

David F. Garber, Esq.
Florida Bar No.: 0672386
DAVID F. GARBER, P.A.
700 Eleventh Street South, Suite 202
Naples, Florida 34102
239.774.1400 Telephone
239.774.6687 Facsimile
davidfgarberpa@gmail.com
Attorney for Claimant, Barry Mack

Hearing date/time: May 15, 2014 at 10:00a.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Case No.: 12-12020)MG)
)	
RESIDENTIAL CAPITAL, LLC, et al.)	Chapter 11
)	
Debtors.)	Jointly Administered
)	
)	

**CREDITOR BARRY MACK'S RESPONSE TO RESCAP BORROWER CLAIMS
TRUST'S OBJECTION TO PROOF OF CLAIM NO. 386 FILED BY BARRY AND
CHERYL MACK**



TABLE OF CONTENTS

EXHIBIT INDEX	3
TABLE OF AUTHORITIES	4
RESPONSE TO OBJECTION	
Statement of the Facts	5-10
Analysis	
I. <u>THE MACK CLAIM IS NOT BARRED BY THE DOCTRINES OF <i>RES JUDICATA</i> OR COLLATERAL ESTOPPEL</u>	10-16
II. <u>THE MACKS' RESPA CLAIM IS NOT BARRED BY THE DOCTRINE OF <i>RES JUDICATA</i>, COLLATERAL ESTOPPEL, OR STATUTE OF LIMITATIONS</u>	16-18
Conclusion	18
Relief Requested	18
Proposed Order	

EXHIBIT INDEX

- Exhibit A – GMACM Purged Loan Notes and Transactions – June 30, 2011
- Exhibit B – Complaint to Foreclose Mortgage – August 22, 2009
- Exhibit C – Mack letter to GMAC Mortgage – October 26, 2009
- Exhibit D – Judgment Creditors/Defendants Mack’s Memorandum of Law in Opposition to Plaintiff’s Motion to Set Aside Final Judgment and for New Trial – April 17, 2012
- Exhibit E – Letter of Eduardo Lichi, M.D. – December 1, 2009
- Exhibit F – Death Certificate of Cheryl M. Mack – October 29, 2013
- Exhibit G – Plaintiff’s Motion to Set Aside Final Judgment and Set New Trial – July 14, 2011
- Exhibit H – Interest-Only Period Fixed Rate Note – October 6, 2006

TABLE OF AUTHORITIES

CASES

<i>Alterra Healthcare Corp. v. Campbell</i> 78 So.2d 595, 602 (Fla. Dist. Ct. App. 2011)	13
<i>Atlantic Cylinder Corp. v. Hetner</i> 438 So.2d 922 (Fla. Dist. Ct. App. 1993)	15
<i>Campbell v. State of Fla.</i> 906 So.2d 293, 295 (Fla. Dist. Ct. App. 2005)	10
<i>Gerardi v. Carlisle</i> 232 So.2d 36, 43 (Fla. Dist. Ct. App. 1969)	16
<i>Holt v. Brown’s Repair Serv., Inc.</i> 780 So.2d 180 (Fla. Dist. Ct. App. 2001)	10
<i>Mitchell v. Edge</i> 598 So.2d 125 (Fla. Dist. Ct. App. 1992)	15
<i>O’Keefe v. Orea</i> 731 So.2d 680, 684 (Fla. Dist. Ct. App. 1998)	13
<i>Ridgewood Util. Corp. v. King</i> 426 So.2d 49, 50 (Fla. Dist. Ct. App. 1983)	12
<i>Salit v. Ruden McCloskey, Smith, Schuster & Russell, PA</i> 742 So.2d 381 (Fla. Dist. Ct. App. 1999)	11
<i>State St. Bank and Trust Co. v. Badra</i> 765 So.2d 251, 253 (Fla. Dist. Ct. App. 2000)	11
<i>Thomas v. Hosp. Bd. of Dir. of Lee Cty.</i> 41 So.3d 246, 256 (Fla. Dist. Ct. App. 2010)	13

STATUTES

12 U.S.C. §2605(a)	12, 17
12 U.S.C. §2605(e)	13, 17
12. U.S.C. § 2614	17

RESPONSE TO OBJECTION

COMES NOW Creditor, BARRY MACK, by and through the undersigned counsel, and for response to ResCap Borrower Claims Trust's Objection to Proof of Claim No.: 386 Filed by Barry and Cheryl Mack, would state as follows:

STATEMENT OF THE FACTS

On April 17, 2009, Barry and Cheryl Mack contacted GMAC Mortgage (hereinafter "GMACM"), to whom they had been making the payments on their loan originally owned by Primary Residential Mortgage, Inc. but transferred to GMACM on October 25, 2006 (MACK Ex. A, Purged Loan Notes and Transactions – 000920). However, the Macks needed to use their savings to make their monthly payments, because they could not make payments on their loan with the income that they received (Social Security and retirement benefits of Barry Mack as a retired Philadelphia police officer). As their savings dwindled, they requested that they be granted some relief from the payments under the government-sponsored HAMP program (MACK Ex. A – 000922). To that end, they filled out an application and made numerous submissions of information requested by GMACM. On April 17, 2009 GMACM categorized their loan as in default (MACK Ex. A – 000920). On August 22, 2009, the Macks were served with a foreclosure suit brought by David Stern as the attorney for Deutsche Bank as trustee for the RALI 2007QS3 Trust (hereinafter "Trustee Deutsche Bank") (MACK Ex. B). Until this incident, Trustee Deutsche Bank was a stranger to the Macks. The Macks contacted GMACM to find out why they were being sued for foreclosure, and were reassured that their loan was not delinquent, there was no foreclosure, and any problem that had arisen would be handled by GMACM (MACK Ex. A – 000929). The Macks also employed an attorney (David F. Garber) to

defend against the foreclosure action and to file a counterclaim against Trustee Deutsche Bank which was done (RESCAP Ex. C, Answer and Countercl.). During September and October of 2009, the Macks continued to contact GMACM frequently by telephone and by letter. Finally on October 26, 2009, Cheryl Mack wrote GMACM a letter requesting some explanation as to why they were being sued for foreclosure when they knew they had made all the payments on their loan (MACK Ex. C). Neither GMACM nor Trustee Deutsche Bank, nor the attorney for Trustee Deutsche Bank, David Stern, ever responded to the letter.

On December 9, 2009, David Stern filed a notice of dismissal of the foreclosure lawsuit claiming Trustee Deutsche Bank to be the prevailing party. Pursuant to Florida law, the foreclosure claim was closed, but the counterclaim filed by the Macks on two counts (count I for RESPA violations by Trustee Deutsche Bank in having failed to inform the Macks of Trustee Deutsche Bank's interest in their loan as required under RESPA laws and count II for slander of title for having filed a lis pendens and maintaining a false foreclosure suit against them) remained (RESCAP Ex. C). During 2010 and 2011, the attorney for the Macks continued to prosecute the counterclaim which was still pending. Despite numerous pleadings, requests for discovery, telephone calls and letters, the attorney for Trustee Deutsche Bank did not respond (MACK Ex. D, Mack Mem. of Law, 4-5). On May 5, 2011, the Court conducted a trial in which evidence was submitted in the form of documentation and witness testimony. The facts presented at that trial indicated the Macks had never been delinquent on their loan, that Cheryl Mack, depressed and distraught over the foreclosure lawsuit in the fall of 2009 overdosed on alcohol and Ambien (a prescribed sleeping medication). Although her life was saved, she suffered serious and permanent kidney damage from the overdose in October 2009 (MACK Ex.

E – Letter of Lichi, M.D.). She later passed away on October 25, 2013 at age 61, for which renal failure was a contributing cause (MACK Ex. F – Death Certificate).

Based upon these facts, but before Cheryl Mack's death, the Court entered a judgment against Trustee Deutsche Bank for count II slander of title and damages to the value of real estate in the amount of \$296,920.05, and further found in favor of the Macks on the RESPA count for personal injuries and the pain and suffering experienced by Cheryl Mack as a result of the wrongful foreclosure in the amount of \$150,000.00. A copy of this judgment was sent by the Florida court not only to David Stern, but also directly to Trustee Deutsche Bank at its headquarters in New York (RESCAP Ex. D, 4).

After the 30-day appeal time had passed, the Macks began collection proceedings on the judgment in June of 2011 and attempted to schedule the deposition of corporate representatives of Trustee Deutsche Bank and GMACM representatives. Only after these collection efforts began did Trustee Deutsche Bank ever respond to the court by filing a motion for relief from the judgment. In it Trustee Deutsche Bank alleged it was unaware of the counterclaim and that their attorney, David Stern, had failed to inform them of any aspect of the Counterclaim, including the judgment which they received directly from the court on May 11, 2011.

No costs were awarded to Trustee Deutsche Bank despite their claim of entitlement on their voluntary dismissal in December 2009. Only the Macks received relief from the court in the form of a money judgment and an award of their costs, including their attorney's fees.

In their motion for relief from the judgment, Trustee Deutsche Bank acknowledged the Macks were never delinquent in their loan and that the foreclosure was wrongful but prayed they be relieved from the effects from the judgment alleging that not only was it equitable they should be released from the judgment because of their attorney's failure to notify them of the conduct of

the lawsuit, but further the counts which pled for damages under count I RESPA and Count II slander of title were fatally defective and could not stand as a matter of law and both should be dismissed (MACK Ex. G – Trustee Deutsche Bank’s Mot. to Set Aside). The court, after reviewing the claims of Trustee Deutsche Bank and conducting numerous hearings during which evidence was taken by testimony of witnesses and documents presented by Trustee Deutsche Bank, entered its judgment of February 26, 2013 granting partial relief to Trustee Deutsche Bank in that the RESPA count pleading was found to be fatally defective and therefore was a nullity and no relief could be given to the Macks under the RESPA count (RESCAP Ex. E). However, the court let stand the relief under slander of title awarding loss of sale proceeds. In the proceedings, GMACM maintained that it was the servicing agent for Trustee Deutsche Bank and that as the servicing agent they had made the decision to initiate the foreclosure through their attorney in Florida, David Stern, but that nine days after the suit was filed, they notified him to terminate the lawsuit and dismiss it. GMACM maintained they were unaware that a counterclaim had been filed. In support of this position, they filed the GMACM activity log (MACK Ex. A) and the Affidavit of Juan Antonio Aguirre (MACK Ex. G, Ex. 1). The Court, although granting partial relief to Trustee Deutsche Bank, did not grant relief to Trustee Deutsche Bank for the failure of their attorney to keep Trustee Deutsche Bank notified of the conduct of the suit since the court found that Stern was grossly negligent and Trustee Deutsche Bank could not be excused for the conduct of its agent.

In the discovery over Trustee Deutsche Bank’s motion for relief from the judgment, numerous documents and witnesses were produced, not only documents and witnesses for Trustee Deutsche Bank, but also documents and witnesses for GMACM. No findings of fact were ever made by the court on the post-judgment motion for relief, but GMACM consistently

maintained it was the servicing agent for this loan which was owned by Trustee Deutsche Bank and GMACM had the responsibility for procuring the attorney and initiating (and dismissing) the lawsuit. In partial support of their position, they produced a copy of the note signed by the Macks (MACK Ex. I), which showed that the ownership of the note was transferred from:

- (1) the original owner (Primary Residential Mortgage, Inc.) to GMAC Bank;
- (2) from GMAC Bank the ownership was transferred to GMAC Mortgage Corporation;
- (3) from GMAC Mortgage Corporation, ownership was transferred to Residential Funding Company, LLC;
- (4) from Residential Funding Company, LLC, the note was transferred to Deutsche Bank Trust Company Americas as Trustee.

Trustee Deutsche Bank and GMACM refused to give any information as to the dates or conditions under which these transfers were made and no discovery regarding these conditions or times was ever produced. However, under the Pooling & Servicing Agreement, the transfer of the Mack loan into the trust of which Deutsche Bank was the trustee, had to be concluded no later than February 27, 2007 (RESCAP Ex. B-1, 6). There was no evidence provided by Trustee Deutsche Bank of the transfer of the mortgage, the price paid, or the conditions of the transfer. However, Trustee Deutsche Bank maintained that they left the servicing rights of this loan with GMAC Mortgage, which was responsible for handling the collection of the payments and for the institution of the foreclosure.

In the documents attached to GMACM's objection to this claim in bankruptcy, they included a copy of the "Client Contract" dated March 6, 2006, defining the relationship between Residential Funding Corporation (GMAC-RFC); and GMAC Mortgage Corporation and Ditech.com (individually and collectively the client) (RESCAP Ex. B-3). Pursuant to paragraph 9 of that Client Contract, the parties defined their relationship between Residential Funding Corporation (party of the first part) and GMACM and Ditech (party of the second part) as that of

a buyer of residential loans on behalf of Residential Funding Corporation, and a seller on behalf of GMAC Mortgage Corporation (and Ditech.com). The contract specifies that GMAC Mortgage Corporation is an independent contractor and GMACM agreed that it would not represent itself as acting as Residential Funding's agent or partner. In recognition of this contract, GMACM sold the Mack loan to Residential Funding Corporation (MACK Ex. I). Residential Funding Corporation then transferred the Mack note to Trustee Deutsche Bank. Under a preceding contract of November 24, 1992 (RESCAP Ex. B-3) GMACM reserved to itself the right to service all loans sold to Residential Funding Corporation (see paragraph 2 therein) while maintaining its independent contractor status (see paragraph 5 therein).

ANALYSIS

I. **THE MACK CLAIM IS NOT BARRED BY THE DOCTRINES OF RES JUDICATA OR COLLATERAL ESTOPPEL.**

Res judicata in Florida will only bar a second suit where the following four elements are met: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the person for or against whom the claim is made. *Campbell v. State of Florida*, 906 So.2d 293, 295 (Fla. Dist. Ct. App. 2005). Further, for the doctrine of collateral estoppel to apply, the "parties and issues must be identical, and the particular matter must have been fully litigated and determined in a context resulting in a final decision of a court of competent jurisdiction (citation omitted). The party claiming collateral estoppel bears the burden of showing its applicability with sufficient certainty through the record or extrinsic evidence." *Id.* at 295. See also, *Holt v. Brown's Repair Serv., Inc.*, 780 So.2d 180, 182 (Fla. Dist. Ct. App. 2001) "the parties in the two proceedings must be identical; and the issues must have been actually litigated."

A judgment rendered on any grounds not based upon merits of the action may not be used as a basis for res judicata. “Finally, the doctrine of res judicata will not be invoked where it will work an injustice.” *State St. Bank and Trust Co. v. Badra*, 765 So.2d 251, 253 (Fla. Dist. Ct. App. 2000).

A. RES JUDICATA

i. Identity of the thing sued for.

Since count I (RESPA) of the Macks’ counterclaim against Trustee Deutsche Bank in the foreclosure suit was stricken as a matter of law in post-judgment relief, they did not receive an award of general damages, and did not receive personal injury damages. They only received their economic damages (\$296,920.05) under count I (slander of title) which were the loss of sale value due to the foreclosure by Trustee Deutsche Bank and its fair market value, and their attorney’s fees in having the foreclosure dismissed in December 2009 (\$2,500.00) (RESCAP Ex. D, 3).

The Macks now claim in this bankruptcy proceeding their general and personal injury damages against GMACM which actually was the causative party of their injuries and damages, as well as punitive damages for the deliberate malicious conduct of GMACM in using the Macks’ pleas for help under HAMP to declare their loan in default and foreclose even though it was not in default. Under Florida law, only specific damages are awardable for slander of title and are distinct and separate from general damages. *Salit v. Ruden McCloskey, Smith, Schuster & Russell, PA*, 742 So.2d 381, 388 (Fla. Dist. Ct. App. 1999). Therefore, there is no identity between the thing sought in *Deutsche Bank v. Mack*, and now in the Macks’ claim against GMACM.

ii. Identity of the cause of action.

The Macks received a judgment against Trustee Deutsche Bank on May 5, 2011 under two theories of law. The first was a violation of RESPA, a federal statute that governs the manner in which mortgages are to be administered by the mortgage holder. The elements of that cause of action are provided for within the statute: 12 U.S.C. §2605(a), among which the Macks sought a judgment for the failure of Trustee Deutsche Bank to notify them that Trustee Deutsche Bank had acquired the interest in the Macks' loan. The theory was predicated on the fact that the Macks continued to make payments to GMACM during this time and since they were not notified of the transfer of the loan to Trustee Deutsche Bank, they did not make payments to Trustee Deutsche Bank. Trustee Deutsche Bank then alleged that, based on an assignment 'to be recorded' (MACK Ex. B, ¶4) that they had the right to receive the payments and the loan was in default. No assignment was ever produced. This count was stricken from the relief allowed by the trial court based upon its failure to state a cause of action. The second county was for slander of title, which under Florida law requires "proof that a false and malicious statement was made in disparagement of the plaintiff's title to the property in question and caused him/her/it damage." *Ridgewood Util. Corp. v. King*, 426 So.2d 49, 50 (Fla. Dist. Ct. App. 1983). Slander of title in Florida does not authorize personal injury or general damages – only specific (and reasonably specified) economic damages. This cause of action also allows for an award or attorney's fees as to the cost of repairing the slander, but not as to the prosecution of the slander claim.

The Macks do not now base their claim in this court on slander of title. Rather, they base their claim on the following theories of law:

(A) malicious prosecution, which has the following elements: "(1) an original criminal or civil judicial proceeding against the present plaintiff

was commenced or continued; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damage as a result of the original proceeding.” *Alterra Healthcare Corp. v. Campbell*, 78 So.2d 595, 602 (Fla. Dist. Ct. App. 2011);

(B) intentional infliction of emotional distress, which has the following elements: "(1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe." Additionally, the conduct must be "so outrageous in character, and so extreme in degree," that it is considered "atrocious and utterly intolerable in a civilized community." *Thomas v. Hosp. Bd. of Dir. of Lee Cty.*, 41 So.3d 246, 256 (Fla. Dist. Ct. App. 2010); and,

(C) violation of 12 U.S.C. § 2605(e) "Duty of loan servicer to respond to borrower inquiries". Even though RESPA was at issue and a judgment was rendered on it on the May 5, 2011 judgment (based upon Trustee Deutsche Bank's failure to notify the Macks of the transfer of interest in their note to Trustee Deutsche Bank (12 U.S.C. § 2605 (e))), it was later stricken by a court as being a nullity in that it was defectively pled. Therefore, no adjudication was made as to a violation of RESPA. While it may be true that the Macks may be estopped from relitigating any measure of damages relating to the loss of value due to the forced sale of the property while under threat of foreclosure, since that claim was made by a court of competent jurisdiction and a conclusive and final order was made as to the amount (and subsequently satisfied), the Macks might be estopped from reclaiming these damages now simply because there is a new party; and

(D) wrongful death of Cheryl Mack, which cause of action in Florida requires: (1) a legal duty owed by defendant to plaintiff, (2) breach of that duty by defendant, (3) injury to plaintiff legally caused by defendant's breach, and (4) damages as a result of that injury.” *O'Keefe v. Orea*, 731 So.2d 680, 684 (Fla. Dist. Ct. App. 1998).

Therefore, the Mack claims against GMACM now made are all under different actions than the action decided on the merits against Trustee Deutsche Bank in Collier County, Florida.

iii. Identity of the persons and parties to the action and identity of the quality or capacity of the person for or against whom the claim is made.

Trustee Deutsche Bank obtained the Mack mortgage from Residential Funding Corporation. While we do not have the documents showing the transfer, Trustee Deutsche Bank must have obtained only that property and those rights which Residential Funding Corporation had to sell. The only evidence of the transfer produced to date was the Mack note showing the transfer from Residential Funding Corporation to Trustee Deutsche Bank. Since Residential Funding Corporation had established a contractual relationship with GMACM and since that relationship is specified in exhibits submitted to this court in support of Debtor's objection to the Macks' claim, where they chose to describe that relationship not as master/servant, but as seller/buyer and with GMACM being an independent contractor ("with respect to servicing by client under the servicer guide.") (RESCAP Ex. B-3, ¶9). GMACM contracted that it would not operate as the agent or partner of Residential Funding Corporation and hence was not the agent or partner of Trustee Deutsche Bank. Presumably this was so that Residential Funding Corporation could insulate itself from any misconduct or liability that GMACM might incur. All of this is specified in the contracts listed under Exhibit B-3 of GMACM's objection to the Macks' claim. The relationship of independent contractor and not as agent was long-standing, dating back at least to November 24, 1992, and continuing at least as recently as March 6, 2006. Since GMACM has refused to identify the date and the documents on which the transfer from Residential Funding Corporation to Trustee Deutsche Bank was effected, nor the conditions under which the transfer was made, we must rely upon the documents that they have chosen to submit, which contractually and specifically deny privity between GMACM, and Residential Funding Corporation, and Trustee Deutsche Bank. Therefore, there being no master-servant

relationship between GMACM and Trustee Deutsche Bank, GMACM's claim of res judicata and collateral estoppel must fail on lack of identity of parties. Further there is a distinct difference between the type of liability that Trustee Deutsche Bank incurred, which was vicarious liability, and that of GMACM which was due to its own specific intentional and malicious conduct in pretending to work with the Macks under the government-sponsored HAMP program to provide relief, but instead using that information to wrongfully target the Macks' loan for foreclosure when they found out the Macks' savings were dwindling and that although current on their mortgage, might soon become delinquent.

The nature of the relationship between GMACM and Trustee Deutsche Bank would more closely resemble that of joint tortfeasors than that of master/servant as claimed by GMACM in its Objection. Florida law applies since Collier County, Florida was the situs of the property mortgaged. Pursuant to Florida law:

“when a person suffers injury as the result of concurrent or consecutive acts of two or more persons, he has a claim against each of them...accordingly a judgment for or against one obligor does not result in merger or bar the claim that the injured party may have against another obligor.”

See *Mitchell v. Edge*, 598 So.2d 125 (Fla. Dist. Ct. App. 1992) where the court was discussing res judicata and collateral estoppel law relating to cases cited by GMACM in its objection (*Atlantic Cylinder Corp. v. Hetner*, 438 So.2d 922 (Fla. Dist. Ct. App. 1993)) wherein it stated:

“The result reached in those cases grows out of a concept that where there is a master-servant or principal-agent relationship and where the master or principal's liability derives solely from the acts of the servant or agent, a satisfied judgment for a plaintiff against one will bar an action by the same plaintiff against the other. Those cases also hold citing the ‘weight of authority,’ that a plaintiff is barred from relitigating his claim against the second of two persons responsible for the wrong to plaintiff where the plaintiff has recovered a collectible judgment against another responsible party. That rule and its application as stated in those cases is contrary to

the ‘more modern rule’ stated in Restatement (Second) of Judgments Secs. 29, 49, 50 (1982).” *Id.* at 127, 128.

The court went on to say:

“When the claimant thus brings consecutive actions against different persons liable for the same harm, the rendition of the judgment in the first action does not terminate the claims against other persons who may be liable for the loss in question.” *Id.* at 128.

See also, *Gerardi v. Carlisle*, 232 So.2d 36, 43 (Fla. Dist. Ct. App. 1969), which states:

“[i]t seems clear to us that the doctrines of res judicata and estoppel by judgment do not operate to bar a plaintiff who has recovered a judgment against one tort-feasor from relitigating all issues in a subsequent suit against a joint tort-feasor.”

The *Gerardi* case, which arose when the plaintiff, Gerardi, suffered personal injuries as a result of a collision with a vehicle that was owned by Bobby Polk and operated with his knowledge and consent by Elizabeth Carlisle. The plaintiff instigated the action against the owner of the vehicle, Polk, alleging vicarious liability. When the plaintiff received an inadequate judgment against owner Polk, she then sued the driver in a separate action, Elizabeth Carlisle. Carlisle interposed the defense of res judicata in that since Polk having been found vicariously liable for a relatively small amount, the plaintiff was barred by the doctrine of res judicata from suing the actual torfeasor/driver Carlisle. The court recognized that while the owner and driver may have been in privity with one another under the doctrine of respondeat superior, they were not *in pari delicto* and res judicata would not bar the second suit.

II. THE MACKS’ RESPA CLAIM IS NOT BARRED BY THE DOCTRINE OF RES JUDICATA, COLLATERAL ESTOPPEL, OR STATUTE OF LIMITATIONS.

The RESPA claim that the Macks would seek to press against GMACM in this case would stem from GMACM’s failure to respond to the October 26, 2009 letter of Cheryl Mack to

GMACM (MACK Ex. C) where she prayed for some relief or explanation as to why Trustee Deutsche Bank was suing her for foreclosure and damaging the title to her property and hampering her efforts to sell the property to get out from under a loan that she and her husband would soon be unable to make payments on. Not only was RESPA not adjudicated on the merits, it was also based on a different section of RESPA, 12 U.S.C. § 2605(a). In the counterclaim against Trustee Deutsche Bank the claim was made that Trustee Deutsche Bank failed to notify the Macks that they had acquired an interest in the Macks' loan and the Macks knowing themselves to be current with GMACM might have been in default with Trustee Deutsche Bank because all payments had been made to GMACM, not Trustee Deutsche Bank. This claim with the bankruptcy court now is made under a different section of RESPA 12 U.S.C. 2605(e), which is the requirement that a loan servicer (which GMACM has steadfastly maintained it was) must acknowledge a written response of a qualified written request (MACK Exhibit C) and to make the appropriate corrections in the account of the borrower, respond to the borrower, or provide a written explanation or clarification. Further, GMACM did not comply with the requirement that it protect the Macks' credit during that period. GMACM now claims that even if the RESPA claim were valid and not barred by res judicata, that it would be barred by the statute of limitations. The statute of limitations is found under 12. U.S.C. § 2614 and provides that a claim may be brought in a court of competent jurisdiction within 3 years from a violation of 12 U.S.C. § 2605. The Macks were not notified and had no knowledge of the bankruptcy until March of 2013. If GMACM filed its bankruptcy petition on May 14, 2012, pursuant to the statute of limitations governing their RESPA claim under 12 U.S.C. § 2605, they had until October 26, 2012 (plus 20 days) to file a claim. Since GMACM filed for bankruptcy in May of 2012, that tolled the statute of limitations against the Macks, which tolling continues to

the present since the bankruptcy continues to the present. Therefore, a claim under RESPA would not be barred by the passage of time.

