect. 14(a) which proves that pledging of negotiable instruments to collateralize a brokers margin loan is known as re-hypothecation; ultimately the hypothecation theory consequently creates and equitable risk to the actual owner mentioned herein.

As it appears, Agent for the Borrowers states herein (Lender/Servicer) has wantonly has refused to accept (Client) offer as legal tender and has willfully refused and continues to refuse to honor the remedy available under Public Law and clearly found upon the following provisions and amendments; 12 U.S.C. 411; 18 U.S.C. 8; 12 U.S.C. Ch. 6, 38 Stat 251 Sec.14(a); 31 U.S.C. 5118, 3123 with rights protected under the 14th Amendment of the United States Constitution, by the U.S. Supreme Court in *The United States v. Russell*, (13 Wall, 623, 627) *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 136, 137 (1962), *The United States v. Hooe*, 3 Cranch (U.S.) 73 (1805), and in conformity with the U.S. Supreme Court 79 U.S. 287 (1970), 172 U.S. 48 (1898), and as confirmed at 307 U.S. 247 (1939).

[EXHIBIT] No. 4

PITE
DUNCAN
LLP

Steven W. Pite *CA/NY/WA*
John D. Duncan *CA/TX/WA*
Peter J. Salmon
CA/ID/UT/WA
David E. McAllister
AZ/CA/HI/OR/UT/WA
Laurel I. Handley
AZ/CA/DC/NV

Rochelle L. Stanford
AZ/CA/OR/WA
Josephine E. Salmon
AK/AZ/CA/NT
Eddie R. Jimenez *CA/NV/TX*
Susan L. Petit *AK/CA/WA*
Cuong M. Nguyen *CA/NV*
Casper J. Rankin *CA/OR*
Charles A. Correia *CA*
Brian A. Paino *AZ/CA/TX/VA*
Christopher McDermott *CA*
Jillian A. Benbow *CA*
Drew A. Callahan *CA*
Natalie T. Nguyen *CA*
Gerald M. Anderson *CA*
Ellen Cha *CA/NV*
Erin L. Laney *CA*
William L. Partridge *CA*
Christopher L. Peterson *CA*
Jason W. Short *CA*
Jason L. Eliaser *CA*
Joseph C. Delmotte *CA*
Gabriel Opel *CA/NY/TX*
Balpreet K. Thiara *CA*
Catherine T. Yuab *CA*
Gregg A. Hubley *NV*
Ace C. Van Patten *ID/NV*
Beau Bennett *CA/NV*
Christopher A. J. Swift *CA/NY*
Claire A. Mack *CA/TX*
Spencer Macdonald *UT*
Jesse Baker *OR/UT/WA*
Carrie Thompson Jones *AZ*
Chad L. Butler *CA*
Gilbert R. Yabes *CA*
Matthew M. McArthur *NV*
Matthew R. Clark, III *CA*
Arnold L. Graff *CA/NV*
Philip J. Giles *CA*
Parada Kovadi *CA*
Renee Beloastro *CA*
Gagan G. Vaidyaswaran *CA*
Jared D. Bissell *CA*
Todd S. Garan *CA*
Cara Christenson *WA*
Michael J. Kriebenbaki *CA*
Grant M. Taber *TX*
Brandon M. Love *CA*
K Alexandra Cavin *NV*
Christian Fenton *CA/HI*
Justin S. Moyer *CA*
Paul A. Hoefler *TX*
Crystal M. Tajco *NV*
Hunter B. Zook *OR*
Tracy J. Frazier *OR/WA*
Elisa S. Magnuson *CA/ID*
Eric L. Cook *AZ*
Eric Tsai *CA*
Michael Baker *CA*
Julia A. Bahner *WA*
Rachael H. Kim *WA*
Jamin S. Neil *AZ*
Bryan S. Fairman *CA*
Evan M. Daily *CA*
Robert J. Campo, Jr. *AZ/CA*
Ryan A. Farmer *OR*
Megan Lees *CA*
Olga S. Pancheshn *TX*
Mark G. Tembi *TX*
Lloyd Workman *CA*
Jordon R. Ferguson *CA*
Irina C. Ribeiro *CA*
Greg Campbell *CA*
Elizabeth C. Thompson *CA*
Stephen T. Kitagawa *CA*
Kimberley V. Deade *CA*
Diane E. Bond *CA*
Brad S. Beberas *CA*

David B. Rosen III
Of Counsel

Mailing - Bankruptcy
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933
Mailing - Unlawful Detainer
4375 Jutland Drive, Suite 200
P.O. Box 17934
San Diego, CA 92177-0934
Overnight
4375 Jutland Drive, Suite 200
San Diego, CA 92117
Ph.: (858) 750-7600
Fax: (619) 590-1385

April 10, 2012

Re: Fannie Mae vs. Shelley Von Brincken
Case No.: C10 229
Loan No.: [redacted]9182
Property: 14738 Wolf Rd., Grass Valley, CA 95949
Our File No.: 000723-006286

Dear:Shelley Von Brincken,

This letter is in response to your recent inquiry regarding the possible repurchase of the above referenced property from our client, Fannie Mae. This letter outlines the procedures and requirements necessary to complete a repurchase of the above property. Please note that this letter does not constitute a waiver of any rights Fannie Mae may have against you or the property, nor does this letter guarantee that you will be approved for a repurchase.

If you are unable to meet each requirement listed below, you will be unable to repurchase this property and should not continue your attempt to do so. Failure to conform to each of the terms listed below will result in the immediate rejection of any proposal to repurchase the above property.

The first step in the payoff process is for you to provide written proof of an ability to complete the repurchase of this property based on the estimated repurchase amount shown at the end of this letter. This written proof must be in the form of a "pre-qualification" letter or loan commitment from a recognized lending institution. If this will be a cash transaction, then some type of verification of funds totaling the estimated repurchase amount must be provided. This documentation must be delivered within five (5) days of the date of this letter or your request to repurchase the property will be denied. After receipt of acceptable documentation, Fannie Mae will review the case to determine, at its sole discretion, if a repurchase of this property is acceptable.

If a repurchase is approved by Fannie Mae, the second step is to provide a 10% **NON-REFUNDABLE** deposit in certified funds to Pite Duncan, LLP, counsel to Fannie Mae in the above referenced action. The 10% non-refundable deposit must be delivered to Pite Duncan, LLP, to the attention of the undersigned, within five (5) days of their request. This deposit will be applied to the repurchase amount if the transaction is completed. If you are unable to complete the repurchase within thirty (30) days from the date of the official repurchase quote, the deposit will not be returned under any circumstance and an eviction will be completed as soon as possible.

After the 10% non-refundable deposit is delivered to Pite Duncan, LLP, an official repurchase quote will be prepared and forwarded to your attention. This quote will provide the total amount necessary to repurchase the property. Payment in certified funds must be delivered to the eviction law firm, to the attention of the undersigned, within thirty (30) days from the issuance date of the official repurchase quote. Complete repurchase proceeds must be paid in certified funds and are to be made payable to Pite Duncan, LLP. Any extensions on this time frame will be at the discretion of Fannie Mae.

Failure to sign and return this agreement to the Pite Duncan, LLP, to the attention of the undersigned attorney, within five (5) days after receipt will result in the denial of your repurchase request.

If all conditions are timely met and the remaining repurchase amount due is delivered to the undersigned attorney in certified funds within the required time frame, a Quitclaim Deed, and only a Quitclaim Deed, will be prepared and forwarded to Fannie Mae for signature. **If you are obtaining any type of financing as part of this buyback agreement, inform your lender up front that Fannie Mae will execute this Quitclaim Deed, transferring its interest in the property back to the former mortgagor, without warranties of any kind. At no time will Fannie Mae agree to any escrow agreement or sales contract regarding the repurchase of the property, and no other documents will be signed or provided by Fannie Mae. If you submit the required 10% non-refundable deposit but cannot obtain financing based on these terms, you will not be able to repurchase the property and your deposit will not be refunded.**

The figures quoted do not include the amounts due on any junior liens on your property which may have been extinguished by the foreclosure. The amount owed on any such liens may be due and payable in addition to the amount shown below. You should consult your attorney to determine your liability as to any such debts. The official payoff quote is non-negotiable and is only valid for as long as the given time frame to complete the payoff. Any extensions after that date are at the sole discretion of Fannie Mae.

Do not contact Fannie Mae directly regarding the repurchase of this property. Fannie Mae is represented by Legal Counsel in this matter; any correspondence or communication should be directed to the undersigned.

Estimated Repurchase Amount: (Including 10% non-refundable deposit amount)	$ 254,338.21
10% non-refundable deposit amount:	$ 25,433.82

Written proof of your ability to complete a payoff on the estimated amount above is due to the undersigned attorney within five (5) days from the date of this letter. If you fail to show such proof within the said five (5) days, your request to repurchase the property will be denied.

The above Estimated Repurchase Amount is an estimated amount. This figure may not include all fees and costs, or other charges, associated with this loan. The exact payoff may be higher than the figure shown. Do not assume that the amount you will have to borrow will be the exact amount shown above. Fannie Mae is not responsible for scheduling a closing date for the proposed repurchase of the property and for paying the closing costs, both of which will be your responsibility.

Sincerely,

Michael M. Baker
Pite Duncan, LLP

12981692.wpd

[EXHIBIT] No. 5

PRIVATE INTERNATIONAL BILL OF EXCHANGE

G-8 © LawForms T13Z

EFFECTIVE DATE	COUNTY & STATE OF TRANSACTION
4/10/2012	NEVADA, CALIFORNIA
PARTY OF THE FIRST PART	PARTY OF THE SECOND PART
SHELLEY VON BRINCKEN	FEDERAL NATIONAL MORTGAGE ASSOCIATION
14738 WOLF RD	3900 WISCONSIN AVENUE
GRASS VALLEY, CA. 95949	NW WASHINGTON, DC, 20016

This contract is dated this 11 day of April, 2012, and is between, SHELLEY C VON BRINCKEN, hereafter known as "Party of the First Part", and FEDERAL NATIONAL MORTGAGE ASSOCIATION, 3900 WISCONSIN AVENUE, NW WASHINGTON, DC 20016 hereafter known as "Party of the Second Part".

The Parties named herein reserve all rights to the Course of Common Law, without prejudice, and come together, this date, in this two party contractual relationship to transfer complete, absolute ownership and control, in allodium, over the following described property.

Property Description

First Party secures payment acquired from said US Treasury Bond #[redacted]5617 account known and identified actually as Routing No. 0041000014 (Cleveland), Account No. [redacted]5617; acquired and derived from Social Security Number [redacted]3837 and all assets withheld on behalf of the borrower SHELLEY VON BRINCKEN. First Party tenders payment as a basis reduction under Internal Revenue Code relevant §§108(b)(5); 1017; 1221; 1273-1275(a)(1); 1082(a)(2); 1081(b) Treasury Regulation 1.1017-1T and residual credits to satisfy and cancel the obligation described herein by way of administrative sett-off. Payment satisfies all claims Second Party may have to the following property:

1. (Legal Descriptions);
2. Letter of Credit;
3. Attached Promissory Note;
4. Original Issue Discount Credit;
5) MONEY ORDER
6) IRS FORM 1099A
7) IRS FORM 1040V
8) IRS FORM 56

The Party of the First Part warrants that they have full and absolute ownership rights, and right of control of the of said described property and that the property is free of liens and encumbrances by this unconditional Property Bill of Exchange-Contract and Agreement.

The Party of the Second Part agrees and offers to release the aforementioned property upon satisfaction by payment of enclosed Money Order, 1099A, Form 56 Appointment of Fiduciary; Form 1040V; Enclosed Cover Letter to the Department of Treasury and abovementioned collateral and whereby releases all Beneficial Interests, of undetermined value, in exchange for the acquisition of all absolute release and control at-law, of the above, described property, with the condition that it is free from liens and encumbrances by consent under Internal Revenue Code §1082(a)(2) and 1081(b).

The Party of the First Part accepts for value the tender offer at-law of the above trade on Party of the Second Parts condition, warranting that the liens and or encumbrances have been extinguished on completion of this transaction provided to the Party of the Second Part by the Party of the First Part.

The Party of the First Part now delivers, by this instrument have legally tendered payment by Money Order, to the above described Party of the Second Part, and the Party of the Second Part acknowledges receipt of tender by Party of the First Part on behalf of the Borrower herein, in addition releases all units of beneficial interest of undetermined value in exchange from the Party of the First Part for the absolute ownership and control at-law, of the above described property.

This Bill of Exchange/Contact and Agreement serves as a public notice to all, that the Parties named herein are functioning by the Course of Common Law by exercising full and complete rights of absolute ownership and control over property exchanged. All rights are reserved to the Course of Common Law, none are waived without prejudice.

1. **CONVEYANCE.** For valuable consideration, receipt of which is acknowledged by Seller, Seller sells and conveys to Buyer the Property Sold, to have and to hold the Property sold to Buyer and the heirs, executors, administrators and assigns of Buyer forever, and Seller and the heirs, executors, administrators and assigns of Seller warrant to defend the sale of the Property Sold

PRIVATE INTERNATIONAL BILL OF EXCHANGE

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unto Buyer and the heirs, executors, administrators and assigns of Buyer, against all and every person whomsoever lawfully claiming or to claim.

2. **WARRANTY BY SELLER.** Seller warrants that (1) Seller has title to the Property Sold, or has the right to possess and convey title, (2) the Property Sold is free of all liens, and (3) has no defects and is in good workable, usable condition except:

3. **INSURANCE AND RISK OF LOSS.** As soon as Seller conveys possession to Buyer by delivery, freight, or mail, the risk of loss and duty for insurance protection shall pass to Buyer. Until that time Seller shall assume risk of loss and maintain fire, theft, and casualty insurance on the Property Sold.

Acknowledgements: Both parties agree and accept the terms and conditions.

Signed this 10 day of APRIL, 2012

_____ _____ (First)
All rights Reserved to the course of
Common Law, Without Prejudice.

SHELLEY VON BRINCKEN

State of California
Country of United States of America

Then personally appeared before me
On this 10 day of April, 2012,
SHELLEY VON BRINCKEN Borrower,
Known to be the person who acknowledged
The foregoing document as a free acts
and deed.

_____ Apr 10, 2013
Notary Public Commission Expires

Signed this ____ day of _____, 2012

_____ _____ (Second)
All rights Reserved to the course of
Common Law, Without Prejudice.

_____
By: FEDERAL NATIONAL MORTGAGE ASSOCIATION
Officer

State of _____
Country of United States of America

Then personally appeared before me
On this ____ day of _____, 2012,
FEDERAL NATIONAL MORTGAGE ASSOCIATION, as Lender,
Known to be the person who acknowledged
The foregoing document as a free acts and deed.

_____ _____ _____

Notary Public Commission Expires

Exhibit L

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELLEY VON BRINCKEN,

Plaintiff, No. 2:12-cv-01689 GEB CKD PS

vs.

GMAC MORTGAGE, et al.,

Defendants. ORDER

_____/

Plaintiff filed the above-entitled action. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c).

On January 25, 2013, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has not filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 25, 2013 are adopted in full;

2. The motion to dismiss (dkt. 8) is granted;

/////

3. All defendants are dismissed from this action; and

4. This action is closed.

Dated: February 20, 2013

GARLAND E. BURRELL, JR.
Senior United States District Judge

Exhibit M

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELLEY VON BRINCKEN,

Plaintiff,

No. 2:12-cv-01689-GEB-CKD PS

vs.

GMAC MORTGAGE, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., FEDERAL NATIONAL MORTGAGE ASSOCIATION, THE LAW OFFICES OF PITE DUNCAN, LLP.,

Defendants.

ORDER &
FINDINGS AND RECOMMENDATIONS

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This action arises from a residential mortgage loan obtained by plaintiff on January 14, 2009 for property located in Grass Valley, CA. Plaintiff proceeds pro se in this action, which was referred to the undersigned by E.D. Cal. L.R. 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1). Pending before the undersigned are two motions to dismiss filed by defendants Pite Duncan LLP ("Pite Duncan") (dkt. 8), Mortgage Electronic Registration System, Inc. ("MERS")(dkt. 18) and GMAC Mortgage ("GMAC")(dkt. 18). Also before the undersigned is GMAC's Letter Brief Re: Bankruptcy Stay requesting that the entire action be stayed. Dkt. 23.

Pite Duncan's motion to dismiss (dkt. 8) was originally noticed for hearing on September 26, 2012 and subsequently reset by the court for hearing on October 17, 2012. Dkts.

8, 11. When plaintiff failed to file an opposition, the motion was submitted on the record without oral argument. Dkt. 12. Subsequently, plaintiff filed a belated opposition to the motion on October 10, 2012 ("first opposition"). Dkt. 13. Defendant GMAC filed a Notice of Bankruptcy and Effect of Automatic Stay on October 23, 2012. Dkt. 16. Nevertheless, GMAC and defendant MERS moved to join in Pite Duncan's motion to dismiss (dkt. 17) and also filed their own motion to dismiss on October 26, 2012 (dkt. 18). Plaintiff filed a belated opposition to GMAC and MERS' motions on November 21, 2012 ("second opposition").[1] Dkt. 24. All motions remained submitted on the record.

Upon consideration of the briefs in support of and in opposition to the motions to dismiss, and also upon considering GMAC's notice of bankruptcy, the court now FINDS AS FOLLOWS:

BACKGROUND

The background facts are taken from the complaint as well as from Pite Duncan's motion to dismiss and the exhibits attached thereto.[2] See Dkt. 8. On January 14, 2009, plaintiff executed a promissory note in the amount of $220,000.00 ("the loan"), which was secured by a deed of trust encumbering real property located at 14738 Wolf Rd., Grass Valley, CA 95949 ("the property"). Dkt. 8-3 at 3-4. Defendant GMAC was the lender and servicer of the loan and MERS was the beneficiary who held the right to take any action required of the lender. Dkt. 1 at 7; Dkt. 8-3. Subsequently, plaintiff defaulted on the loan (dkt. 8-3 at 21) and the property was foreclosed-upon and sold to FNMA at a trustee's sale on August 31, 2010 (dkt. 8-3 at 24,27). On October 18, 2010, Pite Duncan (counsel for FNMA), filed an unlawful detainer action against plaintiff in Nevada County Court. Dkt. 8-4 at 2. Thereafter, the parties stipulated that while FNMA was entitled to possession of the property, plaintiff could remain there as an occupant

[1]Though styled as a Motion to Stop Sale of Home, the court construes this as an opposition to MERS and GMAC's motion to dismiss. Dkt. 24.

[2]Plaintiff does not object to any of the exhibits or background facts.

until April 8, 2012. Dkt. 8-4 at 17. But plaintiff did not vacate the property and instead filed Chapter 7 and Chapter 13 Bankruptcy Petitions — both of which have been dismissed (see Register of Actions, Bkrtcy. E.D. Cal., Nos. 12-29795, 12-32776) — along with the instant litigation (dkt. 1).

The complaint, filed on June 25, 2012, alleges violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., against four defendants. Dkt. 1. The motions to dismiss claim that plaintiff has failed to show: (1) that defendants are debt collectors within the meaning of the FDCPA, and (2) that defendants engaged in debt collection activity. Dkts. 8, 18.

With respect to GMAC's bankruptcy proceedings, GMAC takes the position that despite having filed and joined in motions to dismiss the complaint, those motions cannot be resolved at this time on account of the automatic stay to which GMAC is subject. Dkt. 23 at 1. GMAC further contends that this entire action should be stayed pending resolution of its bankruptcy petition and that it will provide the court with "regular, quarterly updates regarding the status of its bankruptcy case." Dkt. 23 at 1. None of the parties have filed a reply to GMAC's position.

DISCUSSION

Although GMAC provides no explanation for the inconsistency in its position of filing and joining in motions to dismiss on a claim that it does not believe can be presently prosecuted, the court need not resolve this inconsistency. The bases upon which Pite Duncan moves to dismiss the complaint apply equally to all defendants, including GMAC, MERS and FNMA (who has not appeared in this action). This is true because all defendants stand in a position of liability identical to that of Pite Duncan, and resolution of plaintiff's claims can be made by considering the complaint on its face regardless of which defendants move to dismiss. See Silverton v. Dep't of Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981)("A District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss

where such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related."), Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery, 44 F.3d 800, 802 (9th Cir. 1995) (citing to Silverton and upholding sua sponte summary judgment based on res judicata in favor of non-appearing party), Abagninin v. AMVAC Chemical Corp., 545 F.3d 733, 742-43 (9th Cir. 2008) (dismissing with prejudice non-served defendants who were in a similar position to other defendants and where plaintiff could not allege essential elements of the action applicable to all defendants), McFadden v. Deutsche Bank Nat. Trust Co., 2012 WL 2839810, at *1 (E.D. Cal. 2012) (dismissing non-appearing defendant whose liability was not different from that of appearing defendants).

In considering a motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept as true the allegations of the complaint in question, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and construe the pleading in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

In order to avoid dismissal for failure to state a claim a complaint must contain more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

Defendant's Request for Judicial Notice

Pite Duncan asks the court to take judicial notice of ten documents attached to its motion to dismiss. See Dkt. 82. In ruling on a motion to dismiss pursuant to Rule 12(b), the court "may generally consider only allegations contained in the pleadings, exhibits attached to the

complaint, and matters properly subject to judicial notice." Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899 (9th Cir. 2007). "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Consideration of these documents outside the complaint will not convert the motion into a motion for summary judgment. United States v. Ritchie, 342 F.3d 903, 908 (9th Cir.2003).

Here, the court takes judicial notice of the ten exhibits[3] submitted by Pite Duncan because they are all public records whose accuracy cannot reasonably be questioned. See Mack v. South Bay Beer Distributors, 798 F.2d 1279, 1282 (9th Cir. 1986) (abrogated on other grounds) (allowing judicial notice to be taken of records and reports of administrative bodies). Plaintiff does not object to defendant's request and they are all the proper subject of judicial notice.