CONCLUSION

Therefore, the Macks claim for personal injuries under the torts enumerated in its claim and its response to RESCAP's Objection are distinctly different from the elements of slander of title awarded to the Macks against Trustee Deutsche Bank in May 2011. The slander of title alleged, litigated and rendered against Trustee Deutsche Bank was different than the torts now alleged against GMACM. GMACM is a distinctly different entity from Trustee Deutsche Bank. Finally in that the nature of the damages sought (economic damages awarded from the slander of title action, but not personal injury, general damages or punitive damages) are different from the Macks' claim now against GMACM as an actual tortfeasor for general damages, including personal injury, pain and suffering, hospitalization, medical attention and care, permanent residual injury to Cheryl Mack for having been hospitalized due to acute anxiety and depression in 2009, and ultimately death caused at least in part by the renal failure she experienced in October 2009, GMACM cannot excuse its outrageous conduct in the prosecution of the Macks' foreclosure based upon the very technical defenses of collateral estoppel and res judicata. To do so would not only not be in accordance with Florida, but would also work an injustice upon the Macks who have not received any compensation for personal injury.

IV. RELIEF REQUESTED

WHEREFORE, Claimant, BARRY MACK, prays that the Objection be denied and such other relief as this court deems just and proper.

DATED this 29th day of April, 2014.

/s/ David F. Garber

David F. Garber, Esq.

Florida Bar No.: 0672386

DAVID F. GARBER, P.A.

700 Eleventh Street South, Suite 202

Naples, Florida 34102

239.774.1400 Telephone

239.774.6687 Facsimile

davidfgarberpa@gmail.com



Account Number 0601677259 BARRY FRITZ MACK

Comment Line 1

Comment Line 2

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/24/2006	CLS	09990	00000/B 000990000.00 P/B 000990000.00 11/01/06
10/25/2006	D19	00000	WELCOME LETTER ELIGIBLE
10/25/2006	ITR	00000	
10/26/2006	NT	01277	Loaded arm contract per product code
10/26/2006	NT	01277	daily script
11/2/2006	D28	00000	BILLING STATEMENT FROM REPORT R628
11/8/2006	DM	01583	ACTION/RESULT CD CHANGED FROM TO OASK
11/8/2006	NT	01583	Phone number update from Innovis skip file
11/17/2006	CBR	00000	PURCHASED<60 DAYS:SERVICE DT = 10/24/06
11/20/2006	CTA	00330	
11/20/2006	NT	00330	CURT PI 01/01/07 0.00 TO 5,878.11
11/20/2006	AP	00330	
12/4/2006	D28	00000	BILLING STATEMENT FROM REPORT R628
12/6/2006	CWA	00321	
12/6/2006	AP	00321	
12/8/2006	CBR	00000	PURCHASED<60 DAYS:SERVICE DT = 10/24/06
12/20/2006	CTA	00330	
12/20/2006	NT	00330	CURT PI 03/01/07 0.00 TO 5,878.10
12/20/2006	AP	00330	
12/29/2006	CTT	17761	
12/29/2006	PT	17761	
12/29/2006	CTT	17761	
12/29/2006	PT	17761	
12/29/2006	CTT	17761	
12/29/2006	ITR	17761	
12/29/2006	CTB	17761	
12/29/2006	RT	17761	
12/29/2006	CTB	17761	
12/29/2006	RT	17761	
12/29/2006	CTB	17761	
1/2/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
1/12/2007	CBR	00000	PURCHASED<60 DAYS:SERVICE DT = 10/24/06
2/2/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
2/2/2007	CTA	00330	
2/2/2007	NT	00330	CURT PI 04/01/07 0.00 TO 5,878.09

June 30, 2011



Deutsche 000916

Trans Added Date	Trans Type	Trans User ID	Transaction Message
2/2/2007	AP	00330	
2/9/2007	CBR	00000	PURCHASED LOAN: SERVICING DATE =10/24/06
2/24/2007	CTA	00330	
2/24/2007	NT	00330	CURT PI 05/01/07 0.00 TO 5,877.86
2/24/2007	CWA	00330	
2/24/2007	AP	00330	
2/27/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
3/2/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
4/3/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
4/30/2007	CTA	00330	
4/30/2007	NT	00330	CURT PI 06/01/07 0.00 TO 5,877.83
4/30/2007	AP	00330	
5/1/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
5/2/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
5/24/2007	CTA	00330	
5/24/2007	NT	00330	CURT PI 07/01/07 0.00 TO 5,877.70
5/24/2007	AP	00330	
5/25/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
6/4/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
7/5/2007	DM	00000	EARLY IND: SCORE 097 MODEL EI16C
7/7/2007	NT	00330	CURT PI 08/01/07 0.00 TO 5,877.57
7/7/2007	CWA	00330	
7/7/2007	AP	00330	
7/10/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
7/30/2007	CTA	00330	
7/30/2007		00000	
7/30/2007	NT	00330	CURT PI 09/01/07 0.00 TO 5,877.43
7/30/2007	AP	00330	
7/30/2007		00000	
7/31/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
8/2/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
8/31/2007	NT	00330	CURT PI 10/01/07 0.00 TO 5,877.30
8/31/2007	CWA	00330	
8/31/2007		00000	
8/31/2007	AP	00330	
8/31/2007		00000	
9/3/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
9/4/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
10/4/2007	CTA	00330	
10/4/2007		00000	
10/4/2007	NT	00330	CURT PI 11/01/07 0.00 TO 5,877.16
10/4/2007	AP	00330	
10/4/2007		00000	
10/5/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
10/29/2007	CTA	00330	
10/29/2007		00000	
10/29/2007	NT	00330	CURT PI 12/01/07 0.00 TO 5,877.03

June 30, 2011

Deutsche 000917

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/28/2007	AP	00330	
10/28/2007		00000	
10/30/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
11/2/2007	D28	00000	BILLING STATEMENT FROM REPORT R628
12/1/2007	CTA	00330	
12/1/2007		00000	
12/1/2007	NT	00330	CURT PI 01/01/08 0.00 TO 5,876.89
12/1/2007	AP	00330	
12/1/2007		00000	
12/4/2007	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
12/6/2007	DM	13992	B2 C/I WANTED TO KNOW IF CAN STRETCH OUT LOAN FOR
12/6/2007	DM	13992	LONGER TIME PERIOD OR LOWER THE INT.RT ADVSD CAN
12/6/2007	DM	13992	TT DIRECT LENDING; NO PMT DUE NOW, COLL DEPT
12/6/2007	DM	13992	OFFERS REPAY PLANS BUT THAT WOULD INCREASE PMTS
12/8/2007	DM	13992	ACTION/RESULT CD CHANGED FROM OAPC TO OAAI
12/14/2007	CBR	00000	CHANGE IN PRIMARY BORROWERS ADDR
12/29/2007	CTA	00330	
12/29/2007		00000	
12/29/2007	NT	00330	CURT PI 02/01/08 0.00 TO 5,876.76
12/29/2007	AP	00330	
12/29/2007		00000	
1/1/2008	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
1/2/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
1/15/2008	NT	22382	b1 cl inq if acct was arm; adv yes but
1/15/2008	NT	22382	10/o fled rate loan vedan 83090
2/1/2008	CTA	00330	
2/1/2008		00000	
2/1/2008	NT	00330	CURT PI 03/01/08 0.00 TO 5,876.62
2/1/2008	AP	00330	
2/1/2008		00000	
2/4/2008	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
2/29/2008	CTA	00330	
2/29/2008		00000	
2/29/2008	NT	00330	CURT PI 04/01/08 0.00 TO 5,876.48
2/29/2008	AP	00330	
2/29/2008		00000	
3/3/2008	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
3/4/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
3/31/2008	CTA	00330	
3/31/2008		00000	
3/31/2008	NT	00330	CURT PI 05/01/08 0.00 TO 5,876.34
3/31/2008	AP	00330	
3/31/2008		00000	
4/1/2008	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
4/2/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
5/6/2008	CTA	00330	
6/8/2008	DM	00000	EARLY IND: SCORE 097 MODEL EI16C

June 30, 2011

Deutsche 000918

Trans Added Date	Trans Type	Trans User ID	Transaction Message
5/6/2008		00000	
5/6/2008	NT	00330	CURT PI 06/01/08 0.00 TO 5,876.20
5/6/2008	AP	00330	
5/6/2008		00000	
5/7/2008	D28	00000	CURTILMENT BILLING STATEMENT FROM REPORT
5/23/2008	ITR	25101	
5/30/2008	CTA	00330	
5/30/2008		00000	
5/30/2008	NT	00330	CURT PI 07/01/08 0.00 TO 5,876.06
5/30/2008	AP	00330	
5/30/2008		00000	
6/2/2008	D28	00000	CURTILMENT BILLING STATEMENT FROM REPORT
6/3/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
7/7/2008	CTA	00330	
7/7/2008	DM	00000	EARLY IND: SCORE 097 MODEL EI16C
7/7/2008		00000	
7/7/2008	NT	00330	CURT PI 08/01/08 0.00 TO 5,875.91
7/7/2008	AP	00330	
7/7/2008		00000	
7/8/2008	D28	00000	CURTILMENT BILLING STATEMENT FROM REPORT
7/24/2008	CTA	00330	
7/24/2008		00000	
7/24/2008	NT	00330	CURT PI 09/01/08 0.00 TO 5,875.77
7/24/2008	AP	00330	
7/24/2008		00000	
7/25/2008	D28	00000	CURTILMENT BILLING STATEMENT FROM REPORT
8/4/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
8/28/2008	CTA	00301	
8/28/2008		00000	
8/28/2008	NT	00301	CURT PI 10/01/08 0.00 TO 5,875.63
8/28/2008	AP	00301	
8/28/2008		00000	
8/29/2008	D28	00000	CURTILMENT BILLING STATEMENT FROM REPORT
9/2/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
9/15/2008	CTA	00330	
9/15/2008		00000	
9/15/2008	NT	00330	CURT PI 11/01/08 5,875.61 TO 5,875.48
9/15/2008	NT	00330	CURT PI 11/01/08 0.00 TO 5,875.61
9/15/2008	CWA	00330	
9/15/2008		00000	
9/15/2008	AP	00330	
9/15/2008		00000	
9/16/2008	D28	00000	CURTILMENT BILLING STATEMENT FROM REPORT
10/2/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
11/1/2008	CTA	00330	
11/1/2008		00000	
11/1/2008	NT	00330	CURT PI 12/01/08 0.00 TO 5,875.34

June 30, 2011

Trans Added Date	Trans Type	Trans User ID	Transaction Message
11/1/2008	AP	00330	
11/1/2008		00000	
11/4/2008	D28	00000	CURTALMENT BILLING STATEMENT FROM REPORT
11/28/2008	CTA	00330	
11/28/2008		00000	
11/28/2008	NT	00330	CURT PI 01/01/09 0.00 TO 5,875.19
11/28/2008	AP	00330	
11/28/2008		00000	
12/1/2008	D28	00000	CURTALMENT BILLING STATEMENT FROM REPORT
12/2/2008	D28	00000	BILLING STATEMENT FROM REPORT R628
12/20/2008	CTA	00330	
12/20/2008		00000	
12/20/2008	NT	00330	CURT PI 02/01/09 0.00 TO 5,875.04
12/20/2008	AP	00330	
12/20/2008		00000	
12/23/2008	D28	00000	CURTALMENT BILLING STATEMENT FROM REPORT
1/2/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
1/29/2009	CTA	00330	
1/29/2009		00000	
1/29/2009	NT	00330	CURT PI 03/01/09 0.00 TO 5,874.80
1/29/2009	AP	00330	
1/29/2009		00000	
1/30/2009	D28	00000	CURTALMENT BILLING STATEMENT FROM REPORT
2/3/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
3/5/2009	DM	00000	EARLY IND: SCORE 097 MODEL EI16C
3/6/2009	NT	12948	b1 ci reg refi to lower the ln rate xfered
3/6/2009	NT	12948	DL/frances s8978097
3/9/2009	CTA	00330	
3/9/2009		00000	
3/9/2009	NT	00330	CURT PI 04/01/09 0.00 TO 5,874.75
3/9/2009	AP	00330	
3/9/2009		00000	
3/10/2009	D28	00000	CURTALMENT BILLING STATEMENT FROM REPORT
4/7/2009	DM	00000	EARLY IND: SCORE 097 MODEL EI16C
4/17/2009	CIT	31618	001 cil 155
4/17/2009	NT	31618	b2 seeking to lower pymts, no failed rpp's, b2
4/17/2009	DM	31618	TTB2 VAI ADV TAD, B2 AUTH A PBP FOR 5874.75 WITH A
4/17/2009	FEA	00606	
4/17/2009	DM	00000	PROMISE KEPT 04/17/09 PROMISE DT 04/18/09
4/17/2009	NT	31618	made april pymt.
4/17/2009	DM	31618	CONF # 2009041766570584, B2 SEEKING TO LOWER
4/17/2009		00000	
4/17/2009	DM	31618	PYMTS, SUBMITTED CIT 155, ADV ON PROCESS AND TIME
4/17/2009	FB	00606	
4/17/2009	DM	31618	FRAME, B2 UNDERSTOOD.
4/17/2009		00000	
4/17/2009	DM	31618	DFLT REASON 1 CHANGED TO: OTHER

June 30, 2011

Deutsche 000920

Trans Added Date	Trans Type	Trans User ID	Transaction Message
4/17/2009	AP	00606	
4/17/2009	DM	31618	ACTION/RESULT CD CHANGED FROM OAPC TO BRSS
4/17/2009	UI	00606	
4/17/2009		00000	
4/20/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
4/20/2009	NT	01253	CIT155-LM Package Sent
4/20/2009	NT	25101	Suppressed Credit due to (Loan Modification).
4/20/2009	NT	25101	Suppression will expire (05/27/09).
4/22/2009	DM	22684	TT B2, VI: ADV LOAN'S CURR. SD THAT SHE REQ FOR
4/22/2009	DM	22684	W/O PKG ON 04.17 ADV TAT.
4/22/2009	DM	22684	ACTION/RESULT CD CHANGED FROM BRSS TO OAAI
5/2/2009	ET	00330	10361-INT ONLY RATE LOAN CURT LTR
5/2/2009	CTA	00330	
5/2/2009		00000	
5/2/2009	NT	00330	CURT PI 06/01/09 0.00 TO 5,874.60
5/2/2009	AP	00330	
5/2/2009		00000	
5/5/2009	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
5/8/2009	CBR	00000	CR BUR RPT STATUS=N; EXPIRE DT = 05/27/09
5/15/2009	DM	26287	CONT. IN THE PROCESS.
5/15/2009	DM	26287	ACTION/RESULT CD CHANGED FROM OAAI TO OAAI
5/15/2009	DM	26287	B1 CI VI ADV ACCNT ON CURRENT STAT. B1 SD THA SHE
5/15/2009	DM	26287	WAS ADV. TO SEND ITR BUT THE FAX SHE GOT IS
5/15/2009	DM	26287	WRONG. GAVE FAX # BUT B1 ASKED FOR ADD TO SEND WO
5/15/2009	DM	26287	PACKAGE. ADV THAT UIT WOULD BE BETTER TO SEND IT.
5/15/2009	DM	26287	TYHRU FAX. B1 SD TAHT SHE WILL TRY TO SEND IT THRU
5/15/2009	DM	26287	FAX. ADV SEND THAT OUT ASAP FOR US TO BEGIN THE
5/15/2009	DM	26287	ACTION/RESULT CD CHANGED FROM OAPC TO OAAI
5/21/2009	NT	26733	see previous notes, lcl-gee1@2863
5/21/2009	CIT	26733	002 NEW CIT 835: Fax received income tax return,
5/21/2009	CIT	26733	missing: financial statement, hardship
5/21/2009	CIT	26733	affidavit, hardship letter, poi, form 4506-t,
5/21/2009	CIT	26733	Imaged as wout, lcl-gee1@2863
5/25/2009	CIT	26242	002 HMP Modification deleted: Proof of income is
5/25/2009	CIT	26242	not included in the workout package.
6/4/2009	CIT	01253	001 DONE 06/04/09 BY TLR 01253
6/4/2009	CIT	01253	TSK TYP 155-CC TRACK - LM F
6/4/2009	CIT	01253	001 Close CIT 155 Closure Letter Sent
6/5/2009	DM	00000	EARLY IND: SCORE 099 MODEL E116C
6/10/2009	AP	00303	
6/10/2009	UI	00303	
6/10/2009		00000	
6/11/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
7/1/2009	DM	31100	... ADV CC CL LC -CR TAD.
7/1/2009	CIT	31100	003 B2 old, advised will mail financial package.
7/1/2009	DM	31100	ACTION/RESULT CD CHANGED FROM BRSS TO OAAI
7/1/2009	CIT	31100	Information. Provided expectations.

June 30, 2011

Deutsche 000921

Trans Added Date	Trans Type	Trans User ID	Transaction Message
7/1/2009	DM	31100	B2 CI VFD, ASKED WHY GTHEY RCVD A CALL FROM US
7/1/2009	DM	31100	YESTERDAY, I CHECKED NOTES, ADV THAT LOANMOD
7/1/2009	DM	31100	REVIEWAL WAS NOT CONTINUED BY LM COZ COMPLETE PKG
7/1/2009	DM	31100	WAS NOT RCVD WITHIN THE TIME FRAME, ADV MISSING
7/1/2009	DM	31100	DOCS, ADV SHE CAN RE-REQUEST, SD HAS NO INTERNET,
7/1/2009	DM	31100	ADV I WILL MAIL PKG, ADV TERMS, ...
7/1/2009	DM	31100	ACTION/RESULT CD CHANGED FROM OAPC TO BRSS
7/2/2009	NT	01050	Open CIT155 - LM Package Sent
7/6/2009	DM	13018	TT B1 VAI ADV OF TAD,LC,CRD NO ALT# WL MKE PYMT
7/6/2009	FEA	00606	
7/6/2009	DM	00000	PROMISE KEPT 07/06/09 PROMISE DT 07/11/09
7/6/2009	DM	13018	VIA PBP 5874.60+12.50FEE 2009070671041689 MONIQUE
7/6/2009		00000	
7/6/2009	DM	13018	D.
7/6/2009	FB	00606	
7/6/2009	DM	13018	ACTION/RESULT CD CHANGED FROM OAAI TO OAAI
7/6/2009		00000	
7/6/2009	AP	00606	
7/6/2009		00000	
7/7/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
7/10/2009	CBR	00000	CR BUR RPT STATUS=N;EXPIRE DT = 09/09/09
7/13/2009	NT	20040	ATTNC: F/U attempt on Incomplete pkg by
7/13/2009	NT	20040	Titanium - 7/8/09
7/13/2009	NT	20040	Attempt - Abandoned/Hung up In queue.
7/16/2009	NT	26960	ATTNC: F/U attempt on Incomplete pkg by
7/16/2009	NT	26960	ATTCT: F/U attempt on Incomplete pkg by
7/16/2009	NT	26960	ATTCT: F/U attempt on Incomplete pkg by
7/16/2009	NT	26960	Titanium - 7/10/09
7/16/2009	NT	26960	Titanium - 7/10/09
7/16/2009	NT	26960	Titanium - 7/10/09
7/16/2009	NT	26960	Attempt - No Answer/No Contact
7/16/2009	NT	26960	Attempt - Third Party Contact
7/16/2009	NT	26960	Attempt - Right Party Contact
7/22/2009	CIT	20006	003 DONE 07/22/09 BY TLR 20006
7/22/2009	NT	20006	used calc
7/22/2009	CIT	20006	004 new cli 155/b1 struggling to mke pmts/std been
7/22/2009	OL	20006	WDOYLM - NEW FINANCIAL W/SHORT SALE REQ
7/22/2009	DM	20006	NB TTOB2/VAI/OCC ACCT CURRENT/WNTD TO KNW IF CL
7/22/2009	CIT	20006	TSK TYP 155-CC TRACK - LM F
7/22/2009	NT	20006	Loan Balance Limit: FAIL
7/22/2009	CIT	20006	using savgs/cnnf rel/hseis on market/income
7/22/2009	CIT	20006	005 sue mahelic-gulfbreeze realestate
7/22/2009	DM	20006	HAVEE A MOD/EVEN THOUGH HSEE IS ONE MARKET FOR
7/22/2009	NT	20006	Pre-Mod Front-End DTI: PASS
7/22/2009	CIT	20006	Is only 5100 a mnth
7/22/2009	CIT	20006	239-216-8444
7/22/2009	DM	20006	SALE AND THIER INCOME MONTHLY IS ONLY 5100/ADV MAY

June 30, 2011

Deutsche 000922

Trans. Added Date	Trans Type	Trans User ID	Transaction Message
7/22/2009	NT	20006	rfd:been using savgs to mke pmts
7/22/2009	CIT	20006	1.5million
7/22/2009	DM	20006	NT GET ONE SINCE HSE ON MARKET /BEEN ON MARKET FOR
7/22/2009	NT	20006	since 06-have hse on market
7/22/2009	DM	20006	2 YRS/REFUSING TO DO SPO/BEEN USING SVGS
7/22/2009	DM	20006	ACTION/RESULT CD CHANGED FROM OAAI TO BRUN
7/23/2009	NT	01050	Open CIT155 - LM Package Sent
7/23/2009	NT	25101	Suppressed Credit due to (Loan Modification).
7/23/2009	NT	31938	Contact Attempted with Agent- Message Left Imom
7/23/2009	LMT	31938	APPROVED FOR LMT 07/23/09
7/23/2009	CIT	31938	004 DONE 07/23/09 BY TLR 31938
7/23/2009	NT	25101	Suppression will expire (09/30/09).
7/23/2009	NT	31938	for sue mahello-gulfbreeze realestate
7/23/2009	FOR	31938	APPROVED FOR FCL 07/23/09
7/23/2009	CIT	31938	TSK TYP 155-CC TRACK - LM F
7/23/2009	NT	31938	238-216-6444, adv her that we will be ordering bpo
7/23/2009	NT	31938	and to call back with email so disclosures could
7/23/2009	NT	31938	be mailed. ctaylor/nds
7/23/2009	NT	31938	Im module opened by ctaylor for mcarillo/nds
7/24/2009	FOR	31578	FILE CLOSED (1000) COMPLETED 07/24/09
7/24/2009	CIT	31711	005 DONE 07/24/09 BY TLR 31711
7/24/2009	NT	31938	Order is successfully uploaded. Your Order ID is
7/24/2009	FOR	01122	07/24/09 - 11:28 - 00007
7/24/2009	MFR	00578	MERS NOTIFIED FRCLSR REINSTATED 07/24/09
7/24/2009	CIT	31711	TSK TYP 803-SHORT SALES REF
7/24/2009	NT	31938	149324 and Batch ID is 189203-ctaylor.nds
7/24/2009	FOR	01122	Process opened 7/24/2009 by user
7/24/2009	FOR	01122	Fidelity AutoProc.
7/24/2009	FOR	01122	07/24/09 - 14:28 - 50838
7/24/2009	FOR	01122	User has updated the system for the
7/24/2009	FOR	01122	following event: File Received By
7/24/2009	FOR	01122	Attorney, completed on 7/24/2009
7/24/2009	FOR	01122	(DIS)
7/24/2009	FOR	01122	07/24/09 - 14:28 - 50838
7/24/2009	FOR	01122	Process opened 7/24/2009 by user
7/24/2009	FOR	01122	KMCIS Caseaware.
7/24/2009	FOR	01122	07/24/09 - 13:52 - 00007
7/24/2009	FOR	01122	Foreclosure (NIE Id# 13367824) sent
7/24/2009	FOR	01122	to LAW OFFICES OF DAVID J. STERN,
7/24/2009	FOR	01122	P.A. at 7/24/2009 1:52:16 PM by
7/24/2009	FOR	01122	Automated Tasks
7/24/2009	FOR	01122	07/24/09 - 14:01 - 00007
7/24/2009	FOR	01122	User has updated the system for the
7/24/2009	FOR	01122	following event: File Referred To
7/24/2009	FOR	01122	Attorney, completed on 7/24/2009
7/27/2009	RP	20001	
7/27/2009	FOR	01122	07/24/09 - 15:36 - 32012

June 30, 2011

Deutsche 000923

Trans Added Date	Trans Type	Trans User ID	Transaction Message
7/27/2009	FSV	00000	INSP TYPE S ORDERED; REQ CD =1150
7/27/2009	UI	20001	
7/27/2009	FOR	01122	Uploaded Comment: TITLE SEARCH
7/27/2009		00000	
7/27/2009	FOR	01122	ORDERED (DIS)
7/27/2009	FOR	01122	07/24/09 - 00:00 - 32012
7/27/2009	FOR	01122	Uploaded Comment: FILE RECEIVED
7/27/2009	FOR	01122	07/24/2009 (DIS)
7/27/2009	FOR	01122	07/27/09 - 15:44 - 00007
7/27/2009	FOR	01122	Foreclosure (NIE Id# 13367924)
7/27/2009	FOR	01122	picked up by firm LAW OFFICES OF
7/27/2009	FOR	01122	DAVID J. STERN, P.A. at 7/27/2009
7/27/2009	FOR	01122	3:44:20 PM by Raphael Hewlitt
7/28/2009	NT	28866	EMV rcvd 7/27/09 @ \$1.2M. Listing price \$1.128M.
7/28/2009	LMT	02726	LMT BPO/APPRaisal REC ADDED
7/28/2009	FOR	01122	07/24/09 - 15:36 - 32012
7/28/2009	NT	28866	Assigned to JWelborn. - McCarrillo/nds
7/28/2009	FOR	01122	Uploaded Comment: TITLE SEARCH
7/28/2009	FOR	01122	ORDERED (DIS)
7/29/2009	NT	31709	Contact Made with Agent PHONED SUE- STTD THAT
7/29/2009	FOR	01122	07/29/09 - 14:40 - 46949
7/29/2009	FSV	00000	INSP TYPE S ORDERED; REQ CD =1150
7/29/2009	NT	31709	SELLER DOES NOT WANT TO SELL PROP SPO-
7/29/2009	FOR	01122	Intercom From: Olmos, Maribel - To:
7/29/2009	NT	31709	JWELBORN/NDs
7/29/2009	FOR	01122	Patullo, Brittany; / Subject: Issue
7/29/2009	FOR	01122	Request/
7/29/2009	FOR	01122	07/29/09 - 08:01 - 45949
7/29/2009	FOR	01122	of. Issue Comments: PLEASE ADVISE
7/29/2009	FOR	01122	AS TO WHAT NAME WE ARE TO FORECLOSE
7/29/2009	FOR	01122	IN ASAP. Status: Active
7/29/2009	FOR	01122	07/29/09 - 08:01 - 45949
7/29/2009	FOR	01122	System updated for the following
7/29/2009	FOR	01122	event: User has created a
7/29/2009	FOR	01122	Process-Level Issue for this
7/29/2009	FOR	01122	loan. Issue Type: Action in the Name
7/29/2009	FOR	01122	07/29/09 - 09:03 - 60575
7/29/2009	FOR	01122	s: Foreclose in Deutsche Bank Trust
7/29/2009	FOR	01122	Company Americas as Trustee for
7/29/2009	FOR	01122	RALI 2007QS3.
7/29/2009	FOR	01122	07/29/09 - 09:03 - 60575
7/29/2009	FOR	01122	System updated for the following
7/29/2009	FOR	01122	event: User has ended the Issue
7/29/2009	FOR	01122	associated with this loan. Issue
7/29/2009	FOR	01122	Type: Action in the Name of. Comment
7/29/2009	FOR	01122	07/24/09 - 00:00 - 32012
7/29/2009	FOR	01122	Uploaded Comment: TITLE SEARCH