The FDCPA

Plaintiff alleges that defendants violated the FDCPA by "wanton disregard for [plaintiff's] settlement before and after tender." Dkt. 1 at 2. Although it is unclear throughout the complaint which defendant is being referred to, plaintiff appears to believe that Pite Duncan violated the statute by responding (via letter) to plaintiff's request to repurchase the property now owned by FNMA, and also by filing an unlawful detainer action. See Dkt. 1 at 3. Plaintiff also appears to allege that FNMA is the party to whom plaintiff owes a debt which Pite Duncan attempted to collect. Id. Defendant moves to dismiss on the grounds that plaintiff has failed to allege that any defendants are debt collectors within the meaning of the statute and that plaintiff has not identified a debt or debt collection activity as contemplated by the act. See Dkt. 8.

[3]Exhibit A is a deed of trust; Exhibit B is a notice of default on the property; Exhibit C is a notice of the trustee's sale of the property; Exhibit D is a trustee's deed upon sale of the property and; Exhibits E through J are court records. See Dkt. 8-2.

Because these arguments have merit and dispose of the claim entirely, the court need not reach defendant's remaining argument.[4]

The FDCPA prohibits a "debt collector" from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. For purposes of the FDCPA, a "debt collector" is "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). A debt is "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes . . . . " 15 U.S.C. § 1692a(5).

To state a claim under the FDCPA, a plaintiff must allege that the defendant is a debt collector as defined by the statute. Izenberg v. ETS Services, LLC, 589 F. Supp. 2d 1193, 1198-99 (C.D. Cal. 2008) (the FDCPA only applies to debt collectors). Specifically, plaintiff must demonstrate that each defendant "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Although plaintiff makes the bare assertion that "[d]efendant(s) are a 'debt collector' within the meaning of 15 U.S.C. § 1692a(6)," no facts are provided in support of that conclusory allegation. See Iqbal, 556 U.S. at 678 ("[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.") Plaintiff does not specify which "defendant[s]" she is referring to and fails to include factual allegations with respect to any of them. In her first

[4]Pite Duncan argues that, in light of the bankruptcy petition, plaintiff lacks standing to pursue this claim further but that the motion to dismiss should be sustained without leave to amend. Dkt. 8-1 at 6. However, both of plaintiff's bankruptcy petitions have since been dismissed and the motions to dismiss still stand against her. See Register of Actions, Bkrtcy. E.D. Cal., No. 12-32776.

opposition, plaintiff recites the allegation that each of the defendants is a debt collector within the meaning of the statute. Dkt. 13 at 6. Plaintiff then cites to allegations that simply do not appear in the complaint but which nevertheless, do not bring any defendant within the definition of debt collector under § 1692a(6).[5] Accordingly, plaintiff fails to sufficiently allege that any of the defendants are debt collectors and so fails to state a claim under the FDCPA. See Izenberg, 589 F.Supp.2d at 1199.

Plaintiff's claim also fails because she cannot identify a cognizable debt or any debt collection activity engaged in by any of the defendants. See 15 U.S.C. § 1692a(5). It appears that plaintiff intends the debt "relating to real property that was made in City of Grass Valley, State of California," to form the basis of her FDCPA claim — in other words, the $220,000.00 loan she obtained to purchase the property. See Dkt. 1. But plaintiff has failed to allege how any actions of the defendants constitute the collection of that debt.

If plaintiff intends the foreclosure and sale of the property to be the collection of debt, that activity is not cognizable under the FDCPA. The majority of district courts in this circuit, and specifically in California, have held that the non-judicial foreclosure on a property pursuant to a deed of trust does not constitute debt collection for purposes of the FDCPA. As one district court put it:

> "Foreclosing on a trust deed is distinct from the collection of the obligation to pay money. The FDCPA is intended to curtail objectionable acts occurring in the process of collecting funds from a debtor. But, foreclosing on a trust deed is an entirely different path. Payment of funds is not the object of the foreclosure action. Rather, the lender is foreclosing its interest in the property."

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[5]In the first opposition, plaintiff alleges that each defendant "is liable for the acts of all defendants collectively because he sets and approves [FNMA's] collection policies practices, procedures, and he directed the unlawful activities described herein" and "[a]t all times herein mentioned, each of the Defendants was an officer, director, agent, servant , employee and/or joint centrues of his co-defendants, and each of them, and at all said times, each Defendant was acting in the full course and scope of said office, directorship, agency, service, employment and/or joint venture." Dkt. 13 at 6. These allegations do not describe a "debt collector" under § 1692a(6).

Hulse v. Ocwen Fed. Bank, FSB, 195 F. Supp.2d 1188, 1204 (D. Or. 2002); and see e.g., Quintero Family Trust v. Onewest Bank, 2010 WL 2618729, at *4 (S.D. Cal. 2010) (citing Hulse), Garfinkle v. JPMorgan Chase Bank, 2011 WL 3157157, at *3 (N.D. Cal. 2011) (neither notice of the trustee's sale nor the sale itself falls within the scope of the FDCPA), Cardenas v. Reconstruct Co., N.A., 2012 WL 4433306, at *6 (E.D. Cal. 2012) (defendants participating in foreclosure of property pursuant to a deed of trust were not engaged in collection of debt under FDCPA).

Plaintiff's allegation that Pite Duncan contacted her on October 18, 2010 "in connection with a debt owed to FNMA" is similarly unavailing. Most importantly, there are no factual allegations providing a description of that debt. As Pite Duncan points out in Exhibit E to its motion, it filed the unlawful detainer action against plaintiff on October 18, 2010 on behalf of its client, FNMA. See Dkt. 8-1 at 9; Dkt. 8-4 at 2. If plaintiff intends to characterize the unlawful detainer action against her as an attempt to collect a debt, this claim also fails. Such actions brought subsequent to a foreclosure sale on a deed of trust are not debt collection activities, because they seek to recover property and not money. See Arvizu v. GMAC Mortg., LLC, 2011 WL 1087157, at *3-4 (E.D. Cal. 2011), Kalnoki v. First American LoanStar Trustee Services LLC, 2012 WL 3962516, at *3 (E.D. Cal. 2012) (initiating an unlawful detainer action following a foreclosure sale does not run afoul of the FDCPA), Brambila v. Reo Bay Area, LP, 2011 WL 4031142, at *5 (N.D. Cal. 2011) (defendants commencing an unlawful detainer action against plaintiff to gain possession of the property is unrelated to the mortgage transaction and therefore, outside the scope of FDCPA).

Finally, plaintiff references a letter she received from Pite Duncan on April 10, 2012 responding to her earlier correspondence "regarding security of payment for the debt." See Dkt. 1 at 3. It appears as though plaintiff was requesting to repurchase the property which had previously been foreclosed-upon and sold. Id at 11-12. The letter she received from Pite Duncan in response to her request cannot be construed as debt collection activity. Rather, it outlines the

steps plaintiff must take if she wished to repurchase the property from FNMA, who bought it at the trustee's sale on September 10, 2010. Id at 14. By April 10, 2012, nearly two years after the sale of the property, plaintiff owed no debt on the property and no demand of money was being made of her. Thus, no collection activity was taking place.

In the first opposition, plaintiff argues that she has met the pleading standards to state a cause of action under the FDCPA because the perspective of the "least sophisticated consumer" must be applied to any alleged violations. See Dkt. 13 at 5. That standard, however, has nothing to do with the sufficiency of pleadings under the statute. Rather, the least sophisticated consumer perspective applies to whether communications between creditor and debtor violate the FDCPA. See Wade v. Regional Credit Ass'n., 87 F.3d 1098, 1100 (9th Cir. 1996). The first opposition also alleges various debt collection activities undertaken by the defendants that purportedly violate the FDCPA. See Dkt. 13 at 6-10. But none of these allegations are found in the complaint and plaintiff cannot raise them for the first time in opposition to a motion to dismiss. See Outdoor Media Group, 506 F.3d at 899 (considering only allegations contained in the complaint, exhibits attached thereto, and matters properly subject to judicial notice on a motion to dismiss). Nonetheless, all of these new allegations concern a "collection letter" which, as discussed above, (supra pp 11-12), is nothing more than a explanation of how plaintiff could repurchase the property from FNMA . See Dkt. 13 at 6-10; Dkt. 1 at 14. Finally, plaintiff raises, for the first time in opposition to the motion to dismiss, a claim under the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. Dkt. 13 at 12. In addition to the fact that this claim appears nowhere in the complaint, it fails as a matter of law for the same reasons plaintiff's FDCPA claim fails. Plaintiff pleads no allegations of fact demonstrating that defendants were debt collectors who engaged in debt collection activity.

Even considering plaintiff's second opposition, filed on November 21, 2012, plaintiff's claims fail as a matter of law. Nothing in plaintiff's second opposition addresses the

deficiencies of the complaint raised in the motion to dismiss. In fact, the second opposition does not appear to even address the underlying cause of action. Rather, it is comprised of a panoply of legal statutes, case citations and summaries, and conclusory allegations which appear unrelated to each other and bear no resemblance to the factual allegations contained in the complaint. See Dkt. 24. Moreover, the second opposition contains no factual allegations supporting the legal claims made therein or in the complaint. Thus, having considered both of plaintiff's oppositions to the motion to dismiss, plaintiff still fails to state a claim upon which relief can be granted under the FDCPA.

Accordingly, IT IS HEREBY ORDERED that defendant Pite Duncan's request for judicial notice (dkt. 8-2) is GRANTED.

It is further RECOMMENDED that:

1. Defendant Pite Duncan's motion to dismiss (dkt. 8) be GRANTED,

2. All defendants be dismissed; and

3. This action be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the court within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may

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waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: January 24, 2013

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

CKD9
vonbricken bk mtd2

Exhibit N

2:12-cv-01689-GEB-CKD (PS) Von Brincken v. GMAC Mortgage et al
Garland E. Burrell, Jr, presiding
Carolyn K. Delaney, referral
Date filed: 06/25/2012
Date terminated: 02/21/2013
Date of last filing: 02/21/2013

History

Doc. No.	Dates	Description
	Filed & Entered: 06/25/2012	CAED Receipt
	Docket Text: RECEIPT number #CAE200045424 $350.00 fbo Shelley Von Brincken by John Von Brincken on 6/25/2012. (Kastilahn, A)	
	Filed & Entered: 06/25/2012	Service by Mail
	Docket Text: SERVICE BY MAIL: [2] Summons, [3] Civil New Case Documents for GEB served on Shelley Von Brincken. (Kastilahn, A)	
1	*Filed & Entered:* 06/25/2012	Complaint
	Docket Text: COMPLAINT against All Defendants by Shelley Von Brincken. (Attachments: # (1) Civil Cover Sheet)(Kastilahn, A)	
2	*Filed & Entered:* 06/25/2012	Summons
	Docket Text: SUMMONS ISSUED as to *Federal National Mortgage Association, GMAC Mortgage, Mortgage Electronic Registration System, Inc.,, The Law Offices of Pite Duncan, LLP* with answer to complaint due within *21* days. *Shelley Von Brincken* *14738 Wolf Road* *Grass Valley, CA 95949*. (Kastilahn, A)	
3	*Filed & Entered:* 06/25/2012	Civil New Case Documents for GEB
	Docket Text: CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 10/31/2012 at 10:00 AM in Courtroom 26 (CKD) before Magistrate Judge Carolyn K. Delaney. (Attachments: # (1) Order re Consent) (Kastilahn, A)	
4	*Filed:* 07/16/2012 *Entered:* 07/18/2012	Summons Returned Executed
	Docket Text: SUMMONS RETURNED EXECUTED: Federal National Mortgage Association served on 6/28/2012. (Meuleman, A)	
5	*Filed:* 07/16/2012 *Entered:* 07/18/2012	Summons Returned Executed
	Docket Text: SUMMONS RETURNED EXECUTED: The Law Offices of Pite Duncan, LLP served on 6/27/2012. (Meuleman, A)	
6	*Filed & Entered:* 08/16/2012 *Terminated:* 08/17/2012	Motion to Dismiss
	Docket Text: MOTION to DISMISS by The Law Offices of Pite Duncan, LLP. Attorney Short, Jason W. added. Motion Hearing set for 9/24/2012 at 09:00 AM in Courtroom 10 (GEB) before Judge Garland E. Burrell Jr.. (Attachments: # (1) Points and Authorities Memorandum of Points	

	and Authorities, # (2) Request for Judicial Notice, # (3) Exhibits A-D, # (4) Exhibits E-J)(Short, Jason)		
7	*Filed & Entered:*	08/16/2012	Minute Order
	Docket Text: MINUTE ORDER: The Motion to Dismiss, noticed for hearing on 9/24/12, is vacated. Pursuant to the Local Rules, motions in cases designated pro se are to be noticed for hearing before the assigned Magistrate Judge. re [6] Motion to Dismiss, Ordered by Judge Garland E. Burrell, Jr on 8/16/12. (Furstenau, S)		
8	*Filed & Entered:* *Terminated:*	08/16/2012 02/21/2013	Motion to Dismiss
	Docket Text: MOTION to DISMISS by The Law Offices of Pite Duncan, LLP. Motion Hearing set for 9/26/2012 at 10:00 AM in Courtroom 26 (CKD) before Magistrate Judge Carolyn K. Delaney. (Attachments: # (1) Memorandum of Points and Authorities, # (2) Request for Judicial Notice, # (3) Exhibits A-D, # (4) Exhibits E-J)(Short, Jason)		
	Filed & Entered:	09/06/2012	Service by Mail
	Docket Text: SERVICE BY MAIL: [9] Minute Order served on Shelley Von Brincken. (Owen, K)		
9	*Filed & Entered:*	09/06/2012	Minute Order
	Docket Text: MINUTE ORDER (Text Only) by Courtroom Deputy K. Owen for Magistrate Judge Carolyn K. Delaney on 9/6/2012: On the Court's own motion, the Status (Initial Scheduling) Conference set for 10/31/2012 is hereby VACATED. The matter will be reset should the Court deem necessary.(Owen, K)		
	Filed & Entered:	09/17/2012	Service by Mail
	Docket Text: SERVICE BY MAIL: [11] Order, served on Shelley Von Brincken. (Matson, R)		
10	*Filed & Entered:*	09/17/2012	Statement of Non-Opposition
	Docket Text: STATEMENT of NON-OPPOSITION by The Law Offices of Pite Duncan, LLP to [8] MOTION to DISMISS. (Short, Jason)		
11	*Filed & Entered:*	09/17/2012	Order
	Docket Text: ORDER signed by Magistrate Judge Carolyn K. Delaney on 9/17/12 ORDERING THE 9/26/12 hearing date is vacated. The [8] MOTION to DISMISS hearing is reset for 10/17/2012 at 10:00 AM in Courtroom 26 (CKD) before Magistrate Judge Carolyn K. Delaney. Plaintiff is directed to file opposition, if any, to the motion, or a statement of non-opposition thereto, no later than September 26, 2012. Failure to file opposition and appear at hearing, or to file a statement of non-opposition, will be deemed a statement of nonopposition, and shall result in a recommendation that this action be dismissed. Defendant's reply, if any, shall be filed no later than October 10, 2012. (Matson, R)		
	Filed & Entered:	10/10/2012	Service by Mail
	Docket Text: SERVICE BY MAIL: [12] Order served on Shelley Von Brincken. (Benson, A.)		
12	*Filed & Entered:*	10/10/2012	Order
	Docket Text: ORDER signed by Magistrate Judge Carolyn K. Delaney on 10/10/12 ORDERING that the 10/17/12 hearing on the [8] Motion to Dismiss is VACATED; the motion is submitted on the record. (Benson, A.)		
13	*Filed:* *Entered:*	10/10/2012 10/12/2012	Opposition to Motion

	Docket Text: Plaintiff's MEMORANDUM of POINTS AND AUTHORITIES in OPPOSITION to [8] Defendants' Motion to Dismiss. (Mena-Sanchez, L)		
14	*Filed:* 10/10/2012 *Entered:* 10/12/2012	Summons Returned Executed	
	Docket Text: SUMMONS RETURNED EXECUTED: GMAC Mortgage served on 10/2/2012. (Mena-Sanchez, L)		
15	*Filed:* 10/10/2012 *Entered:* 10/12/2012	Summons Returned Executed	
	Docket Text: SUMMONS RETURNED EXECUTED: Mortgage Electronic Registration System, Inc., served on 9/27/2012. (Mena-Sanchez, L)		
16	*Filed & Entered:* 10/23/2012	Notice - Other	
	Docket Text: NOTICE *of Bankruptcy and Effect of Automatic Stay* by GMAC Mortgage, Mortgage Electronic Registration System, Inc.,. Attorney Cross, Michael Gerald added. (Cross, Michael)		
17	*Filed & Entered:* 10/26/2012	Joinder	
	Docket Text: JOINDER by GMAC Mortgage, Mortgage Electronic Registration System, Inc., in re [8] Motion to Dismiss filed by The Law Offices of Pite Duncan, LLP. (Attachments: # (1) Proposed Order)(Cross, Michael)		
18	*Filed & Entered:* 10/26/2012 *Terminated:* 01/29/2013	Motion to Dismiss	
	Docket Text: MOTION to DISMISS by GMAC Mortgage, Mortgage Electronic Registration System, Inc.,. Motion Hearing set for 12/17/2012 at 09:00 AM in Courtroom 10 (GEB) before Judge Garland E. Burrell Jr.. (Attachments: # (1) Proposed Order)(Cross, Michael)		
19	*Filed & Entered:* 10/26/2012	Certificate of Service	
	Docket Text: CERTIFICATE of SERVICE by GMAC Mortgage, Mortgage Electronic Registration System, Inc., re [17] Joinder, [18] MOTION to DISMISS. (Cross, Michael)		
	Filed & Entered: 10/30/2012	Service by Mail	
	Docket Text: SERVICE BY MAIL: [20] Minute Order served on Shelley Von Brincken. (Owen, K)		
20	*Filed & Entered:* 10/30/2012	Minute Order	
	Docket Text: MINUTE ORDER (Text Only) by Courtroom Deputy K. Owen for Magistrate Judge Carolyn K. Delaney on 10/30/2012: In light of the Court's Order (dkt. no. [12]) filed on 10/10/2012, Defendant's Motion to Dismiss (dkt. no. [18]) is SUBMITTED, and the 12/17/2012 hearing date is VACATED. (Owen, K)		
21	*Filed & Entered:* 10/30/2012	Minute Order	
	Docket Text: MINUTE ORDER: The Motion to Dismis, noticed for hearing before Judge Burrell on 12/17/12, is vacated. Pursuant to the Local Rules, motions in cases designated pro se are to be noticed for hearing before the assigned Magistrate Judge. re [18] Motion to Dismiss Ordered by Judge Garland E. Burrell, Jr on 10/30/12. (Furstenau, S)		
	Filed & Entered: 11/16/2012	Service by Mail	
	Docket Text: SERVICE BY MAIL: [22] Order served on Shelley Von Brincken. (Becknal, R)		
22	*Filed & Entered:* 11/16/2012	Order	

	Docket Text: ORDER signed by Magistrate Judge Carolyn K. Delaney on 11/15/12 ORDERING that no later than 11/21/12, defendant GMAC shall file a letter brief setting forth the legal basis on which this court may resolve the motion to dismiss in light of the Bankruptcy Court's supplemental order and shall submit as an exhibit a copy of that order; Plaintiff shall file opposition, if any, to the motion to dismiss [18] no later than 12/14/12; Reply, if any, shall be filed no later than 12/21/12; The matter shall thereafter stand submitted. (Becknal, R)		
23	*Filed & Entered:*	11/21/2012	Brief
	Docket Text: BRIEF *Letter Brief Re: Bankruptcy Stay* by GMAC Mortgage, Mortgage Electronic Registration System, Inc.,. (Attachments: # (1) Proof of Service)(Cross, Michael)		
24	*Filed:* *Entered:* *Terminated:*	11/21/2012 11/26/2012 01/29/2013	Motion for Miscellaneous Relief
	Docket Text: MOTION to Stop sale of home by Shelley Von Brincken. (Mena-Sanchez, L)		
25	*Filed & Entered:* *Terminated:*	11/29/2012 11/30/2012	Motion to Dismiss
	Docket Text: MOTION to DISMISS by GMAC Mortgage, Mortgage Electronic Registration System, Inc.,. Motion Hearing set for 1/9/2013 at 10:00 AM in Courtroom 26 (CKD) before Magistrate Judge Carolyn K. Delaney. (Attachments: # (1) Proposed Order)(Cross, Michael)		
	Filed & Entered:	11/30/2012	Service by Mail
	Docket Text: SERVICE BY MAIL: [26] Minute Order served on Shelley Von Brincken. (Owen, K)		
26	*Filed & Entered:*	11/30/2012	Minute Order
	Docket Text: MINUTE ORDER (Text Only) by Courtroom Deputy K. Owen for Magistrate Judge Carolyn K. Delaney on 11/30/2012: After conferring with counsel for defendants, the Court has determined that defendants'[25] Motion to Dismiss is duplicative. The motion, therefore, is denied as moot, and the 1/9/2013 hearing date is vacated. (Owen, K)		
	Filed & Entered:	01/25/2013	Service by Mail
	Docket Text: SERVICE BY MAIL: [27] Order, Findings and Recommendations, served on Shelley Von Brincken. (Mena-Sanchez, L)		
27	*Filed & Entered:*	01/25/2013	Order
	Docket Text: ORDER AND FINDINGS AND RECOMMENDATIONS signed by Magistrate Judge Carolyn K. Delaney on 1/24/13 ORDERING that that Defendant Pite Duncan's Request for Judicial Notice [8-2] is GRANTED. IT IS FURTHER RECOMMENDED that Defendant Pite Duncan's Motion to Dismiss [8] be GRANTED. All defendants be dismissed; and This Action be closed. These FINDINGS and RECOMMENDATIONS are sumbitted to U.S. District Judge Garland E. Burrell, Jr. Objections to these F&R due within fourteen days. (Mena-Sanchez, L)		
	Filed & Entered:	02/21/2013	Service by Mail
	Docket Text: SERVICE BY MAIL: [28] Order Adopting Findings and Recommendations, [29] Judgment, served on Shelley Von Brincken. (Kaminski, H)		
28	*Filed & Entered:*	02/21/2013	Order Adopting Findings and Recommendations
	Docket Text: ORDER adopting [27] FINDINGS AND RECOMMENDATIONS IN FULL signed by Judge Garland E. Burrell, Jr on 2/20/13: The motion to dismiss [8] is granted. All defendants are dismissed from this action. This action is closed. (Kaminski, H)		
29	*Filed & Entered:*	02/21/2013	Judgment