June 30, 2011

Deutsche 000924

Trans Added Date	Trans Type	Trans User ID	Transaction Message
7/29/2009	FOR	01122	ORDERED (DIS)
7/29/2009	FOR	01122	07/29/09 - 00:00 - 32012
7/29/2009	FOR	01122	Uploaded Comment: 7/29 AWT PLNTF
7/29/2009	FOR	01122	INFO VIA NT (DIS)
7/29/2009	FOR	01122	07/28/09 - 19:19 - 75732
7/29/2009	FOR	01122	ed 7/24/09, Awaiting title
7/29/2009	FOR	01122	completion, will follow up on
7/29/2009	FOR	01122	8/6/09 Status: Active,
7/29/2009	FOR	01122	approval not required.
7/29/2009	FOR	01122	07/28/09 - 19:19 - 75732
7/29/2009	FOR	01122	System updated for the following
7/29/2009	FOR	01122	event: User has reprojected the
7/29/2009	FOR	01122	step Complaint Filed to 8/6/2009.
7/29/2009	FOR	01122	Reason: Other. Comments: File receiv
7/30/2009	FOR	01122	07/29/09 - 00:00 - 32012
7/30/2009	FOR	01122	Uploaded Comment: 7/29 PLNTF INFO
7/30/2009	FOR	01122	RCVD (DIS)
8/3/2009	FB	02726	
8/3/2009		00000	
8/4/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
8/5/2009	FOR	01122	08/04/09 - 20:59 - 75732
8/5/2009	FOR	01122	nfo rcvd 7/29/09, Awaiting title
8/5/2009	FOR	01122	completion, will follow up on
8/5/2009	FOR	01122	8/17/09 Status: Active,
8/5/2009	FOR	01122	approval not required.
8/5/2009	FOR	01122	08/04/09 - 20:59 - 75732
8/5/2009	FOR	01122	System updated for the following
8/5/2009	FOR	01122	event: User has reprojected the
8/5/2009	FOR	01122	step Complaint Filed to 8/17/2009.
8/5/2009	FOR	01122	Reason: Other. Comments: Plaintiff I
8/5/2009	FOR	01122	08/05/09 - 09:32 - 45964
8/5/2009	FOR	01122	The user has re-opened the process.
8/5/2009	FOR	01122	08/05/09 - 09:32 - 45964
8/5/2009	FOR	01122	User has updated the system for the
8/5/2009	FOR	01122	following event: Original Note Sent
8/5/2009	FOR	01122	To Attorney, completed on 8/5/2009
8/5/2009	FOR	01122	08/05/09 - 09:32 - 45964
8/5/2009	FOR	01122	Sent original note, original
8/5/2009	FOR	01122	recorded mortgage, and original
8/5/2009	FOR	01122	title to David Stern Fed Ex #
8/5/2009	FOR	01122	796834489207
8/5/2009	FOR	01122	08/05/09 - 09:32 - 45964
8/5/2009	FOR	01122	User has updated the system for the
8/5/2009	FOR	01122	following event: Original Mortgage
8/5/2009	FOR	01122	Sent To Attorney, completed on
8/5/2009	FOR	01122	8/5/2009
8/7/2009			

June 30, 2011

Deutsche 000925

Trans Added Date	Trans Type	Trans User ID	Transaction Message
8/7/2009	FB	19327	
8/7/2009		00000	
8/7/2009	NT	19327	CHECK DATED 07/28/09 FOR 5000.00
8/7/2009	NT	19327	RETURNED-NSF
8/7/2009	ET	19327	10010 NON-SUFFICIENT FUNDS -NSF 08/07
8/7/2009	PR1	19327	
8/7/2009	UI	19327	
8/7/2009		00000	
8/10/2009	D19	00000	CSH - NSF/REVERSAL LETTER (10010)
8/10/2009	FOR	01122	08/10/09 - 15:12 - 72779
8/10/2009	FOR	01122	User has updated the system for the
8/10/2009	FOR	01122	following event: Attorney Recd
8/10/2009	FOR	01122	Original Mortgage, completed on
8/10/2009	FOR	01122	8/10/2009
8/10/2009	FOR	01122	08/10/09 - 15:12 - 72779
8/10/2009	FOR	01122	to completed on 8/10/2009.
8/10/2009	FOR	01122	08/10/09 - 15:12 - 72779
8/10/2009	FOR	01122	User has updated the system for the
8/10/2009	FOR	01122	following event: Attorney Recd
8/10/2009	FOR	01122	Original Note. User changed date
8/10/2009	FOR	01122	completed from 8/10/2009 12:00:00 AM
8/10/2009	FOR	01122	08/10/09 - 15:12 - 72779
8/10/2009	FOR	01122	00 AM to completed on 8/10/2009.
8/10/2009	FOR	01122	08/10/09 - 15:12 - 72779
8/10/2009	FOR	01122	User has updated the system for the
8/10/2009	FOR	01122	following event: Attorney Recd
8/10/2009	FOR	01122	Original Mortgage. User changed
8/10/2009	FOR	01122	date completed from 8/10/2009 12:00:
8/10/2009	FOR	01122	08/10/09 - 15:12 - 72779
8/10/2009	FOR	01122	User has updated the system for the
8/10/2009	FOR	01122	following event: Attorney Recd
8/10/2009	FOR	01122	Original Note, completed on
8/10/2009	FOR	01122	8/10/2009
8/11/2009	NT	25041	VRU xfered to Debit Card. Valdate fxn on CSI
8/11/2009	DM	15732	ACTION/RESULT CD CHANGED FROM OAPC TO NOTE
8/11/2009	FOR	15732	LMT BORR FIN REC ADDED
8/11/2009	NT	15732	see previous notes, ict-gee1@2863
8/11/2009	FOR	01122	08/10/09 - 22:56 - 32012
8/11/2009	CIT	15732	006 New CIT 835: Fax rcvd - hardship letter.
8/11/2009	DM	15732	ICT-GLIE1@2863
8/11/2009	FOR	01122	User has updated the system for the
8/11/2009	CIT	15732	4506T, financial statement, hardship
8/11/2009	DM	15732	DFLT REASON 2 CHANGED TO: PAYMENT ADJUSTMENT
8/11/2009	FOR	01122	following event: Title Report
8/11/2009	CIT	15732	affidavit, bank statements, mortgage acct
8/11/2009	DM	15732	DFLT REASON 3 CHANGED TO: EXCESSIVE OBLIGATIONS
8/11/2009	FOR	01122	Received, completed on 8/10/2009

June 30, 2011

Deutsche 000926

Trans Added Date	Trans Type	Trans User ID	Transaction Message
8/11/2009	CIT	15732	statement, 2007&2008 tax return. Missing: POI
8/11/2009	FOR	01122	(DIS)
8/11/2009	CIT	15732	(b1&b2). Imaged as wout, lct-glee1@2863
8/11/2009	FOR	01122	08/10/09 - 00:00 - 32012
8/11/2009	FOR	01122	Uploaded Comment: 8/11/2009 CASE
8/11/2009	FOR	01122	SUMMARY COMPLETED (DIS)
8/11/2009	FOR	01122	08/10/09 - 00:00 - 32012
8/11/2009	FOR	01122	Uploaded Comment: 8/11/2009
8/11/2009	FOR	01122	COMPLAINT COMPLETED (DIS)
8/13/2009	FOR	01122	08/12/09 - 00:00 - 32012
8/13/2009	FOR	01122	Uploaded Comment: COMPLAINT PREPPED
8/13/2009	FOR	01122	AND PRINTED (DIS)
8/13/2009	FOR	01122	08/12/09 - 00:00 - 32012
8/13/2009	FOR	01122	Uploaded Comment: FILE TO ATTORNEY
8/13/2009	FOR	01122	FOR REVIEW 8/12/09 (DIS)
8/14/2009	DM	21306	B2 CI VAI, WNTD TO STUP PHNE PYMT TODAY FOR TAD
8/14/2009	CIT	02574	006 need disability awards letter, SSI awards
8/14/2009	FEA	00606	
8/14/2009	CBR	00000	CR BUR RPT STATUS=N;EXPIRE DT = 08/30/09
8/14/2009	DM	21306	STUP PHNE PYMT TODAY FOR TAD. BCROWDERX6772
8/14/2009	CIT	02574	letter, and most recent pension statment.
8/14/2009		00000	
8/14/2009	DM	21306	ACTION/RESULT CD CHANGED FROM NOTE TO LMDC
8/14/2009	CIT	02574	Please submit.
8/14/2009	FB	00606	
8/14/2009		00000	
8/14/2009	FWA	00606	
8/14/2009		00000	
8/14/2009	FWA	00606	
8/14/2009		00000	
8/14/2009	AP	00606	
8/14/2009	UI	00606	
8/14/2009		00000	
8/17/2009	FOR	01122	08/16/09 - 17:59 - 75732
8/17/2009	FOR	01122	repped and sent to attorney for
8/17/2009	FOR	01122	review .Status: Active,
8/17/2009	FOR	01122	approval not required.
8/17/2009	FOR	01122	08/16/09 - 17:59 - 75732
8/17/2009	FOR	01122	System updated for the following
8/17/2009	FOR	01122	event: User has reprojected the
8/17/2009	FOR	01122	step Complaint Filed to 8/25/2009.
8/17/2009	FOR	01122	Reason: Other, Comments: Complaint p
8/18/2009	FOR	01122	08/17/09 - 00:00 - 32012
8/18/2009	FOR	01122	Uploaded Comment: CORRECTION
8/18/2009	FOR	01122	COMPLETED 8/17/09 (DIS)
8/18/2009	FOR	01122	08/17/09 - 00:00 - 32012
8/18/2009	FOR	01122	Uploaded Comment: FILE TO ATTNY FOR

June 30, 2011

Deutsche 000927

Trans Added Date	Trans Type	Trans User ID	Transaction Message
8/18/2008	FOR	01122	SIGNATURE (DIS)
8/20/2008	FOR	01122	08/19/09 - 00:00 - 32012
8/20/2008	FOR	01122	Uploaded Comment: COMPLAINT SENT
8/20/2008	FOR	01122	FOR FILING 8/19/09 (DIS)
8/20/2009	FOR	01122	08/19/09 - 00:00 - 32012
8/20/2009	FOR	01122	Uploaded Comment: AWT RETURN (DIS)
8/24/2009	NT	25041	ENHANCED HISTORY LETTER PRINTED
8/24/2009	DM	31243	TT B2 VI ADV THAT RECV FC NOTICE, AND LTTR ADV TO
8/24/2009	FOR	01122	08/24/09 - 00:00 - 32012
8/24/2009	DM	31243	GET ATTNR. ADV NOT IN FC, BUT LPS SHOWS FC MOVING
8/24/2009	FOR	01122	Uploaded Comment: COMPLAINT FILED
8/24/2009	DM	31243	FORWARD, WILL EMAIL MOD REP TO SEE IF ACCURATE
8/24/2009	FOR	01122	8/20/09 (DIS)
8/24/2009	DM	31243	LATER B/C P&P DOWN, CANT ACCESS LOSS MIT MATRIX.
8/24/2009	FOR	01122	08/24/09 - 00:00 - 32012
8/24/2009	DM	31243	FORWARD TO SUP.
8/24/2009	FOR	01122	Uploaded Comment: AWAIT SERVICE
8/24/2009	DM	31243	ACTION/RESULT CD CHANGED FROM OAPC TO LMDC
8/24/2009	FOR	01122	(DIS)
8/24/2009	FOR	01122	08/24/09 - 05:54 - 75732
8/24/2009	FOR	01122	Process opened 8/24/2009 by user
8/24/2009	FOR	01122	Nette Diaz.
8/24/2009	FOR	01122	08/24/09 - 05:54 - 75732
8/24/2009	FOR	01122	User has updated the system for the
8/24/2009	FOR	01122	following event: Complaint Filed,
8/24/2009	FOR	01122	completed on 8/20/2009
8/25/2009	ET	00330	10361-INT ONLY RATE LOAN CURT LTR
8/25/2009	FOR	01122	08/25/09 - 00:00 - 32012
8/25/2009	CTA	00330	
8/25/2009	FOR	01122	Uploaded Comment: PER PROVEST WEB
8/25/2009	FOR	01122	LDS 8/22/09 - NO D&D (DIS)
8/25/2009		00000	
8/25/2009	FOR	01122	08/25/09 - 00:00 - 32012
8/25/2009	NT	00330	CURT PI 10/01/09 0.00 TO 5,874.45
8/25/2009	FOR	01122	Uploaded Comment: AWAIT FIGS/AOM
8/25/2009	AP	00330	
8/25/2009	FOR	01122	PREP'D/DOCS IN HOUSE (DIS)
8/25/2009		00000	
8/25/2009	FOR	01122	08/25/09 - 03:34 - 83055
8/25/2009	FOR	01122	User has updated the system for the
8/25/2009	FOR	01122	following event: Service Complete,
8/25/2009	FOR	01122	completed on 8/22/2009
8/26/2009	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
8/26/2009	DM	02624	TTB2,VAL. ADV NEXT PMT AMOUNT AND DTE... B2 WAS
8/26/2009	NT	13970	b2 ci to say they have rcvd word they are being
8/26/2009	DM	11555	TT B2-VI AND ADV OF DD-B2 SAID GETTING FORE NOTICE
8/26/2009	DM	10363	B1 CALLED TO CHK WHY SHE IS RECV FCL NOTICES ADVSD

June 30, 2011

Deutsche 000928

Trans Added Date	Trans Type	Trans User ID	Transaction Message
8/26/2009	NT	12700	B1 old re: Ltr fxd: Cheryl Mack
8/26/2009	NT	12700	B2 was transfered back from loss mlt to Cc adv.
8/26/2009	DM	02624	CLLNG B/C THERE ARE SOME LTTR OF FC FROM DEUTSCHE
8/26/2009	NT	13970	forclosed on; trns to lmt, judyf/4064
8/26/2009	DM	11555	IN ML-VER FORE OPEN IN NEWTRACK- MOD PENDING SO
8/26/2009	DM	10363	MS THT SHE COULD DISREGARD IT AND WILL TRANSF THE
8/26/2009	NT	12700	Fax number: 2395983823
8/26/2009	NT	12700	they could not be of assilstance. She wanted a
8/26/2009	DM	02624	BANK WHICH ITS SHWS THT DEUTSCHE BNK ITS PYNG
8/26/2009	DM	11555	TRANS TO DALLAS MOD.MSASALA6391
8/26/2009	DM	10363	CALL TO CS SHE COULD CHK WITH THEM FOR A PROOF THT
8/26/2009	NT	12700	Letter: 2:31
8/26/2009	NT	12700	letter, stating that the loan was current faxed
8/26/2009	DM	02624	US... ADV B1 THT ACCT ITS CRRNT.. ADV FOR MOD..
8/26/2009	DM	11555	ACTION/RESULT CD CHANGED FROM BRUN TO LMDC
8/26/2009	DM	10363	SHE IS CURRENT WITH HER MTG/PRADEEP
8/26/2009	NT	12700	Copy not mailed to customer.
8/26/2009	NT	12700	out a letter for account is current and principal
8/26/2009	DM	02624	ADV MISSING INFO.. XFER TO C/S...
8/26/2009	DM	10363	ACTION/RESULT CD CHANGED FROM LMDC TO LMDC
8/26/2009	OL	12700	WDOYCUS - PRINCIPAL BALANCE
8/26/2009	NT	12700	bal on the loan letter Patm/2364079
8/26/2009	DM	02624	ACTION/RESULT CD CHANGED FROM LMDC TO BRUN
8/26/2009	NT	12700	B1 old re: Ltr fxd: Cheryl Mack
8/26/2009	NT	12700	Fax number: 2395983823
8/26/2009	NT	12700	Letter: 2:35
8/26/2009	NT	12700	Copy not mailed to customer.
8/26/2009	OL	12700	WDOYCUS - CONFIRM ACCOUNT CURRENT
8/27/2009	NT	25101	WDOYLM - 10 Day Doc - requesting proof of income -
8/27/2009	NT	25101	5.68 TXT
9/2/2009	D2B	00000	BILLING STATEMENT FROM REPORT R028
9/2/2009	FOR	01122	09/02/09 - 09:55 - 39235
9/2/2009	FOR	01122	Process opened 9/2/2009 by user
9/2/2009	FOR	01122	Marina Serrano.
9/2/2009	FOR	01122	09/02/09 - 09:55 - 39235
9/2/2009	FOR	01122	User has updated the system for the
9/2/2009	FOR	01122	following event: Attorney Notified
9/2/2009	FOR	01122	to Close and Bill, completed on
9/2/2009	FOR	01122	9/2/2009
9/2/2009	FOR	01122	09/02/09 - 11:20 - 33319
9/2/2009	FOR	01122	User has updated the system for the
9/2/2009	FOR	01122	following event: Attorney Confirmed
9/2/2009	FOR	01122	File Closed, completed on 9/2/2009
9/3/2009	FOR	01122	09/03/09 - 00:00 - 32012
9/3/2009	FB	32551	
9/3/2009	FOR	01122	Uploaded Comment: AWT DOCS FROM DOC
9/3/2009	FB	32551	

June 30, 2011

Deutsche 000929

Trans Added Date	Trans Type	Trans User ID	Transaction Message
9/3/2009	FOR	01122	TEAM -- NO ADDL BILLING (DIS)
9/3/2009	FB	32551	
9/3/2009	FOR	01122	09/03/09 - 00:00 - 32012
9/3/2009	FB	32551	
9/3/2009	FOR	01122	Uploaded Comment: FILE CLOSED PER
9/3/2009	FB	32551	
9/3/2009	FOR	01122	CLIENT-- 9/2/2009 -- REINSTATED
9/3/2009	FB	32551	
9/3/2009	FOR	01122	(DIS)
9/5/2009	NT	30509	See previous notes, <u>ict-qlap1@2863</u>
9/5/2009	CIT	30509	.007 New CIT 835: Fax rcvd-b1/b2-SS benefit
9/5/2009	CIT	30509	statement and b1-retirement benefit, imaged as
9/5/2009	CIT	30509	wout, <u>ict-qlap1@2863</u>
9/8/2009	CIT	20311	007 did not send b1's 2009 ssl awards letter, only
9/8/2009	CIT	20311	the 2008 one. must send most recent year's
9/8/2009	CIT	20311	benefits awards letter.
9/11/2009	CBR	00000	CR BUR RPT STATUS=N; EXPIRE DT = 09/30/09
9/14/2009	FSV	04895	INSP TP S RESULTS RCVD; ORD DT=07/29/09
9/14/2009	FSV	00000	INSP TYPE S CANCELLED; REQ CD =1150
9/15/2009	FOR	01122	09/15/09 - 00:00 - 32012
9/15/2009	FOR	01122	Uploaded Comment: FILE CLOSED PER
9/15/2009	FOR	01122	CLIENT-- 9/2/2009 -- REINSTATED
9/15/2009	FOR	01122	(DIS)
9/15/2009	FOR	01122	09/15/09 - 00:00 - 32012
9/15/2009	FOR	01122	Uploaded Comment: AWT DOCS FROM
9/15/2009	FOR	01122	DOCTEAM - FILE TO DISMISSALS (DIS)
9/23/2009	FOR	01122	09/22/09 - 00:00 - 32012
9/23/2009	FOR	01122	Uploaded Comment: FILE CLOSED PER
9/23/2009	FOR	01122	CLIENT-- 9/2/2009 -- REINSTATED
9/23/2009	FOR	01122	(DIS)
9/23/2009	FOR	01122	09/22/09 - 00:00 - 32012
9/23/2009	FOR	01122	Uploaded Comment: ORIG NT MTG TP
9/23/2009	FOR	01122	RTND - FILE TO DISMISSALS (DIS)
9/28/2009	ET	00330	10361-INT ONLY RATE LOAN CURT LTR
9/28/2009	ARC	00000	AUTO RESET NSF COUNTER = 0
9/28/2009	CTA	00330	
9/28/2009		00000	
9/28/2009	NT	00330	CURT PI 11/01/09 0.00 TO 5,874.29
9/28/2009	AP	00330	
9/28/2009		00000	
9/29/2009	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
9/29/2009	NT	25101	WDOYLM - 10 Day Doc - requesting proof of income -
9/29/2009	NT	25101	5.68 TXT
10/2/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
10/5/2009	NT	22378	b2 ci re the \$3629 charge in the mas; adv expense
10/5/2009	DM	31991	RECEIVED CALL FRM CHERYAL WHILE VERIFYING THE SSN
10/5/2009	NT	17774	b2 ci inq about exp adv fee transferred to loss

June 30, 2011

Deutsche 000930

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/5/2009	DM	31123	TT B2...CALLED IN TO CHK WHAT AMT IS 3629.00 ON
10/5/2009	NT	22378	advances re the details; adv xfer to loss mlt
10/6/2009	DM	31991	CALL DROP..EVE/TULSI
10/5/2009	NT	17774	mlt.marc j 8978105
10/5/2009	DM	31123	THE A/C..ADV BRRWR THAT ITS THE EXPENSE ADVANCE
10/5/2009	NT	22378	franchezca m. 8978184
10/5/2009	DM	31991	ACTION/RESULT CD CHANGED FROM OAPC TO LMDC
10/5/2009	DM	31123	AND WHILE CHKING THE DETAIL INFO OF THE SAME THE
10/5/2009	DM	31123	CAL GOT DISCONNECTED...MARY
10/5/2009	DM	31123	ACTION/RESULT CD CHANGED FROM LMDC TO LMDC
10/6/2009	NT	13708	B2 called to check status of loan mod-xfr to
10/6/2009	DM	31123	TT B2..CALLED IN TO CHK THE AMT ON HER A/C FOR
10/6/2009	NT	13708	lmt-pennlg/4218
10/6/2009	DM	31123	3629.00..ADV THAT IS THE EXP ADV AND ADV THT IS FC
10/6/2009	DM	31123	ADVANCE ON COMPANY-OWNED LOAN...BRRWR WANTED TO
10/6/2009	DM	31123	KNE ABT THE LOAN MOD..ADV WE STILL NEED THE PROOF
10/6/2009	DM	31123	OF INCOME..GAVE THE FAX#...MARY
10/6/2009	DM	31123	ACTION/RESULT CD CHANGED FROM LMDC TO LMDC
10/8/2009	DM	11016	TT B1, VAL, ADV OF TAD, OFFER PBP, DECLINE TRANSFER
10/8/2009	DM	11016	TO LOSS MIT ABOUT LOAN MOD PAPERS
10/8/2009	DM	11016	ACTION/RESULT CD CHANGED FROM LMDC TO BRTR
10/15/2009	NT	13682	See previous notes, icl-gee1@2863
10/15/2009	CIT	13682	008 New CIT 601: Fax received Social Security
10/15/2009	CIT	13682	Benefits(b1 and b2), Imaged as wout,
10/15/2009	CIT	13682	icl-gee1@2863
10/16/2009	CIT	17797	009 new cit 602-social security benefits,
10/16/2009	CIT	17797	transferring to loan mod teams: jernstx2985
10/16/2009	CIT	17797	008 DONE 10/16/09 BY TLR 17797
10/16/2009	CIT	17797	TSK TYP 601-LIQUIDATION ADD
10/19/2009	CIT	30872	010 New CIT 835
10/19/2009	CIT	30872	Mod Referral
10/19/2009	CIT	30872	009 DONE 10/19/09 BY TLR 30872
10/19/2009	CIT	30872	TSK TYP 602-CASH FLOW ADDIT
10/20/2009	LMT	20136	FILE CLOSED (7) COMPLETED 10/20/09
10/20/2009	HMP	20136	FINANCIAL INFORMATION COLLECTED FOR HMP
10/20/2009	CIT	20136	011 new cit 318
10/20/2009	CIT	02175	011 cit 316-per the county web site taxes are pd
10/20/2009	LMT	20136	0000000000 TASK:0000-LMT-REJECTED OPTION 10/20/09
10/20/2009	HMP	20136	LMT BORR FIN REC ADDED
10/20/2009	CIT	20136	special servicing HMP mod setup all required
10/20/2009	CIT	02175	current/began escrow/FL loan/dv
10/20/2009	LMT	20136	REJECTED BY:SERVICER
10/20/2009	LMT	20136	BPO ORDERED (4) COMPLETED 10/20/09
10/20/2009	CIT	20136	escrow lines assume receipt of 2 payment to
10/20/2009	LMT	20136	REJECT REASON: OTHER
10/20/2009	LMT	20136	LMT SOLUTN PURSUED (6) COMPLETED 10/20/09
10/20/2009	CIT	20136	roll during trial period; effective date perm