Docket Text: JUDGMENT dated *2/21/13* pursuant to order signed by Judge Garland E. Burrell, Jr on 2/20/13. (Kaminski, H)

PACER Service Center			
Transaction Receipt			
01/19/2016 11:20:42			
PACER Login:	mf1354:2923879:3945828	**Client Code:**	73304-0000019-14078
Description:	History/Documents	**Search Criteria:**	2:12-cv-01689-GEB-CKD
Billable Pages:	3	**Cost:**	0.30

Exhibit O

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York	PROOF OF CLAIM
Name of Debtor: GMAC MORTGAGE, LLC	Case Number: 12-12032-MG
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*	
Name of Creditor (the person or other entity to whom the debtor owes money or property): SHELLEY VON BRINCKEN	
Name and address where notices should be sent: 14738 WOLF RD GRASS VALLEY, CA. 95949 Telephone number: (530) 268-8777 email:	☐ Check this box if this claim amends a previously filed claim. Court Claim Number: (*If known*) Filed on:
Name and address where payment should be sent (if different from above): N/A Telephone number: email:	☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

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COURT USE ONLY

1. **Amount of Claim as of Date Case Filed:** $ 186,940.72

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. **Basis for Claim:** DEBT INSTRUMENT "Deed of Trust" (See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as:	3b. Uniform Claim Identifier (optional):
4 8 4 0	(See instruction #3a)	(See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other Describe:

Value of Property: $ 173,500.00

Annual Interest Rate 5.914% ☐ Fixed or ☑ Variable (when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ 186,940.72

Basis for perfection: Security Instrument

Amount of Secured Claim: $ 186,940.72

Amount Unsecured: $ 0.00

5. **Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a).** If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☑ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(C2). $ 186,940.72

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

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KURTZMAN CARSON CONSULTANTS

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

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KURTZMAN CARSON

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☑ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: SHELLEY VON BRINCKEN
Title: MORTGAGOR
Company: N/A
Address and telephone number (if different from notice address above):
14738 WOLF RD
GRASS VALLEY, CA. 95949

(Signature) 8-3-12 (Date)

Telephone number: email:

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Von Brincken #[redacted]219 gmac #[redacted]7759

18

RECORDING REQUESTED BY:
CALIFORNIA LAND TITLE COMPANY OF NEVADA COUNTY

AND WHEN RECORDED MAIL TO:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVE., SUITE 200
ORANGE, CA 92867

ORDER NO.: 105038-TO

Nevada County Recorder
Gregory J. Diaz
DOC- 2009-0001231-00
Acct 1-California Land Title Co.
Friday, JAN 23, 2009 08:00:00
REC $22.00:SBS $17.00:SSR $1.00
MIC $1.00:AUT $18.00:
Ttl Pd $59.00 Nbr-0000576E89
ENM/EM/1-18

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

DOCUMENT TITLE

SEPARATE PAGE - PURSUANT TO GOVERNMENT CODE 27361.6

titlepg

Recording Requested By:
MORTGAGECLOSE.COM, INC.

And After Recording Return To:
MORTGAGECLOSE.COM, INC.
1855 WEST KATELLA AVENUE, SUITE 200
ORANGE, CALIFORNIA 92867
Loan Number: [redacted]0219

RECORDING REQUESTED
BY: OLD REPUBLIC TITLE
212300668 4-SE

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: [redacted]

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JANUARY 14, 2009, together with all Riders to this document.
(B) "Borrower" is SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.
(C) "Lender" is MORTGAGECLOSE.COM, INC.

Lender is a NEVADA CORPORATION organized and existing under the laws of NEVADA
Lender's address is 1855 WEST KATELLA AVENUE, SUITE 200, ORANGE, CALIFORNIA 92867

(D) "Trustee" is CALIFORNIA LAND TITLE COMPANY OF NV COUNTY
464 BRUNSWICK RD, GRASS VALLEY, CALIFORNIA 95945

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the **beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated JANUARY 14, 2009. The Note states that Borrower owes Lender TWO HUNDRED TWENTY THOUSAND AND 00/100 Dollars (U.S. $ 220,000.00) plus interest.

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2039

(G) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(H) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Planned Unit Development Rider
☐ Balloon Rider	☐ Biweekly Payment Rider
☐ 1-4 Family Rider	☐ Second Home Rider
☐ Condominium Rider	☐ Other(s) [specify]

(J) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) **"Escrow Items"** means those items that are described in Section 3.

(N) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) **"Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's

obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender

shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether

or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires

otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action

required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Borrower at the address set forth above. A copy of any Notice of Default and any Notice of Sale will be sent only to the address contained in this recorded request. If the Borrower's address changes, a new request must be recorded.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

SHELLEY VON BRINCKEN (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Witness:

_____

Witness:

_____

[Space Below This Line For Acknowledgment]

State of California)
) ss.
County of Placer)

On 1-15-09 before me, K. Dean Notary public

personally appeared SHELLEY VON BRINCKEN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

K. DEAN
Commission # 1628882
Notary Public - California
Placer County
My Comm. Expires Dec 11, 2009

NOTARY SEAL

NOTARY SIGNATURE

K. Dean
(Typed Name of Notary)

GMAC Mortgage

3451 Hammond Ave
P.O. Box 780
Waterloo, IA 50704-0780

07/24/12

SHELLEY VON BRINCKEN

14738 WOLF ROAD

GRASS VALLEY CA 95949

RE: Account Number [redacted]7759
Property Address 14738 WOLF ROAD

GRASS VALLEY CA 95949

Dear SHELLEY VON BRINCKEN

The enclosed mortgage history is being provided in conjunction with the recent escrow analysis review of your account which was mailed to you under separate cover.

As your last annual escrow review was completed on your account more than one year ago, this document reflects a history of your escrow account activity since the last annual statement was issued.

If you have any questions about this matter, please call our office at 800-766-4622 (weekdays, 6:00 a.m. - 10:00 p.m. CT; Saturday, 9:00 a.m. - 1:00 p.m.).

Thank you,

Customer Care
Loan Servicing

4:63

If this is a mortgage loan and the property is located in the state of Texas:
COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TX 78705. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 877-276-5550.

A complaint form and instructions may be downloaded and printed from the Department's website located at www.sml.texas.gov or obtained from the Department upon request by mail at the address above, by telephone at its toll-free consumer hotline listed above, or by email at smlinfo@sml.texas.gov.

Account Number	[redacted]7759
Name	SHELLEY VON BRINCKEN
Starting Escrow Balance	0.00
Ending Escrow Balance	-4,693.40
Starting Time Period	08/02/2010
Ending Time Period	07/24/2012

Transaction Date	Amount To Escrow	Trans Type	Transaction Description	Escrow Balance
9/1/2010	6,276.62	RT	PAYMENT	0.00
9/1/2010	-6,276.62	PT	PAYMENT	-6,276.62
9/9/2010	453.00	R20	Escrow Refund-Fire	-5,823.62
10/12/2010	5,823.62	SR	PAYMENT	0.00
11/10/2010	-1,154.45	E90	Escrow Disb-Tax County	-1,154.45
3/9/2011	-1,154.45	E90	Escrow Disb-Tax County	-2,308.90
11/9/2011	-1,192.25	E90	Escrow Disb-Tax County	-3,501.15
3/7/2012	-1,192.25	E90	Escrow Disb-Tax County	-4,693.40
Total Escrow Amounts	**1,583.22**			

GMAC Mortgage

3451 Hammond Avenue
Waterloo, IA 50702
1-800-766-4622/Follow the Prompts

Important Note: In accordance with RESPA requirements, this notice is being sent as a result of the review completed on your escrow account.

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

ACCOUNT NUMBER: [redacted]7759

PROPERTY ADDRESS:
14738 WOLF ROAD
GRASS VALLEY CA 95949

ANALYSIS DATE: JULY 23, 2012

48081-0000277-001
SHELLEY VON BRINCKEN
14738 WOLF RD
GRASS VALLEY CA 95949-8134

PLEASE KEEP THIS ESCROW ANALYSIS FOR COMPARISON TO NEXT YEAR'S STATEMENT.

Section 1:

DESCRIPTION	NEXT DUE DATE	ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT	AMOUNT(S) USED IN PRIOR ANALYSIS
COUNTY	DECEMBER 2012	1,192.25	0.00
COUNTY	APRIL 2013	1,192.25	0.00
	TOTAL ANNUAL DISBURSEMENTS:	2,384.50	0.00
	TOTAL ESCROW PAYMENT:	198.70	523.05

The amounts above are based on either an estimate previously provided or the amount last disbursed.

New Payment Amount:	1,465.14
New Payment Effective:	SEPTEMBER 01, 2012
Next Scheduled Analysis:	SEPTEMBER 01, 2013

Payment change:	New	Prior Analysis
Escrow	198.70	523.05
Total	198.70	523.05
Principal/Interest	1,266.44	1,266.44
Total Payment	1,465.14	1,789.49

For details about the difference between the old and new payment amounts, please reference the ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT and AMOUNT(S) USED IN PRIOR ANALYSIS columns listed above.

Any questions regarding changes in the "Estimated Amount of Next Disbursement" should be directed to your Tax Authority and/or Insurance Company. To reach our insurance department call: 1-800-256-9962.

If you are utilizing a military allotment, or third-party company to make payments on your behalf, please notify your service of any payment changes.

UNRELEASED SURPLUS NOTICE

GMAC Mortgage

THIS IS NOT A CHECK

Account Number	Surplus Amount
[redacted]7759	6,667.50

SHELLEY VON BRINCKEN

ACCOUNT NUMBER: [redacted]

SHELLEY VON BRINCKEN

Dear Homeowner(s):

As you know, we are the servicer for your mortgage loan. We maintain an escrow account for your loan. Part of your monthly payment is an escrow payment. We use that money to pay your escrow items. These items may include property taxes, hazard insurance, ground rents and other expenses as described in your mortgage contract.

The amount of your escrow payment depends upon the way we classified your contract. We have classified your contract as a "One Sixth Aggregate Cushion Contract." Under this kind of contract, we have estimated the amount of your future bills for escrow items. We have projected your account balance for the next year. Your projected account balance will fall to 1/6 of the total amount of your escrow bills at least once during the projected year. For example, if your estimated bills for escrow items total $2400, your projected account balance should drop to at least $400 (1/6 of $2400) during the projected year following the analysis. Actual results will often differ from the projections. Differences in amounts will be considered in your next escrow analysis.

We may improperly classify a few contracts. If you believe that we have incorrectly classified your contract, contact us at the phone number or address listed below.

If you have any questions concerning your escrow analysis, please contact us at the phone number or address listed below.