June 30, 2011

Deutsche 000931

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/20/2009	LMT	20136	REVIEWING FOR MOD
10/20/2009	LMT	20136	PURSUE LN:MODIFCATN (1000) COMPLETED 10/20/09
10/20/2009	CIT	20136	mod = 03/01/10
10/20/2009	NT	20136	HMP POI Calculator: Total Calculated Gross Income
10/20/2009	LMT	20136	REFERRD TO LOSS MIT (1) COMPLETED 10/20/09
10/20/2009	CIT	20136	b layton 6909
10/20/2009	NT	20136	of \$6232.39 using amounts obtained from individual
10/20/2009	LMT	20136	APPROVED FOR LMT 10/20/09
10/20/2009	DM	20136	MOD RFD
10/20/2009	NT	20136	payscale.Borrower 1's Monthly Gross Is \$1480.40
10/20/2009	DM	20136	DFLT REASON 1 CHANGED TO: EXCESSIVE OBLIGATIONS
10/20/2009	NT	20136	using an average gross of \$1480.40, Paid
10/20/2009	DM	20136	ACTION/RESULT CD CHANGED FROM BRTR TO OAAI
10/20/2009	NT	20136	Monthly.Borrower 2's Monthly Gross Is \$1509.20
10/20/2009	NT	20136	using an average gross of \$1509.20, Paid
10/20/2009	NT	20136	Monthly.Additional Income from other employment
10/20/2009	NT	20136	totals \$3242.79 and \$0.00:Other Verified Income
10/20/2009	NT	20136	Includes Social Security of \$0.00, Disability of
10/20/2009	NT	20136	\$0.00, Pension of \$0.00, Child Support/Alimony of
10/20/2009	NT	20136	\$0.00, and Self Employment Inc of \$0.00.
10/20/2009	CIT	20136	010 DONE 10/20/09 BY TLR 20136
10/20/2009	CIT	20136	TSK TYP 835-PRE-LOSS-MIT MO
10/21/2009	M20	14165	
10/21/2009	CIT	14165	011 Retarget 316-Balboa- loan changed from non
10/21/2009	VEA	13413	ONLINE ESCROW ANALYSIS SENT TO PRINT VENDO
10/21/2009	CIT	13413	011 retarget cit 316 to teller 20136
10/21/2009	CIT	14165	escrow to escrow, issued payment. Thank you.
10/21/2009	CIT	13413	perm mod efft date 3/10
10/21/2009	CIT	14165	JJH X3604
10/21/2009	CIT	13413	cap amt: 29826.86
10/21/2009	CIT	13413	shg amt: 15907.37
10/21/2009	CIT	13413	esc pmt (1/12th): 3181.47
10/21/2009	CIT	13413	1/60th amt of shg: 265.12
10/22/2009	CIT	20136	011 DONE 10/22/09 BY TLR 20136
10/22/2009	LMT	20136	BPO OBTAINED (5) COMPLETED 10/22/09
10/22/2009	NT	20136	avm low confidence ordered ebpo; Order ID is
10/22/2009	CIT	20136	TSK TYP 316-TRIAL HMP NON-E
10/22/2009	CIT	20136	012 new cit 710
10/22/2009	NT	20136	190897 and Batch ID is 213485
10/23/2009	FSV	00000	INSP TYPE R ORDERED; REQ CD =1150
10/26/2009	FSV	04895	INSP TP R RESULTS RCVD; ORD DT=10/23/09
10/29/2009	ET	00330	10361-INT ONLY RATE LOAN CURT LTR
10/29/2009	ARC	00000	AUTO RESET NSF COUNTER = 0
10/29/2009	CTA	00330	
10/29/2009		00000	
10/29/2009	NT	00330	CURT PI 12/01/09 0.00 TO 5,874.14
10/29/2009	AP	00330	

June 30, 2011

Deutsche 000932

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/29/2009		00000	
10/30/2009	D28	00000	CURTAILMENT BILLING STATEMENT FROM REPORT
10/30/2009	DM	14248	TT B2. VAI ADV TAD. INQR STATS OF MOD. CLL TRF TO
10/30/2009	DM	26779	TT B1 CALLED TO CHECK THE STATUS OF A/C WAS NOT
10/30/2009	DM	15951	B2 CALLED IN REGARDING THE LOAN MOD,ADV THE ACCT
10/30/2009	DM	14248	LM.
10/30/2009	DM	26779	ABLE TO HEAR HER WHILE DOING VERIFICATION BRW WAS
10/30/2009	DM	15951	IS UNDER REVIEW ,ADV TO WAIT,EXPLAINED THE PROCESS
10/30/2009	DM	14248	ACTION/RESULT CD CHANGED FROM OAPC TO BRUN
10/30/2009	DM	26779	NOT ABLE TO UNDERSTAND ME XFRD BACK TO
10/30/2009	DM	15951	OF MOD...SHR.ACKRARATNAM
10/30/2009	DM	26779	Q..NATHAN(SHAIK)
10/30/2009	DM	15951	ACTION/RESULT CD CHANGED FROM LMDC TO LMDC
10/30/2009	DM	26779	ACTION/RESULT CD CHANGED FROM BRUN TO LMDC
11/2/2009	LMT	30902	LMT BPO/APPRaisal REC ADDED
11/2/2009	NT	20246	b2 cl and Inq why acct is escrowed sts they are
11/2/2009	NT	20246	paying their taxes and Ins adv that they applied
11/2/2009	NT	20246	for mod and non escrowed acct will be converted to
11/2/2009	NT	20246	escrow acct sts that Instead of lowering pmt it
11/2/2009	NT	20246	Increased Insisted to be xferred to loss mit
11/2/2009	NT	20246	xferred call rhodora p 8978281
11/3/2009	D28	00000	BILLING STATEMENT FROM REPORT R628
11/3/2009	CIT	13304	012 DONE 11/03/09 BY TLR 13304
11/3/2009	DM	14420	B1 VAI ADV ACCT IS CURRENT, ACCT IS HANDELED IN
11/3/2009	DM	13273	VAI TT B1 ADV LOAN CURRENT NEXT DUE 12/1, B1 RECVD
11/3/2009	CIT	13304	013 New CIT 711: Non-HMP Modification Review
11/3/2009	CIT	13304	TSK TYP 710-MOD REVIEW IN P
11/3/2009	DM	14420	OTHER DPT, XFER TO LOSS MIT.
11/3/2009	DM	13273	THE ESCROW ANALYSIS ADV 36K TO PAY, ADV B1 THAT
11/3/2009	CIT	13304	012 Closing CIT 710: HMP Modification denied as
11/3/2009	DM	14420	ACTION/RESULT CD CHANGED FROM LMDC TO BRTR
11/3/2009	DM	13273	THE AMOUNT OF INS AND TAXES PAID WILL BE SPREAD
11/3/2009	CIT	13304	loan does not meet pre-qualification criteria.
11/3/2009	DM	13273	ACCROSS THE LOAN AND PYMNT AT THIS TIME IS NOT
11/3/2009	GIT	13304	Loan will be reviewed for Non-HMP
11/3/2009	DM	13273	DETERMINED, ADV 36K IS NOT DUE IN FULL. MOD STILL
11/3/2009	CIT	13304	Modification.
11/3/2009	DM	13273	PENDING AT THIS TIME. THUNTER 2802
11/3/2009	DM	13273	ACTION/RESULT CD CHANGED FROM BRTR TO BRUN
11/4/2009	FB	02726	
11/4/2009	NT	13304	HMP Modification denied,Mortgage is ineligible
11/4/2009	CIT	28831	013 DONE 11/04/09 BY TLR 28831
11/4/2009	CIT	28831	014 New CIT 712: Modification denied. Based upon
11/4/2009	OL	28831	WDOYLM - DENIAL LETTER
11/4/2009	LMT	28831	FILE CLOSED (7) COMPLETED 11/04/09
11/4/2009		00000	
11/4/2009	NT	13304	forHMP

June 30, 2011

Deutsche 000933

Trans Added Date	Trans Type	Trans User ID	Transaction Message
11/4/2009	CIT	28831	TSK TYP 711-NON HMP MOD REV
11/4/2009	CIT	28831	Income of \$6232 and value of \$1150000, we are
11/4/2009	LMT	28831	LOSS MIT DENIED OTHER
11/4/2009	CIT	28831	013 Closing CIT 711: Modification Denied.
11/4/2009	CIT	28831	unable to reach an affordable PITIA (Incl.
11/4/2009	CIT	28831	PMI) of \$1932.04 even when reducing interest
11/4/2009	CIT	28831	rate to 3.625% and reducing UPB to 70% LTV.
11/4/2009	CIT	28831	Please counsel to sell
11/6/2009	DM	20305	OUTBOUND CALL, I CALLED B1 AND MOD WAS DENIED
11/6/2009	NT	11636	B2 CI SAID SHE WAS PREV DENIED FOR MOD WNTD TO
11/6/2009	DM	11029	TT B1, VAI/ XFERD TO CUS CARE.
11/6/2009	NT	31747	b1 ci req to removed esc adv need to bring back
11/6/2009	DMD	22222	00/00/00 00:00:00
11/6/2009	DM	20305	HE WILL NEED TO INCREASE INCOME OR SELL PROP.
11/6/2009	NT	11636	KNOW WHT ELSE SHE COULD DO THT MAY HELP ADV IF
11/6/2009	DM	11029	ACTION/RESULT CD CHANGED FROM LMDC TO BRTR
11/6/2009	NT	31747	esc to 0 bal or positive joey v8978086
11/6/2009	DMD	22222	00/00/00 00:00:00
11/6/2009	DM	20305	I SUGGESTED HIM TO GET A REALTOR. HIS ESCROW IS
11/6/2009	NT	11636	NOTHING HAS CHNGED AND SHE DIDNT WNTD TO DO A REFI
11/6/2009	DMD	22222	11/06/09 10:22:35 SUCCESSFUL
11/6/2009	DM	20305	VERY HIGH, HE IS GOING TO CONTACT CUST. SERV TO
11/6/2009	NT	11636	I CLD XFER TO COL TO SEE IF THERE WAS ANY OPTS
11/6/2009	DM	20305	TRY TO SPREAD OUT FOR 5 YEARS. ADVSD HIM OF NEW
11/6/2009	NT	11636	AVAILABLE FOR HER; SHE ALSO MENTIONED THT SHE WAS
11/6/2009	DM	20305	PMT AMT.
11/6/2009	NT	11636	NVR ESC BEFORE WNTD TO REMOVE; ADV HER THT IN
11/6/2009	DM	20305	ACTION/RESULT CD CHANGED FROM BRUN TO LMDC
11/6/2009	NT	11636	ORDER TO REMOVE SHE WILL NEED TO BRING DOWN ESC
11/6/2009	NT	11636	ACCT TO A 0 BALANCE. SHE SAID THERES NO WAY
11/6/2009	NT	11636	SHE CAN MKE THT XFERRED TO COL. KYAP/4207
11/9/2009	NT	00024	b2 ci asking if the account is current. adv
11/9/2009	NT	00024	account is current. b12 asked for 3712.00 fees on
11/9/2009	NT	00024	the account adv expencse advances and corporate
11/9/2009	NT	00024	adv corporate adv for bpo for loan mod. b2 asked
11/9/2009	NT	00024	why there is an escrow on the account adv ins and
11/9/2009	NT	00024	tax was paying by gmac. b2 adv that she was the
11/9/2009	NT	00024	one paying ins and asking for refund. adv xfr call
11/9/2009	NT	00024	to ins for more info. b2 don want to. karent
11/9/2009	NT	00024	8978515
11/11/2009	DMD	22222	00/00/00 00:00:00
11/11/2009	DMD	22222	00/00/00 00:00:00
11/11/2009	DMD	22222	11/11/09 09:43:42 ANS MACH
11/12/2009	NT	12031	b1 will call back to set up a s/s. RNarramore2616
11/12/2009	E90	32687	
11/12/2009	DM	12031	TT B1. ADV OF MOD DENIAL AND REVIEWED FOR S/S. B1
11/12/2009	DMD	22222	00/00/00 00:00:00

June 30, 2011

Deutsche 000934

Trans Added Date	Trans Type	Trans User ID	Transaction Message
11/12/2009	DM	12031	STATED THAT HIS REALTOR SUGGESTED DOING A S/S BUT
11/12/2009	DMD	22222	00/00/00 00:00:00
11/12/2009	DM	12031	B1 WANTED TO KNOW WHY HIS PAYMENT WENT TO 12,000 A
11/12/2009	DMD	22222	11/12/09 09:38:57 SUCCESSFUL
11/12/2009	DM	12031	MONTH. I ADVISED HIM TO CALL COLLECTIONS AND CALL
11/12/2009	DM	12031	ME BACK IF HE DECIDES TO DO A S/S. RNARRAMORE2616
11/12/2009	DM	12031	ACTION/RESULT CD CHANGED FROM BRTR TO LMDC
11/18/2009	E21	32022	
11/27/2009	CIT	17085	014 DONE 11/27/09 BY TLR 17085
11/27/2009	CIT	17085	TSK TYP 712-DENIED MODIFICA
11/27/2009	CIT	17085	014 Counsel to sell; worked 20+ days, no contact
12/1/2009	SRA	00330	
12/1/2009	UFU	00330	
12/1/2009		00000	
12/4/2009	DM	12652	TTB1.VAI, ADV TAD B1 HAS PYMT IN 1U BUT HAS BEEN
12/4/2009	CIT	23022	015 new clt 130..3p Monna/balboa/9583 xref b1 re
12/4/2009	DMD	22222	00/00/00 00:00:00
12/4/2009	DM	12652	ADDED ESCROW ACCT. XFERED TO ESCRO DEP.
12/4/2009	CIT	23022	for the esc acct, dont want to be esc since he
12/4/2009	DMD	22222	00/00/00 00:00:00
12/4/2009	DM	12652	ACTION/RESULT CD CHANGED FROM LMDC TO BRTR
12/4/2009	CIT	23022	was denied to the loan mod, have the esc neg
12/4/2009	DMD	22222	12/04/09 11:29:54 MSG TO VOICE
12/4/2009	CIT	23022	bal spread into 12 months as per b1's req//
12/4/2009	CIT	23022	Thanks// Liza/n.8978233
12/7/2009	DM	00000	EARLY IND: SCORE 089 MODEL EI16C
12/15/2009	CIT	01390	015 re:target 130 to 350-mod denied. cij
12/15/2009	CIT	22062	017 New CIT 302 - Wavled T&I. Please cancel
12/15/2009	CIT	22062	015 DONE 12/15/09 BY TLR 22062
12/15/2009	CIT	22062	pending pmt change and set up repay for
12/15/2009	CIT	22062	TSK TYP 130-MANUAL ESCROW A
12/15/2009	CIT	22062	advance.
12/15/2009	CIT	22062	016 Clsd CIT 350 - Non-qualification for HMP.
12/15/2009	CIT	22062	016 New CIT 513 - Please update all ins lines to
12/15/2009	CIT	22062	T&I waiver completed.
12/15/2009	CIT	22062	non-esc.
12/15/2009	OL	22062	WDOYMOD WAIVE ESC-NEGATIVE BAL
12/17/2009	CIT	14131	016 DONE 12/17/09 BY TLR 14131
12/17/2009	CIT	13405	017 DONE 12/17/09 BY TLR 13405
12/17/2009	SLC	00000	
12/17/2009	CIT	14131	TSK TYP 513-HAZ - UPDATE ES
12/17/2009	CIT	13405	TSK TYP 302-LN MOD ESC ADVA
12/17/2009	CIT	14131	016 Closing CIT 513 - Balboa - changed haz and
12/17/2009	CIT	13405	017 closing cit 302 - analyze eff 12/09 8048.99
12/17/2009	CIT	14131	flood ins to non esc. Thank you Kaleena x1389.
12/17/2009	VEA	13405	ONLINE ESCROW ANALYSIS SENT TO PRINT VENDO
12/21/2009	D28	00000	BILLING STATEMENT FROM REPORT R628

June 30, 2011

Deutsche 000935

Trans Added Date	Trans Type	Trans User ID	Transaction Message
12/23/2009	NT	25041	PO Total Amount =1027995.00
12/23/2009	NT	25041	PO Principal =989329.09
12/23/2009	NT	25041	PO Interest =14452.00
12/23/2009	NT	25041	PO Latecharge =293.70
12/23/2009	NT	25041	PO Unpaid Fees =3722.00
12/23/2009	NT	25041	PO Escrow Balance =26098.21
12/23/2009	NT	25041	PO Interest To Date =01/15/10
12/23/2009	NT	25041	PO PHN =2394351007
12/23/2009	NT	25041	PO FAX =2394350021
12/23/2009	NT	25041	PO TYPE =FAX
12/23/2009	PAY	25041	ORIG TO: BARRY FRITZ MACK
12/23/2009	PAY	25041	INT TO 011510 EXP DT 012210 AMT 1027995.00
12/25/2009	DM	00000	PROMISE BROKEN 12/25/09 PROMISE DT 12/25/09
1/4/2010	NT	00330	CURT PI 01/01/10 0.00 TO 5,874.14
1/4/2010	DM	00000	EARLY IND: SCORE 364 MODEL EI30C
1/4/2010	SWA	00330	
1/4/2010	UFU	00330	
1/4/2010		00000	
1/4/2010	AP	00330	
1/4/2010	UFU	00330	
1/4/2010	UI	00330	
1/4/2010		00000	
1/5/2010	D28	00000	BILLING STATEMENT FROM REPORT R628
1/5/2010	DM	00000	EARLY IND: SCORE 006 MODEL EI16C
1/6/2010	NT	13567	TellerID:13567
1/6/2010	NT	13567	b2 ci inq call rcvd GMAC could not understand, in
1/6/2010	NT	12025	Spoke with b2
1/6/2010	DM	23440	B2 CI WILL BE CLOSING BY END OF MONTH. ASHLIES5157
1/6/2010	CIT	23440	018 new cli 127 please review fees assessed to
1/6/2010	DMD	22222	00/00/00 00:00:00
1/6/2010	NT	13567	Fax Number:
1/6/2010	NT	13567	process of making settlement, needs to know full
1/6/2010	NT	12025	Needing to speak with Customer Service in regards
1/6/2010	DM	23440	ACTION/RESULT CD CHANGED FROM OAPC TO BRSS
1/6/2010	CIT	23440	account on 9/23/09 and send ltr to customer
1/6/2010	DMD	22222	00/00/00 00:00:00
1/6/2010	NT	13567	Phone Number:2395981280
1/6/2010	NT	13567	payoff, calc'd for 1/31 \$1,025,000 amt. cus inq
1/6/2010	NT	12025	to: loan mod. pay off -
1/6/2010	NT	23440	b2 ci inq why po more and why pd escrow advd when
1/6/2010	CIT	23440	advdng what fees are for. advd lat ashlies5157
1/6/2010	DMD	22222	01/06/10 12:36:58 MSG TO VOICE
1/6/2010	NT	13567	1025478.66: Final Payoff Amount
1/6/2010	NT	13567	why so high, adv negative esc bal, needs to be
1/6/2010	NT	12025	Transferred to customer care
1/6/2010	NT	23440	In review for mod escrow added to acct and pd tax
1/6/2010	NT	13567	Requestor Name:Cheryl

June 30, 2011

Deutsche-000936

Trans Added Date	Trans Type	Trans User ID	Transaction Message
1/6/2010	NT	13567	repaid. cus upset pays quarterly, cannot pay
1/6/2010	NT	12026	Agent:fa/cmartone 9131
1/6/2010	NT	23440	and h/o lns. advd po ls int calc through 1/31 l/c
1/6/2010	PAY	13567	ORIG TO: CHERYL
1/6/2010	NT	13567	add'l funds. xfer to tax discuss disb.
1/6/2010	NT	23440	lao 587.40 due to december pmt rcvd outside grace
1/6/2010	PAY	13567	INT TO 013110 EXP DT 020510 AMT 1025478.66
1/6/2010	NT	13567	dbuxton4231
1/6/2010	NT	23440	period, and fees on acct will have rsrchd advd
1/6/2010	NT	23440	tat. ashiles\$157
1/13/2010	DMD	22222	00/00/00 00:00:00
1/13/2010	DMD	22222	01/13/10 10:20:02 NO AGENT AVAIL
1/13/2010	DMD	22222	01/13/10 10:18:31 ANS MACH
1/14/2010	CIT	12883	018 DONE 01/14/10 BY TLR 12883
1/14/2010	NT	11487	borrower to send in listing agreement today
1/14/2010	DM	11487	SPK TO B1 BORROWER TO SEND IN LISTING AGREEMENT.
1/14/2010	DMD	22222	00/00/00 00:00:00
1/14/2010	CIT	12883	TSK TYP 127-DEFAULT FEE RES
1/14/2010	NT	11487	myaklin 11487
1/14/2010	DM	11487	MYAKLIN.11487
1/14/2010	DMD	22222	00/00/00 00:00:00
1/14/2010	CIT	12883	018 cont. closing clt 127: Total Billed \$3,712.00
1/14/2010	DM	11487	ACTION/RESULT CD CHANGED FROM BRSS TO LMDC
1/14/2010	DMD	22222	01/14/10 12:21:34 SUCCESSFUL
1/14/2010	CIT	12883	Total Paid \$00.00 TOTAL DUE \$3,712.00
1/14/2010	CIT	12883	018 closing clt 127: mid ltr adv'ing there is a
1/14/2010	CIT	12883	balance of liquidation/preservation fees on ur
1/14/2010	CIT	12883	acct in the amt of \$3,712.00.Fees were
1/14/2010	CIT	12883	assessed 2 ur acct due to the FCL. BPO \$83.00
1/14/2010	CIT	12883	11/4/09 Filing Fee \$1,945.00 9/1/09 FCL Fee
1/14/2010	CIT	12883	\$1,170.00 9/1/09 Process Service \$180.00
1/14/2010	CIT	12883	9/1/09 Recording Fees \$9.00 9/1/09 Title Costs
1/14/2010	CIT	12883	\$150.00 9/1/09 Title Search \$175.00 9/1/09
1/15/2010	NT	25041	PO Total Amount =1026138.49
1/15/2010	NT	11586	See previous notes
1/15/2010	CBR	00000	DELINQUENT: 30 DAYS
1/15/2010	NT	25041	PO Principal =989329.09
1/15/2010	CIT	11586	019 New clt#803.Fax recvd: Listing Agreement,
1/15/2010	NT	25041	PO Interest =12327.65
1/15/2010	CIT	11586	Listing agent: - Ph: - Price:\$ 1,969,000.00.
1/15/2010	NT	25041	PO Latecharge =587.40
1/15/2010	CIT	11586	Missing: Financials, Hardship Affidavit, Form
1/15/2010	NT	25041	PO Unpaid Fees =3722.00
1/15/2010	CIT	11586	4508-T, Tax return, POI, Hud-1, Purchase
1/15/2010	NT	25041	PO Escrow Balance =23923.36
1/15/2010	CIT	11586	Agreement, W2, Bank statement. Imaged as WOUT.
1/15/2010	NT	25041	PO Interest To Date =02/04/10

June 30, 2011

Deutsche 000937

Trans Added Date	Trans Type	Trans User ID	Transaction Message
1/15/2010	CIT	11586	Clearing 2863
1/15/2010	NT	25041	PO PHN =2394350021
1/15/2010	NT	25041	PO FAX =2394350021
1/15/2010	NT	25041	PO TYPE =FAX
1/15/2010	PAY	25041	ORIG TO: BARRY FRITZ MACK
1/15/2010	PAY	25041	INT TO 020410 EXP DT 021410 AMT 1026138.49
1/19/2010	SLC	00000	
1/26/2010	NT	25041	PO Total Amount =1025092.41
1/26/2010	NT	25041	PO Principal =989329.09
1/26/2010	NT	25041	PO Interest =11281.57
1/28/2010	NT	25041	PO Latecharge =587.40
1/26/2010	NT	25041	PO Unpaid Fees =3722.00
1/26/2010	NT	25041	PO Escrow Balance =23923.36
1/26/2010	NT	25041	PO Interest To Date =01/29/10
1/26/2010	NT	25041	PO PHN =2394351007
1/26/2010	NT	25041	PO FAX =2394350021
1/26/2010	NT	25041	PO TYPE =FAX
1/26/2010	PAY	25041	ORIG TO: BARRY FRITZ MACK
1/26/2010	PAY	25041	INT TO 012910 EXP DT 022510 AMT 1025092.41
1/29/2010	NT	07701	TellerID:7701
1/29/2010	NT	07701	today rcvd payoff ck lao \$1,025,671.78 from
1/29/2010	NT	07701	Fax Number:5023804813
1/29/2010	NT	07701	Raymond Bowie, ESZ, funds not certified, sending
1/29/2010	NT	07701	Phone Number:9
1/29/2010	NT	07701	back today, fedex tr # 793224758195, marijuana
1/29/2010	NT	07701	1026331.61: Final Payoff Amount
1/29/2010	NT	07701	7701
1/29/2010	NT	07701	Requestor Name:7701
1/29/2010	PAY	07701	ORIG TO: 7701
1/29/2010	PAY	07701	INT TO 020510 EXP DT 022810 AMT 1026331.61
2/1/2010	DM	22564	TTU3P(RAYMOND BOWIE), WNTD TO KNOW STATUS OF PY
2/1/2010	FB	07704	
2/1/2010	ET	07704	10020:PAYOFF - ESCROW RELEASE 02/16
2/1/2010	PAY	28725	COPY TO: 7701
2/1/2010	ET	00000	SENT TO RECONVEYANCE SYSTEM
2/1/2010	DM	22564	OFF ADV CLD NT DISCUSS ACCT, XFRD CC...SLAND/8540
2/1/2010		00000	
2/1/2010	FP	07704	
2/1/2010	PAY	28725	INT TO 020510 EXP DT 022810 AMT 1026331.61
2/1/2010	DM	22564	ACTION/RESULT CD CHANGED FROM.LMDC TO NOTE
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	