GMAC Mortgage
3451 Hammond Ave.
P.O. Box 780
Waterloo, IA 50704-0780
1-800-766-4622 (Toll Free Number)

Very truly yours,

GMAC Mortgage
Escrow Analysis Department

Dear Valued Customer(s),

We recently analyzed your escrow account and found a surplus. The amount of the surplus is indicated in Section 3 of the Escrow Analysis Statement. This means there was more money in your account than we anticipate we will need to pay your estimated future escrow bills and maintain the cushion permitted by your contract. Shortly, you will receive a new monthly remittance statement based upon this new analysis.

Your escrow analysis was based on our estimate of your future escrow bills. We usually cannot determine the exact amount of these bills. Therefore, you could have either a shortage or a surplus when we do your next escrow analysis.

We are offering you **4 options** for the refund check:

1. **Cash the check.**
   If you choose to cash the surplus check you do not need to return the attached coupon.

2. **Apply the surplus to your escrow account.**
   You may return the check or a portion of the check and request we apply the money to your escrow account. If you choose this option, **the surplus will be used to lower your next 12 payments, starting with the effective date of your new analysis.**

3. **Apply the surplus to your mortgage payments.**
   You may return the check or a portion of the check and request to have the money applied toward your mortgage payments. This will reduce or satisfy one or more of your total monthly payments. **We would like to ask that if the surplus check does not fulfill your entire mortgage payment, please enclose additional funds to insure that we receive the exact amount of your monthly payment. This is done to insure the proper application of funds.**

4. **Apply the surplus to your outstanding principal balance.**
   You may return the check or a portion of the check and request the money be applied to your outstanding principal balance. This may reduce the number of months you repay your loan, however, it will not reduce your monthly payment.

680-2020-1002F

If you choose **Option 1**, you need not contact us.

If you choose **Option 2, 3, or 4, we ask that you please:**

COMPLETE THE ATTACHED COUPON AND MAIL WITH THE SURPLUS CHECK AND ANY ADDITIONAL FUNDS TO US AT THE ADDRESS BELOW.

CUT HERE ✂----------

SEND TO:

Attention: Escrow Analysis
PO Box 780
Waterloo, IA 50704-0780

ACCT # _____

OPTION # _____

(COUPON MUST ACCOMPANY ESCROW SURPLUS CHECK)

YOUR ESCROW ANALYSIS

If we are maintaining a reserve account for the payment of taxes, insurance premiums, and/or other escrow items, a portion of your mortgage payment is deposited into your Escrow/Impound account. Should your estimated or actual bills for taxes, insurance, and/or other escrow items go up or down, the amount we collect may be too little or too much to pay the anticipated bills. Therefore, we analyze your escrow account each year to adjust for the difference.

Your escrow account is maintained on an aggregate balance basis. This means that we calculate the amount of your required escrow payment based upon the lowest balance expected to occur within the 12-month period beginning with the effective payment change date for your escrow analysis. The anticipated lowest balance is determined through a running trial balance of the expected escrow receipts and disbursements in which the anticipated balance at the end of each month is noted. Your mortgage contract indicates what the maximum permitted low balance should be.

Your escrow payment will be equal to 1/12 of the anticipated total escrow disbursements plus a pro-rata portion of any shortage determined to exist if the lowest escrow balance in the running trial balance is less than the maximum permitted low balance. Shortages are usually a result of estimated or actual increases in taxes and/or insurance premiums, and/or the maintenance of any cushion authorized by your mortgage contract.

The effective date of your escrow analysis is the date on which the change in your payment takes effect.

THE FOLLOWING EXPLANATION IS PROVIDED TO ASSIST YOU IN UNDERSTANDING YOUR ESCROW ANALYSIS STATEMENT.

680-2021-1002B

Section 1:
The "**DESCRIPTION**" identifies each escrow item that we will be paying.
The "**NEXT DUE DATE**" is the date by which the bill for each escrow item must be paid.
The "**ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT**" are the anticipated amount(s) for the next bill(s) for each escrow item.
The "**AMOUNT(S) USED IN PRIOR ANALYSIS**" are the corresponding amount(s) used in your prior escrow analysis.

Section 2:
The "**ANALYSIS TYPE**" indicates how we have classified your mortgage contract for escrow analysis purposes. It specifies the percentage, if any, of the total projected disbursements that we used to determine the maximum permitted low point for your escrow account.

The "**PROJECTED ESCROW BALANCE**" is the projected balance in your account as of the effective date of the analysis.

The "**ANTICIPATED LOW POINT FOR ANALYSIS PERIOD**" is the lowest balance anticipated to be in your escrow account during the 12 month period beginning with the effective date of the analysis.

The "**MAXIMUM PERMITTED LOW POINT**" is the maximum balance that can be projected to be in your account at its lowest point during the period covered by the escrow analysis. This balance is determined by our classification of your mortgage contract.

Section 3:
The "**SURPLUS**" is the amount by which the Anticipated Low Point exceeds the Maximum Permitted Low Point For Analysis Period.

The "**SHORTAGE**" is the amount by which the Maximum Permitted Low Point exceeds the Anticipated Low Point For Analysis Period.

Exhibit P

Sent/Received

JUL 22 2013

RESCAP

MORRISON | FOERSTER

To
By Claim Information

Claim Number	441
Basis of Claim Explanation that states the legal and factual reasons why you believe you are owed money or are entitled to other relief from one of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases) and, you must provide copies of any and all documentation that you believe supports the basis for your claim.	SEE ATTACHED

If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the following loan information, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Loan Number: [redacted]		
Address of property related to the above loan number: 14738 Wolf Road		
City: Grass Valley	State: California	ZIP Code: 95949

Additional resources may be found at - http://www.kccllc.net/rescap

Priority Mail 9505 5109 4961 3199 5045 24

CERTIFACATE OF SERVICE
ACKNOWLEDGEMENT OF RECEIPT BY MAIL

I, Luke Pedersen am over the age of 18 and not a party to the within action and live in Sacramento County, California. On, July 18, 2013 A.D. I did send by Priority mail.

And did mail the document(s) described as;

Original Copy of the RES CAP,BASIS OF CLAIM INFORMATION FORM with attached BASIS OF THE CREDITOR CLAIM NUMBER 44. Also and copy of the RESCAP letter and forms dated JUNE 31,2013.

And by placing a true copy thereof enclosed in a sealed envelope, fully prepaid, addressed as follows:

Residential Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438

And by placing in the mail at the location of United States Post Office, Grass Valley, California 95945.

Additionally I have first hand knowledge that the alike documents where emailed to:Claims.Management@rescap.com this same day.

I attest and affirm that I did mail the above on the date of July 18, 2013.

Luke Pedersen

Shelley von Brincken
PO Box 2362
Grass Valley, California 95945

In RE: RESIDENTIAL CAPITAL, LLC, GMAC MORTGAGE, LLC, and other Affiliated debtors

Case No. 12-12020 MG

Clarification for the Basis of The Creditor Claim for Shelley von Brincken Claim # 441

1. The above claim is filed based upon a fraudulent and unlawful non-judicial foreclosure that was commenced on the property at 14738 Wolf Road, Grass Valley, California by GMAC MORTGAGE, LLC on September 3, 2010.

2. The Substitution of Trustee was signed by an alleged MERS employee, at a time when MERS, Inc. was not registered with the Secretary of State and was, consequently, not authorized to do business in California by the California Secretary of State, see **Exhibit A**. Consequently, MERS, Inc.'s act of signing and recording the Substitution of Trustee is an act that violates California Corporation Code, Sections 2258 and 2259, and makes the act of signing and recording the Substitution of Trustee document ultra vires and void,

see Carter v. DEUTSCHE BANK, NATIONAL TRUST COMPANY, AS TRUSTEE, C09-3033 BZ (USDC, N. DIST. OF CALIF.). As a result MERS, Inc. acted without authority in signing and recording the Substitution of Trustee, and said document is void. MERS, Inc. did not issue a resolution from the Board of Directors making the signer of the Substitution of Trustee, Donna Fitton, a signer authorized to act on behalf of MERS, Inc. Normally a resolution of the Board of Directors must be issued authorizing the appointed person to act in an official capacity as a MERS, Inc. executive, otherwise third parties and courts cannot know if the documents they sign are a valid exercise of corporate authority. The signer of the Substitution of Trustee, Donna Fitton, signed her name in Los Angeles County, in Southern California, which is the headquarters office of ETS Services, LLC, but MERS, Inc. has their headquarters office in Reston, Virginia, so it appears that the signature is by an ETS Services, LLC employee and not a MERS, Inc. executive. Additionally, the original lender, MORTGAGECLOSE.COM has never been a member of MERS, INC. MERS membership is the contractual agreement that authorizes MERS, Inc. to act on behalf of the original lender, in this case MORTGAGECLOSE.COM, INC. as a nominee or beneficiary. MERS, Inc cannot act as a nominee or beneficiary of a lender that is not a member of MERS, and thus MERS is not a beneficiary nor are they a nominee for this particular Deed of Trust.

3. Without the MERS, Inc. membership agreement, MERS, Inc. has no standing and capacity to sign pre-foreclosure documents for MORTGAGECLOSE.COM, INC. MERS, Inc. does not have any standing whatsoever to sign their name as a nominee when the original lender did not authorize their status as a nominee by way of a standard

membership agreement, which is signed by all of their members. MERS, Inc. cannot act as a nominee for MORTGAGECLOSE.COM, INC without a formal written agency agreement.

4. Based upon the above analysis of the MERS, Inc. use of a Substitution of Trustee, without the proper agency status as a signer of the Substitution of Trustee, the subsequent documents signed by the allegedly substituted trustee, the Notice of Default, the Notice of Trustees Sale, and the Trustees Deed Upon Sale, see **Exhibit B**, were all void and defective documents and have no force and effect in law, having been signed by a party who does not have standing to sign as a trustee for reasons already discussed. The act of signing and recording the Substitution of Trustee, a Notice of Default, and a Trustees Deed Upon Sale without standing is a violation of my procedural and substantive due process rights as guaranteed under the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution, because the signer had no standing to act as an agent of the original lender.

5. In addition, GMAC MORTGAGE, LLC presented an indorsement of the note that was typed and signed on a separate piece of paper called an allonge, see **Exhibit C**. Under California law, an allonge must be signed directly on the note, unless there are so many indorsements on the note itself that a separate allonge must be filed and attached to the note, see Pribus v. Bush, 118 Cal.App.3d 1003; 173 Cal. Rptr. 747(1981). The appellate court in Pribus, supra, states: "The trial court ruled that the Williams' signature on the paper attached to the promissory note did not qualify as an indorsement because there

was adequate space for the indorsement on the note itself. We affirm the judgment." The court in Pribus v. Bush, supra, went on to say that the possibility for fraud is greatly reduced when the above rule is applied. Thus, GMAC MORTGAGE, LLC does not have an indorsed note, and does not have the status of a note holder, and cannot assign the mortgage to a third party, see UCC 3-203. A creditor must have an indorsed note in their possession as a condition precedent to enforce the note.

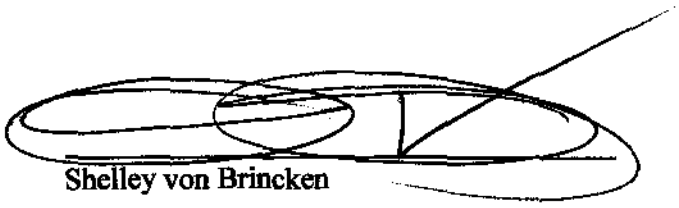
6. There is also no Assignment of Deed of Trust on file at the County Recorder's Office in Nevada County assigning the Deed of Trust to GMAC MORTGAGE, LLC or FEDERAL NATIONAL MORTGAGE ASSOCIATION as required under California Civil Code Section 2932.5. There is a common law requirement for the alleged creditor to have possession of the security device, otherwise there is no admissible evidence that the alleged creditor is entitled to enforce the note and Deed of Trust. If the indorsement of the note does not meet the requirements under state law for foreclosure, then the creditor does not have standing to foreclose, in violation of my procedural and substantive due process rights, as guaranteed under the Fifth and Fourteenth Amendments to the US Constitution.

7. The foreclosure sale was based upon a series of flawed and defective documents and unlawful acts by GMAC MORTGAGE, LLC and their agents, especially ETS Services, LLC employees, who executed the Substitution of Trustee document as a MERS executive, that they have no right to execute because the original lender, MORTGAGECLOSE.COM, is not a MERS member and for other reasons already stated.

This act of signing and recording the Substitution of Trustee was unlawful, ultra vires and void and makes all of the other pre-foreclosure documents and foreclosure documents void for lack of standing and capacity. My home was foreclosed on in violation of the UCC Section 3-301 and in violation of the other state and Federal laws, and in violation of the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution.

8. I was forced to answer a civil action for Unlawful Detainer filed by a party without standing and filed with the intent to use fraudulent inducement to make me believe that GMAC MORTGAGE, LLC had the right to foreclose with a flawed and defective Substitution of Trustee. Every other document subsequently recorded was signed by an improperly substituted trustee was without force and effect in law having been recorded by ETS Services, LLC, who was not properly appointed as a trustee for all of the reasons given above. I lost my home due to violations of my rights under state and federal law, as discussed. Although GMAC MORTGAGE, LLC is not a state actor, they engaged the services of the County Recorder's Office, through their agent, ETS Services, LLC, thereby violating my civil rights by use of the County Recorder and taking actions that lead to my home being taken away from me in violation of the above-cited law, causing me to lose my home in violation of my procedural and substantive due process rights. As a result, GMAC MORTGAGE, LLC is subject to the federal civil rights statutes by way of their use of the County Recorder, who is a state actor, to commit overt acts of deception and fraud. My home is worth more than the amount of the claim at this point in time.

Dated: 7-18-13



Shelley von Brincken

EXHIBIT A

RECORDING REQUESTED BY:
Recording Requested by
Title Court Service

Old Republic Default Management Services
When Recorded Mail To:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

Nevada County Recorder
Gregory J. Diaz
Document#: 201000009776
Wednesday April 28 2010, at 12:00:00 PM
Rec Fee:$14.00
Paid: $14.00
Recorded By:JR
Title Court Services

TS NO: [redacted]
LOAN NO [redacted]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY was the original Trustor, CALIFORNIA LAND TITLE COMPANY OF NV COUNTY was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION was the original Beneficiary under that certain Deed of Trust dated 1/14/2008 and recorded on 1/23/2008 as Instrument No. 2008-0001231-00, in Book , Page of Official Records of Nevada County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated : 4/27/2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

DONNA FITTON, ASSISTANT SECRETARY

State of California) ss.
County of Los Angeles)

On 4/27/2010 before me, Dee C. Ortega Notary Public, personally appeared Donna Fitton who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)
Dee C. Ortega

DEE C. ORTEGA
Commission # 1672751
Notary Public - California
Los Angeles County
My Comm. Expires Jun 2, 2010

EXHIBIT B

RECORDING REQUESTED BY:
Recording Requested by
Title Court Service

Old Republic Default Management Services
When Recorded Mail To:

ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600

Nevada County Recorder
Gregory J. Diaz
Document#: 201008809776
Wednesday April 28 2010, at 12:08:09 PM
Rec Fee:$14.00
Paid: $14.00
Recorded By:JR
Title Court Services

TS NO: [redacted]
LOAN NO: [redacted]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE

WHEREAS, SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY was the original Trustor, CALIFORNIA LAND TITLE COMPANY OF NV COUNTY was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MORTGAGECLOSE.COM, INC., A NEVADA CORPORATION was the original Beneficiary under that certain Deed of Trust dated 1/14/2009 and recorded on 1/23/2009 as Instrument No. 2009-0001231-00, in Book , Page of Official Records of Nevada County, California; and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW, THEREFORE, the undersigned desires to substitute Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated : 4/27/2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

DONNA FITTON, ASSISTANT SECRETARY

State of California} ss.
County of Los Angeles }

On 4/27/2010 before me, Dee C. Ortega Notary Public, personally appeared Donna Fitton who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)
Dee C. Ortega

DEE C. ORTEGA
Commission # 1672761
Notary Public - California
Los Angeles County
My Comm. Expires Jun 5, 2010

RECORDING REQUESTED BY:

Old Republic Default Management Services

WHEN RECORDED MAIL TO:
ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120

This is to certify that the attached is a true and correct copy of the original recorded 4-28-10
Instrument No. 2010-8777
Official Records of Nevada County
Recorder
Recording Service 17.00

TS No.: [redacted] Loan No.: [redacted]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **$5,958.63** as of **4/27/2010**, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
C/O ETS Services, LLC
2255 North Ontario Street, Suite 400
Burbank, California 91504-3120
(818) 260-1600 phone

3

RECORDING REQUESTED BY:
Executive Trustee Services, LLC dba ETS Services, LLC

AND WHEN RECORDED MAIL TO:
GMAC MORTGAGE, LLC FKA
GMAC MORTGAGE CORPORATION
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034

Forward Tax Statements to
the address given above

Nevada County Recorder
Gregory J. Diaz
Document#: 20[illegible]1 00021600
Friday September 10 2010, at 01:35:13 PM
Rec Fee:$20.00
Paid: $20.00
Recorded By:KP

SPACE ABOVE LINE FOR RECORDER'S USE

TS #[redacted]
LOAN[redacted]
TITLE ORDER #[redacted]

INVESTOR #: 0000000000000

TRUSTEE'S DEED UPON SALE

APN 55-060-68-000 TRANSFER TAX: $00.00
"THIS TRANSACTION IS EXEMPT FROM THE REQUIREMENTS OF THE REVENUE AND TAXATION CODE, SECTION 480.3"
The Grantee Herein Was The Foreclosing Beneficiary.
The Amount Of The Unpaid Debt was $235,204.06
The Amount Paid By The Grantee Was $186,940.72
Said Property Is In The City Of GRASS VALLEY, County of Nevada

Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee, (whereas so designated in the Deed of Trust hereunder
more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

FEDERAL NATIONAL MORTGAGE ASSOCIATION

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Nevada, State of California, described as follows:

See exhibit "A" attached hereto and made a part hereof

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by SHELLEY VON BRINCKEN, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY as Trustor, dated 1/14/2009 of the Official Records in the office of the Recorder of Nevada, California under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on 1/23/2009, instrument number 2009-0001231-00 (or Book , Page) of Official records. Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

[Page 1 of 2]

EXHIBIT "A"

GM-242742-C

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF NEVADA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

LOT 1, AS SHOWN UPON THE FINAL MAP NO. 00-002, "THE WOLF", AS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF NEVADA ON MAY 6, 2008, IN BOOK 8 OF SUBDIVISION MAPS, AT PAGE 178.

TRUSTEE'S DEED UPON SALE

Trustee's Deed
T.S.# [redacted]
Loan # [redacted]
Title Order [redacted]

All requirements per California Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 8/31/2010. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being $196,940.72 in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, Executive Trustee Services, LLC dba ETS Services, LLC, as Trustee, has this day, caused its name
to be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws

Date: 9/3/2010

Executive Trustee Services, LLC dba ETS Services, LLC

By: Kathleen Gowen
Kathleen Gowen, Limited Signing Officer

State of California) S.S.
County of Los Angeles)
On 9/3/2010 before me, Sally Beltran Notary Public, personally appeared Kathleen Gowen who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sally Beltran (Seal)
Sally Beltran

SALLY BELTRAN
Commission # 1777085
Notary Public - California
Los Angeles County
My Comm. Expires Oct 30, 2011

[Page 2 of 2]

EXHIBIT C

Allonge to Note

Loan Number: [redacted]

Note Date: January 14, 2009

In Favor of:

MORTGAGECLOSE.COM, INC.

And Executed by

Borrower: SHELLEY VON BRINCKEN

Property: 14738 WOLF RD
GRASS VALLEY, CA 95949

Loan Amount: $220,000.00

Pay to the Order of

GMAC Bank

Without Recourse

MORTGAGECLOSE.COM, INC.

Authorized Signature:

Chau Lam - President of MortgageClose.com, Inc.

RESCAP

MORRISON | FOERSTER

June 21, 2013

Claim Number: 441

Dear Claimant: SHELLEY VON BRINCKEN

You are receiving this letter because you or someone on your behalf filed a Proof of Claim form in the jointly-administered chapter 11 bankruptcy cases of Residential Capital, LLC ("ResCap"), GMAC Mortgage, LLC and other affiliated debtors and debtors in possession (collectively, the "Debtors") pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 12-12020 (MG) (the "ResCap bankruptcy case"), and we need additional information from you regarding the claim(s) ("claim") you are asserting against one or more of the Debtors.

The Information we Need From You Regarding Your Proof of Claim:
We reviewed a copy of the Proof of Claim form and documents, if any, that you filed in the ResCap bankruptcy case. A copy of your Proof of Claim form is enclosed for your reference. After reviewing the Proof of Claim form and any documents you submitted, we have determined that you did not provide sufficient information to support your "Basis for Claim" and we do not have sufficient information to understand the calculations you used to determine the amount you claim to be owed. In order to evaluate your claim, we need to understand the specific reasons as to why you believe you are owed money or are entitled to other relief from one or more of the Debtors. Please reply using the attached form and provide a written explanation, with supporting documentation, and include a detailed explanation of how you calculated the amount of your claim.

You Must Respond to this Letter by no Later Than July 22, 2013:
In accordance with the Order of the Bankruptcy Court (Docket No. 3294, filed March 21, 2013), you **must** respond to this letter by no later than July 22, 2013 with an explanation stating the legal and factual reasons why you believe you are owed money or are entitled to other relief from one or more of the Debtors as of May 14, 2012 (the date the Debtors filed their bankruptcy cases). You **must** provide copies of any and all documentation that you believe supports the basis for and amount of your claim. A form is included with this letter to assist you in responding to our request for additional information.

Consequences of Failing to Respond:
If you do not provide the requested information regarding the basis for and amount of your claim and the supporting documentation by July 22, 2013, the Debtors may file a formal objection to your Proof of Claim on one or more bases, including that you failed to provide sufficient information and documentation to support your claim. If the Debtors file such an objection and it is successful, your claim may be disallowed and permanently expunged. If your claim is disallowed and expunged, you will not receive any payment for your claim and any other requests you may have made for non-monetary relief in your Proof of Claim will be denied. Therefore, it is very important that you respond by the date stated above with the requested information and documentation supporting the basis for and amount of your claim.