June 30, 2011

Deutsche 000938

Trans Added Date	Trans Type	Trans User ID	Transaction Message
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	FE	07704	
2/1/2010		00000	
2/1/2010	PF	07704	
2/1/2010	UFU	07704	
2/1/2010	UI	07704	
2/1/2010		00000	
2/2/2010	NT	13878	b2 c/ln for p/off adv applled 0201 refund avail
2/2/2010	NT	13878	15d after
2/2/2010	NT	13878	antonette d. 8978199
2/16/2010	E01	32504	
2/17/2010	CIT	15977	020 Open CIT#765 Referral not being actively
2/17/2010	CIT	15977	worked In Equator Remove from Import file.
2/19/2010	D28	00000	BILLING STATEMENT FROM REPORT R628
2/23/2010	CBR	00000	DELINQUENT: 30 DAYS
2/25/2010	DM	18147	B2 CLLED;VAI;B2 SYD RECD INFO STATING SHE OWES
2/25/2010	DM	18147	ESCROW;B2 SYD ACCT HAS BEEN SETTLED AND DOES NT
2/25/2010	DM	18147	OWE;B2 WILL MAIL SETTLEMNT LTTR FRM COURT.
2/25/2010	DM	18147	ACTION/RESULT CD CHANGED FROM NOTE TO OAAI
3/12/2010	CBR	00000	PAID ACCOUNT: PAYOFF DATE = 02/01/10
3/12/2010	CBR	00000	CHANGE IN SECNDRY BORROWERS ADDR
3/12/2010	CBR	00000	CHANGE IN PRIMARY BORROWERS ADDR
4/15/2010	CIT	15977	020 DONE 04/15/10 BY TLR 15977
4/15/2010	CIT	15977	TSK TYP 765-EQUATOR DELETIO
4/15/2010	CIT	15977	020 Closing CIT 765
7/6/2010	NT	13191	b1 cl re year end statement adv eoy Int pd
7/8/2010	NT	13191	58746.58 end tax pd 12835.01 and sent copy by fax
7/8/2010	NT	13191	tat 24-48 hrs rey m 8978504
7/6/2010	NT	13191	B1 cld re: Ltr fxd: cheryl mack
7/6/2010	NT	13191	Fax number: 2395983823
7/6/2010	NT	13191	Letter: 2:37
7/8/2010	NT	13191	Copy not mailed to customer.
7/8/2010	OL	13191	WDQYSubstitute 1098 Form
10/14/2010	NT	11203	b1 ci abt pmt made for 5900.00 to satisfy
10/14/2010	NT	11203	12/01/2009 due adv not enough to cover the pmt
10/14/2010	NT	11203	bec. It went up due to mod of the loan acct escrow
10/14/2010	NT	11203	for taxes, adv then It was late when the full ptm
10/14/2010	NT	11203	was recvd, adv that with how pmt was made and for
10/14/2010	NT	11203	It to be satisfied and that was adv properly for
10/14/2010	NT	11203	info for HMP then adv info what hyad happened and

June 30, 2011

Deutsche 000939

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/14/2010	NT	11203	cannot do an amendment of credit ephraemd8976824
10/18/2010	CIT	03231	021 Open CIT 108 Reason:Rep Error
10/18/2010	CIT	03231	021 fyl to cit 106 please amend 01/2010 to 20
10/18/2010	CIT	03231	021 fyl to cit 106 please amend 01/2010 to 20 days
10/18/2010	CIT	02272	021 fyl to cit 106 b2 ci want to req credit amend
10/18/2010	CIT	03231	Year:2009 Month:12 Days:20
10/18/2010	CIT	03231	also, b2 ci 10/15 and was adv by "Brian" the
10/18/2010	CIT	03231	also, b2 ci 10/16 and was adv by "Brian" the
10/18/2010	CIT	02272	letter signed to be fax at this # 6095431112.
10/18/2010	CIT	03231	Fax:6095431112 Recipient:Cheryl
10/18/2010	CIT	03231	credit would be amended, when adv b2 it could
10/18/2010	CIT	03231	credit would be amended, when adv b2 it could
10/18/2010	CIT	02272	thank you. markp.8978028
10/18/2010	CIT	03231	Loan paid off or sold - need manual credit
10/18/2010	CIT	03231	not be done she was ready to elevate.
10/18/2010	CIT	03231	not be done she was ready to elevate, ltr one
10/18/2010	CIT	02272	021 fyl to cit 106 b2 ci want to req credit amend
10/18/2010	CIT	03231	amend. Mail Letter.
10/18/2010	CIT	03231	lsak4103
10/18/2010	CIT	03231	adv to do it. b2 has requested the letter be
10/18/2010	CIT	02272	letter signed to be fax at this # 6095431112.
10/18/2010	CIT	03231	signed. thank you lsak4103.
10/18/2010	CIT	02272	thank you. markp.8978028
10/19/2010	CIT	20246	021 retargetting to 1408 needs letter to be faxed
10/19/2010	OL	12650	WDOYCUS-CREDIT INFO APOLOGY-4 REPOS.NOT
10/19/2010	CIT	12650	021 DONE 10/19/10 BY TLR 12650
10/19/2010	CIT	19470	022 new cit 250 b2 ci to dispute reg the credit
10/19/2010	CIT	19470	022 cont..on 02/01/10, offer paid in full
10/19/2010	CIT	12005	022 fyl to b1 and very adamant as she was promised
10/19/2010	CIT	12005	022 DONE 10/19/10 BY TLR 12005.
10/19/2010	CIT	20246	thanks rhodora p8978376
10/19/2010	OL	12650	WDOYCUS-CREDIT INFO APOLOGY-4 REPOS.NOT
10/19/2010	CIT	12650	TSK TYP 106-CREDIT AMEND >
10/19/2010	CIT	19470	amend letter that she rec. fr us bec it does
10/19/2010	CIT	19470	letter, cust stating that it still showing in
10/19/2010	CIT	12005	a credit amend ltr for the month of feb. adv
10/19/2010	CIT	12005	TSK TYP 250-TEAM LEAD ONLY:
10/19/2010	CIT	12650	021 clng cit 106, amended 12/09 and 01/10 to
10/19/2010	CIT	19470	not included correct reporting for feb 2010
10/19/2010	CIT	19470	her credit bureau that 02/10 was 30 days, adv
10/19/2010	CIT	12005	cant provide as acct was pif as of jan. adv
10/19/2010	CIT	12005	022 closing cit 250. rcvd conf thru email that pif
10/19/2010	CIT	12650	avoid further elevate. sent AUD to bureaus
10/19/2010	CIT	19470	since it was paid off on 02/01/2010, she was
10/19/2010	CIT	19470	need to file dipute, she cannot do that bec
10/19/2010	CIT	12005	that pif ltr can be sent by fax 609-543-1112.
10/19/2010	CIT	12005	ltr was sent thru fax forwarded to Rachelle.

June 30, 2011

Deutsche 000940

Trans Added Date	Trans Type	Trans User ID	Transaction Message
10/19/2010	CIT	12650	shwng acct pif 02/01/10 was CURRENT (13-0) 0
10/19/2010	CIT	19470	promised by prev rep that dec 09 Jan and feb
10/19/2010	CIT	19470	she is refi today, requesting to speak with sup
10/19/2010	CIT	12005	eunlced8977033
10/19/2010	CIT	12005	eunlced8977033
10/19/2010	CIT	12650	bal, in rev of 02/08-02/10 NO lates. mlg and
10/19/2010	CIT	19470	2010 will be corrected, adv even before the
10/19/2010	CIT	19470	xfer call,, peterr 8978050
10/19/2010	CIT	12650	faxing 2.70 ltr shwng 12/09 and 01/10 amends.
10/19/2010	CIT	19470	correction we have not amde any vredit
10/19/2010	CIT	12650	allisonh5377
10/19/2010	CIT	19470	reporting for fe 2010 since the loan was
10/20/2010	NT	22008	3p beckylkroll factual data, conf call b1, wanted
10/20/2010	NT	22008	to confirm the ltr we sent to cust that we have
10/20/2010	NT	22008	corrected the credit for 12/2009 and 01/2010. adv
10/20/2010	NT	22008	yes, adv no lates showing, asked if credit burea
10/20/2010	NT	22008	can call us to confirm this info, adv verbal auth
10/20/2010	NT	22008	is needed,, anng 8978135

June 30, 2011

Deutsche 000941

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL
CIRCUIT, IN AND FOR COLLIER COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO: 09-7336-CA

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI
2007QS3

PLAINTIFF

VS.

BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK;
CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A CHERYL
MARGARET MACK; ANY AND ALL UNKNOWN PARTIES CLAIMING BY,
THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL
DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER
SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS,
DEWISEES, GRANTEES OR OTHER CLAIMANTS; JOHN DOE AND JANE DOE AS
UNKNOWN TENANTS IN POSSESSION

DEFENDANT(S)

COMPLAINT TO FORECLOSE MORTGAGE

Plaintiff, sues the Defendant(s) and alleges:

COUNT 1

1. THIS IS AN ACTION to foreclose a Mortgage on real property in COLLIER County, Florida.
2. This Court has jurisdiction over the subject matter herein.
3. On OCTOBER 6, 2006 BARRY FRITZ MACK A/K/A BERRY FRITZ MACK AND CHERYL MARGRET MACK A/K/A CHERYL MARGARET MACK executed and delivered a Promissory Note and a Mortgage securing payment of the Note to the Payee named thereon.
4. The Mortgage was recorded on OCTOBER 17, 2006 in Official Records Book 4123 at page 804, of the Public Records of COLLIER County, Florida, and mortgaged the property described in it, then owned by and possessed by the Mortgagors, a copy of the Mortgage AND NOTE ARE attached hereto as "Exhibit A". Said mortgage was subsequently assigned to DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3 by virtue of an assignment to be recorded
5. The Plaintiff owns and holds the Note and Mortgage.
6. The property is now owned by the Defendant(s), BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK AND CHERYL M. MACK A/K/A CHERYL MARGARET MACK A/K/A CHERYL MARGARET MACK, if living and if dead, the unknown spouses, heirs and beneficiaries of BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY FRITZ MACK AND CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A CHERYL MARGARET MACK who hold(s) possession.
7. There is a default under the terms of the note and mortgage for the AUGUST 1, 2009 payment and all payments due thereafter.
8. All conditions precedent to the acceleration of this Mortgage Note and to foreclosure of the Mortgage have been fulfilled or have occurred.
9. The Plaintiff declares the full amount payable under the Note and Mortgage to be due.


10. The borrowers owe Plaintiff \$989,405.75 that is due in principal on the Mortgage Note and Mortgage, together with interest from JULY 1, 2009, late charges, and all costs of collection including title search expenses for ascertaining necessary parties to this action and reasonable attorney's fees.
11. Plaintiff is obligated to pay its attorney a reasonable fee for his services rendered.
12. Defendants, John Doe and Jane Doe, may claim an interest in the property described in the Mortgage as tenants pursuant to a lease agreement, either written or oral. Said interest is subject, subordinate, and inferior to the lien of the Mortgage held by Plaintiff.
13. In addition to all other named defendants, the unknown spouses, heirs, devisees, grantees, assignees, creditors, trustees, successors in interest or other parties claiming an interest in the subject property by, through under or against any of said defendants, whether natural or corporate, who are not known to be alive or dead, dissolved or existing, are joined as defendants herein. The claims of any of said parties are subject, subordinate, and inferior to the interest of Plaintiff.

WHEREFORE, Plaintiff prays: That an accounting may be had and taken under the direction of this Court of what is due the Plaintiff for principal and interest on said Mortgage and Mortgage Note, and for the costs, charges and expenses, including attorney's fees and title search costs, and advancements which Plaintiff may be put to or incur in and about this suit, and that the Defendants found responsible for same be ordered to pay the Plaintiff herein the amounts so found to be due it; that in default of such payments, all right, title, interest, claim, demand, or equity of redemption of the Defendants and all other persons claiming by, through, under or against said Defendants since the filing of the Lis Pendens herein be absolutely barred and foreclosed and that said mortgage property be sold under the direction of this Court; that out of the proceeds of said sale, the amounts due the Plaintiff may be paid so far as same will suffice; and that a deficiency judgment be entered if applicable and only in the event no Order of Discharge of Personal Liability in Bankruptcy has been entered as to any of the Defendants who signed the subject Note and Mortgage and a Writ of Possession be issued.

TO ALL DEFENDANTS: PLEASE NOTE EFFECTIVE OCTOBER 13, 2006, 15 U.S.C. §1692G OF THE FAIR DEBT COLLECTION PRACTICES ACT HAS BEEN AMENDED AS FOLLOWS:

(a) LEGAL PLEADINGS -- Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding at the end the following new subsection:

"(d) Legal Pleadings -- A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a)."


ELSA HERNANDEZ SHUM

Bar #: 29554

Miriam Mendieta

Bar #: 0866880

Law Offices of David J. Stern, P.A.

Attorney for Plaintiff

900 South Pine Island Road SUITE 400

Plantation, FL 33324-3920

(954) 233-8000

09-75969 GMAP

3917813 OR: 4123 PG: 0804

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
10/17/2006 at 11:53AM DWIGHT B. BROCK, CLERK

OBLD	990000.00
OBLI	990000.00
RRC FEE	171.50
DOC-.35	3465.00
INT-.002	1980.00

Return To:

PRIMARY RESIDENTIAL MORTGAGE INC.
4750 WEST WILEY POST WAY #200
SALT LAKE CITY, UTAH 84116
Attn.: SHIPPING DEPT./DOC. CONTROL
This document was prepared by:
DANETTE NIX
PRIMARY RESIDENTIAL MORTGAGE INC.
4750 WEST WILEY POST WAY, #200
SALT LAKE CITY, UTAH 84116

Retn:
PALM TITLE ASSOC
12590 1 WHITEHALL DR
FT MYERS FL 33917 4680

1-06-0529-ES

[Space Above This Line For Recording Data]

MORTGAGE

MIN 1001464-0609002738-6
MERS TELEPHONE: (888) 679-6377

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 October 6, 2006, together with all Riders to this document.

(B) "Borrower" is BARRY FRITZ MACK AND CHERYL MARGRET MACK, JOINT TENANTS. Borrower is the mortgagor under this Security Instrument.

(C) "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 mortgagee 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.

(D) "Lender" is PRIMARY RESIDENTIAL MORTGAGE INC.. Lender is a corporation organized and existing under the laws of the State of NEVADA. Lender's address is 4750 WEST WILEY POST WAY #200, SALT LAKE CITY, UTAH 84116.

(E) "Note" means the promissory note signed by Borrower and dated October 6, 2006. The Note states that Borrower owes Lender Nine Hundred Ninety Thousand And 00/100 Dollars (U.S. \$ 990,000.00)

FLORIDA - Single Family - Fannie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS
Page 1 of 18

Form 3010 1/01

Initials: *BEM*

flcmertd



179700007



DEED

"EX A"

OR: 4123 PG: 0805

plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2036.

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

(G) "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.

(H) "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]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Others [specify]

(I) "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.

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 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

08/31/2009 15:09

2395663P09

Pg 5 of 23

OR: 4123 PG: 0806

a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "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

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 does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction] of COLLIER [Name of Recording Jurisdiction]:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number:

which currently has the address of
(Street)

287 EGRET AVE

NAPLES (City), Florida 34108 (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.

FLORIDA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS
Page 3 of 12

Form 3010 1/01

Initials:

BSH *cm*

OR: 4123 PG: 0807

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, 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 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

OR: 4123 PG: 0808

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

OR: 4123 PG: 0809

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, less hold 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

OR: 4123 PG: 0810

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. 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.

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

OR: 4123 PG: 0811

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 right 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; Inspection.** 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

OR: 4123 PG: 0812

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. 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.

OR: 4123 PG: 0813

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.

OR: 4123 PG: 0814

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

OR: 4123 PG: 0815

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

OR: 4123 PG: 0816

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

OR: 4123 PG: 0817

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 action: 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

OR: 4123 PG: 0818

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 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, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. 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 foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies

OR: 4123 PG: 0819

provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Attorneys' Fees.** As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. **Jury Trial Waiver.** The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

OR: 4123 PG: 0820

.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.
Signed, sealed and delivered in the presence of:

BARRY FRITZ MACK (Seal)
-Borrower

287 EGRET AVE
NAPLES, FLORIDA 34106

(Address)

CHERYL MARGRET MACK (Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

OR: 4123 PG: 0821

STATE OF FLORIDA.

LEE

County ss:

The foregoing instrument was acknowledged before me this 6TH day of NOVEMBER by ~~BARRY FRITS MACK~~ and CHERYL MARGRET MACK, who is personally known to me or who has produced FL DR LICENSE as identification.

Notary Public

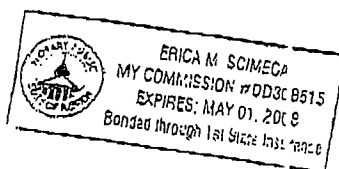
OR: 4123 PG: 0822

STATE OF FL
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 6th
day of October, 2008 by Berry Fritz Mack
He is personally known to me or has produced a
Driver License as identification and who did not
take an oath.

SEAL

Erica M. Scimeca
Notary



*** OR: 4123 PG: 0823 ***

Lot 36, Block S, of that certain Subdivision known as Conner's Vanderbilt Beach Estates, Unit No. 3,
according to the plat thereof recorded in Plat Book 3, Page 89, Public Records of Collier County,
Florida.

BOX 481

GMAC MORTGAGE, LLC

GMAC MORTGAGE, LLC
1100 VIRGINIA DRIVE
FT. WASHINGTON, PA 19034

Loan No.: 0601677259

Mortgagor (s): BARRY F. MACK A/K/A BARRY FRITZ MACK A/K/A BERRY
FRITZ MACK
CHERYL M. MACK A/K/A CHERYL MARGRET MACK A/K/A
CHERYL MARGARET MACK

Property Address: 287 EGRET AVE., NAPLES, FL 34108

Original Balance: \$990,000.00

Origination Date: OCTOBER 6, 2006

Payment Amount: \$5,874.60

Interest Rate (Percent): 7.125%

Loan Term (mo/yr): 360 term

EXHIBIT "B"

287 Egret Ave.
Naples, FL 34108
October 26, 2009

GMAC Mortgage
Attn: Customer Care
P.O. Box 4622
Waterloo, IA 50704-4622

FILE COPY

RE: our mgt number
0601677259

Dear Sirs:

This letter is in response to our previous communications via mail and telephone calls to you. We are still very confused about the fact that our home is still in foreclosure. We were served the papers on 8-22-09. They were issued by DEUTSCHE BANK TRUST COMPANY.

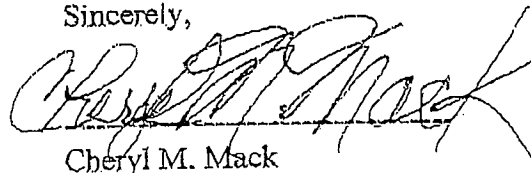
We notified you right away. Your company has reassured us that our mortgage is current and that we were not in any arrears with GMAC.

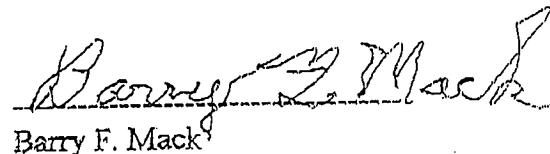
Our question still remains unexplained. How is it possible that a bank that we have never even heard of, can issue foreclosure documents on our property. You have told us that you did not sell our mortgage to any other financial facility.

PLEASE try to help us with this major problem. We both are elderly, and this situation has caused us to be very upset and we remain very stressed out.

We will wait anxiously for your reply.

Sincerely,


Cheryl M. Mack


Barry F. Mack

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE FOR RALI 2007QS3,

Plaintiff,

v.

Case No.: 09-7336-CA

BARRY F. MACK A/K/A BARRY FRITZ
MACK A/K/A BERRY FRITZ MACK, ET AL.

Defendants.

**JUDGMENT CREDITORS/DEFENDANTS MACK'S MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF'S MOTION TO SET ASIDE FINAL JUDGMENT AND
FOR NEW TRIAL**

COME NOW Judgment Creditors/Defendants, BARRY F. MACK and CHERYL M. MACK, and file their Memorandum of Law in Opposition to Plaintiff's Motion to Set Aside Final Judgment and for New Trial of Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS3, as follows:

SUMMARY OF THE ARGUMENT

Judgment Creditor/Defendants MACK obtained a judgment against Plaintiff on a counterclaim to Plaintiff's suit to foreclose a mortgage that was initiated in August of 2009 and concluded with a judgment in favor of the Macks on May 5, 2011.

Plaintiff filed a motion dated July 11, 2011 that the judgment should be vacated pursuant to Fla. R. Civ. P. 1.540(b), which provides equitable authority to a court to reverse a default judgment if the moving party can show three factors:

1. Excusable neglect during the course of litigation;
2. Diligence in bringing the motion to vacate upon learning of the judgment; and
3. Meritorious defense.

Defendants MACK respond and state that under the facts of the case and the law of the State of Florida, Plaintiff's motion to vacate does not show excusable neglect, due diligence or a meritorious defense. Since 1.540, Fla. R. Civ. P. provides motions to vacate should be entertained by courts on such conditions that are deemed just, it is an equitable remedy, and subject to equitable attacks. Defendants MACK maintain that Plaintiff acted inequitably in bringing the foreclosure suit, acted inequitably in maintaining the foreclosure suit, and has not acted equitably in bringing its motion to vacate. Defendants MACK further maintain they would be irreversibly harmed if the court vacated their judgment and order a new trial against Plaintiff DEUTSCHE BANK.

ARGUMENT

I. Excusable Neglect

Plaintiff maintains that the excusable neglect entitles them to a reversal of the judgment of May 5, 2011, is based on the fact that their attorney, the Law Offices of David J. Stern, P.A. informed them the file had been closed on September 3, 2009 and despite receiving a shower of legal pleadings from the Macks over the next 18 months, failed to notify the attorney for Deutsche Bank of the record activity and Deutsche Bank had no knowledge whatsoever of the proceedings until they received a copy of the judgment sent directly to them by the Court and received on May 11, 2011.

In support of their motion, they proffer four cases. The first, *Beasley v. Girtten*, 61 So.2d 179 (Fla. 1952), was a case where the court ordered a pretrial conference and neither the plaintiff nor his counsel appeared and did not give reason for their actions. The court dismissed the case with prejudice. The Supreme Court granted to Plaintiff under the precursor to our modern rule Fla. R. Civ. P. 1.540, which was as follows:

“Although persistent refusal to attend might, in the interest of the justice, require a dismissal without prejudice, we think for the reasons given that such a dismissal upon the first infraction is too severe.”

Plaintiff also tenders the case of *Anthony v. Schmitt*, 557 So.2d 656 (Fla. 2d DCA 1990). In the Anthony case the plaintiff was suing for wrongful death and the record demonstrated an abysmal record of prosecution. When plaintiff's counsel failed to appear for a scheduled status conference, a trial court refused to consider a rehearing with motion and affidavits by the

plaintiff's counsel. The Second District Court of Appeal granted plaintiff relief and reversed the dismissal stating, "typically, it is more appropriate for the trial court to require the trial attorney to atone for his own sins rather than visit them upon the attorney's unfortunate client."

The case of *Wilson v. Woodward*, 602 So.2d 547 (Fla. 2d DCA 1992), the trial court dismissed the case upon the failure of Wilson's attorney to appear at a summary judgment hearing because of a secretarial error in the attorney's office. The Second District Court of Appeal reversed stating that, "the attorney presented uncontroverted evidence that he failed to appear at the hearing because of a mistake and not because of any willful or flagrant act."

Plaintiff presents *Yusem v. Butler*, 683 So.2d 1170 (Fla. 4th DCA 1996), where the trial court refused to vacate a default stating, "appellant's attorney, Richard H. Pearlman abandoned his client without notice and vacated his Florida office. Accordingly, service of an amended complaint by appellees on Perlman at the lawyers' vacated Florida office and at some California address could not be considered notice to his abandoned clients, whose failure to respond constituted excusable neglect."

The first three cases are cases in which cases were dismissed for an attorney's failure to appear at a hearing. In each case a motion to vacate the dismissal was brought showing a clerical or scheduling error. The courts found that a dismissal with prejudice was too harsh for a single instance of mistake when coupled with a showing of communication breakdown. The case of *Yusem v. Butler*, was a case where a clerk's default had been entered upon the failure of the appellant's attorney to respond to an amended complaint after he abandoned his clients without notice and vacated his Florida office *Id.*

These four cases are not on point. In the Mack case, there was case a cascade of pleadings beginning in September 2009 and up to and including the very date of a trial in which live testimony and evidence was presented overwhelmingly showing that Deutsche Bank improperly maintained a foreclosure suit against the Macks and the Macks suffered severe economic damages by being forced to sell their house under threat of foreclosure at a reduced price and severe physical damages with the hospitalization of Mrs. Mack for a suicide attempt, which ultimately led to renal damage and presently, Hospice care.

The shower of correspondence and legal documents that were served on the attorney Deutsche Bank by Defendants MACK and the court were as follows:

1. Answer to Complaint to Foreclose Mortgage, Affirmative Defenses and Counterclaim – September 9, 2009.
2. Motion for Default – October 16, 2009.
3. Default – October 21, 2009.
4. Defendants' First Request for Production – November 2, 2009.
5. Defendants' Request for Designation of Corporate Representative – November 2, 2009.
6. Letter to Elsa Shum – November 18, 2009.
7. Defendants' Notice for Trial – November 18, 2009.
8. Letter to Elsa Shum – December 28, 2009.
9. Motion for Referral to General Magistrate – July 30, 2010.
10. Notice of Case Management Conference – July 30, 2010.
11. Letter to Judge Hayes – July 30, 2010.
12. Order of Referral to General Magistrate – August 2, 2010.
13. Defendants' Second Request for Production – September 21, 2010.
14. Letter to Judge Hayes – October 14, 2010.
15. Letter to Magistrate – October 14, 2010.
16. Recommended Order of General Magistrate on Case Management Conference – October 21, 2010.
17. Order on Recommended Order of General Magistrate on Case Management Conference – November 9, 2010.
18. Letter to Judge Monaco – with a copy sent certified mail to Elsa Shum on January 31, 2011.
19. Defendants' Motion to Compel Discovery – February 2, 2011.
20. Cover letter to Clerk – February 2, 2011.
21. Letter to Shum – February 2, 2011.
22. Notice of Hearing Before General Magistrate – February 8, 2011.
23. Motion of Referral to General Magistrate – February 8, 2011.
24. Cover letter to clerk – February 8, 2011.
25. Letter to Judge Hayes – February 8, 2011.
26. Order of Referral to General Magistrate – February 10, 2011.
27. Order Setting Docket Sounding – February 16, 2011.
28. Order Setting Non-Jury Trial – March 16, 2011.
29. Report and Recommended Order on Defendants' Motion to Compel Discovery – March 17, 2011.
30. Order on Recommended Order of General Magistrate on Defendants' Motion to Compel Discovery – April 12, 2011.
31. Final Judgment – May 5, 2011.

A partial review of the file that Plaintiffs DEUTSCHE produced as the contents of the Stern file, showed the following were present:

1. Notice of Hearing Before General Magistrate – February 8, 2011. *
2. Cover letter to clerk – February 8, 2011.
3. Motion for Referral to General Magistrate – February 8, 2011.
4. Letter to Judge Hayes – February 8, 2011.

5. Letter to Shum – February 2, 2011.*
6. Copy of cover letter to Clerk – February 2, 2011
7. Defendants' Motion to Compel Discovery – February 2, 2011.
8. E-mail from GHH to Stern – February 4, 2011. *
9. Letter to Judge Monaco – January 31, 2011. *
10. Order on Recommended Order of General Magistrate on Case Management Conference – November 9, 2010.
11. Report and Recommended Order on Case Management Conference – October 21, 2010.
12. Letter to Judge Hayes – October 14, 2010.
13. Letter to Magistrate – October 14, 2010.
14. Cover letter to clerk - September 21, 2010.
15. Order of Referral to General Magistrate – August 2, 2010. *
16. Cover letter to clerk – July 30, 2010.
17. Notice of Case Management Conference – July 30, 2010.
18. Motion for Referral to General Magistrate – July 30, 2010.
19. Letter to Judge Hayes – July 30, 2010.
20. Letter to Shum – December 28, 2009.
21. Defendants' Notice for Trial – November 18, 2009.
22. Default – October 21, 2009.
23. Answer to Complaint to Foreclose Mortgage, Affirmative Defenses and Counterclaim – September 9, 2009.
24. Order of Referral to General Magistrate – undated. *
25. Order Setting Case for Docket Sounding – undated. *
26. Order on Recommended Order of General Magistrate on Case Management Conference – undated.*
27. Order of Referral to General Magistrate – undated.

Each document produced to date in the Stern file shows receipt by the attorney for Deutsche Bank; those with an asterisk were bar coded and entered into the data system of Stern's office. There can be no question this was a clerical error, but rather was a concerted, intentional effort and act by the attorney of record for Deutsche Bank to not respond or participate in any way.

Florida courts have overwhelmingly refused to entertain motions to vacate judgment pursuant to Fla. R. Civ. P. 1.540(b) where an attorney failed to respond to pleadings, hearings and other court activities. (See *Herrick v. Southeast Bank, N.A.*, 512 So.2d 1029 (Fla. 3rd DCA 1997) - "excusable neglect sufficient to warrant vacating a default is not shown by mere proof that a defendant relied upon another to defend the action.")

Bequer v. National City Bank, 46 So.3d 1199 (Fla. 4th DCA 2010), the appellate court found that the trial court erred in setting aside a default where the appellee failed to establish

excusable neglect stating, “[w]hile appellee’s inaction to respond to the complaint alone might have constituted excusable neglect given the system appellees had in place, the failure to respond to the complaint, when coupled with the correspondence sent on three different occasions constitutes gross negligence.” Further, the court stated:

This court recognizes the ‘extremely high standard of review’ when reviewing for gross abuse of discretion. *Allstate Floridian Insurance Company v. Ronco Inventions, LLC*, 890 So.2d 300 (Fla. 2d DCA 2004). However, if the court were to find that the particular facts of this case did not violate the standard of gross abuse of discretion for failure to demonstrate excusable neglect, we would be hard pressed to find violations of this standard in other cases, and ultimately the standard would effectively countenance any type of negligence as being ‘excusable’.”

The case of *Rivera v. Dept. of Revenue*, 899 So.2d 1265 (Fla. 2d DCA 2005) is a child support case where appellant appealed from an order setting aside a supplemental judgment modifying child support where the appellant had filed a petition to modify his child support. The DOR, representing his former wife, failed to file a responsive pleading or appear on a motion for default. Mrs. Rivera filed a motion to set aside the final judgment pursuant to 1.540(b) contending that the Department’s neglect of her case was excusable. The appellate court reversed the order setting aside the supplemental order of child support stating that, “our review of the record indicates that the trial judge intended to protect Ms. Rivera from the failure of counsel provided to her by the Department of Revenue. Although we understand this laudable motivation, it is the duty of the Department, not the trial court, to insure their clients receive adequate representation.”

In the case of *Wycoff v. Wycoff*, 374 So.2d 614 (Fla. 4th DCA 1979) Aetna filed a motion for relief from a judgment pursuant to Fla. R. Civ. P. 1.550(b) alleging that it had relied on defendant Ewing’s attorney to provide a defense for Aetna, and by oversight or neglect no such representation was provided. The appellate court reversed the trial court which granted a motion for a stay of execution pursuant to Rule 1.550 that errors of law do not constitute good cause for granting a stay of execution on a final judgment any more than it can be treated as good cause for relief under 1.540(b). Further, “negligence of counsel will not support the setting aside of default judgment absent exigent circumstances.” (See also *Westinghouse Credit Corp. v. Steven Lake Masonry, Inc.*, 356 So.2d 1329 (Fla. 4th DCA 1978); *Allen v. Wright*, 350 So.2d 111 (F;a/

1st DCA 1977); *Sun Finance Corp. v. Friend*, 139 So.2d 484 (Fla. 3d DCA 1962); *Wright v. Spears*, 123 So.2d 689 (Fla. 3d DCA 1960).

The case of *Kandell v. Patten*, 375 So.2d 356 (Fla. 4th DCA 1979), is a case in which a trial court notified counsel of its intention to dismiss for lack of prosecution. Counsel overlooked the case and it was dismissed. Abatement was sought pursuant to Fla. R. Civ. P. 1.540(b) on the grounds of excusable neglect. The trial court granted reinstatement, the appellate court reversed stating, "[t]o characterize the appellee's inattention to this case over a period of nearly two years as excusable neglect would emasculate the finality of dismissals for lack of prosecution and allow almost any inattention to a case to be described as excusable."

The appellate courts in the State of Florida have uniformly found that a party will be responsible for the inaction, inattention or failure to respond of its attorney, unless that inattention is a unique, single act, coupled with some understandable mistake. Courts have persistently maintained that when a party hires an attorney and entrusts a legal proceeding to that attorney, any failure of counsel is their responsibility – not the court's or the other party.

If the facts alleged by Deutsche Bank were supported by evidence that, in fact, Stern consistently failed to attend to the counterclaim over a period of 18 months, then undoubtedly Deutsche Bank would have a cause of action against Stern for a lack of professional responsibility. However, Plaintiff's remedy is not to disturb a final judgment entered after a trial on the facts and damages together with witnesses and documentation for which Deutsche Bank chose not to request a rehearing and chose not to pursue an appeal.

It should be noted nowhere in the affidavits and discovery adduced to date is there any evidence that the Law Offices of David J. Stern, P.A. failed to adequately communicate with its clients, GMAC and Deutsche Bank. Rather, Deutsche Bank relies solely on records exclusively maintained by GMAC and partially adduced through discovery which do not show any communication between GMAC and the Law Offices of David J. Stern, P.A. of the counterclaim or knowledge of the suit after September 3, 2009. Further, numerous affidavits by employees and officers of GMAC and Deutsche Bank all state that they have no personal knowledge of any communication and in almost every single case, nor would they have had any knowledge because they did not ordinarily deal with Stern. However, the Macks maintain they were continually calling GMAC during the fall of 2009 and into 2010 and have presented a letter dated October 26, 2009, (Exhibit "A") specifically referring to the foreclosure suit more than a

month after DEUTSCHE BANK claimed that it had no further knowledge of the foreclosure suit or counterclaim. For some completely unexplained reason on December 9, 2009, the Law Offices of David J. Stern, P.A. filed a unilateral dismissal of its foreclosure suit (but which did not disturb the Macks' counterclaim) when DEUTSCHE BANK and its agent GMAC had been claiming that the file was closed on September 2, 2009 and there was no further activity whatsoever.

The facts alleged by DEUTSCHE BANK allow only one of three different interpretations:

1. That Stern was grossly negligent and that Deutsche Bank, his client, was the unparticipating victim.
2. That Deutsche Bank and its agent/servicer GMAC did not maintain or produce viable records to make any determination.
3. That Stern knowingly and actively failed to make any response to the Macks' counterclaim and did so with the full consent and cooperation and knowledge of his clients, Deutsche Bank and its servicer, GMAC.

Since the third possibility is the one most consistent with attorney-client relationships, it should be the presumed fact in the absence of a strong showing of evidence to the contrary by Deutsche Bank. Deutsche Bank and GMAC have failed to produce any affirmative proof of a continuous failure to respond by Stern to almost 20 separate letters, pleadings and orders over a period of 18 months. If GMAC had something to hide because they had guilty knowledge as to why the foreclosure suit was wrongfully brought in the first place, the presumption would be strengthened by showing a motive on the part of GMAC, as agent for Deutsche Bank, to conceal its misdeed in bringing the foreclosure. This presumption is further strengthened by the continual refusal by GMAC to allow discovery into the circumstances involved in bringing the foreclosure in the first place instead of honestly and openly admitting a mistake and throwing itself on the equitable discretion of the court.

II. Due Diligence

The second prong that Plaintiff must meet is proving that it acted with due diligence in moving to vacate the judgment once they learned of the existence of the judgment.

To meet the due diligence requirements, Plaintiff alleges as follows:

Deutsche Bank first received notice of Defendant's countersuit and the final judgment on May 12, 2011. It quickly retained undersigned counsel, conducted an immediate internal investigation and has attempted to contact the attorneys at Stern, including Shum. Deutsche Bank is prepared to move as quickly as the court desires to redress this situation.

If the assertion by Plaintiff that it received notice of the judgment on May 12, 2011 is correct, then the motion to vacate on July 13, 2011 was exactly 62 days after Plaintiff first received notice. The evidence will show that Plaintiff actually received notice of the final judgment on May 11, 2011, by acknowledging receipt of a final judgment on that day from the court (attached hereto as Exhibit "B").

Plaintiff gives no reason for the 62-day delay from the notice of the judgment to the filing of the motion to vacate. Plaintiff had knowledge of the judgment on May 11, 2011. The judgment was entered on May 5, 2011. Therefore, Plaintiff still had 4 days under the Florida Rules of Civil Procedure to bring a motion for rehearing pursuant to Fla. R. Civ. P. 1.530. Plaintiff also had 30 days to file a notice of appeal pursuant to Fla. R. App. P. 9.110(b). Although Plaintiff DEUTSCHE maintains that it immediately contacted its attorneys to perform an investigation, the attorneys elected not to file an appeal within the time limits set forth in Fla. R. App. P. 9.110. Instead, Plaintiff waited until July 13, 2011, after Plaintiff had been served with a Subpoena for Deposition in Aid of Execution (attached hereto as Exhibit "C"). Further, GMAC Mortgage, LLC, the servicer and corporation responsible for the conduct of the lawsuit and the handling of the Mack loan was also served with a Subpoena Duces Tecum for Deposition in Aid of Execution on June 22, 2011 (attached hereto as Exhibit "D"). Only after receiving notice of efforts to execute on the judgment did Plaintiff respond with their motion to vacate. When presented with facts similar to the ones at issue in this case, Florida appellate courts have not hesitated to reverse trial courts that granted motions to vacate pursuant to Rule 1.540(b). Fla. R. Civ. P., with uniformity.

In the case of *Otero v. Gov't Employees Insurance Company*, 606 So.2d 443 (Fla. 2d DCA 1992), the court found that the appellant, GEICO, did not move to vacate a default until May 3, 1991, after having been mailed a copy of the final judgment on March 6, 1991, and was guilty of gross negligence for failing to promptly moving to vacate and that, "it was therefore a gross abuse of discretion to vacate the final judgment and the underlying default." Further in

Trinka v. Struna, 913 So.2d 626 (Fla. 4th DCA 2005), where the trial court set aside a final default judgment, the appellate court reversed the order. Here, the attorney for the appellant became aware of a clerk's default on the case he had been retained in to represent Struna. The attorney failed to take any action or file a paper at that time, and a final judgment was entered on July 1, 2003. On July 3, 2003, Struna filed a motion to vacate the default (some two days after the entry of the final judgment). The court denied Struna's claim of excusable neglect citing *Somero v. Hendry General Hosp.*, 467 So.2d 1103 (Fla. 4th DCA 1985) stating, "[t]he pattern which emerges from these and the myriad of cases not cited here is best stated negatively: a default will **not** be set aside where the defaulted party or his attorney (1) simply forgot or (2) intentionally ignored the necessity to take appropriate action." The court went on to cite *Westinghouse Credit Corp. v. Steven Lake Masonry, Inc.*, 356 So.2d 1329 (Fla. 4th DCA 1978), "swift action must be taken upon first receiving knowledge of any default. Further delay in excess of the time reasonably necessary to prepare and file a notice to vacate should prove fatal absent some exceptional circumstance." In *Allen v. Wright*, 350 So.2d 111 (Fla. 1st DCA 1997) the appellate court struck down the trial court's interlocutory order reversing a default noting that the defendant became aware of the default in February 1997, and did not file a motion to vacate until March 21, 1997. The appellate court found the lower court abused its discretion in setting aside the default against Wright when he failed to move to vacate from time of learning of the default of February and the filing of the motion on March 21, 1997.

In *Bennett v. Halper*, 248 So.2d 522 (Fla. 3^d DCA 1971), the appellate court approved a trial court's decision to deny a motion to vacate where counsel did not move to vacate within 34 days after knowledge of the judgment.

In the case of *Lazcar Int'l, Inc. v. Caraballo*, 957 So.2d 1191 (Fla. 3^d DCA 2007), the court found that a six-week delay from learning of a judgment to the filing of a motion to vacate is a lack of due diligence as a matter of law. That court cited to *Westinghouse*, 356 So.2d at 1330, finding a six-week delay in the filing of a motion to vacate constituted a lack of due diligence as a matter of law. The court also cited *Fischer v. Barnett Bank of South Florida, N.A.*, 511 So.2d 1087 (Fla. 3^d DCA 1987), finding a five week delay in filing a motion to vacate entirely inexcusable. They further referred to *Bayview Tower Condo Association v. Schweitzer*, 475 So.2d 982 (Fla. 3^d DCA 1985) finding a one-month delay showed a lack of due diligence. Also referred to was *Allstate Floridian Ins. Co. v. Ronco Inventions, LLC*, 890 So.2d 300 (Fla.

2d DCA 2004) finding a seven-week delay was unreasonable.

In the case of *Westinghouse*, 356 So.2d at 1329, the appellate court did not hesitate to reverse a trial court that had set aside a final judgment after default stating, “[y]et there are two areas where the courts have consistently upheld defaults and both are factors in this case. First, failure of the attorney to act with no good reason given (citation omitted). Second, failure to immediately act upon learning of the default. (citation omitted).” In the *Westinghouse* case, the defendants turned over the complaint to a lawyer who failed to do anything to justify his inactions by reporting a disappearance of the pleadings. Four weeks after three copies of the complaint were served, the defendants waited a further seven weeks before attempting to vacate, which was 30 days after receipt of the final judgment. The appellate court stated:

The message is clear. Negligence by a litigant’s representative may be grounds for an independent suit, but it will not support the setting aside of a default judgment save under exceptional circumstance. Moreover, swift action must be taken upon first receiving knowledge of the default. Further delay in excess of the time reasonably necessary to prepare and file a notice to vacate should prove fatal, absent some exceptional circumstance. In the case at bar, we find the attorney’s inaction unacceptable and the delay, after learning of the default, unexceptional. As such, there exists no excusable neglect under Fla. R. Civ. P. 1.540(b).

The appellate court in *Allstate Floridian Ins. Co.*, found that the trial court’s entry of an order setting aside a default upon a motion filed seven weeks after learning of the entry of a final judgment was a gross abuse of discretion by the trial court and reversed. The appellate court cited several cases regarding due diligence and found that a one-week delay had been ruled to be due diligence, a three day delay was a reasonable exercise of diligence; 6 days was considered due diligence; and 15 days was accepted due diligence; and a next-day filing was reasonable. The court suggested that a rule of thumb in determining what is a reasonable amount of time to bring a motion to vacate a default after learning of a default should be 20 days. In this case, the appellate court found there was a shower of notices leading up to the default, and therefore a seven-week delay was unreasonable.

In *Bailey v. Deebold*, 351 So.2d 355 (Fla. 2d DCA 1977), the appellate court reversed the trial court which had set aside a default upon a motion to vacate finding the moving party was guilty of gross neglect stating, “[w]here a party, as here, admits to notice of default in May, the subsequent entry of a final judgment against him, two separate garnishment judgments and the

institution of a separate creditor's complaint before he initiates a response he does not justify the delay or show 'excusable neglect'."

Plaintiff's explained delay in failing to immediately moving the court to vacate the default was 63 days after first learning of the default was gross negligence and inexcusable neglect, which alone would defeat their motion to vacate. However, coupled with the fact that Plaintiff only made efforts to vacate the default after being subject to execution, and further having its agent who was responsible for maintaining the suit served with a subpoena in aid of execution shows that it was not remorse over mistaken failure to attend to the counterclaim, but rather fear of collection efforts instituted by the Macks that motivated Plaintiff's motion to vacate.

III. Meritorious Defense

Plaintiff maintains in its motion to vacate pursuant to 1.540(b), Fla. R. Civ. P. that it has a meritorious defense. However, it admits the basic facts of the counterclaim leading to the judgment in favor of the Macks because GMAC as the agent for Plaintiff wrongfully filed a foreclosure suit against the Macks, and wrongfully maintained the foreclosure suit when the Macks were not in arrears on their payments. The meritorious defenses they discuss then fall into three categories.

a. Plaintiff complains under its allegations of a meritorious defense that the filing of lis pendens is insufficient to constitute actionable publication. They fail to acknowledge that the foreclosure lawsuit was actionable because it was wrongfully filed. The lis pendens was filed in support of a wrongfully filed action. Additionally, Plaintiffs maintain Defendants Mack failed to allege that Plaintiff knew or should of known that the filing of a lis pendens resulted in reluctance by other parties to deal with Defendants. This allegation is not only countered by the direct quote from the Mack's complaint, it is also contrary to a basic understanding of what a lis pendens is, which is a notice to all parties to induce them not to deal with a defendant under foreclosure because all rights acquired would be secondary to the foreclosure judgment.

b. Plaintiff also claims the complaint failed to allege special damages. However, special damages have been defined to be those damages which would not necessarily flow from the lawsuit as maintained, and must be specifically plead *Land Title of Central Fla. v. Jimeneez*, 946 So.2d 90 (Fla. 5th DCA 2006). The Macks allege their efforts to sell the property were hampered by Plaintiff's foreclosure suit and therefore it would naturally flow that the sale price

would be less than if the Macks were not hampered by the actions of Plaintiff.

c. Plaintiff goes on to complain about the amount of damages. However, they do not cite a single case where a judgment debtor has received relief from the amount of damages under a 1.540(b) motion.

d. Plaintiff saves its most detailed argument for an apparent inconsistency in the preliminary findings of fact in the judgment, and cite the specifically listed sale price of \$1,156,000.00 from paragraph 8 as opposed to the appraisal by the expert of \$1,275,000.00. This difference was calculated to be \$118,500.00. However, the Macks testified their property was worth at least as much as the appraiser had valued it, and in fact should have been worth in a range up to the listing price in paragraph 6 of \$1,499,000.00. The actual finding of damages in the judgment was \$296,920.05, which was an amount of money approximately between the two valuations presented by the real estate appraiser and the Macks, less the actual sale price of the property. The judgment is clear and without ambiguity that the damages are \$296,920.05 for damages to the value of the real estate, \$150,000.00 in emotional anguish pain and suffering of Defendant, Cheryl Mack, and prejudgment interest from the date of sale to the date of judgment of \$22,550.22, for a total of \$469,470.27 "for which let execution issue forthwith." Plaintiff is arguing that this judgment is inconsistent, which not only is untrue, but an objection to an inconsistent judgment must be made in a timely fashion (10 days from entry for a rehearing, or 30 days for an appeal). Courts in the State of Florida have uniformly found that failure to make timely objection to verdict cannot be waived by the passage of the time period for motions for new trial and appeals. See *Repub. Svcs. of Florida v. Poucher*, 851 So.2d 866 (Fla. 1st DCA 2003); *Keys Co. v. Rocky Graziani, Inc.*, 406 So.2d 100 (Fla. 3d DCA 1981); *Wiggs & Maale Const. Co. v. Harris*, 348 So.2d 914 (Fla. 1st DCA 1977); *Tunnage v. Green*, 947 So. 2d 687 (Fla. 4th DCA 2007).

Further, courts have denied this type of relief under Rule 1.540(b). See *Commonwealth Land Title v. Freeman*, 884 So.2d 164 (Fla. 2d DCA 2004), stating "Rule 1.5640(b) is intended to provide relief from a judgment only under a limited set of circumstances." Florida courts have further maintained that it is a "well-settled" rule that "where a court is legally organized and has jurisdiction of the subject matter and the adverse parties are given an opportunity to be heard, then errors, irregularities or wrongdoing in proceedings, short of illegal deprivation of opportunity to be heard, will not render the judgment void." See

Phenion Dev. Group, Inc. v. Love, 940 So.2d 1179 (Fla. 5th DCA 2006); *Leach v. Salehpour*, 19 So.3d 342 (Fla. 2d DCA 2009), citing *Pompano Atlantis Condo Ass'n v. Merlino*, 415 So.2d 153, 154 (Fla. 4th DCA 1982) - "[Rule 1.540] only envisions 'mistakes' made in the ordinary course of litigation and does not contemplate judicial error." Further, the court in *Leach* cited to *Malone v. Percival*, 875 So.2d 1286, 1288 (Fla. 2d DCA 2004) (citations omitted), stating:, "Instead, 'judicial errors' which include errors that affect the substance of a judgment must be corrected within ten days pursuant to [rule 1.530] or by appellate review." The court went on to state, "a trial court may vacate a final judgment and order a new trial 'on its own initiative'. However, in order to do so, the court must act '[n]ot later than 10 days after entry of judgment." In the *Leach* case, the appellate court reversed an order setting aside a final judgment in the trial court that was against appellant Leach and noted that if the trial court treated the motion of Salehpour's motion as one filed pursuant to Rule 1.540 it abused its discretion by vacating the judgment and granting Salampour new trial because such relief exceeds the scope of 1.540. *Leach*, 19 So.3d at 345. However, if the trial court ordered a new trial on its own initiative pursuant to Rule 1.530(d) it erred as a matter of law by not adhering to the time limits of the rule. *Id.*

Federal courts have also been in line with Florida courts as to the definition of what constitutes excusable neglect. In the case of *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), although the United States Supreme Court found excusable neglect where there was a late filing of a proof of claim in bankruptcy, it found the lower appellate court erred when it failed to attribute to the client the fault of their counsel, "thus, in determining whether respondent's failure to timely file was excusable, the proper focus is upon whether the neglect of respondents **and** their counsel was excusable." *Id.* (emphasis added). Further, "petitioner voluntarily chose this attorney as his representative in this action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" *Id.* The Supreme Court went on to say that it would not have overturned the bankruptcy court denying excusable neglect, "were there any evidence of prejudice to petitioner or to judicial administration in this case, or any indication at all of bad faith, we could not say that the Bankruptcy Court abused its discretion in declining to find the neglect 'excusable.'" *Id.*

IV. Adverse and Prejudicial Effect on Defendants' MACK to vacation of judgment

Mr. and Mrs. Mack were awarded \$150,000.00 for pain and suffering for the filed and maintained foreclosure against them in the fall of 2009. The pain and suffering element came about because Mrs. Mack, under pressure from the threat of foreclosure, took an overdose of Ambien at her home in a suicide attempt. When her neighbor called a short time later and spoke to her, she realized Mrs. Mack was incoherent and sent an EMS crew to her home to take her to the hospital. She was hospitalized for seven days, leaving her with permanent kidney damage. This evidence was presented to the trial court at the trial on May 5, 2011, which was the basis for the award of damages. Mrs. Mack currently resides in New Jersey and is under Hospice care for several conditions, including kidney damage. She maintained at her deposition of April 4, 2012 that the kidney failure had either caused or exacerbated her other conditions which led her to be placed under Hospice care. Mr. Mack maintained in his deposition of April 4, 2012 that her condition is terminal and her prognosis is that she will die within six months.

Should Mrs. Mack die due to the injuries for which she received the pain and suffering award, and if Plaintiff DEUTSCHE BANK's motion to set aside were granted and trial ensued, it those claims would have to be filed by her estate under the Florida Wrongful Death Act. Under the Florida Wrongful Death Act, Fla. Stat. § 768.16, *et seq.*, a decedent may not recover for pain and suffering, but rather the damages are limited to those suffered by the survivors as enumerated in the statute. Mr. Mack, her only survivor, is 74 years old, and any loss of income or companionship that would be authorized under the statute to him would have to be amortized over his life expectancy according to mortality tables. Therefore, the damages recoverable by Mrs. Mack's estate would be significantly impacted and reduced from those awarded to her at trial, since her pain and suffering would not now be recognized.

Florida courts have maintained that one of the factors to be considered as to whether or not a judgment should be vacated would be prejudice that would inure to adverse party upon a motion to vacate a judgment (see *John Crescent, Inc. v. Schwartz*, 382 So.2d 383 (Fla. 4th DCA 1980), "the failure of a party to take the required steps necessary to protect its own interests cannot, standing alone, be grounds to vacate judicially authorized acts to the detriment of other innocent parties. The law requires certain diligence of those subject to it, and which diligence is not likely excused." See also, *Carter v. Lake County*, 840 So.2d 1153 (Fla. 5th DCA 2003)

“whether the failure to abide by a specified time limit constitutes excusable neglect is in essence an equitable one which should take into account all of the relevant circumstances including prejudice to the other party, the reason for the delay, the duration of the delay, and whether the movant acted in good faith.”

V. Inequitable Conduct of Plaintiff Prevents the Court from Granting Equitable Relief to Deutsche Bank

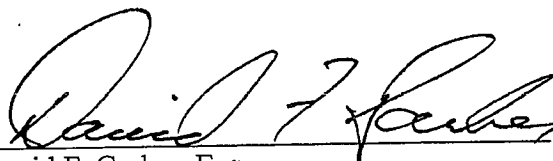
Plaintiff seeks relief pursuant to Rule 1.540(b), Fla. R. Civ. P., which provides that the court should grant relief on such terms as to it may seem just. In *Carter*, the court determined that this, in fact, is an equitable remedy and subject to equitable principles and equitable defenses *Carter*, 840 So.2d at 1153. Defendants MACK maintain that the evidence generated in discovery shows that Plaintiff wrongfully filed the foreclosure suit when Defendants Mack were not in default; that the filing of suit was done only after Defendants MACK came to GMAC Mortgage, LLC, the agent for Plaintiff seeking government-mandated relief under the HAMP program, which allows for payment reductions and a reduction of interest rate and an extension of a term of a mortgage; and that GMAC Mortgage, LLC, realizing in July and August 2009 that the income of the Macks (\$5,800.00) was insufficient to support a mortgage payment of \$5,100.00, sought to foreclose on the home to reduce their exposure on a sub-standard loan, instead of helping under HAMP. However, Plaintiff had no authority to initiate foreclosure action as long as the Mack loan was current, even if it came to the conclusion there was insufficient income to make the payments. Upon the transmission of the foreclosure suit to the offices of the Law Offices of David J. Stern, P.A., the attorney for Plaintiff, GMAC Mortgage, LLC, GMAC was advised of difficulties in bringing the foreclosure suit. Since GMAC Mortgage, LLC has redacted the notes from the Title Information Sheet of the Law Offices of David J. Stern, P.A. dated August 8, 2009, Defendants MACK do not know exactly what the substance of the difficulty was. However, a reasonable inference can be made that, in fact, continuance of the foreclosure suit was not legally supportable. Even though Plaintiff, through its agent GMAC, maintains that it told its attorney, Law Offices of David J. Stern, P.A. to close the file on September 2, 2009, the file was not closed by the time the Mack's filed an answer and counterclaim on September 9, 2009 challenging, among other things, the authority and right of GMAC and Deutsche Bank to bring the foreclosure in the first place. The bank, through its

agent, GMAC, has exclusive knowledge of the advice given by their attorney, David J. Stern, and their conduct and knowledge during the suit. GMAC has controlled all of the discovery, only allowing those portions of discovery that would be of benefit to their case. They have redacted and resisted any discovery concerning GMAC's actual conduct during the foreclosure and counterclaim and have continuously cited a lack of knowledge.

If the court were to now grant Plaintiff's motion to vacate, the Court would be allowing GMAC as the agent for Plaintiff to have a second bite at the apple despite the following:

- a. GMAC had unclean hands in bringing the foreclosure suit in the first place because there was no default and they knew it.
- b. GMAC negligently failed to recover Stern's files in a timely manner and to review them to determine what must be done. Had GMAC recovered the files in a timely fashion, it would have discovered the litigation was continuing because Stern's files contained notification of the continuing counterclaim, not only through the discovery requests, but the multiple and continuing orders and pleadings filed in the Collier County Circuit Court and received by Stern as indicated in Plaintiff's discovery responses.

WHEREFORE, Defendants, BARRY F. MACK and CHERYL M. MACK, pray that Plaintiff's Motion to Set Aside Judgment and for New Trial be denied; that the amount of the judgment plus accrued interest be paid from the bond; that the remainder of the bond be held in escrow pending determination of an award of attorney's fees, and; all such other relief as this court deems just and proper.



David F. Garber, Esq.
Florida Bar No. 0672386

GARBER, HOOLEY & HOLLOWAY, LLP
700 Eleventh Street South, Suite 202
Naples, Florida 34102-6777
(239) 774-1400 Telephone
(239) 774-6687 Facsimile

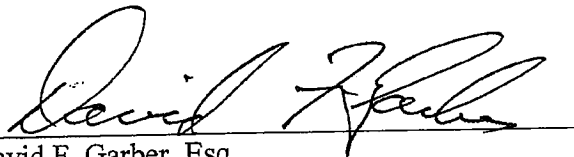
CERTIFICATE OF SERVICE

I certify that a copy of this document was faxed and mailed to the persons listed below on this 15 day of April, 2012.

Christian W. Hancock, Esq.
Bradley Arant Boult Cummings LLP
Bank of America Corporate Center
100 N. Tryon Street, Suite 2690
Charlotte, NC 28202
704.332.8858 Facsimile

John Smith T, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104
205.521.8800 Facsimile

Stanley A. Bunner, Jr., Esq.
Salvatori, Wood, & Buckel, P.L.
9132 Strada Place, Fourth Floor
Naples, FL 34108
239.649.1706 Facsimile



David F. Garber, Esq.
Attorney for Defendants MACK

Eduardo Lichi, M.D.

1019 Crosspointe Drive, #3 ▪ Naples, Florida 34110 ▪ (239) 262-2058

December 1, 2009

To Whom It May Concern:

Mrs. Cheryl Mack has been a patient of mine since 2005. Recently, her depression and drinking exacerbated secondary to facing potential foreclosure to the point of the patient becoming a danger to self and requiring hospitalization.

If I can be of any further assistance, please contact me.

Sincerely,



Eduardo Lichi, M.D.

EL/ls

cc: C. Mack

STATE OF NEW JERSEY

B0006758244

NEW JERSEY DEPARTMENT OF HEALTH

CERTIFICATE OF DEATH

STATE FILE NUMBER

20130057058

1a. Legal Name of Decedent (First, Middle, Last, Suffix) Cheryl M. Mack				LMB ONLY <input type="checkbox"/>
1b. Also Known As (AKA), If Any (First, Middle, Last, Suffix)				
2. Sex Female	3. Social Security Number 171-44-9380	4a. Age 61 Years	5. Date of Birth (Mo/Day/Yr) 11/24/1951	
6. Birthplace (City & State/Foreign Country) Camden, New Jersey				
7a. Residence-State New Jersey	7b. County Burlington	7c. Municipality/City Delran Township		
8a. Street and Number 112 Amberfield Drive		8b. Apt. No.	7f. Zip Code 08075	7g. Inside City Limits? Yes
9a. Ever in US Armed Forces? No		8c. War Service Dates (From/To):		
9. Domestic Status at Time of Death Married		10. Name of Surviving Spouse/Partner (Name, date of birth or on birth certificate) Barry F. Mack		
11. Father's Name (First, Middle, Last) Alfred C. Grover				
12. Mother's Name Prior to First Marriage (First, Middle, Last) Dorothy Cubbler				
13a. Name of Informant Barry F. Mack				13b. Relationship to Decedent Spouse
13c. Mailing Address (Street and Number, City, State, Zip Code) 42 Amberfield Drive, Delran, NJ 08075				
14. Method of Disposition Burial		15. Place of Disposition (Name of cemetery, crematory, other) Lakeview Memorial Park		16. Location - City & State/Foreign Country Cinnaminson Township, New Jersey
17. Name and Complete Address of Funeral Facility Grover-Ghivish Funeral Home, 1200 Rt 130, Cinnaminson, NJ 08077-3006				
18. Electronic Signature of Funeral Director John J. McGlone				19. NJ License Number 23JP00406500
20. Decedent Education High school graduate, GED completed		21. Decedent of Hispanic Origin? Not Spanish / Hispanic / Latino		22. Decedent Race White
23. Occupation of Decedent (Type of work done most of life, when retired) Senior Systems Analyst		24. Kind of Business/Industry Toy Manufacturing		
25. Name and Address of Last Employer Tyco Toys, NJ				
26. Date Pronounced Dead (Mo/Day/Yr) 10/25/2013		28. Name of Person Pronouncing Death Susan Constantine		
27. Time Pronounced Dead (24-hr) 1833		29. License Number 28NR08430000		30. Date Signed (Mo/Day/Yr) 10/25/2013
31. Date of Death (Mo/Day/Yr) 10/25/2013		32. Time of Death (24-hr) Approx 1533	33. Was Medical Examiner Contacted? No	34. Place of Death Decedent's Home
35a. Facility Name (if not institution, give street and number) 42 Amberfield Dr Delran, NJ				
35b. Municipality Delran Township		35c. County Burlington		
36a. PART I - IMMEDIATE CAUSE - final disease or condition resulting in death. Subsequently list conditions, if any, leading to the cause of death on Line 36b. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death). ASSESS				
Immediate Cause e. Cirrhosis		Interval Between Onset and Death unknown		
Due to (or as a consequence of): b. Renal Failure		unknown		
Due to (or as a consequence of): c. Congestive Heart Failure		unknown		
Due to (or as a consequence of): d. Neuropathy		unknown		
36b. PART II - Enter other significant conditions contributing to death but not resulting in underlying cause given in PART I.		37. Was an Autopsy Performed? No		
39. Date of Injury (Mo/Day/Yr)		40. Time of Injury (24-hr)		38. Were Autopsy Findings Available to Complete Cause of Death? Not Applicable
41. Place of Injury (e.g., home, construction site, restaurant)		42. Injury at work?		
43a. Location of Injury (Number and Street, Zip Code)		43b. Municipality	43c. County	43d. State
44. Describe How Injury Occurred		45. If Transportation Injury:		
46. Manner of Death Natural		47. Did Decedent Have Diabetes? No	48. Did Tobacco Use Contribute to Death? Unknown	49. If Female, Pregnancy State Not pregnant within the past year
50. Certifier Type Certifying Physician		51. Name, Address, and Zip Code of Certifier Scott M Dorfner Dorfner Family Medicine 1105 Sunset Road, Burlington, NJ 08016-2289		
52. Electronic Signature of Certifier Scott M Dorfner		53. License Number 25MB05391000	54. Date Certified (Mo/Day/Yr) 10/28/2013	
55. Electronic Signature of Legal Registrar Pamela McGlone		56. District No. V0313	57. Date Received 10/28/2013	58. Page ID Number 1622018

Record
Contains
Amendment

DATE ISSUED: October 29, 2013

ISSUED BY:

New Jersey Department of Health, Office of Vital Statistics and Registry

This is to certify that the above is correctly copied
from a record on file in my office.Certified copy not valid unless the raised
Great Seal of the State of New Jersey
or the seal of the issuing municipality
or county, is affixed hereon.Vincent T. Arisi
State Registrar
Office of Vital Statistics and RegistryREG-42B
JAN 13

THIS DOCUMENT HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD. VOID IF ALTERED.

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA

CASE NO.: 09-7336-CA

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE FOR RALI2007QS3,

Plaintiff,

v.

BARRY F. MACK, et al.,

Defendant.

FILED 38
COLLIER COUNTY, FLORIDA
2011 JUL 14 AM 11:11
CLERK OF COURTS
D.C.
T. SMITH
Filed in Computer

**PLAINTIFF'S MOTION TO SET ASIDE
FINAL JUDGMENT AND SET NEW TRIAL**

Plaintiff Deutsche Bank Trust Company Americas as Trustee for RALI2007QS3 ("Deutsche Bank") moves this Court to set aside the Final Judgment against Deutsche Bank and set a new trial. In support of this Motion, Deutsche Bank, **which was never informed by previous counsel of Defendants' countersuit or any of the court filings or other activities leading up to the default judgment**, states as follows:

INTRODUCTION

Deutsche Bank hired counsel to prosecute a foreclosure action against Defendants and shortly thereafter instructed counsel to voluntarily dismiss the suit. Completely unbeknownst to Deutsche Bank, Defendants filed an answer and counterclaims against Deutsche Bank. In the last communication received by Deutsche Bank, previous counsel informed Deutsche Bank that the lawsuit had been dismissed and that the case was over. For reasons presently known only to previous counsel, Deutsche Bank was never informed about Defendants' countersuit. Deutsche Bank only learned of the entry of the default when it received a copy of the Final Judgment after

it was entered on May 5, 2011. In the short time since learning of the default, Deutsche Bank has retained counsel, conducted an intensive internal investigation, and endeavored to contact prior counsel. As is well known, prior counsel is, and has been for some time, the subject of widespread negative publicity and legal investigations for unethical conduct and malpractice. As a result, Deutsche Bank terminated its relationship with prior counsel last year. Deutsche Bank should not be penalized for the failures of its prior counsel to put forward any defense whatsoever to Defendants' countersuit, a defense which as shown below, is meritorious and should be at least given a proper hearing.

STATEMENT OF UNDISPUTED FACTS

1. Defendants Barry F. and Cheryl M. Mack ("Defendants" or the "Macks") executed a mortgage, which is secured by property located at 287 Egret Avenue, Naples, FL 34108, and is the subject of this action (the "Mack Loan"). The Mack Loan is part of the Residential Accredit Loans, Inc. Trust 2007-QS3, Mortgage Asset-Backed Pass-Through Certificates Series 2007-QS3 (the "Trust"). (Affidavit of J. Aguirre, attached hereto as Ex. 1, at ¶ 3; Affidavit of R. Reyes, attached hereto as Ex. 2, at ¶ 3).

2. The Trust is governed by a Pooling and Servicing Agreement ("PSA"), dated as of December 1, 2006. Pursuant to the Series Supplement, dated as of February 1, 2007, to the Standard Terms of the PSA, Deutsche Bank serves as the Trustee of the Trust and Residential Funding Company, LLC ("RFC") as the Master Servicer. (Aff. of J. Aguirre, at ¶ 4; Affidavit of R. Reyes, at ¶ 2).

3. Pursuant to a sub-servicing agreement between RFC and GMAC, GMAC serves as the sub-servicer of the Trust. (Aff. of J. Aguirre, at ¶ 5).

4. On or about October 25, 2006, GMAC mailed to Defendants its Welcome Letter,

which advised Defendants that GMAC had obtained the servicing rights to their loan. GMAC serviced the Mack Loan until the time that Defendants sold the subject property and satisfied the mortgage debt. (*Id.* at ¶ 6).

5. On July 24, 2009, GMAC instructed the Law Offices of David J. Stern, P.A. ("Stern") to prosecute a foreclosure action on behalf of Deutsche Bank against Defendants. (*Id.* at ¶ 7).

6. Pursuant to GMAC's instructions, on August 20, 2009, Elsa H. Shum ("Shum"), an attorney with Stern, filed a Complaint to Foreclose Mortgage on behalf of Deutsche Bank. (*Id.* at ¶ 8).

7. At the time of the filing of the Complaint, GMAC believed that the Mack Loan was in default, and the Macks and GMAC were engaged in loss mitigation discussions. (*Id.* at ¶ 9).

8. GMAC subsequently discovered that the loan was not in default and, on September 2, 2009, instructed Stern to "close and bill" the file. That same day, Stern confirmed that the file had been closed. (*Id.* at ¶ 10).

9. Between September 2, 2009 and May 12, 2011, GMAC and Deutsche Bank **did not receive any notices from Stern, the Defendants, Defendants' counsel or the clerk's office regarding this action.** GMAC and Deutsche Bank believed the matter was closed. (*Id.* at ¶ 11; Aff. of R. Reyes, at ¶ 5).

10. Unbeknownst to GMAC and Deutsche Bank, on September 11, 2009, Defendants answered the Complaint, and asserted counterclaims against Deutsche Bank. Stern provided no notice to GMAC or Deutsche Bank of Defendants' answer or counterclaims. (Aff. of J. Aguirre, at ¶ 12; Aff. of R. Reyes, at ¶ 5).

11. On October 19, 2009, Defendants filed a Motion for Default against Deutsche Bank. The filed copy of the Motion for Default reflects service to Shum at Stern, but neither Shum nor anyone at Stern provided any notice to GMAC or Deutsche Bank of the Motion for Default. (*Id.* at ¶ 13; Aff. of R. Reyes, at ¶ 5).

12. On October 21, 2009, the Court entered a default against Deutsche Bank. The filed copy of the Clerk's entry of Default reflects service to Shum at Stern, but neither Shum nor anyone at Stern provided any notice to GMAC or Deutsche Bank of the entry of Default. (Aff. of J. Aguirre, at ¶ 14

13. Thereafter, Defendants served various discovery requests and other filings on Shum at Stern, including (a) on November 3, 2009, a Request for Production and a Request for Designation of Corporate Representative; (b) on September 22, 2010, a Second Request for Production on Stern; (c) on February 4, 2011, a Motion to Compel Discovery. Neither Shum nor anyone at Stern communicated with GMAC or Deutsche Bank in any way about any of these papers. (Aff. of J. Aguirre, at ¶ 15; Aff. of R. Reyes, at ¶ 5).

14. On December 8, 2009, Stern filed a Notice of Voluntary Dismissal and Release of Lis Pendens. (Aff. of J. Aguirre, at ¶ 16).

15. On March 3, 2011, there was a hearing on Defendants' Motion to Compel. No attorney appeared on behalf of Deutsche Bank, which had no notice of the hearing. (*Id.* at ¶ 17).

16. On May 5, 2011, the Court held a non-jury trial in which it awarded damages in the amount of \$469,470.27 to Defendants and reserved ruling on attorneys' fees. No attorney appeared on behalf of Deutsche Bank, which had no notice of the trial. (*Id.* at ¶ 18).

17. To reiterate, between September 2, 2009 when GMAC instructed Stern to close the file, and May 5, 2011 when the Court conducted a trial and entered Final Judgment, neither

GMAC nor Deutsche Bank received any notice regarding any of the pleadings, motions, and correspondence sent in this action. (*Id.* at ¶ 19; Aff. of R. Reyes, at ¶ 5).

18. Deutsche Bank first learned about Defendants' countersuit and the subsequent case history on May 12, 2011. (Aff. of R. Reyes, at ¶ 5). Deutsche Bank immediately referred the matter to GMAC, which began investigating and hired the undersigned legal counsel. (Aff. of J. Aguirre, at ¶ 20).

19. In 2010, national news reports were widely circulating about alleged unethical and possibly illegal conduct by Stern after Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") terminated their relationship with Stern on or about November 3, 2010. (*See id.* at ¶ 21; *see also* Nick Timiraos, *Fannie, Freddie Cut Ties to Firm*, Wall St. J., Nov. 3, 2010, <http://online.wsj.com/article/SB10001424052748704462704575590342587988742.html>.; Bloomberg News, *Fannie and Freddie Drop Florida Law Firm*, N.Y. Times, Nov. 2, 2010, <http://www.nytimes.com/2010/11/03/business/03mortgage.html>).

20. In November 2010, in reaction to the allegations and upon conducting its own investigations into the files being handled by Stern, GMAC terminated its relationship with Stern. (Aff. of J. Aguirre, at ¶ 22).

21. On March 4, 2011, Stern sent a letter to all of the chief judges of the Florida Circuit Courts in which he announced that he was stopping all foreclosure-related operations in the State of Florida as of March 31, 2011. (*See id.* at ¶ 23; *see also* Letter from David J. Stern regarding Law Offices of David J. Stern, P.A. cases in your circuit, dated March 4, 2011).

ARGUMENT

I. The Final Judgment against Deutsche Bank should be set aside.

A. Deutsche Bank can establish excusable neglect and a meritorious defense.

It is well established that under appropriate circumstances courts should “liberally set aside defaults for failure of a defendant to plead so as to allow a determination of the controversy on the merits.” *Cnty Nat’l Bank of No. Miami Beach v. Sheridan*, 403 So. 2d 502, 503 (Fla. 4th DCA 1981); *N. Shore Hosp. Inc. v. Barber*, 143 So. 2d 849, 853 (Fla. 1962). If there is any reasonable doubt in the matter of vacating a default, it should be resolved in favor of granting the application and allowing the trial upon the merits. *See Barber*, 143 So. 2d at 853; *see also Khubani v. Mikulic*, 620 So. 2d 800, 801 (Fla. 2d DCA 1993).

Rule 1.540(b) of the Florida Rules of Civil Procedure sets forth the standard for relief from judgment, decrees, or orders as follows:

On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court.

Fla. R. Civ. P. 1.540(b). In Florida, the party seeking to set aside a final judgment bears the burden of demonstrating (1) excusable neglect, (2) a meritorious defense, and (3) due diligence. *See Geer v. Jacobsen*, 880 So. 2d 717, 720 (Fla. 2d DCA 2004) (citing *Coquina Beach Club Condo. Ass’n Inc. v. Wagner*, 813 So. 2d 1061, 1063 (Fla. 2d DCA 2002)).

1. Excusable Neglect

“Excusable neglect must be proven by sworn statements or affidavits.” *Id.* (quoting *DiSarrio v. Mills*, 711 So.2d 1355, 1356 (Fla. 2d DCA 1998)). In the present case, Deutsche Bank has attached sworn affidavits demonstrating that, until May 12, 2011, Deutsche Bank (and its servicer, GMAC) had no notice of Defendants’ countersuit or any court paper served in this action after September 2, 2009. (See Aff. of J. Aguirre, at ¶¶ 11-15, 19; Aff. of R. Reyes, at ¶ 5.) According to file-stamped copies, the Answer and Counterclaims were served on Shum at Stern on September 11, 2009. However, as attested in the affidavits, neither Shum nor anyone at Stern gave any notice to Deutsche Bank or GMAC of the Defendants’ countersuit. Deutsche Bank’s failure to respond to the Counterclaim and subsequent motions and papers is solely the result of the acts and omissions of Stern.

Deutsche Bank only became aware of Defendants’ counterclaims after the Final Judgment had already been entered by the Court. Consequently, this is not a case where an attorney committed a tactical error or a judgmental mistake. Nor is this a situation where a party either intentionally or negligently ignored notices or simply chose not to respond. Rather, this is a case where a client was completely unaware of claims against it because of its former attorney’s failure to take any action whatsoever, such failure constituting an abdication of the attorney’s ethical responsibilities to the client.

Deutsche Bank should not be penalized for the gross misconduct of its prior counsel. See *Wilson v. Woodward*, 602 So. 2d 547, 549 (Fla. 2d DCA 1992) (“Although the court has the authority to discipline counsel for failure to comply with the rules of civil procedure, ordinarily any punishment should be imposed upon the attorney and not the litigant.”); see also *Beasley v. Girtten*, 61 So. 2d 179, 181 (Fla. 1952) (explaining that dismissal with prejudice would in effect

punish the litigant instead of his counsel); *Anthony v. Schmitt*, 557 So. 2d 656, 662 (Fla. 2d DCA 1990) (“Typically, it is more appropriate for the trial court to require the trial attorney to atone for his own sins rather than visit them upon the attorney’s unfortunate client.”).

The present case is similar to *Yusem v. Butler*, 683 So. 2d 1170 (Fla. 4th DCA 1996). In *Yusem*, the plaintiff’s attorney served an amended complaint on the defendants’ attorney, but the defendants’ attorney had abandoned his clients without notice and vacated his office. *Id.* at 1171. The defendants failed to respond, and the trial court entered a default against them. *Id.* The defendants subsequently moved to vacate the default, but the trial court denied their motion to vacate. *Id.* On appeal, the Fourth District Court of Appeal reversed, holding that, under the circumstances, service on the defendants’ attorney could not be considered notice to the clients. *Id.* Accordingly, the court found that the defendants’ failure to respond constituted excusable neglect. *Id.*

As in *Yusem*, Stern failed to give Deutsche Bank or GMAC any information about Defendants’ countersuit or the subsequent case events. Inexplicably, Stern appears to have received notices of court pleadings but did not forward anything to, or attempt to have any communication with, Deutsche Bank or GMAC. Such inaction undeniably resulted in material prejudice to Deutsche Bank – namely, a significant, adverse judgment being entered against it. Deutsche Bank’s failure to respond to any court papers or otherwise defend the subject action constitutes excusable neglect. Therefore, the Final Judgment should be set aside.

Setting aside the Final judgment is further warranted by the circumstances surrounding Stern’s inactivity in the case. Despite having made the initial filing and taking the voluntary dismissal, Stern made no filing or appearance in the case. With publicity swirling about Stern’s problems, Defendants must have been aware by the time of trial that Stern had abdicated

responsibility for the case.

On March 4, 2011, Stern sent a letter to all of the chief judges of the Florida Circuit Courts in which he announced that he was stopping all foreclosure-related operations in the State of Florida as of March 31, 2011. (*See* Aff. of J. Aguirre, at ¶ 23). In his letter, Stern said that “[t]he majority of our clients have terminated the attorney-client relationship and have taken physical possession of their files.” *See Id.* Deutsche Bank, like other clients, took possession of its files from Stern’s office, but this file was classified as a “closed” matter. Had Deutsche Bank known that this “closed” matter was still being litigated by Defendants, it would have immediately taken steps to protect its interests.

Defendants never attempted to communicate with Deutsche Bank. On February 4, 2011, Defendants filed a Motion to Compel and represented that they had “made a good faith effort to resolve this discovery dispute with Plaintiff.” Neither GMAC nor Deutsche Bank is aware of any such effort. Defendants should not be awarded an uncontested windfall under these circumstances.

2. Meritorious Defense

A meritorious defense must be asserted either by a pleading or in an affidavit. *See Geer*, 880 So. 2d at 721 (citing *Schauer v. Coleman*, 639 So. 2d 637, 639 (Fla. 2d DCA 1994)). With regard to Defendants’ claim for violation of the Real Estate Settlement Procedures Act (“RESPA”), Deutsche Bank has at all times complied with RESPA. Defendants specifically allege that Deutsche Bank failed to comply with 12 U.S.C. § 2605(c) by not providing notice that the loan had been assigned to Deutsche Bank within fifteen (15) days of the assignment. (*See* Counterclaim, ¶¶ 6-8). This is a misstatement of the requirements of 12 U.S.C. § 2605(c). Section 2605(c) is entitled “Notice by transferee of loan servicing at time of transfer,” and it

provides as follows:

- (1) Notice requirement. **Each transferee servicer** to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.
- (2) Time of notice
 - (A) In general. Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

12 U.S.C. § 2605(c)(1)-(2) (emphasis added).

At all times relevant to this action, GMAC has acted as servicer on behalf of Deutsche Bank. On or about October 25, 2006, GMAC mailed to Defendants its Welcome Letter, which advised Defendants that GMAC had obtained the servicing rights to their loan. (Aff. of J. Aguirre, at ¶ 6). GMAC serviced the Defendants' loan until the time that Defendants sold the subject property and satisfied the mortgage debt. Because the servicing rights were never transferred to another entity after GMAC and because GMAC provided proper notice pursuant to Section 2605(c), there is no violation of RESPA. *See* 12 U.S.C. § 2605(c)(1)-(2). Hence, Deutsche Bank has a meritorious defense to Defendants' RESPA claim.

With regard to Defendants' slander of title claim, the Defendants must allege and prove the following elements:

- (1) A falsehood (2) has been published, or communicated to a third person (3) when the defendant-publisher knows or reasonably should know that it will likely result in inducing others not to deal with the plaintiff and (4) in fact, the falsehood does play a material and substantial part in inducing others not to deal with the plaintiff; and (5) special damages are proximately caused as a result of the published falsehood.

McAllister v. Breakers Seville Ass'n, Inc., 981 So. 2d 566, 573 (Fla. 4th DCA 2008).

First, the filing of a lis pendens is insufficient to constitute “actionable publication” for a slander of title claim. See *Tishman-Speyer Equitable S. Fla. Venture v. Knight Invs, Inc.*, 591 So. 2d 213, 214 (Fla. 4th DCA 1991) (“Nor does actionable publication occur when a lis pendens is recorded.”); see also *Procacci v. Zacco*, 402 So. 2d 425, 427 (Fla. 4th DCA 1981) (holding that the filing of a proper notice of lis pendens, as part of judicial proceeding to determine existence of easement, was encompassed within the judicial proceedings privilege, and thus, claims for slander of title could not be predicated on filing of the notice.)

Second, Defendants failed to allege that Deutsche Bank knew or reasonably should have known that the filing of the Lis Pendens would have resulted in inducing others not to deal with Defendants. Defendants only allege that “Defendants Mack are currently in the process of trying to sell their property, but such efforts have been hampered due to the wrongful recordation of the notice of its pendens against the property, which serves to discourage potential purchasers.” (See Counterclaim, at ¶ 21). Defendants’ failure to properly allege a cause of action for slander of title constitutes a meritorious defense.

Third, Defendants failed to allege special damages with the specificity required under Florida law. In *Land Title of Central Florida, LLC v. Jimenez*, 946 So. 2d 90 (Fla. 5th DCA 2006), the Fifth District Court of Appeal discussed the standard for pleading special damages in Florida as follows:

The purpose of the special damages rule is to prevent surprise at trial. See Fla. R. Civ. P. 1.120(g); *Bialkowicz*, 215 So.2d at 770. **Special damages must, therefore, be particularly specified in a complaint in order to apprise the opposing party of the nature of the special damages claimed. If special damages are not specifically pled, then evidence of them is inadmissible.** See *Precision Tune Auto Care, Inc. v. Radcliffe*, 804 So.2d 1287 (Fla. 4th DCA 2002). More importantly for purposes of the present case, damages may not be awarded on a claim that is not contained within the pleadings. See *DeMello; Hooters of Am., Inc. v.*

Carolina Wings, Inc., 655 So.2d 1231 (Fla. 1st DCA 1995).

Id. at 93 (emphasis added); *see also Continental Development Corp. of Fla. V. Duval Title & Abstract Co.*, 356 So. 2d 925, 927-28 (Fla. 2d DCA 1978) (finding that plaintiff failed to plead special damages with the requisite specificity so as to warrant an award for special damages on a slander of title claim). In their Counterclaim, Defendants simply claim that "Plaintiff Deutsche Bank's recordation of the notice of lis pendens against Defendants Mack's property has caused Defendants Mack to suffer actual damages." (See Counterclaim, at ¶ 22). Such a broad and conclusory allegation is insufficient to satisfy the specificity requirements as set forth in *Jimenez* and *Continental Development*. Accordingly, Defendants' failure to properly plead special damages with specificity constitutes a meritorious defense.

Fourth, there is a legitimate dispute about the damages allegedly suffered by Defendants as a result of the filing of the Complaint to Foreclose Mortgage on August 20, 2009. As noted, Defendants filed public denials to the claims in its Answer. On December 8, 2009, the Complaint was voluntarily dismissed and the Lis Pendens was released. The Final Judgment clearly states that the property was sold by Defendants on January 28, 2010, almost two months after the Notice of Voluntary Dismissal and Release of Lis Pendens had been filed with the Court. There is no reference in Defendants' Motion or in the findings of fact that the instant lawsuit played a material and substantial part in inducing others not to deal with Defendants. The publicly-filed withdrawal of the Lis Pendens and the absence of proof concerning prospective buyers not dealing with Defendants should all have been taken into account when estimating the value of Defendants' damages.

Fifth, in the Final Judgment, the Court made specific findings of fact with regard to the damages suffered by Defendants as a result of the slander of title as follows:

6. Defendants, Barry F. Mack and Cheryl M. Mack, entered into a Listing of Residential Improved Property Exclusive Right and Authority to Sell Contract on March 26, 2008 with Gulf Breeze Real Estate for a listing price of \$1,969,000.
7. The threat of pending foreclosure and the title slandered by Plaintiff's Notice of Lis Pendens. Defendants Mack reduced the MLS listing price of their property to \$1,499,000.00 on August 30, 2009.
8. Defendants, Barry F. Mack and Cheryl M. Mack, ultimately sold their property for \$1,156,000.00, which closing took place on January 28, 2010.
9. The property of Defendants, Barry F. Mack and Cheryl M. Mack, had a value of \$1,275,000.00 as of January 29, 2010 according to the appraisal of trial expert and licensed appraiser, Ted Hofferber.
10. **Defendants Mack suffered actual damages in the amount of \$118,500.00, the difference between the sale price and the appraised price of the property.**

(See Final Judgment, p. 2, ¶¶ 6-10 (emphasis added)).

Notwithstanding these specific findings of fact, the Court awarded Defendants \$296,920.05 "for damages to the value of the real estate." (*See id.*, p. 3, ¶ 1). The Final Judgment is thus inconsistent. In the findings of fact, it claims that the actual damages suffered by Defendants were \$118,500, yet it awards an amount that is almost one and a half (1.5) times the amount supported by the facts. This creates a legitimate dispute about damages suffered by Defendants.

Lastly, Deutsche Bank is prepared to present evidence that the value of Defendants' home was an effect of the overall decline in the housing market and not substantially affected by the brief presence of the Lis Pendens in the Official Records.

3. Due Diligence

Deutsche Bank first received notice of Defendants' countersuit and the Final Judgment on May 12, 2011. It quickly retained undersigned counsel, conducted an immediate internal investigation and has attempted to contact the attorneys at Stern, including Shum. Deutsche Bank is prepared to move as quickly as the Court desires to redress this situation.

B. Deutsche Bank's due process rights would be violated if the Final Judgment was not set aside.

By the time of trial, it was well known that Stern was no longer in business and that he would almost certainly not be responding to any court papers delivered to his offices. Defendants, however, never reached out directly to Deutsche Bank and instead continued to send court papers to a largely vacant office. To proceed with a trial in light of such widespread reports of Stern's demise is contrary to Deutsche Bank's constitutionally protected due process rights. In *N.C. v Anderson*, 882 So.2d 990 (Fla. 2004), the Florida Supreme Court stated:

The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty or property, without due process of law." This same protection is provided in the Florida Constitution. See Art. I, § 9, Fla. Const. "Procedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue." *Dep't. of Law Enforcement v. Real Prop.*, 588 So. 2d 957, 960 (Fla. 1991). Procedural due process requires both reasonable notice and a meaningful opportunity to be heard. See *id.* The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Id. at 993. In this case, Deutsche Bank was not provided with adequate notice or a meaningful opportunity to be heard and was thus denied procedural due process.

II. The default judgment against Deutsche Bank should be set aside.

A. Defendants failed to provide effective notice of application for default judgment.

The default judgment was entered without effective notice to Deutsche Bank and must be set aside. Default judgments are disfavored, and Florida law requires a party seeking default to make every effort to resolve the action on its merits. *See Coggin v. Barfield*, 8 So. 2d 9, 11 (Fla. 1942). “[D]efault is not appropriate in cases where the plaintiff knows that a defendant is represented by counsel who intends to assert matters in defense of the cause of action.” *Gulf Maint. & Supply, Inc. v. Barnett Bank of Tallahassee*, 543 So.2d 813, 816 (Fla. 1st DCA 1989). Accordingly, “plaintiff’s counsel should contact the attorney known to be representing a defendant to determine whether the latter intends to proceed in the matter before causing a default to be entered.” *Id.* Rule 1.500(b) of the Florida Rules of Civil Procedure codifies these principles:

When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party; provided that if such party has filed or served any paper in the action, that party shall be served with notice of the application for default.

Fla. R. Civ. P. 1.500(b).

In the present action, Plaintiff had filed a “paper in the action” – the Complaint to Foreclose Mortgage – that identified Stern as its counsel. *See Green Solutions Intern., Inc. v. Gilligan*, 807 So. 2d 693, 696 (Fla. 5th DCA 2002) (holding that “paper” under Fla. R. Civ. P. 1.500(b) includes “any paper that has been filed or served by the party’s attorney”). Because Defendants knew that Deutsche Bank was represented by Stern in the matter, they had an obligation to inquire of Stern before seeking default. *See Gulf Maintenance*, 543 So.2d at 816

n.3 (“When [a lawyer] knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer’s intention to proceed.”). There is no indication from the file that Defendants made any such inquiry. Indeed, had Defendants inquired of Stern, Defendants would have learned that Stern was not communicating with Deutsche Bank, that Deutsche Bank intended to defend the action, or both. Under these circumstances, Defendants’ service of default on Stern was ineffective as to Deutsche Bank, which received no notice of default until after the judgment was entered.

In short, the default judgment should be set aside because of Defendants’ failure to provide Deutsche Bank with effective notice of the application for default. An improper *ex parte* default “must be vacated without regard to whether the defendant can establish a meritorious defense or whether the defendant can demonstrate inadvertence or excusable neglect.” *Makes & Models Magazines, Inc. v. Web Offset Printing Co. Inc.*, 13 So. 3d 178, 181 (Fla. 2d DCA 2009) (quoting *U.S. Bank Nat’l Ass’n v. Lloyd*, 981 So. 2d 633, 640 (Fla. 2d DCA 2008)). Therefore, this Court should set aside the default judgment against Deutsche Bank.

B. Defendants failed to allege that they satisfied an express condition precedent to this litigation.

A default judgment is void and should be set aside when the complaint fails to state a cause of action. See *Southeast Land Developers, Inc. v. All Florida Site and Utilities, Inc.*, 28 So. 3d 166, 168 (Fla. 1st DCA 2010); see also *Moynet v. Courtois*, 8 So. 3d 377, 378-79 (Fla. 3d DCA 2009) (citing *Becerra v. Equity Imports, Inc.*, 551 So.2d 486 (Fla. 3d DCA 1989), and *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So.2d 490, 493 (Fla. 3d DCA 1994)); *GAC Corp. v. Beach*, 308 So. 2d 550 (Fla. 2d DCA 1975); see generally *Hooters of America, Inc. v. Carolina Wings, Inc.*, 655 So. 2d 1231 (Fla. 1st DCA 1995) (damages award barred on default judgment

violated due process due to lack of well-pled allegations in complaint). Failure to allege that a condition precedent is met renders a complaint fatally defective in that it fails to state a cause of action. *See id.* (citing *Nguyen v. Roth Realty, Inc.*, 550 So. 2d 490 (Fla. 5th DCA 1989)).

Defendants' mortgage contains an express notice and cure period required before any party can bring a judicial action arising in any way from the mortgage. Specifically, paragraph 20 of the mortgage states as follows:

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.

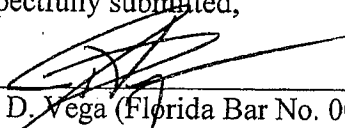
(See Exhibit A to Complaint, at ¶ 20).

Defendants' Counterclaims unquestionably arose out of Deutsche Bank's actions under the mortgage. Defendants, however, failed to make any allegations, either general or specific, that they complied with this notice and cure period. Because Defendants failed to allege that a condition precedent was met, the Counterclaim is fatally defective, and thus the default judgment is void and should be set aside.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiff Deutsche Bank Trust Company Americas as Trustee for RALI2007QS3 respectfully requests the Court set aside the Final Judgment against Deutsche Bank, and set a new trial, and award such further relief as the Court deems appropriate.

Respectfully submitted,



José D. Vega (Florida Bar No. 0088872)
BRADLEY ARANT BOULT CUMMINGS, LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000
Facsimile: (205) 521-8800
jvega@babbc.com

Christian W. Hancock (Florida Bar No. 643521)
BRADLEY ARANT BOULT CUMMINGS, LLP
Bank of America Corporate Center
100 N. Tryon Street, Suite 2690
Charlotte, North Carolina 28202
Telephone: (704) 332-8842
Facsimile: (704) 332-8858
chancock@babbc.com

Stanley A. Bunner, Jr. (Florida Bar No. 297010)
SALVATORI, WOOD, & BUCKEL, P.L.
9132 Strada Place, Fourth Floor
Naples, FL 34108-2683
Telephone: (239) 552-4100
Facsimile: (239) 649-1706
sab@swbnaples.com

ATTORNEY FOR DEUTSCHE BANK TRUST
COMPANY AMERICAS AS TRUSTEE FOR
RALI2007QS3

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2011, I served the foregoing by Federal Express, upon the following:

David F. Garber, Esq.
Garber, Hooley & Holloway, LLP
700 Eleventh Street South, Suite 202
Naples, Florida 34102



OF COUNSEL

EXHIBIT 1

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA

CASE NO.: 09-7336-CA

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE FOR RALI2007QS3,

Plaintiff,

v.

BARRY F. MACK, et al.,

Defendant.

**AFFIDAVIT OF JUAN ANTONIO AGUIRRE IN SUPPORT OF
PLAINTIFF'S MOTION TO SET ASIDE FINAL JUDGMENT AND SET NEW TRIAL**

I, Juan Antonio Aguirre, do state under oath as follows:

1. My name is Juan Antonio Aguirre. I am over twenty-one years of age, am of sound mind, and am competent to make this affidavit. The facts stated in this Affidavit are within my personal knowledge based on a review of the business records for GMAC Mortgage, LLC ("GMAC") and are true and correct to the best of my knowledge.
2. I am employed as Manager-Litigation Support Department. I am authorized to submit this Affidavit on behalf of GMAC.
3. Defendants Barry F. and Cheryl M. Mack ("Defendants") executed a mortgage, which is secured by property located at 287 Egret Avenue, Naples, FL 34108, and is the subject of this action (the "Mack Loan"). The Mack Loan is part of the Residential Accredited Loans, Inc. Trust 2007-QS3, Mortgage Asset-Backed Pass-Through Certificates Series 2007-QS3 (the "Trust").
4. The Trust is governed by a Pooling and Servicing Agreement ("PSA"), dated as

of December 1, 2006. Pursuant to the Series Supplement, dated as of February 1, 2007, to the Standard Terms of the PSA, Deutsche Bank serves as the Trustee of the Trust and Residential Funding Company, LLC ("RFC") as the Master Servicer.

5. Pursuant to a sub-servicing agreement between RFC and GMAC, GMAC serves as the sub-servicer of the Trust.

6. On October 25, 2006, GMAC mailed to Defendants its Welcome Letter, which advised Defendants that GMAC had obtained the servicing rights to their loan. GMAC serviced the Mack Loan until the time that Defendants sold the subject property and satisfied the mortgage debt.

7. On July 24, 2009, GMAC instructed the Law Offices of David J. Stern, P.A. ("Stern") to prosecute a foreclosure action on behalf of Deutsche Bank against Defendants.

8. Pursuant to GMAC's instructions, on August 20, 2009, Elsa H. Shum ("Shum"), an attorney with Stern, filed a Complaint to Foreclose Mortgage on behalf of Deutsche Bank.

9. At the time of the filing of the Complaint, GMAC believed that the Mack Loan was in default, and Defendants and GMAC were engaged in loss mitigation discussions.

10. GMAC subsequently discovered that the Mack Loan was not in default. On September 2, 2009, GMAC instructed Stern to "close and bill" the file. That same day, Stern confirmed that the file had been closed.

11. Between September 2, 2009 and May 12, 2011, GMAC did not receive any notices from Stern, the Defendants, Defendants' counsel, or the Court regarding this action. GMAC believed the matter was closed.

12. Unbeknownst to GMAC, on September 11, 2009, Defendants answered the Complaint, and asserted counterclaims against Deutsche Bank. Stern provided no notice to

GMAC of Defendants' answer or counterclaims.

13. On October 19, 2009, Defendants filed a Motion for Default against Deutsche Bank. The filed copy of the Motion reflects service to Shum at Stern, but neither Shum nor anyone at Stern provided any notice to GMAC of the Motion for Default.

14. On October 21, 2009, the Court entered a default against Deutsche Bank. The filed copy of the Clerk's entry of Default reflects service to Shum at Stern, but neither Shum nor anyone at Stern provided any notice to GMAC of the entry of Default.

15. Thereafter, Defendants served various discovery requests and other filings on Shum at Stern, including (a) on November 3, 2009, Request for Production and a Request for Designation of Corporate Representative; (b) on September 22, 2010, Second Request for Production on Stern; (c) on February 4, 2011, a Motion to Compel Discovery. Neither Shum nor anyone at Stern communicated with GMAC in any way about any of these papers.

16. On December 8, 2009, Stern filed a Notice of Voluntary Dismissal and Release of Lis Pendens.

17. On March 3, 2011, there was a hearing on Defendants' Motion to Compel. No attorney appeared on behalf of Deutsche Bank, which had no notice of the hearing.

18. On May 5, 2011, the Court held a non-jury trial in which it awarded damages in the amount of \$469,470.27 to Defendants and reserved ruling on attorneys' fees. No attorney appeared on behalf of Deutsche Bank which had no notice of the trial.

19. To reiterate, between September 2, 2009, when GMAC instructed Stern to close the file, and May 5, 2011, when the Court conducted a trial and entered Final Judgment, GMAC did not receive notice regarding any of the pleadings, motions, and correspondence sent in this action.

20. After Deutsche Bank first learned of Defendants' countersuit on May 12, 2011, Deutsche Bank immediately referred the matter to GMAC, which began investigating and hired the undersigned legal counsel.

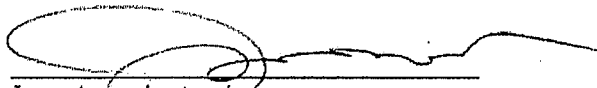
21. In 2010, national news reports were widely circulating about alleged unethical and possibly illegal conduct by Stern after Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") terminated their relationship with Stern on or about November 3, 2010.

22. In November 2010, in reaction to the allegations and upon conducting its own investigations into the files being handled by Stern, GMAC terminated its relationship with Stern.

23. On March 4, 2011, Stern sent a letter to all of the chief judges of the Florida Circuit Courts in which he announced that he was stopping all foreclosure-related operations in the State of Florida as of March 31, 2011.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

FURTHER AFFIANT SAITH NOT

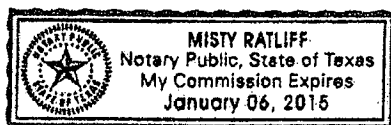


Juan Antonio Aguirre

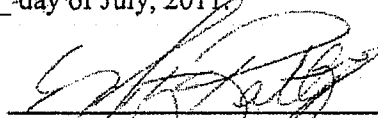
STATE OF Texas)

COUNTY OF Dallas)

Subscribed and sworn to before me this 11th day of July, 2011.



[NOTARIAL SEAL]



Notary Public

My commission expires: 01/06/2015

EXHIBIT 2

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA

CASE NO.: 09-7336-CA

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE FOR RALI2007QS3,

Plaintiff,

v.

BARRY F. MACK, et al.,

Defendant.

**AFFIDAVIT OF RONALDO REYES IN SUPPORT OF
PLAINTIFF'S MOTION TO SET ASIDE FINAL JUDGMENT AND SET NEW TRIAL.**

I, RONALDO REYES, do state under oath as follows:

1. My name is Ronaldo Reyes. I am over twenty-one years of age, am of sound mind, and am competent to make this affidavit. I am a Vice President of Deutsche Bank Trust Company Americas ("DBTCA"). I am authorized to submit this Affidavit on behalf of DBTCA. The facts stated in this Affidavit are within my personal knowledge based on a review of the business records for DBTCA and are true and correct to the best of my knowledge.

2. Pursuant to the Series Supplement, dated as of February 1, 2007, to the Standard Terms of Pooling and Servicing Agreement ("PSA"), dated as of December 1, 2006, DBTCA became the trustee ("Trustee") of Residential Accredit Loans, Inc. Trust 2007-QS3, Mortgage Asset-Backed Pass-Through Certificates Series 2007-QS3 (the "Trust").

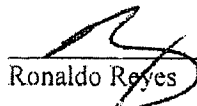
3. Pursuant to the Mortgage Loan Schedule, which is Exhibit I to the Series Supplement for the Trust, the Barry F. Mack loan, which is secured by property located at 287 Egret Avenue, Naples, FL 34108, and is the subject of this action (the "Mack loan"), is part of

the Trust, and is serviced by a servicer (either the Master Servicer or a Subservicer), pursuant to the Series Supplement and PSA governing the Trust.

4. Pursuant to the terms of the Series Supplement and PSA, servicing responsibilities for the Mack Loan include the collection and application of mortgage payments, and the power to initiate foreclosure on behalf of DBTCA if the loan defaulted.

5. Prior to May 12, 2011, DBTCA had no knowledge of this action. It was not aware of any of the pleadings, motions or orders filed in the action, including the counterclaim filed by the defendants or the judgment that had been obtained against it, and received no notices in connection with this action until May 12, 2011, when it received a copy of the Final Judgment of Foreclosure.

FURTHER AFFIANT SAITH NOT

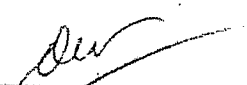

Ronaldo Reyes

State of California}
County of Orange}

On July 11, 2011, before me, TUAN QUACH Notary Public, personally appeared Ronaldo Reyes, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.


Notary signature



IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA

CASE NO.: 09-7336-CA

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE FOR RALI2007QS3,

Plaintiff,

v.

BARRY F. MACK, et al.,

Defendant.

**AFFIDAVIT OF RONALDO REYES IN SUPPORT OF
PLAINTIFF'S MOTION TO SET ASIDE FINAL JUDGMENT AND SET NEW TRIAL.**

I, RONALDO REYES, do state under oath as follows:

1. My name is Ronaldo Reyes. I am over twenty-one years of age, am of sound mind, and am competent to make this affidavit. I am a Vice President of Deutsche Bank Trust Company Americas ("DBTCA"). I am authorized to submit this Affidavit on behalf of DBTCA. The facts stated in this Affidavit are within my personal knowledge based on a review of the business records for DBTCA and are true and correct to the best of my knowledge.

2. Pursuant to the Series Supplement, dated as of February 1, 2007, to the Standard Terms of Pooling and Servicing Agreement ("PSA"), dated as of December 1, 2006, DBTCA became the trustee ("Trustee") of Residential Accredit Loans, Inc. Trust 2007-QS3, Mortgage Asset-Backed Pass-Through Certificates Series 2007-QS3 (the "Trust").

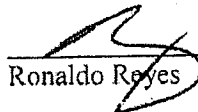
3. Pursuant to the Mortgage Loan Schedule, which is Exhibit I to the Series Supplement for the Trust, the Barry F. Mack loan, which is secured by property located at 287 Egret Avenue, Naples, FL 34108, and is the subject of this action (the "Mack loan"), is part of

the Trust, and is serviced by a servicer (either the Master Servicer or a Subservicer), pursuant to the Series Supplement and PSA governing the Trust.

4. Pursuant to the terms of the Series Supplement and PSA, servicing responsibilities for the Mack Loan include the collection and application of mortgage payments, and the power to initiate foreclosure on behalf of DBTCA if the loan defaulted.

5. Prior to May 12, 2011, DBTCA had no knowledge of this action. It was not aware of any of the pleadings, motions or orders filed in the action, including the counterclaim filed by the defendants or the judgment that had been obtained against it, and received no notices in connection with this action until May 12, 2011, when it received a copy of the Final Judgment of Foreclosure.

FURTHER AFFIANT SAITH NOT

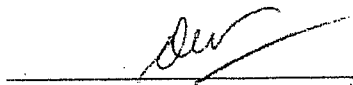

Ronaldo Reyes

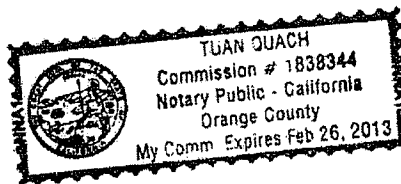
State of California)
County of Orange)

On July 11, 2011, before me, TUAN QUACH Notary Public, personally appeared Ronaldo Reyes, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.


Notary signature



0601677259
Loan No.: 179700007
INTEREST-ONLY PERIOD FIXED RATE NOTE

MIN: 1001464-0609002738-6
MERS TELEPHONE: (888) 679-6377

October 6, 2006
[Date]

NAPLES
[City]

FLORIDA
[State]

287 EGRET AVE, NAPLES, FLORIDA 34108
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 990,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is PRIMARY RESIDENTIAL MORTGAGE INC.. 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 7.125%.

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 make a payment every month. This payment will be for interest only for the first 120 months, and then will consist of principal and interest.

I will make my monthly payment on the FIRST day of each month beginning on December 1, 2006. 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 if the payment includes both principal and interest it will be applied to interest before Principal. If, on November 1, 2036, 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 4750 WEST WILEY POST WAY #200, SALT LAKE CITY, UTAH 84116 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. \$ 5,878.13 for the first 120 months of this Note, and thereafter will be in the amount of U.S. \$ 7,749.92. The Note Holder will notify me prior to the date of change in monthly payment.

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 of my monthly payment unless the Note Holder agrees in writing to those changes. However, if the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest as well as during the time that my payments consist of principal and interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, the amount of my monthly payment will not decrease; however, the principal and the interest required under this Note will be paid prior to the Maturity Date.

FLORIDA INTEREST-ONLY PERIOD FIXED RATE NOTE-Single Family-Fannie Mae UNIFORM INSTRUMENT Form 3271.10 1/01(rev. 9/06)
Page 1 of 3

Initials: *ESW emm*

03271



179700007



OTHER

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 fifteen (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 five percent (5.00%) of my overdue payment of interest and/or 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.

11. **DOCUMENTARY TAX**

The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

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

Barry Fritz Mack (Seal)
BARRY FRITZ MACK -Borrower

Social Security No.: 143-32-0789

Cheryl Margaret Mack (Seal)
CHERYL MARGRET MACK -Borrower

Social Security No.: 171-44-9380

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Pay to the order of:

GMAC BANK

Without Recourse

PRIMARY RESIDENTIAL MORTGAGE INC.

By:

Sadie Young
SADIE YOUNG
VICE-PRESIDENT

Pay to the Order of

GMAC Mortgage Corporation

Without Recourse

Joanna Wight
Joanna Wight, Vice President
Acting Agent for GMAC Bank

[Sign Original Only]

PAY TO THE ORDER OF
RESIDENTIAL FUNDING COMPANY, LLC
WITHOUT RECOURSE

D. Harkness
D. Harkness
Limited Signing Officer
Acting Agent for
GMAC MORTGAGE CORPORATION

PAY TO THE ORDER OF
Deutsche Bank Trust Company Americas as Trustee
WITHOUT RECOURSE
Residential Funding Company, LLC

BY Judy Faber
Judy Faber, Vice President