For Those With a Mortgage Loan Originated or Serviced by One of the Debtors:
If your claim relates to a mortgage loan that you believe was originated or serviced by one of the Debtors, please be sure to include the loan number and property address that the loan relates to in the information and any documentation that you send us, so that we can effectively search our records for information on your property and loan, and evaluate your claim.

Questions:
If you have any questions about this letter, or need help in providing the requested information and document(s), you should contact an attorney. You may also contact the Special Counsel to the Official Committee of Unsecured Creditors[1] with general questions (contact information provided below):

SPECIAL COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
SILVERMANACAMPORA LLP
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Telephone: 866-259-5217
Website: http://silvermanacampora.com
E-mail address: rescapborrower@silvermanacampora.com

You must send the requested information and document(s) supporting your claim on or before the date provided in this letter to either:

(i) Claims.Management@gmacrescap.com; or
(ii) **Residential Capital, LLC**
P.O. Box 385220
Bloomington, Minnesota 55438

Please mark each document you send with the Claim Number referenced above.

Sincerely,

Claims Management
Residential Capital, LLC

[1] Please be advised that SilvermanAcampora LLP does not represent you individually and, therefore, cannot provide you with legal advice.

Claim #441 Date Filed: 8/27/2012

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Southern District of New York		PROOF OF CLAIM
Name of Debtor: GMAC MORTGAGE, LLC	Case Number: 12-12032-MG	AUG 27 2012
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*		
Name of Creditor (the person or other entity to whom the debtor owes money or property): SHELLEY VON BRINCKEN		COURT USE ONLY
Name and address where notices should be sent: 14738 WOLF RD GRASS VALLEY, CA. 95949 Telephone number: (530) 268-8777 email:		☐ Check this box if this claim amends a previously filed claim. Court Claim Number: (If known) Filed on:
Name and address where payment should be sent (if different from above): N/A Telephone number: email:		☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $ 186,940.72

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: DEBT INSTRUMENT "Deed of Trust" (See instruction #2)

3. Last four digits of any number by which creditor identifies debtor: 4 8 4 0	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ 186,940.72

Nature of property or right of setoff: ☒ Real Estate ☐ Motor Vehicle ☐ Other Describe:

Basis for perfection: Security Instrument

Value of Property: $ 173,500.00

Amount of Secured Claim: $ 186,940.72

Annual Interest Rate 5.914% ☐ Fixed or ☒ Variable (when case was filed)

Amount Unsecured: $ 0.00

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).

☒ Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(2). $ 186,940.72

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

RECEIVED
AUG 29 2012

12120321208270000000000003

KURTZMAN CARSON CONSULTANTS

01KCY002_59050-2_domestic_271/000219/000876/1

B 10 (Official Form 10) (12/11) 2

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

RECEIVED
AUG 29 2012
KURTZMAN CARSON

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☑ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: SHELLEY VON BRINCKEN
Title: MORTGAGOR
Company: N/A
Address and telephone number (if different from notice address above):
14738 WOLF RD
GRASS VALLEY, CA 95949

(Signature) 8-3-12 (Date)

Telephone number: email:

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

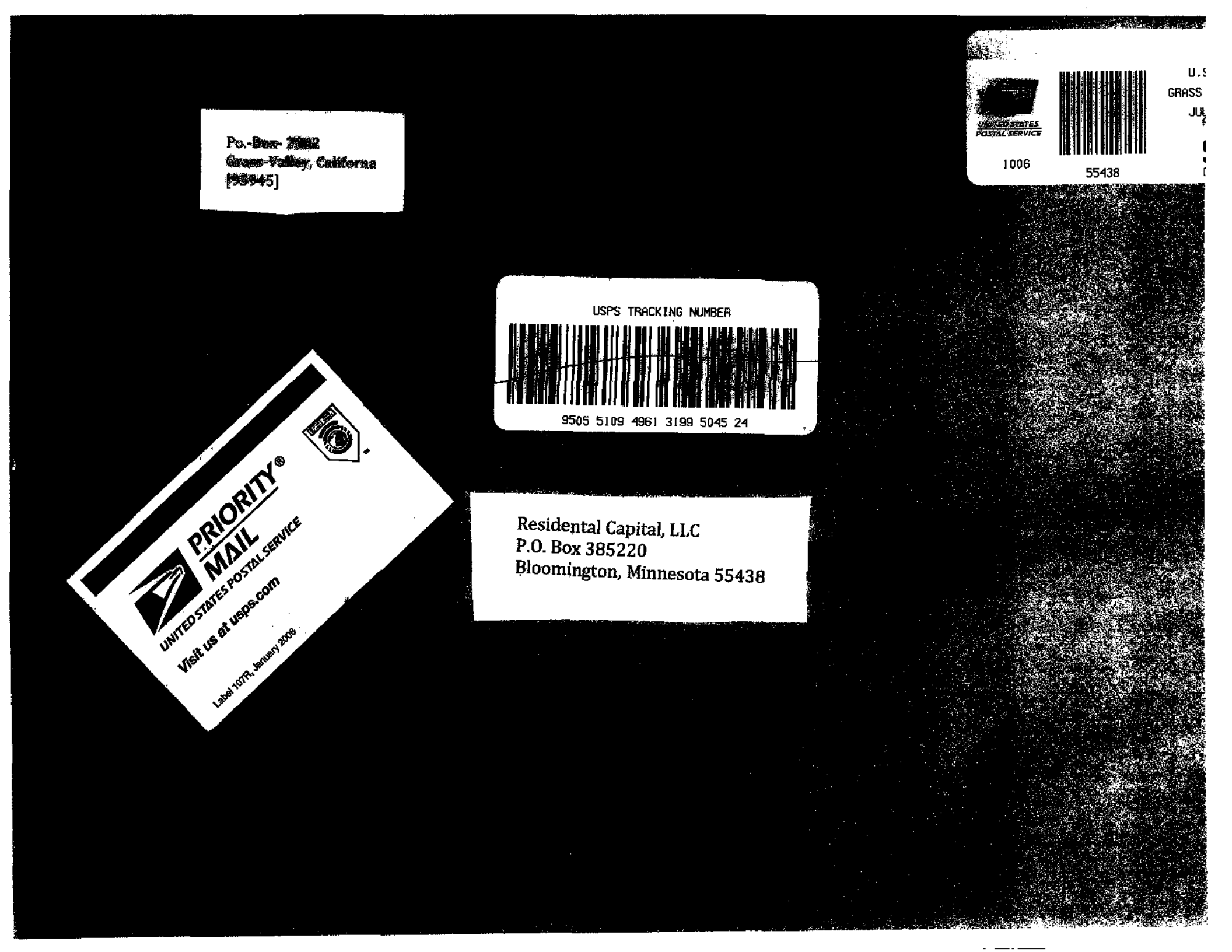

Po.-Box- 2[illegible]
Grass-Valley, California
[95945]
1006
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GRASS
USPS TRACKING NUMBER
9505 5109 4961 3199 5045 24
PRIORITY®
MAIL
UNITED STATES POSTAL SERVICE
Visit us at usps.com
Label 107R, January 2008
Residental Capital, LLC
P.O. Box 385220
Bloomington, Minnesota 55438

EXHIBIT 2

Proposed Order Dismissing Adversary Proceeding

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Shelley von Brincken,	:	
	:	Adv. Case No. 13-01436 (MG)
Plaintiff,	:	
	:	
v.	:	
	:	
GMAC Mortgage, LLC, or assignee, ETS Services, LLC, Ocwen Loan Servicing, LLC, and Does 1-20,	:	
	:	
Defendants.	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, *et al.*,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered

ORDER DISMISSING ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Upon consideration of the complaint (the "Amended Adversary Complaint") filed by *pro se* plaintiff Shelley von Brincken in the above-captioned adversary proceeding (the "Adversary Proceeding"); and upon consideration of the *Joint Motion of ResCap Liquidating Trust and ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b) and FRCP 12(b)(6) and (II) Disallowance of Proof of Claim Number 441 Filed by Plaintiff* (ECF Doc. # [_]) (the "Motion"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper

and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon consideration of the arguments presented with respect to the Motion at the hearing held on March 22, 2016 to consider the Motion (the "**Hearing**"); and after due deliberation; it is hereby

ORDERED ADJUDGED, AND DECREED THAT:

1. For the reasons stated on the record at the Hearing, the Motion is **GRANTED** as provided in this Order.

2. The Amended Adversary Complaint is dismissed with prejudice in its entirety with respect to all Debtor Defendants pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, as made applicable to the Adversary Proceeding by Bankruptcy Rule 7012(b).

3. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: March __, 2016
New York, New York

/s/
THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 3

Proposed Order Disallowing Proof of Claim

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, *et al.*,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered

ORDER GRANTING OBJECTION OF THE RESCAP BORROWER CLAIMS TRUST TO CLAIM NUMBER 441 FILED BY SHELLEY VON BRINCKEN

Upon the *Joint Motion of ResCap Liquidating Trust and ResCap Borrower Claims Trust for (I) Dismissal of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b) and FRCP 12(b)(6) and (II) Disallowance of Proof of Claim Number 441 Filed by Plaintiff* (ECF Doc. # [_]) (the "Objection"), seeking entry of an order, pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, disallowing and expunging proof of claim number 411 filed by Shelley von Brincken (the "Proof of Claim"), for the reasons set forth in the Objection; and the Court having jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, and it appearing that no other or further notice need be provided; and upon consideration of the Objection and the declaration of Kathy Priore annexed to the Objection as Exhibit 1; and upon consideration of the arguments presented with respect to the Motion at the hearing held on March 22, 2016 to consider the Motion; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Borrower Trust, the Borrower Trust's beneficiaries, the Debtors, their estates, creditors, and other parties in interest, and that the legal and factual bases

set forth in the Objection establish just cause for the relief granted herein; and the Court having determined that the Objection complies with the Borrower Claim Procedures set forth in the Procedures Order; and responses to the Objection, if any, having been resolved, withdrawn or otherwise overruled by this Order; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the relief requested in the Objection is granted to the extent provided herein; and it is further

ORDERED that, pursuant to section 502(b) of the Bankruptcy Code, the Proof of Claim is disallowed and expunged with prejudice; and it is further

ORDERED that Kurtzman Carson Consultants LLC, the notice and claims agent in these Chapter 11 Cases, is directed to disallow and expunge the Proof of Claim so that it is no longer reflected on the claims register maintained in the Chapter 11 Cases; and it is further

ORDERED that entry of this Order is without prejudice to the Borrower Trust's right to object to any other claims in these Chapter 11 Cases; and it is further

ORDERED that the Borrower Trust and the Debtors are authorized and empowered to take all actions as may be necessary and appropriate to implement the terms of this Order; and it is further

ORDERED that notice of the Objection, as provided therein, is deemed good and sufficient notice of such objection, and the requirements of Bankruptcy Rule 3007(a), the Case Management Procedures entered on May 23, 2012 [Docket No. 141], the Procedures Order, and the Local Bankruptcy Rules of this Court are satisfied by such notice; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: March __, 2016
New York, New York

/s/
THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE